



UNIVERSITY OF  
KWAZULU-NATAL

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INYUVESI  
YAKWAZULU-NATALI

**A CRIMINOLOGICAL EXPLORATION OF THE SOUTH  
AFRICAN LAND RESTITUTION PROCESS: A NON-  
EMPIRICAL STUDY OF KWAZULU-NATAL.**

**By**

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## **DECLARATION OF PLAGIARISM**

I, Arnold Tawanda Milos, declare that:

- The research reported in this dissertation, except where otherwise indicated is my original research.
- This dissertation has not been submitted for any degree or examination at any other university.
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**As the candidate's Supervisor I have approved this dissertation for submission:**

.....  
**Dr Siyanda Dlamini**

.....  
**Date**

## **DEDICATION**

**This dissertation is dedicated to the following special people in my life:**

- My parents (**MR THOMAS MILOS AND MRS PATRICIA MILOS**) for the love and support since I was born;
- My brothers (**SHELTON AND MARSHAL MILOS**) for being there always;
- All the scholars and readers (universal) interested in land reform.

## ACKNOWLEDGEMENTS

Genesis 18 v 14 says “Is anything too hard for the LORD...” I am nothing without God.

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## ABSTRACT

This research was aimed at exploring crimes which are involved in the process of restitution of land in KwaZulu-Natal Province in South Africa. The motivation of the study is that since the Restitution of Land Rights Act 22 of 1994 was enacted after South Africa's independence, the focus has been on giving people the land back which is up to today not half done. Instead of resorting to measures like land grabs and unplanned expropriation of land without compensation, the researcher decided to look at the root cause of why the process of restitution has been slow and sometimes not completed. The researcher did this by exploring the criminological reasons for such.

To ensure that the end-product of this research is achieved, a qualitative approach (using systematic literature review) was used to explore the Restitution of Land Rights Act 22 of 1994 and link it with crimes involved. Data was collected using systematic literature review. This was done to assist with assessing at all documents, journals, reported news, case law and statutes. The data collected was analysed using Content Analysis method (CA). The essence of Content Analysis was that it brings scholars' opinions, reported cases, decided cases and published journals and dissertations together. This is important as the researcher had different sources to investigate when embarking on this journey.

The main findings highlighted that most land related crimes are committed by the tribunal authorities in KZN. These are the chiefs who are responsible for looking after and distributing communal land to the community after it has been given back to a community or individuals. Other findings indicated that if South Africa does not take measures, other crimes committed in other countries by people like land guards can end up being practiced in South Africa.

This study suggest that successful individual claimants should be able to be given back land straight to themselves or otherwise they choose a curator of their choice. The other suggestion is that the implementation of the process should be strict, and the land commissioners should be monitored and produce progress reports on the cases they would have handled. A recommendation offered is that scholars may do a critic or further study on land related crimes.

## ACRONYMS

<b>ANC</b>	<b>AFRICAN NATIONAL CONGRESS</b>
<b>CA</b>	<b>CONTENT ANALYSIS</b>
<b>CPA</b>	<b>COMMUNAL PROPERTY ASSOCIATION</b>
<b>DAT</b>	<b>DIFFERENTIAL ASSOCIATION THEORY</b>
<b>DRDLR</b>	<b>DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM</b>
<b>EFF</b>	<b>ECONOMIC FREEDOM FIGHTERS</b>
<b>IDP</b>	<b>INTEGRATED DEVELOPMENT PLAN</b>
<b>IPLRA</b>	<b>INTERIM PROTECTION OF INFORMAL LAND RIGHTS ACT 31 OF 1996</b>
<b>KZN</b>	<b>KWAZULU-NATAL</b>
<b>LCC</b>	<b>LAND CLAIMS COMMISSION</b>
<b>LCC</b>	<b>LAND CLAIMS COURT</b>
<b>NPA</b>	<b>NATIONAL PROSECUTION AUTHORITY OF SOUTH AFRICA</b>
<b>PLAS</b>	<b>PROACTIVE LAND ACQUISITION STRATEGY</b>
<b>RAT</b>	<b>ROUTINE ACTIVITIES THEORY</b>
<b>RLRA</b>	<b>RESTITUTION OF LAND RIGHTS ACT 22 OF 1994</b>
<b>SA</b>	<b>REPUBLIC OF SOUTH AFRICA</b>
<b>UDHR</b>	<b>UNIVERSAL DECLARATION OF HUMAN RIGHTS</b>
<b>WBWS</b>	<b>WILLING BUYER WILLING SELLER</b>
<b>ZANU-PF</b>	<b>ZIMBABWE AFRICAN NATIONAL UNION-PATRIOTIC FRONT</b>

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# CHAPTER ONE

## GENERAL ORIENTATION AND PROBLEM FORMULATION

### 1. Introduction and Historical Background

The Preamble of the South African Constitution, 1996 states that the people of South Africa recognize the injustices of the past and believe the constitution will help heal the divisions of the past. The land question is without a doubt one of the past injustices which the constitution seeks to address. Section 25(7) of the constitution reads, “A person or community dispossessed of property after 19 June 1913 because of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of the Parliament, either to restitution of that property or to equitable redress.” Restitution of Land Rights Act (22 of 1994) and the Amendment Act (15 of 2014) are Acts of Parliament which caters for restitution of land and gave freedom for those who can prove that the property was owned by them or their forefathers to claim it. This was expected to work, and at a certain given target, a certain amount of land was expected to have been given back to the rightful owners. However, this process of land restitution has been met with various criminal challenges such as land fraud, illegal land grabs and corruption. This study takes a criminological perspective to highlight on how these challenges affect an effective process of land reform (restitution in this study) in South Africa.

The issue of land is a highly sensitive, therefore, it requires a considerable approach that is reflective of the principal guidelines of our constitution and principled interpretation of the law. This approach of understanding the tenets of land restitution amidst the struggles of land reform program in South Africa is important to provide future strategies of addressing and executing the cause in a conciliatory manner and for all South Africans. Therefore, the study explores various land restitution related issues to understand the legal guidelines and frameworks that have been used and are being used in addressing various cases and how they can be expanded to ensure that justice is properly served, or the rule of law is upheld in honour of the country`s constitution. The process of land restitution should be considered sacred. Since it is not a matter of just trying to re-address the politico-socio-economic injustices and challenges of the past against black people but also a representation of the current constitutional and democratic values of the country. It should be noted that the land restitution process has been tainted by criminal activities (Corruption Watch, 2013). Thus, in as much as historical injustices must be

addressed within the confines of the constitution and the rule of law, it is also necessary to ensure that this process of justice is meticulously followed to avoid fraud and criminality from tainting the goodwill process. Thus, this study explores the land restitution processes in KwaZulu-Natal to identify and root out criminal challenges affecting the process and how these measures can be addressed. It is essential to note that engaging this perspective help in safeguarding the land reform process in South Africa<sup>1</sup> to avoid land fraud, corruption and land related violence like what has occurred in other countries such as Ghana and Zimbabwe.

This study looks at the land restitution as part of the land reform program in KwaZulu-Natal South Africa. It specifically looks at the crimes associated with the process. The Commission on Restitution of Land Rights is responsible for investigating and processing restitution claims regarding the Land Rights Act 22 of 1994. The Commission also develops and coordinates restitution policies and oversees restitution court cases. It is during the afore-mentioned process where cases of ongoing crimes have been reported. This is perpetual act as traced in the research and it is not unique to South Africa.

In so doing, the study explores these crimes in KZN as they affect the claimants, the authorities and the South African legal system on how it deals with issues of crime when it comes to land-related matters. This is done with the intention of finding solutions of reducing these crimes and granting aspiring claimants hope that their cases will be in future held with fairness.

The 2018 announcements of considering expropriation of land without compensation (by President Ramaphosa) left the stone of crime in restitution process unturned. The issue is altogether not attended to. Although there are some instances of prosecution regarding restitution of land-related crimes, most of them remain unresolved or rather neglected which is what this study researched on (Corruption Watch, 2013).

Although land reform programs are popular in Africa, this does not mean that “Land reform” originated in Africa. It has always been a burning issue internationally. In countries in Europe such as Italy, land reform was experienced there. It was the western Europeans who had

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<sup>1</sup> Section 25(2) (b) states that, “Property may be expropriated only in terms of law and general application subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.” In other words, those who would have been appropriated should be compensated and it should be done fairly by agreement.

initially deprived the Italians of their original land (Russell, 1973). In Colombia, land restitution is common up to date. The Colombian law defines restitution as, “giving out titles or compensation.” In the nineteenth century, Colombians experienced unfair distribution of land. Business people were the ones who were given larger portions of land if they are successful. This was done so that the states meet “public debt obligation” (Paula, 2010). This resulted in the poor majority being left with small or no land.

In the 1870s, Africa started experiencing land oppression with “scramble for Africa” which is defined as “the rush to take Africa” using superior powers (Thomas, 2015). The motive for the scramble for Africa was to take land by force which is productive for cultivation and rich in natural resources. South Africa was part of the countries colonised. Until now, people are claiming back their land.

Land reform program is increasingly becoming a serious issue in South Africa. Historically, the land crisis in Africa began when the European settlers dispossessed the natives of their land through colonialism in the 1870s. The repressive laws that were put in place by the colonial masters and settler regimes stripped natives of their wealth and arable farming land and placed them in reserves (Thomas, 2015). In South Africa, the implementation of the Natives Land Act 27/1913 on 19 June 1913 witnessed most of the country’s land being set aside for whites’ supremacy leaving the native citizens with little or no land.

Enacting statutes like the Native Act for the sake of oppressing and chasing the natives off their land was criminal activity on its own. It can be said that land crime was pioneered by the white settlers who dispossessed the rightful owners of their land. It is important to note that the heartbeat of most liberation struggles all over Africa, was land reclamation (Russell, 1973). Despite the political manipulations in most independence negotiations which diverted and evaded the land question, the fact remains that this process was not an inevitable cause. Contemporarily, the land reform programs have become very popular in Africa, South Africa included, due to the historical consequences which remain unattended.

In the South African Post-apartheid era (1994 onwards), the Constitutional government managed to enact a Statute namely; the Restitution of Land Rights Act (1994; 22) which address the question of lost land. Its mandate is “to provide restitution of rights in land to

persons or communities dispossessed of such rights after 19 June 1913 because of past racially discriminatory laws or practices.” In collation with this statement, this study seeks to engage the criminal cases of KwaZulu-Natal (KZN) Province to reflect on the challenges of corruption and inconsistencies that exist in the land restitution process. This challenge is identified across the entire country. However, KZN has recorded the most cases of suspicious criminal nature surrounding this subject. Thus, it is important to note, that loopholes in the land restitution can demean the effect of precedence in any land reform issues in KZN Province.

Regarding the official government policy, the South African restitution process is intended to restore land and other restitution remedies to people dispossessed by racially discriminatory legislation and practice by providing support to the vital process of reconciliation, reconstruction and development (Russell, 1973). A considerable percentage of land in rural South African communities comprises of rivers, grazing land, subsistence farming, irrigation schemes and natural resources. The significant areas of land are owned by the State and under the custodianship of Traditional Authorities, and the large tracts of high potential agricultural land are used for intensive and extensive farming activities.

### **1.1. Problem Statement**

The land restitution process in South Africa remains a huge and important task. This process is currently (2018) highly politicised by various criminal activities even though this process was staged to redress the wrongs of the past and pursue justice through the available legal lanes, in contrary, various issues of corruption, abuse of power and bribery in the procurement process has been reported. According to the statistics provided by Corruption Watch (2013), KZN has had the largest percentage of reports at 35.7% with Gauteng following at 21, 4 % on corruption in the land restitution procurement process. This is a worrying phenomenon which required proper investigation since the failure of this process might set a bad precedence in any land related challenge that might need the attention of the law and government. Considering this problem, the land question increasingly becomes a huge subject to the extent that there are suggestions for land expropriation without compensation. This is an unconstitutional process according to Article 25(2) of the Constitution (1996) which advocates for expropriation subject to compensation which is and equitable. However, the current president Cyril Ramaphosa’s address to the nation (31 July 2018), he had raised an eyebrow when he announced the ANC’s

plans to amend the constitution to allow expropriation of land without compensation. However, nothing has been decided.

The land under claim in South African rural communities poses a very serious challenge when it comes to social and economic development. On the other hand, land redistribution processes in these communities may result in many people obtaining access to land, resulting in improved quality of life, while on the other hand it could result in large-scale sterilization of productive economic land, for example; the agricultural land and mining, which will lead to job losses if not well managed (Herman, 2016 News 24).

The Restitution of Land Rights Act of 1994 states that those who lost their land during apartheid had four years to seek compensation or restoration, but the process has moved at a snail pace. In 2014 the Land Restitution Amendment Act came into law, this gives those who missed the 1998 deadline until June 2019 to lodge a claim. However, this move put the existing claims on the back burner, further prompting various grassroots organisations to challenge the new Bill; they argued that the public was not properly consulted before the Amendment Act was introduced.

Now the Constitutional Court has ordered that the old claims must be finalised first before the new ones are processed. At the beginning of 2014, the government were sitting with 20 thousand outstanding claims, a further 100 thousand claims and expected 300 thousand claims. More than 8 thousand claims dating from the 90s has yet to be settled (Herman, 2016 News 24), over 17 thousand had been approved but without any restitution.

The dearth of the literature indicated the following challenges that the Land Claims Commission is facing in line with land restitution in South African communities:

- Counterclaims or overlapping of claims;
- The validity of Chieftainship;
- Landowners challenging the validity of claim;
- New landowners not having the expertise to continue with the production and running of the farm commercially;
- The capacity of staff to deal with all claims at once;

- Illegal land occupation also poses a serious challenge for South African municipalities in large;
- and
- Land belonging to the municipality and traditional Leaders is illegally occupied; this has serious implications in terms of proper planning.

There was a need to explore KZN case studies and how they are being governed and administered. Cases, for example, In the Mangethe Case<sup>2</sup>, the Mangethe Committee had to be formed due to the slowness of the process of restitution of their claim. In 1998 the claim was lodged and published in the Green Gazette, and in 2002 a Section 42D agreement was signed. From there it went all quiet for 6 years until 2008 when the committee was formed, and they decided to follow up on the claim. As soon as they followed up and appointed a lawyer to challenge Section 42D that is when the proceedings started moving. Mr Choundree, counsel for the applicant, submitted that the delay was caused by the fact that applicant was kept in the dark about S42D agreement (which is an administration ignorance in restitution cases) According to the Promotion of Administrative Justice Act, (2000:3) reviews must be done “without unreasonable delay.” This is also the position of common law although there is no stipulated time frame of the delay. Even though the presiding judge M J Mpshe AJ dismissed the application and ordered both parties to pay their costs, it raises eyebrows that the authorities had to wait for a follow up from the Mangethe committee for them to clearly explain the agreement of section 42D of the Act to the claimants and South Africa as a whole.

Barry (2011:139-150) did a case study on the Elandskloof community<sup>3</sup>. It is the first community to claim land back after the apartheid era successfully. However, there was a limited success in this case because the state did not properly plan the process. There was no administrative structure put in place beforehand among other things. In the Baphiring case<sup>4</sup> the community could not claim back their land because it could have been expensive for the government to do the expropriation therefore, they were left hanging. The restitution process has been blamed for being very slow.

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<sup>2</sup> (LCC36/09) [2011] ZALCC 4 (17 February 2011)

<sup>3</sup> 476 [1996] ZALCC 4 (15 October 1996)

<sup>4</sup> Baphiring Community v Uys 2010 (3) SA 130 (LCC).

The most recent instance of the slow process of restitution of land cases of KZN is this year's (2017) appeal case of *Nongoma Commonage Community and Another v Regional Land Claims Commissioner, KwaZulu-Natal and Others*.<sup>5</sup> On 21 January 2002 the First Respondent (Regional Land Claims Commissioner, KwaZulu-Natal) acknowledged the receipt of the claim and advised Nongoma Commonage Community representative Mr Nzuza, that he (First Respondent) was satisfied that the claim met the criteria in terms of the Act and that steps had been taken to publish notice of the said claim in the Green Gazette. Even though the land in question had been valued, the claim had not been finalised, and the commissioner was not in communication. By notice of claim being published in the Gazette, it means that all the necessary processes were done. However, decelerating the procedure might be influenced by criminal activities. The Applicants submitted several complaints to the First Respondent to no avail. It is evident that there is reluctance when it comes to the process of restitution of land in South Africa.

In the case of *Crafcor Farming (Pty) Ltd v Regional Land Claims Commissioner, Kwazulu-Natal and Others*<sup>6</sup> where an application by the applicant (Crafcor Farming (Pty) Ltd) to review the decision because of the wrong publication of the lodged claim. Ncube A J, granted the applicant review and setting aside of the claim stating in his judgement that, among other things,

*The first respondent is directed to conduct an inspection with the second respondent, in the presence of the applicant's attorney of record and the second respondent's attorney on a date to be agreed upon by all the attorneys for the purpose of allowing the second respondent to point out the claimed position of his homestead and the boundaries of the area in respect of which he claims the Restitution of the Rights in Land.*

This shows that there were no proper checks of the land by the first respondent which is maladministration and needs to be looked at in the process of restitution of land. Crimes associated with land reform are not unique to KZN, South Africa but also the rest of Africa.

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<sup>5</sup> (LCC52/2016) [2017] ZALCC 2 (28 March 2017)

<sup>6</sup> (LCC46/2007) [2009] ZALCC 10 (4 September 2009) hereafter referred to as "the Crafcor Case".

## **1.2. Rationale of the Study**

Land related crimes are dominantly noted across South Africa (Corruption Watch, 2013), however research rarely focuses on the crimes related to land. Probably because land issues are politically sensitive and are highly tied to historical injustices of colonial systems. Thus, much attention is often given to concerns that are considered prime. It is essential to note that land related crimes have been on the rise following land reform processes in other countries such as Ghana, Cameroon, Kenya and Zimbabwe just to mention a few. Azeng (2016:8) pointed out that in Cameroon, fraudulent land documents and land transactions, such as simultaneous sales of same property are common. In a different country, with increased demand for land, Zimbabwe has witnessed multiple cases of corruption in which various actors in the land sector have used various forms of power to accumulate primitively (Chiweshe, 2016:20). These factors provide important insight relevant to the development of this research study. This implies that land related crimes must be effectively guarded against and necessary measures must be grafted across government institutions engaging on land issues in the country.

## **1.3. Key Research objectives and questions to be asked**

“The aims of research studies are to establish the “facts” to gather new data and to determine whether there are interesting patterns in the existing data” (De Vos, 2002). The aim of this research is to explore how decided cases were determined taking note of the crime aspect so that good practices of responding to the cases of land restitution process in KZN Province may be recommended, with a projection that if applied correctly, this study’s findings can be enhanced and aid to the criminological arena.

### **The objectives of this study are:**

1. To evaluate the procedure used by the government in addressing corruption associated with land restitution process in KZN Province. With the aim of improving the procedure based on strength and weaknesses of the spheres of government (National, Provincial and Local levels).
2. To explore local and international sources to assess the outcomes of cases of land restitution process in KZN Province, as it is known and how it is used elsewhere.

3. To recommend good practices of responding to the cases of land restitution process in KZN Province, with a projection that if applied correctly, the performance of the responsible sphere of government can be enhanced and aid to the criminological arena.

The supra mentioned scholar points out “how can it help those who are being researched?” The outcome of the research will be shared by presenting the findings at conventions and training workshops within the spheres of government, to enhance their knowledge and skills and assist the government departments and entities involved in addressing the cases of land restitution process to benchmark their methods and identify the best practices of this practice.

### **Key questions to be addressed**

Research questions provide a basis for any research in which specific aspects are “observed, measured and interrogated” to answer the broader research questions (Denscombe, 2010). The researcher intends to answer the following research questions:

1. What are the policies of the government concerning addressing corruption on land restitution process in KZN Province?
2. What is the value of solving cases relating to land restitution process in KZN Province?
3. What are the best practices of responding to cases of land restitution process in KZN Province?

### **1.4. Study Justification**

“The research must be relevant, in terms of contributing to existing knowledge, solving practical needs and being of relevance to current issues” (Denscombe, 2014). This research contributes to knowledge regarding solving the cases of land restitution process in KZN Province. The study intends to educate and create awareness to all government employees and the affected communities across KZN Province.

This research seeks to benefit the community by imparting knowledge and public awareness about land restitution process that all persons applying for land understand the process to be undertaken thereof and what they should look out for. This research will be available to University of KwaZulu-Natal (UKZN) and the greater academic community, and it can be used both in curriculum development whereby students could be taught about the decided cases on

this subject and the underlying principles in which this process operates, and it can also be used as a source for researchers.

The outcome of this research will be useful for the management of different spheres of government, because it will outline factors that should be taken into consideration by relevant stakeholders in accessing land restitution process when considering the rightful beneficiaries to meet the standards that have been set by the binding policy with regard to fairness, impartiality, integrity, credibility, reliability, loyalty and trustworthiness, among others. Analysing decided cases of land restitution process will be of benefit from this research because it will further empower the relevant stakeholders with knowledge and the rationale associated with the land question.

This research will give a different dimension to the issue of land restitution process. This will consider restitution from the decided cases. It is with the researcher's opinion that the government should help the new owners of the land with all necessary information, equipment, and input that will help them in accessing their lands. This study will ascertain whether there are policies / legislative governing this process.

### **1.5. Structure of the Dissertation**

The dissertation is divided into six chapters, namely:

#### **CHAPTER ONE: GENERAL ORIENTATION AND PROBLEM FORMULATION**

This chapter addressed the general orientation that will include the introduction, problem statement and purpose of this research. The background for this research will also be outlined and followed by the aim, purpose and research questions of this research.

#### **CHAPTER TWO: LITERATURE REVIEW**

In this Chapter, the researcher will look at the current and previous work done by other scholars on a similar topic. Grey areas will be identified, those which can be made a clear will and any advancement from previous scholars will be made. Precedence set by others will be vital and used. This chapter will aid to rationalise the significance of conducting the research and its importance and contribution to the existing body of knowledge.

#### **CHAPTER THREE: THEORETICAL FRAMEWORK**

An outline of the theories used and how they link to the study being conducted.

#### **CHAPTER FOUR: METHODOLOGY**

This chapter presents the methodology and approach used in conducting the research. This will include data collection methods as well as any limitations to this study.

#### **CHAPTER FIVE: DATA DISCUSSION, ANALYSIS AND INTERPRETATION OF FINDINGS**

This chapter the researcher will outline the findings based on the analysis and interpretation of data gathered from a systematic review. Results will be reported, data will be presented, and the conceptual framework will be described.

#### **CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS**

In this chapter, the researcher will give a summary of the study briefly, propose the conclusion of the study. Limitations of the study will be highlighted, and recommendations made on future research on a related theme.

#### **1.6. Chapter Summary**

In this chapter, the general orientation of the study was given. The introduction to the whole research was made to make clear to the reader what the topic, issue and critic are about. The background of the research was given for the reader to understand where the research is coming from and going. The focal point of this research is to expose the crimes which are committed by the officials responsible for the restitution of land process in KwaZulu-Natal, South Africa, and to find possible solutions thereof. In a nutshell, chapter one presented the reasons on why this study is necessary to the criminological arena, the government and most importantly the beneficiaries of restitution of land.

Chapter two, which is literature review will vigorously discuss the topic further by considering what other scholars and commentators have said or written about the theme of the present study. This will locate the study in the general discussion within the continent and the context of South Africa and mainly in the Province of KwaZulu-Natal.

# CHAPTER TWO

## LITERATURE REVIEW

### 2. Introduction

This chapter reviews literature in land redistribution and restitution processes. It explores literature on various global, regional and local land issues. Thus, the chapter details various perspectives on land issues in South Africa and across the world. Land restitution is a highly contentious discussion in South Africa. One of the most debated upon subject matter in political circles, media outlets and public debates in contemporary South Africa. South Africa had entered the democratic era with the legacy of apartheid and had the burden to address matters relating to the land question and thus the ensuing constitution, legislation and policies adopted to implement land restitution. While the land restitution programme is a programme in that eligible restoration of, or compensation for the land lost however this process has been marked by irregularities and elements of criminality which has impaired on the processes of land restitution, hindering its effectiveness and impairing its progress in general. This chapter reviewed the policies of the government concerning addressing corruption on the land restitution process particularly in the KwaZulu-Natal Province as the main geographical area of study. The chapter will also introspect on the value of solving cases relating to land restitution process also within the limitations of the KwaZulu-Natal province.

#### 2.1. Defining Land

Defining land might require various contextual meanings. Widespread literature gives an understanding of land as a resource or asset that one can own for the socio-economic benefit. Scholars outline that land can be described as one of if not the most precious assets, an individual, communities and broader society could own (Hart, Allen, Lindner, Keenleyside, Burgess, Eggers, Buckwell, 2013). Sida (2015) defines land as a social asset which represents the crucial aspects of cultural identity, political power and participation in decision making. In most traditional societies land is viewed as a common asset held through community ownership and cannot be sold. Verheye (2007) emphasises that in traditional rural societies of Africa, Asia and South America land is a common good. It is considered a gift from God that allows

satisfying primary needs for food and shelter and, therefore, it is not transferable (Verheye, 2007).

The ethnicity of land restitution is enlightened by Vorster (2016). It touches the Biblical side of restoration. The scholar introduces the term Ethical evaluation which means that there are fundamental rights and human rights. “Fundamental rights are rights which are legally enforceable by law but are also limited to a certain extent”. For example, the Universal Declaration of Human Rights UN General Assembly (1948) (UDHR) states that “everyone should have a right to land” but this does not necessarily mean that every individual should be given land. Some may benefit from land restitution in the form of employment opportunities. Vorster (2016) is concerned about the Biblical side of restitution. It is juxtaposes it as Biblical because when the colonialists came to South Africa, they came as missionaries exploiting the Book of Exodus in the Old Testament claiming that they have come to take the Promised Land. They regarded themselves as people called by God. The article further addresses the issue of whether land ownership can be considered as a fundamental human right and the legality of expropriation.

The author reflects on the guidelines to fair restitution according to Christian ethics thus the underlying principles about land ownership in the Bible and their fit to the modern world’s restitution. However, it should be noted that it is difficult to use Old Testament History in land ownership and restoration in the modern world because it changed from time to time with the Israelites, it was a tribal structure thus family inheritance to monarchy where the land belonged to the King and later in the post-exilic period where people enjoyed some self-governance.

The ethical values underlying the Old Testament’s moral teaching about land are that there is a belief that all land belongs to God and he made humankind to be the overseers of the land, therefore, humans are only temporary owners of the land. Both the Old and New Testaments advocated for land tenure which should be treated with stewardship and distributed in such a way that everyone benefits from it to alleviate poverty, Vorster (2016). In Modern day restitution hostility might still be a factor especially with the question on the claimants especially the whites. Religiously speaking, everyone should be equal in the eyes of God, but it is still not the case up to now.

In the recent modern free market system land is generally a commodity that is highly valued and on-demand moreover land can change ownership through the sale of title deeds

furthermore, its value and price are directed demand and by the general potential benefits that can be realized as the result of accessing the land (Verheye, 2007).

### 2.1.1. **The African understanding of land**

In this study, it is essential to understand how Africans view land. This is because there are other dimensions which are usually neglected when the land question is discussed. To begin with: the African view of land, extends beyond the merely economic, although productive use of land is fundamental (Tafira, 2015). However, it is important to note that land debates in the contemporary era mostly priorities the production value of land. Home (2011), accordingly rebukes this understanding, arguing that it shows a lack of understanding of what land means to Africans. He further, clarifies that it is perverse thinking to justify and limit the production use of land within the confines of Agriculture and market-related benefits. Home (2011) concludes that land in African communities is distanced from the primacy of market and private property, which demonstrates the core of liberal capital thinking and logic which is distant from the African worldview.

According to Tafira (2015), land in the African view is not regarded as a commodity or an individual possession. Rather, he describes it as a gift given by God for all creatures. More so, Tafira (2015) argues that land to African people is an ultimate representation and custodian of various sacred values which relate to ecology, culture, cosmology and spiritual connection. Thus the use of land for African cannot be limited to the specific or single narrative. Therefore, understanding and views of land should not be limited to European values which are divergent to African laws and perspectives of land. Accordingly, African land is viewed to be for the communal use and access, which can be used by the living, the dead and unborn, meaning it cannot be alienated from the existence of the community and cannot be limited to an individual (Tafira, 2015). Thus, when Africans bury their dead, that portion of land becomes important because it connects them to their ancestors and sacred religious rites that connect them to God. Therefore, the land is viewed beyond productive economic value in the African communities, rather is it also represents their roots and identity (Idang, 2015). Land embodies many more dimensions, such as homeland, place of ancestry, a prerequisite for realising individual freedom, and a basis for survival or wealth. It is also an object that is taxed and desired by governments and interest groups (Verheye, 2007).

## **2.2. Understanding the History of Land Redistribution in South Africa**

In South Africa, current land ownership trends and land development patterns strongly reflect the political and economic remnants of the preceding apartheid-era government policies and laws, which is a great source of the highly skewed socio-economic status of the country. Racially-based land policies were a cause of insecurity, landlessness and poverty amongst black people, and a cause of inefficient land administration and land use (Kloppers and Pienaar, 2014). The land policy must deal with the following in both urban and rural environments (Rural development, 1997).

Thereby reducing the highly unequal distribution of land ownership in the country becomes a priority of the democratic regime, as evidence on a global scale highlights that in situations where there is an unresolved land question of such magnitude of the South African scenario there is a high likelihood of the impasse escalating into a conflict situation. Consequently, of priority too became the need to facilitate greater access and participation of black people in the agricultural sector and the need to enhance the productivity of those assets that were already in their hands of black people to ensure economic sustainability and maintenance of food security (Erlank, 2014).

### **2.2.1. Tracing the roots of land reform in South Africa**

Land dispossession in South Africa can trace back to the white colony at the cape with the intention to expand the Dutch Colonial settlement which was established by Jan Van Riebeeck on the interest of the Dutch East India Company (VOC) (James, 2007). At first, his mission was to set up a refreshment station for the company's ships, because of the need for a more sustainable source of meat and vegetable supply more land was needed (James, 2007).

The land was first seized from the Khoikhoi and later the San to increase the Dutch grazing pastures grow their area for farming activities and to establish settlements (James, 2007). After some time, the reduction of grazing pastures which was originally used by the Khoikhoi, as the Dutch continued to set up farms resulted in conflict between the two groups (Lahiff, 2001). Over time the Dutch were able to defeat the Khoikhoi and expropriate more land. After that

the indigenous people were then deprived of their livelihood which forced them to seek employment on the farmlands of white colonial settlers (James, 2007).

After the British gained control over the Cape Colony from the Dutch in 1806, colonial expansion and dispossession were expanded further to the interior. The tension between the Dutch and the British constrained the Voortrekkers to start moving from the Cape Colony in 1834 into the interior to escape the British rule (Benjaminsen, Rohde, Sjaastad, Wisborg, and Lebert, 2006). They continued to fight, seized and occupied land while dispossessing Khoikhoi, San and African communities in the process. Land dispossession was achieved through warfare complemented by questionable treaties which the colonists' claim was signed by chiefs and community leaders (Weiner and Harris, 2003). The indigenous people fought to have the land back but due to the superior weaponry and joint effort with other local communities allowed the settlers to prevail (Weiner and Harris, 2003).

In the 1900s the indigenous people had been dispossessed of their land, and the colonial rule was still in the process of being dismantled (Lahiff, 2001). Around this time, a fifth of the land area in South Africa was owned by land companies or absentee landowners. Two colonial companies Wernher Beit & Co and H Eckstein & Co controlled almost a quarter of the land owned (Sender and Johnston, 2004). In 1904, the Lagden commission submitted its report and recommended that 40% of the best and fertile land must be made available to white people only as from 1906 (Hall, 2004). The Masters and Servants Ordinance was passed, and it denied black tenants of legitimate protection by characterising them as 'servants' rather than wage workers (Hall, 2004). Through these definitions, the mandate basically settled the lawful reason for the procedure of forceful eviction and the removal of worker tenants and farm labourers (Freund, 1984).

The right of South Africans to have rights to land was tested in 1905; an African bought land in the township of Johannesburg successfully applied for a court order which forced the registrar of Deeds to pass the transfer (Binswanger and Deininger, 1993). The outcome established the principle that in the Transvaal a native could hold direct title to the land (Binswanger and Deininger, 1993). Later the Native Location Commission was formed to make recommendations about borders of existing reserves and identify where new areas could be established (Lahiff, 2001). In 1911 the Mines and Works Act were established which

restricted Africans from getting jobs “beyond the level of manual labour which helped in ensuring that labour costs would remain low” was passed (Binswanger and Deininger, 1993). In 1912 the Land Settlement Act was passed, and it is based on the provisions for the sale of state land to whites (Pienaar, 2014)

The issue of land in South Africa which as shown above can be traced back to 1700. However, for this section two major sections appear to be noted, these are the segregation era starting from 1910 to the year 1948 and the apartheid era from the year 1948 to the year 1990. The arrangement of the Union of South Africa allowed the fast procedure of further pressing black people off the land. A series of laws were designed to uproot people from their land and prevented them from buying land in recommended areas were passed (James, 2007).

The Native Trust and Land Act made provision for the establishment of the South African Native Trust, which was an agency of the state devised to oversee the administration of trust lands. The Native Trust and Land Act provided for the trust lands to be administered for the settlement, support, benefit, and material welfare of the natives across the South African landscape (Kloppers & Pienaar, 2014). The Act abolished individual land ownership by black people, and a new tenure system was formulated through the establishment of the South African Development Trust, which was another government entity which was created and given the responsibility to purchase land for black settlement in those areas available for purchase for black occupation (Walker, 2017).

### ***2.2.2 The Native Land Act of 1913***

Walker (2017) argues that the roots of the prevailing inequality about land in the country can be commonly traced back to the promulgation of the Natives Land Act in June 1913. The Natives Land Act provided the legal framework for the division of the country into relatively prosperous white-owned land and a cluster of increasingly impoverished black reserves on the periphery, which was a result of the process (Kloppers & Pienaar, 2014). Thereby the blacks ended up occupying the largely unproductive lands while the prime lands were occupied with the privileged white minority.

According to section 2(1) of the Act, certain areas of land (including land identified in the Natives Land Act) were transferred to the Native Trust to be administered by the Trust. Vested

in the Trust was land reserved for the occupation of natives and land within the scheduled native areas as identified in the Natives Land Act. The South African Native Trust Fund is a fund which was created by the colonial, and the funds of the trust fund were mainly used to acquire and develop land for “advancing the interest of native population” (black indigenous Africans) (Kloppers & Pienaar, 2014). The Act further empowered the Trust to acquire land for native settlement but limited the amount of land that could be attained in this regard to almost 13% of the total land area available. The land which could be acquired by the Trust was further limited to land within the scheduled native areas or within released areas. The Act created "reserves" for black people and increased the 8% of land reserved by the Natives Land Act to 13%, confining 80% of the population to this area. To achieve the objectives of the Act, section 13 empowered the trustees of the Trust to appropriate land owned by natives outside a scheduled area for reasons of public health or for any other reason which would promote public welfare or be in the public interest. Reparation paid upon expropriation of one's property was determined by the fair market value of the land without any improvements, plus the value of the necessary or useful improvements together with the value of luxurious, coupled with money intended at compensating for inconvenience encountered due to the process (Kloppers & Pienaar, 2014).

### ***2.2.3 The Native Trust and Land Act***

The Native Trust and Land Act was an important mechanism employed by the oppressive minority government to implement its policy of racial segregation systematically using these forms of discriminatory legislation in its support. The Act took away black South Africans' rights to own land, and it even went on to limit black not to live outside delineated areas without the approval of the concerned authorities by the relevant authorities (Kloppers & Pienaar, 2014). Vivid is of the fact that this Act promoted of systematic exclusion through the process of legalised racial segregation, thus with the advent of democracy, the eventual need for land reform is apparent.

#### ***2.2.4 The Group Areas Act of 1966***

The final of the four Land Acts here in question is the Group Areas Act of 1966, which complemented the Group Areas Act of 1950. The Act aimed to amalgamate the law related to the formation of group areas and to regulate the control of the acquisition of immovable property and the occupation of land and premises. The Act showed abundant parallels with the Group Areas Act of 1950 and recognised three groups for the Act as follows white, Bantu and coloured groups (Kloppers & Pienaar, 2014). Further, the Act prohibited the acquisition of immovable property in a controlled area, and further placed restrictions on the occupation of land in a controlled area. Moreover, the Act also stated that no person who is a member of any group should occupy and no person shall allow any such person to occupy any land or premises in a specified area which was not lawfully occupied unless in such a case one had the authority of a permit. However, the Act did provide for exceptions where it would not be unlawful for a person to occupy land or premises if the person is a known employee of the state, or in the case of a bona fide though not for a period beyond ninety days in every year which sounded as a reprieve considering the oppressive environment existent at the time.

The Group Areas Act legislation further went on in entrenching the policy of racial segregation as noted in section 23 of the Act as it effectively empowered the then State President to decree through the Government Gazette an area for the exclusive occupation by or ownership of members of a specified group. In conjunction with section 23, sections 26 and 27 prohibit the occupation or acquisition of property by disqualified persons in group areas. Regarding the enforcement of the Act, the then South African Police Force was given extensive powers. To illustrate the case it is noted that section 43(1)(a) actually authorized the Police, when investigating a suspected transgression in terms of the Act, to enter without a warrant any premises and make any investigation as might be necessary, which is highly undemocratic and oppressive in nature (Kloppers & Pienaar, 2014). It is estimated that between 1960 and 1983 around three million, five hundred thousand people were forcibly removed because of the Acts.

Furthermore, Quan argues that the sense of emergency towards the resolution of the land question in Southern Africa is a reality as he highlights that this issue is pertinent in the region but more so in countries such as South Africa, Namibia and Zimbabwe. Quan the southern African region perceive donors as having pulled back from firm commitments to support new solutions to land redistribution, which could make faster progress. But such a pulling back is no substitute for addressing such issues. Political sensitivities may be easier to handle when

there is joint funding of the land reform process by several of the major donor agencies (Quan et al., 2004)

### **2.2.5 Controversies Surrounding Claimants**

The issue of claimants is tested by Hopkins (2006) especially the position of whites as claimants. The question is whether whites should claim under the RLRA since the laws during the colonial era were designed to favour them. The question asked is whether whites also form part of the previously disadvantaged individuals or community in terms of unfair discrimination. The preamble of the RLRA and The Constitution are the two statutes to be used. Section 1 of the RLRA states that a 'claimant' is any person who has lodged a claim. Read with section 2(1) of the same Act. On the other hand, section 9 of the Constitution states that everyone is equal before the law meaning no any form of discrimination.

The issue of a claimant is relevant in the process of restitution as who qualifies as a claimant is part of the process. The question arose in the case of *Minister of Land Affairs V Slam Diem*, where the judge pointed out that the Act does not mention anything about whites but only talks of a person who meets the requirements. According to section 9 of the Constitution of 1996, everyone seems to include the whites automatically Hopkins (2006). However, this section does not debar the state from discriminating people based on race. This is because it is not discrimination per se that is prohibited but unfair discrimination. This is a point of interest, and it raises an eyebrow.

### **2.3. Understanding Land Grabs in Africa: Politics, Crime or Populism**

South Africa has a long history relating to Land grabbing, with nearly over a 350-year history which was characterised by the systematic loss of key productive resources by indigenous populations and further the rights to land and natural resources were undermined through a process of legalised segregation and expropriation (Cousins, 2016). This process of removing the means of production from the natives came together with the undermining of women's land rights, mainly in areas where land was held and administered within the customary system which is largely patriarchal.

Moreover, the spatial inequities existent in South Africa, which are largely defined by race, were deeply entrenched into the South African capitalist economy from its earliest stages. This was used partly as the basis for a cheap labour force through coordinated emigrational policies, to accommodate the arrival of cheap labour. Social differences and inequalities based on a complex articulation of race, gender and class identities thus underpinned the unequal distribution of land and insecure rights to land (Cousins, 2016).

### **2.3.1. The Case Study of Land Guards in Ghana**

The issue of land and socio-economic disparities has led to the rise of a group commonly referred to as “land guards” in the West African state of Ghana. Land guards can simply be described as individuals or groups who are hired by general citizens or by organizations in order to protect land which is privately held, as the demand for land has led to the claiming of land by people using power however illegally this the need to protect one’s land has become of paramount importance. Usually, land guards are young men, who have no background or training in the security services industry, but due to the lack of property rights law enforcement and the lack of jobs in the country, they end up taking up such jobs to guard the land. While some people believe land guards provide a beneficial service by filling the security gap created by the state’s inability to provide enough land protection, however, they are those who argue that land guards (Bansah, 2017). However of paramount importance is the need to recognize that reports have revealed that, land guards have caused harm to either an individual or a group, often resulting in deaths, police arrests, particularly of land guards, however not their employers and some level of unrest and disturbance of the peace across Ghanaian society and communities (Bansah, 2017).

In the case of Ghana of importance to note is the fact that most of the land belong to stools, skins, or families thus the land is communally and tribally owned at most. Lands held in such a manner are thus held in trust for the entire community and for the future generations who are to follow, thereby. As a result, there is often shared the responsibility to protect the communal inheritance (Darkwa and Attuquayefio, 2013). Disagreements around land usually involve traditional leaders who at times may sell the pieces of land without consulting the communities, thus raising conflict. Thereby land guard groups are then formed irregularly however with the

agenda to address a specific problem. These types of land guards tend to be existent only for the period which the dispute is going on, and after a resolve, they disband themselves and return to civil life. These guards do not receive any forms of payment. However their cause is rewarded by being able to prevent the sale of their communal land, and these guards are generally referred to as “community guards.” (Darkwa and Attuquayefio, 2013) The following group of land guards can be appropriately referred to as “amateur land guards.” These land guards are usually groups comprised of young people within communities who come together with the purpose of exploiting landowners and developers in a gangster manner. (Darkwa and Attuquayefio, 2013) The other existing category of land guards is the one that is made up of those members who work with the traditional leadership within the communities and who have sought refuge under the traditional Asafo institutions Darkwa and Attuquayefio, 2013). The fourth and last category of land guards is that which is made up of young persons who work under a recognisable chain of command and provide protection services to any paying customer and in the case of a clash to the highest bidder (Darkwa and Attuquayefio, 2013).

A review of the impact of land registration in Ghana establishes that many people who are in possession of legally transferred land documents with formal title deeds do not feel secure with their hold on these lands. Because it has become common, that one can lose ownership of their land to another person either using force or bribery of government officials (Bansah, 2017). This fear is further exacerbated by the fact that even the legal systems sometimes fail to deal with the land issue especially in areas controlled by traditional leadership. Traditional leaders have been known in Ghanaian society to defy court rulings and court decisions, even those where there is a legitimate title holder with a legal decision in their favour. Traditional landowners usually argue on the basis that judges are not authoritative sources of knowledge on customary law, which applies in such cases, which is based on how land was allocated originally in the Ghanaian land distribution (Bansah, 2017). Thus, in the Ghanaian economy legal security by way of a formal title to land alone, does not constitute actual security as noted in the above discussion that in Ghana titleholders cannot be fully guaranteed of the safety of their titled land especially if it has not yet been developed. Thus, amid such uncertainty, the people have turned to unorthodox means of protection on their land rights (Bansah, 2017). This situation certainly is not an idealist and causes civil and economic distress, and as such, South Africa in its quest to effect land reform should avoid living loopholes that may transcend into the land guard situation as in Ghana. These cases are important to note, understand, and be

utilized as key lessons in securing land reform processes in KZN and South Africa at large to guard against criminality in land processes.

### **2.3.2. The case study of Zimbabwe**

As in many African countries during colonial times the black population of Zimbabwe was land dispossessed by the colonial settlers. Zimbabwe is popular for pioneering a fast track land reform program in the early 2000s. However, it is noted that has a long history of land reform that dates to the early 1980s after attaining its independence. Zimbabwe's initial land redistribution program was well planned, carefully organised and lawful and had the backing of the British government at the time (Deininger, Klaus, Squire, 1996). As like in South Africa Zimbabwe at independence had a very skewed land distribution as noted by the fact that 6100 families of European descent were possessing 15 million hectares of prime agricultural land in the districts with better rain, in comparison nearly close to 800,000 indigenous African families of origin occupied 16.4 million hectares of less fertile and mostly sandy soils in the same districts. The government of Zimbabwe then adopted the willing buyer, willing seller policy to acquire land to resettle people with however through this policy it was noted that only 20,000 households were successfully resettled between the year 1990 and 1996 (Williams, 2011). Moreover, the British government as the guarantor of the Lancaster house agreement spent close to £44 million on the process of land reform in Zimbabwe and after realising the costly nature of the process withdrew its funding for the process thus the start for the advocating for the fast track land reform program (Williams, 2011).

The popular farm invasions in Zimbabwe began sometime in the year 1999. These invasions gained momentum during the year 2000 that was also an election year, and scholars argue that the reform process was used as a political tool to garner votes for the sitting president who was losing majority support due to economic challenges facing the Zimbabwean economy at the time. (During this period, it is recorded that about 1,700 commercial farms invaded by the time elections were held in June 2000. Thus the invasions were very quick and swift (Williams, 2011). From the year, 2000 to the year 2011 it is noted that 170, 000 households were resettled because of the land reform process (Scoones, 2011). It is noted that the amount of land distributed during this process accounts to close to 20percent of the total land area of Zimbabwe which are very high levels of redistribution which are very difficult to achieve. The land was

generally divided into small-scale farms with a village like nature known as A1 scheme farms and the much larger commercial farms with more hectares of land available for commercial use under the A2 scheme (Scoones *et al.*, 2011).

Of importance to note with the Zimbabwean scenario is the fact that land is a highly socially emotive subject which was also the rallying point of the liberation struggle. As in South Africa where the struggle for independence associated with the land and other struggle morale-boosting songs were composed on the matter. The failure of the proper process of the willing buyer willing seller reform strategy in one of the major reasons the situation in Zimbabwe then escalated to a point where invasions became the new form of reform (Hall and Williams, 2015). In South Africa acts of invasion have been reported however they lack the support of the government as happened in the Zimbabwean situation leading to complete economic collapse for the nation plunging into the status of a pariah state with no global support. It is imperative then that the process of land reform in South Africa be prioritised to avert a situation where there may result in massive land invasions from the frustrated landless resulting in losses for the farmers whose property is invaded and the economy in general (De Villiers, 2003). In the South African context, it is noted that community lobbies have been for some time now, mobilising for nonmarket based land reforms in several provinces citing the failure of the reform process based on compensating the farm's owners based on land market values (Hall and Williams, 2015). These developments may point toward a realization by the general populace that state policies being pursued by the state do not land for the majority of rural South Africans (Hall and Williams, 2015).

#### **2.4. Land Reform in South Africa**

It is important to unpack and understand the elements that guide the understanding of land reform processes in South Africa. This is essential in this study since it provides an outline of understanding the legality of the process. Thus, this can help to reflect on various situations that might have been affecting land reform, restitution and redistribution in KwaZulu-Natal. Therefore, this section gives an understanding of the literature on land restitution, redistribution, and tenure reform in the South African context.

## ***2.5 Land Restitution***

Restitution, in general, refers to the act of the restoration to its rightful owner of a certain possession that was unjustly taken away or forcefully expropriated (Thompson, 2003). It is argued that the purpose of land restitution activities is to return land and provide just compensation to those who were dispossessed after 1913 because of discriminatory laws enacted by the colonial regime. The Restitution of Land Rights Act of 1994 allowed claimants until 31 December 1998 to lodge claims with the Commission for Restitution of Land Rights (CRLR). About 80 000 claims were lodged. The claims process was fraught with difficulties. Numerous potential claimants did not meet the deadline. Administratively the process also did not proceed according to expected timelines. Initially, the expectation was that all claims would be implemented and settled by 2005 (Rugege, 2004). However, Cousins (2016) reported that “thousands” of claims are still to be settled and at least 20 000 to be implemented.

Partly in response to the controversy, The Restitution of Land Rights Amendment Act was passed in 2014. This reopened claims until 2019 although the period of dispossession was not backdated to 1652 as some would have it. Cousins (2016) has argued that reopening the claims raises at least two concerns for the overall restitution process. Firstly, with more than 120 000 new claims lodged, current unsettled claims are at risk of being flooded or overruled, which is retrogressive in practice. Second, with the claims increasing dramatically it has become impracticable to settle all of them as the cost would extend the state beyond its capabilities and allows elements of criminality to override the system.

## ***2.6 Land Redistribution***

Redistribution by formulation is intended to empower the poor by giving them access to land for both residential and productive purposes (DLA 1997) to improve the living conditions of the citizenry. The conceptualisation of redistribution has seen some variation over the years, and this has been reflected in policy changes since it was first entrenched in the 1996 Constitution. Originally the intended beneficiaries of distribution were those who did not qualify for restitution settlements (de Wet 1997). In the early days of the democratic transition redistribution as a component was placed in the Settlement and Land Acquisition Grant (SLAG) programme. The Settlement and Land Acquisition Grant framework identified the landless, labour tenants, farm workers, women and the rural poor and emerging farmers as the

beneficiaries of redistribution and subjected all to a means test to determine eligibility (Hall and Cliffe, 2009:5). The beneficiaries were responsible for the acquisition of land from willing sellers, and state intervention consisted of the provision of R15 000 grants per household, this was however later increased to R16 000. Scholars argue that land acts as collateral in the modern economy (Deininger, 2018) hence the redistribution of land is important for the beneficiaries who in turn assume ownership and ultimately become viable business, in the long run, is beneficial to both the state and economy as a larger part of the population becomes self-sustaining without the need of state aid.

After a suspension from the year 1999 to 2001 the Settlement and Land Acquisition Grant was replaced by the Land Reform for Agricultural Development (LRAD) programme, which was a different alternate approach. This programme offered a different policy direction and changed the focus of redistribution to emerging farmers and the economic outcome specifically to commercial practices (Hall and Cliffe, 2009:7). The grant structure was changed to a sliding scale offering from R20 000 to R100 000 per applicant, and the means test was done away with to allow any black South African the opportunity to apply. Moreover, various other policy and operational instruments were to be implemented in the country such as in the year 2008 when the Land and Agrarian Reform Project (LARP) was announced. The project introduced partnership between the then Department of Land Affairs and Department of Agriculture on redistribution projects with the aim of offering better post-settlement assistance. It was, however, not clear to what extent LARP will complement or replace LRAD (Hall and Cliffe, 2009:9). Though the LARP was still a transformation instrument, which focused on increased commercial rather than social outcomes, thereby, living out the interests of the marginalised land-hungry citizen. Other similar attempts have also been documented by Cousins (2016).

More recently populist pressures have shifted the land redistribution conversation drastically. Calls for nationalisation and expropriation without compensation had become more common since the rise of the Economic Freedom Fighters (EFF) which is a radical party led by a charismatic leader who started pushing for expropriation without compensation when he was still a member of the African National Congress the ruling party in South Africa. It is then apparent that balancing the need for justice and an economically viable agricultural sector is becoming an increasingly difficult challenge for the ANC government (Hall and Cliffe, 2016). However, the debate of expropriation without compensation is now at a parliamentary consultative level.

## **2.7 Tenure reform**

According to the South African government, tenure reform is intended to improve the security of landholding for the rural-urban and poor (DLA, 1997). During the days of racial segregation, under the apartheid framework tenants, labourers, renters and squatters held land under tenure dispensations that left their right to the land insecure being trampled upon and with no long-term guarantee (de Wet, 1997). Thereby the legislative framework suggested by the land reform policy allows for improved security of access by the process of removing the oppressive system replacing it with the proper legal ownership rights (DLA, 1997).

The legislative framework for tenure reform is advised by an array of legislation including, the Provision of Land and Assistance Act of 1993, Restitution of Land Rights Act of 1994, Land Reform Act of 1996, Development Facilitation Act (1996), Extension of Security Act of 1997 and Interim Protection of Land Rights Act of 1996. The Communal Property Associations Act of 1996 contributed more indirectly in that it provided for the formation of communal units that could pool Settlement/Land Acquisition Grants (SLAG) received by low-income families to acquire land (McCusker, 2004:53).

Tenure reform remains the most unfledged aspect of the land reform project, both regarding policy frameworks and outcomes (Cousins 2016). While a legislative framework exists to both inform and facilitate the policy, regular claims of the arbitrary expulsion of workers/tenants are levelled against most commercial farmers (see for example Visser and Ferrer 2015). In turn, the organised agricultural sector has often challenged these claims referring to the inflation of figures relating to evictions, arguing that it is part of a concerted effort to influence public opinion (Uys, 2015).

## **2.8 Land grabs in South Africa**

South Africa's first land claims commissioner, Joe Seremane, has been quoted as saying that land is a birthright as such it is imperative to understand the value of land to the people as it is a determining factor in determining the actions of communities (Young, 2017). Access to land is considered a necessity for sustainable livelihood, poverty reduction and promoting inclusive

economic growth. The rural economy is mostly dependent on agriculture, particularly, small-scale farming for subsistence and partially commercial purposes (Jili and Masuku, 2017).

### **Urban cases**

Land grabs and occupations have been presenting in South Africa for some time as noted by the case of the unlawful occupation of peri-urban land at Bredell outside Johannesburg in the year. Thus this trend has been carried over a period while over the years it has gained momentum and social acceptance as part of the social reality. In the same year, the residents of the Khayelitsha shacks just outside Cape Town, whose homes had been hit by flooding occupied another piece of land also illegally. These land grabs of a residential nature have been consistent mainly in the Gauteng province. However, other provinces have experienced it in their form.

#### *The politics behind land grabs in South Africa.*

Over the past few years, South Africa has seen the rise of an ultra-left group of opposition politicians who have a more socialist-communist stance of approaching matters in the name of Economic Freedom Fighters (EFF). The EFF national leader has been in the past quoted encouraging the spats of unlawful occupation of land by people encouraging them to continue as the process of land reform has effectively failed. Feinberg (2018) outlines how in one case in the Gauteng province, the invaders highlighted that they had the backing of the EFF provincial leadership, in their acts of occupation thus clearly the land. The EFF's provincial chairperson in Gauteng articulated that these actions were organised by the EFF (Feinberg, 2018); thereby it is clear by a policy that other political parties within the South African political landscape do embrace unlawful occupation and redistribution of land.

However, it is noted that the current president of the ANC and the Republic of South Africa, President Ramaphosa considering the spate of land grabs, reiterated the position of the laws of the Republic and noted that no person could illegally occupy private land, as it was a clear violation of the country's laws. He warned that those who are doing so would face the full might of the law, thus, for now, the ruling party still can defend the unlawful occupation of

land. However, given that, political power is not guaranteed, and with elections, the ultra-left may gain control and change the discourse. Thus urgent action is needed to affect a more robust reform program (Feinberg, 2018). This means criminal free measures towards land reform should be put in place in across South Africa.

## **2.9 Hindrances to the land reform process in KZN**

The process of land reform in the province of KwaZulu Natal is one which is marked by various impediments and challenges ranging from the fact that the processing of claims has been slow in the courts in relation to lodged claims, there is also an element of corruption and criminality which has also been noted to have been part of the hindering factors towards a successful land reform. The other matter relates to the issue of tribal authorities and their administration of communal lands which at times is noted to be done on a feudal monarchist stance which is highly autocratic and disadvantageous to the general populace. Moreover, it is noted some people do resell the land returned to them through government efforts.

Ramutsindela (2007) gives an extrinsic argument on the geographical hindrance of the land in question of restoration. He was looking at the case study of Limpopo Province. Sometimes the land would have been used for forestry therefore when needed for housing for instance, which might be a barrier to the process of restoration. The fact that the geographical location of a community may be an obstacle in the process of land restitution shows lack of proper governance. This is because the Act stipulates that reasons for the use of land should be stipulated, so, before lodges are claimed, aspiring claimants should be educated by these to avoid unsuccessful claims.

This also reviews how the minority whites displaced the black majority from their conducive lands forcing them into reserves called the Bantustans — questions of whether land restitution would be a catalyst for the reconciliation of black and white South Africans after apartheid was also raised Ramutsindela (2007). Reconciliation would be good because it would avoid the possibility of a civil war whereby the black majority might be tempted to do land grabs as it happened in Zimbabwe.

According to Ramutsindela (2017), all the parties except the white farmers are willing to conform to the notion of reconciliation and fair land restitution. It also summaries how the

white settlers managed to turn blacks against each other when they created the Bantustans in Limpopo namely Gazankulu, Lebowa and Venda.

## **2.10 Land Fraud and Corruption in KZN**

Corruption is one hindrance about the issue of land reform Corruption Watch (2013) highlights that since the province of KwaZulu Natal is the province with regards to land. It is noted that KwaZulu-Natal province experience about thirty-five per cent of the of the total corruption cases that are reported. Corruption is then a hindrance in the manner that land meant to be redistributed then accessed at exorbitant prices limiting the amount of land which the budgeted money by the government could have bought, thereby the targeted resettlement targets set for the province cannot be met and ultimately the reform process is disturbed as a whole. Corruption Watch (2013) cites that, the complaints of corruption cited in most of the tip-offs which reached them had to do with the abuse of power by government officials, and these accounted for over half of the corruption-related complaints. Moreover, it is noted that Community Property Associations (CPA) have the highest vulnerability and are easily affected by corrupting which then derails the reform process. Government employees are cited to be part and process of the hindrance towards land reform as they are noted to be either deliberately for personal gain delaying the formation of the bodies, secondly it is noted that they also delay the process registering the land to the CPAs as they are reportedly bribed to do so (Corruption Watch, 2013).

One way the South African government had implemented the land reform process has been the creation of Community Properties Associations (CPAs). Community properties associations committee members are also another form of hindrance towards land reform in general as they are noted to be misusing funds, thereby curtailing the productivity of the lands given to the CPAs. Secondly, it is noted that members are illegally selling portions of the land for their gain with no consultation with the rest the members. In one complaint, money received from a development agency was misappropriated by the leader of a certain CPA, instead of going towards the intended objective of funding the development of agricultural land acquired through the restitution process (Corruption Watch, 2013). In November 2012 at a workshop held for CPAs, the then Rural Development and Land Reform Minister, confirmed the fact that the CPA model has loopholes which open it up to forms abuse not only from government

officials but that it is also vulnerable for abuse from CPA members. The minister pointed out that the department of rural development and land reform paid out over two hundred million rands in an effort to save restituted land which had been resold by CPA members.

### **The Kuick Vlei Settlement case**

The Kuick Vlei Settlement case is one case where a government employee, and manager had defrauded both the state and the intended beneficiaries of the reform program. According to the records of the KwaZulu-Natal Department of Rural Development and Land Reform (Kockott, 2018), a certain family of former farm workers, had been allocated a farm and were now the legal holders of the farm and were eligible for government grants and support in relation with the government's objective to support emerging farmers. Thence the government made a provision for livestock to be part of the reform package. However, the government official circumvented the process intended to benefit the family under the reform program and took ownership of both the farm and livestock intended to support the reform program. Furthermore, he corruptly benefited from the agricultural development grants for livestock purchase, farm implements and livestock handling facilities which all should have been forwarded to the family which he defrauded together with the state (Kockott, 2018). It is noted that in this case, the government official can re-issue the title deeds of the farm and other farm documentation to swindle the farm from the hands of the intended beneficiaries.

Furthermore, the case only came to light because of whistleblower activities after ten years of the initial crime having been committed thus there may be more case of a similar nature within the province which were depriving real beneficiaries their awarded land. As the Kuick Vlei case demonstrates how easy it is for farms acquired by the state, for reform processes, to have ownership fraudulently taken away from the hands of beneficiaries (South African Lawyer, 2018). Thereby there is an intermittent need to introspect into the question of who exactly owns farms that the government has bought for land redistribution and land reform and further to evaluate the procedure used by the government in addressing corruption associated with land restitution process in KZN Province.

## **The Roscoe Family Trust scandal**

About the Roscoe Family Trust case, it is noted that the KwaZulu-Natal Department of Rural Development and Land Reform bought six farms in the province of KwaZulu-Natal, for an amount of thirty-six million rands. In this case, it is also highlighted that evidence pointed to the fact that beneficiary of their final transfer transaction was an entity named Abrina 6822; this entity only has one shareholder, which is the Roscoe Family Trust, which is in turn controlled by an individual business person. Investigations into the activities surrounding the process of reform showed the existence of lists of beneficiaries that was a forgery as it had been created only to cheat the system and defraud it. Most of those whose names were found on the list were themselves had no idea someone had obtained state funding using their names and identities, highlighting the extent of the criminality (Kockott, 2018).

Of note on the about the Roscoe Family Trust is that three officials from the KwaZulu-Natal Department of Rural Development and Land Reform and the well-known Ladysmith businessman named, Roshan Sewpersad was charged. However, the charges were withdrawn for a temporary period in the year 2013 leaving the case unclosed even up to 2018. The outcomes of this case have raised various questions on how many other cases of land fraud by government officials against the vulnerable and illiterate are out there (Sunday Tribune, 2018). This case poses much threat to prospective land reform initiatives in the country as this means; there is a need for mechanisms that are transparent and efficient to oversee successful processes.

The Sunday Tribune (2018) notes that if reformations are not done to address any criminal elements that have been identified within Department of Rural Development and Land Reform offices the process of reform is bound to fail. This is because the officials tasked to oversee the success of the process have become the main perpetrators of Land fraud as in the case of Patrick Mashoka and the Shabalala family in KwaZulu-Natal (Sunday Tribune, 2018).

## **2.11 Traditional Authorities and implications to Land Crimes**

In the province of KwaZulu-Natal, a very large segment of land is communal land is held under Ingonyama Trust is a state entity established at the collapse of the apartheid and was formalised by the ushering in of the 1994 Ingonyama Trust Act (Ingonyama Trust Board, 2018). The only trustee of the trust is the current Zulu King, King Goodwill Zwelithini and is administrated by Ingonyama Trust board. The mandate of the trust is to hold land for the benefit and social well-being of the communities living on the land (Cls.uct.ac.za, 2015) . This then obliges the Trust not to enter into any agreements in relation to the land such as the leasing of the land in circumstances that have the likelihood of marginalizing people living and resident on that land. In theory communal land rights are protected (Cls.uct.ac.za, 2015). However, this is not always the case in practice as not by the dissatisfaction of people in the province and the manner in which the board responses to questions relating to the management and funds of the trust, hence the need to evaluate the procedure used by the government in addressing corruption associated with land restitution process in KZN Province.

In cases involving restitution where trusteeship is given to traditional authorities, discrepancies in administration of the land and resources exist as noted by the chair of Ingonyama Trust Board who refused to respond to requests which requested for information about mining deals on ‘tribal’ land on the basis that ordinary beneficiaries have no legal status to request such information (Yeni, 2018). Such behaviour from the custodians of the restituted properties then compounds to the agitation of the ordinary people who are in need of titular rights of possession of this communal land which is presided upon in a feudalistic manner.

In as much as laws that have been passed by parliament to ensure the security of tenure for people living in communal areas. While there are laws that seek to protect their land rights, the government has also proposed contradictory laws that concentrate all powers with traditional leaders, thus rendering the rights of ordinary citizens insecure. Some of the reasons for the contradictions are in the history of colonial rule (Weinberg, 2015). In theory communal land rights are protected (Cls.uct.ac.za, 2015). However, this is not always the case in practice as noted by the dissatisfaction of people in the province and the way the board responses to questions relating to the management and funds of the trust — thence the need to evaluate the

procedure used by the government in addressing matters associated with Traditional leaders and land restitution process in KZN Province.

## **2.12 Makhasaneni case study**

In the case of the people of eMakhaseni who were not consulted on the case of mining in their village by their traditional leader (Inkosi). In response to mining activities on their restituted land, the community called a meeting where the traditional leader acknowledges the fact that he had agreed with the mining company that was initialising its operations in the area. The conduct in which the traditional leader conducted his business and exercised his authority, in this case, was in clear disregard of the Ingonyama Trust Act, which stipulates that people should give prior written consent for such activities on their land (KwaZulu-Natal Ingonyama Trust Act No. 3KZ of 1994). From the sequence of events, starting from the arrival of the mining company identified by the name Jindal right up to the community meeting with the chief, one might conclude that the chief was deliberate in his efforts to bypass the headman and the community in making the decision to give Jindal access to the land (Timse, 2015). Thereby even though the people of eMakhaseni are on restitution land, they are deprived of the right to self-determination meaning it is as similar to the fact that they were never received their restitution land on the basis that tribal leadership still controls their land and its activities without their concern thereby effectively rendering the process of reform useless.

The chief apologized for his actions; however, he insisted that Jindal be given a chance to continue with its prospecting activities. His actions were a clear disregard of IPILRA and the Ingonyama Trust Act which stipulate that people should give prior written consent for such activities on their land (KwaZulu-Natal Ingonyama Trust Act No. 3KZ of 1994). From the sequence of events, starting from the arrival of Jindal right up to the community meeting with the chief, one might conclude that the chief was deliberate in his efforts to bypass the headman and the community in making the decision to give Jindal access to the land (Timse, 2015).

However, on the backdrop of the meeting the chief claimed having been intimidated and as a result of the power wielded by traditional leaders, a meeting was organized to apologize to the chief for the confrontation. On this meeting, the chief attended with members of the royal family and the mining company staff and hijacked the process to institute a vote on whether the community agreed or not to the establishment of the mine (Timse, 2015).

It should be noted that while the meeting was in Makhasaneni, not all who attended the meeting and voted were from Makhasaneni. There was no space provided for people to ask questions, no information on what exactly Jindal was planning to do, how, for how long and with what outcomes (Timse, 2015). While IPILRA and Ingonyama Trust Act does not stipulate the exact procedure for consultation processes and producing written consent, voting by a show of hands from random community members who did not represent the number of households in Makhasaneni was far from accountability. Thus the whole process itself was flawed and had a sign of duress, which is contradictory to democratic principles advising the nation (Yeni, 2018).

Moreover at this very meeting, one of the brothers of the chief in question announced that he was representing the committee of princes, and was going to establish a trust to be in charge of the mine, while he himself is not part of the community in question. He also said that the pending land claims of forty commercial farms around Melmoth should be withdrawn, and the trust would take over and lodge one consolidated land claim on behalf of everyone. In terms of community representation on the trust, two people from Makhasaneni were to be elected. The trust would also oversee the mine (Timse, 2015). All of this came as a shock to the people of Makhasaneni. Further, no solid decisions were taken at this meeting about the establishment of the trust, there becomes a need to look into how government response to matters of this nature where there is outright abuse of power by traditional authorities, which has the potential of endangering the lives of those living on the land, contrary to the mandate of the Ingonyama Trust act (KwaZulu-Natal Ingonyama Trust Act No. 3KZ of 1994). This is as proved by the literature gathered that the administration work in KZN has been poor and biased as the responsible authority take advantage of the claimants' especially rural claimants. This is because these claimants at most times do not have knowledge about the procedures to be taken and they do not afford legal representation.

Considering the proposition of the royal house in resistance, the community had a meeting and came up with a committee and demands to be met by the company here in question. They agreed and proposed that the committee draft the memorandum stipulating their terms and conditions. Some of the conditions were: 80% of the employees should come from Makhasaneni, Jindal must show them where they were planning to dig before they do, pay R5000 for each hole to the relevant family and not use their water (Yeni, 2018).

A meeting was then called with the mining representatives the agreement was signed, and subsequently, the mine then started working around November 2012. however immediately

there arose a dispute between the committee and the mining company and the community forced the mine to halt operations. The cause of the dispute was that the committee found out that Jindal was paying R2500 per hole to the chief, thereby the traditional leader was unduly befitting from the mining activities while depriving the community of the gains illegally (Yeni, 2018).

It is therefore imperative to investigate the administration of communal lands as noted by the problems between communities and their traditional leaders about land and land rights. It is a general known practice whereby mining companies use gifts and promises of personal wealth to co-opt traditional leaders into supporting them at the expense of the communities who reside in those areas. Thereby the need to investigate matters of whether restitution is being fulfilled where the members of those communities (Larc.uct.ac.za, 2016) hold no title deeds. Thereby the study probes on these matters to give a better understanding of how land is redistributing in the KwaZulu-Natal province can be conducted with minimal fraud and corruption to benefit the masses of the ordinary citizens, meant to benefit from any land reform program that has occurred and might occur.

### **2.13 Other decided case law on Land Restitution in KZN**

Sibanda (2001) stated that Delivery under the Restitution of Land Rights Act increased significantly after April 1999 and this was mainly a result of the government adopting simpler administrative processes to resolve cases. This was however only addition to several cases lodged and published not the number of successful cases. What the government simply did was adding a back log in cases instead of thoroughly dealing with the already lodged claims first. The literature has shown the neglected issues of maladministration of the restitution process in KwaZulu-Natal, which causes delays in the process. For example, in the already discussed case of Mangethe in the previous chapter.

Analogous to Sibanda's school of thought, Edward (2001) also stipulates that since 1999 there has been an increase in the number of resolved claims. However, he proves that these claims are in urban areas and mostly monetary compensation which is individual family claims. This is a failure up to date since the restoration of land is based on reconciliation, addressing the past injustices but also addressing the issue of poverty through developmental aspects of restitution. The reason of slowness of rural claims according to this scholar is not properly implementing the restitution policies which falls under governance. This was evident in the

case of *Crafcor Farming (Pty) Ltd v Regional Land Claims Commissioner, Kwazulu-Natal and Others* as discussed in chapter one.

Comparably to the aforementioned scholars who are in sync about the need to resolve administrative issues in the land restitution process in order to avoid slow progress, although he focused on another aspect of land tenure, Piennar (2009) pointed out the need for good governance in private (corporate) and public (state) sectors, especially concerning policy, planning, decision-making, management and administration for the successfulness of the land tenure process which can also be applied to land restitution.

In a 2009 case review, Regional Land Claims Commissioner of KwaZulu-Natal showed poor governance in the case of *Isizwe Sakwa Dlodla (Dlodla Tribe) v Regional Land Claims Commissioner, KwaZulu-Natal and Others (2017)* where the Land Claims Commissioner did not include one of the claiming communities (Melmoth) in the Government Gazette thereby not publishing their lodged claim. The Judge Bertelsmann regarded the actions of the commissioner of not including the town of Melmoth as a 'failure' in passing his judgement and the review by the applicant was granted, and the decision by the commissioner was set aside. The Dlodla tribe was prejudiced and had to go through the court proceedings again which could have been avoided had the commissioner done his planning carefully.

In the case of *Mashilane Community and Another v Minister for Agriculture and Land Affairs and Others (2004)* In June 2003 the applicants (Mashilane Community and Moletele Community) submitted settlement agreements as contemplated in section 42(D) of the Act, for the settlement of their claims, to the first respondent, The Minister for Agriculture and Land Affairs who was the first respondent, for her consideration and signature. The first respondent took more time than expected to act as requested by the first and second applicant. The reluctance on the part of the first respondent to come to a decision was unreasonable and shows a gap in the restitution process. Instead of applicants getting required support before taking the matter for appeal, they had to incur more costs and emotional journey while claiming.

### **2.13 The Value of Solving Land Related Issues**

Badenhorst (2003) articulate the importance value of all forms of land reform program by the government to the socio-economic state of South Africa together with its development. The author further brings about the fact that solving delays and other maladministration in the process of land restitution caused by crimes brings about some positivity in the country. The

government enacted the Constitution which has land reform program in it which is aimed at reviving and restoring the legal protection and commercial value of black land rights which were eroded gradually by the apartheid land regime.

He addressed how the process restoration of land has affected the socio-economic and political life of South Africa. He explains the goals of restoration of land social, economic and moving forward the development of the country. The author defines the terms social justice and development. Social justice is defined as putting all social groups on equal footing. Due to the previous apartheid regime, black South Africans might see themselves as inferior, and that is what is aimed at with social justice. Development is defined as a way of growing the country economically.

The author attempts to answer the question whether the restitution of land is conducive to the establishment of a more just social order and to socio-economic development in South Africa, and builds upon the apparent shift in the South African land regime from one of unjust domination on the basis of skin colour and status to one that complies with the principles of the rule of law and the social state.

Mettler (1998), starts by reviewing that the new democratically elected government's first and important task was to balance the imbalances which were caused by the previous apartheid government and Restitution of land was one of those goals. Restitution of land was and is an important part of land reform system which is aimed at reconciliation and developing South Africa among other vital goals. It is not only a form of compensation for the past injustices, but it also secures property rights to the black South Africans.

He looked at the overall process of restitution. It assesses at the interim constitution the final constitution and the restitution of land rights act and how they work hand in hand in acquiring the goals of restoration of land. The interim Constitution according to the author only generalized land ownership according to section 28. On the other hand, the final constitution is precise on land reform and to be precise restitution of land (section 25(7)).

Restitution of Land Rights Act was promulgated in terms of section 121-123 of the Interim Constitution during November 1994, and its main function was and still is, to provide for the restitution of rights in land in respect of which persons or communities were dispossessed for the purposes of furthering racially based discriminatory laws. The Act is discussed under three

headings namely, who the targeted beneficiaries are; what the process is in terms of which land claims are adjudicated and lastly, the extent of the restitution remedies as provided for in the Act.

Based on Mettler's views, the values of solving the land-related crimes and land-related issue in South Africa is to balance the scale of superiority versus inferiority which was there before South Africa gained independence. Resolving has a goal of putting all races on an equal footing. Atuahene (2014: 20) in her framework concluded that restoration of the past legacy and injustices does not only end at giving back the land or equitable redress, but she talks of restoring dignity too. During the apartheid era, not only material property was stolen from the South African Natives but also their dignity was stolen. So, solving the land related issues would also help in the restoration of dignity that was lost.

### **2.13.1 Poor Interdepartmental cooperation on Land issues in SA**

Difficulties arise in the KwaZulu-Natal province about getting support from other sectors and organs of government, at national, provincial and district level. Cooperation amongst the different departments and offices of the government is crucial in facilitating the transfer of land in the process of restitution and redistribution, it is noted that such cooperation exists at a limited level in the case of South Africa in general and this problem transcends to the provincial level thereby curtailing the process of land reform.

## **2.14 Chapter Summary**

This chapter explored literature on the land reform. It traced the history of land reform and highlighted on factors guiding land restitution in South Africa and gave understanding on criminal matters surrounding issues of land in Africa and South Africa. Given that the land question is a critical and controversial issue, it is important that legal processes relating to land be handled with justice and fairness Atuahene (2014: 20). Literature indicates that land issues are met with various criminal practices, which require careful consideration since they might emerge to be a major challenge as in the cases of Ghana and Zimbabwe. Thus, this review of literature helped in understanding why land issues and crime are related and need was there for

research of this magnitude. It is noted that not all crimes were discussed as the researcher opens the floor for other scholars to further and or critic this study. Crimes involved in the land restitution process and the value of solving them were discussed.

The next chapter focuses on the theoretical framework, thus, the theories which were used to determine the reasons why individuals and or groups commit land related crimes. It will be further followed by the methods used for the research.

# **CHAPTER THREE**

## **THEORETICAL FRAMEWORK**

### **3.1 Introduction**

This chapter discusses the theoretical framework guiding this study. Differential Association Theory (DAT) and Routine Activities Theory (RAT), are the two theories used in guiding the thinking in this study. These theories were deemed necessary by the researcher as relevant in answering the question of why there are crimes in the process of land restitution in South Africa, KZN. The theories assisted the researcher in finding out the behavioural causes of the offenders in this area of study.

In this chapter, the importance of the theories was also presented by giving examples from different authors regarding how crime is committed using these theories to understand the root cause of these crimes. This will be done to have an understanding in general and in terms of crimes involved in the land restitution process in South Africa and in KwaZulu-Natal. KwaZulu-Natal was severely affected by political instability which was surrounded by discriminatory laws, especially before the national democratic dispensation in 1994 which saw the white minority having to own a larger percentage of the land as opposed to the black majority who owned the smaller part. This is as discussed in the previous chapter.

### **3.2 Differential Association Theory (DAT)**

This theory was developed by Edwin Sutherland proposing that through interaction with others, individuals learn the values, attitudes, techniques, and motives for criminal behaviour. Though it has been criticised because of its difficulty to test, the theory of differential association is the best-known theory in America used to determine criminal behaviour in human beings. Sutherland introduced the “white-collar-crime” and was mainly focusing on the fraud committed by officials who are in power for example Members of Parliament, ministers and so forth and how they misuse resources available to them by committing criminal activities against the public and their superiors (Sutherland, 1939).

### 3.2.1 Principles of the Differential Association Theory

The following principles that govern the DAT, and how they impacted this study, are discussed below:

- **Criminal behaviour is learned**

Sutherland implies that “criminality is learned in the same manner as any other learned behaviour” (Siegel, 2011). In this study, it implies that the commitment of fraudulent acts by the responsible government officials in the process of land restitution in KZN is learned. The officials act in the same capacity and are always in interaction which is how they learn and pass to each other their fraudulent behaviour explicitly and or tacitly. It is no secret that every time when one comes to power, they follow the same pattern as their predecessors. This on its own tacitly suggests that they do learn from each other. In his discoveries, Sutherland was mainly interested in the fraud committed by the upper-world business executive against stakeholders.

It is impossible for one to master committing crimes, especially which involves paperwork as mentioned in chapter 2 with regards to the case of *Nongoma Commonage Community and Another v Regional Land Claims Commissioner, KwaZulu-Natal and Others*. The Regional Land Claims Commissioner, KwaZulu-Natal acknowledged the receipts of the claim and advised Nongoma Commonage Community representative Mr Nzuza, that he (the commissioner) was satisfied that the claim met the criteria in terms the Restitution of Land Act and that steps had been taken to publish notice of the said claim in the Gazette.

Even though the land in question had been valued, the claim had not been finalised, and the commissioner was not in communication. By notice of claim being published in the Gazette, it means that all the necessary processes were done. Therefore, for one to be able to commit such a fraudulent act, they would have learnt it for them to perfect it.

- **Criminal behaviour is learned in interaction with others**

Sutherland expresses that "an individual does not begin disregarding the law basically by living in a criminogenic domain or by showing individual attributes related to guiltiness, for example, a low Intelligence Quotient or family issues. Individuals learn as they effectively

mingle and cooperate with different people who fill in as instructors and advisers for wrongdoing" (Siegel, 2011:174).

This suggests that land crime lawbreakers learn to commit crime from other land crime offenders. For example, in the case of land guards discussed in the previous chapter, new land guards who end up being criminals learn from land guards who already have experience in that field. At first some start as non-violent but through learning from the others, they end up committing crimes too. Their initial reason for becoming land guards (protectors) is that they find it difficult to find employment. So, they will be doing for the sake of getting money for survival. However, the more they interact with others, the more they learn criminal behaviour as land guards. However, it must not be ignored that as mentioned before, some become violent just for the sake of being feared and respected among fellow gangs.

Also, as discussed in the previous chapter, some association comes as a mob. The case of Zimbabwe where a mob was beginning the end of 1999, caused people to do land grabs. This is a crime caused by learning by interacting with others.

- **Learning criminal behaviour occurs within intimate personal groups**

Sutherland also stipulates that criminal behaviour is also learnt through participation within intimate personal groups. Therefore, this suggests that by simply socialising with individuals who are in crime, one can learn criminal behaviour. However, this process of socialising is difficult to understand (Lexington: Lexington Books, 1982).

Sutherland is of the view that people's contacts with their most intimate social companions – family, friends, and peers – have the greatest influence on their development of deviant behaviour and an antisocial attitude (Siegel, 2011:174). On account of land violations, the guilty parties may have experienced childhood in families where there are relatives who are in the administration, and they have an approach to worm their way into the framework for money related advantages where kids saw it as a method for a living and increasing simple riches.

- **Learning criminal behaviour involves assimilating the technique of committing a crime, including motives, drives, rationalisation, and attitudes**

Crooks take in the best possible phrasing for their demonstrations and get affirmed responses to law infringement. Offenders must figure out how to respond appropriately to their unlawful demonstrations, for example, when to safeguard them, when to justify them, and when to indicate regret for them (Sutherland, 1883-1950). For example, as mentioned in the literature review chapter, the Land Claims Commissioner in the Elandskloof case did not follow the correct procedure when he gave the land back to the claimants communally instead of giving it to families. This is a criminal practice which continually shows up in decided cases mentioned and discussed by this research paper. With that said, offenders learn to dodge the correct process of giving the land back. They do not do this to all the claimants, but they calculate on whom to apply this as they know that most of the rural claimants do not do a follow up due to lack of knowledge.

- **The specific direction of motives and drive is learned from the perception of various aspects of the legal code as favourable or unfavourable**

Sutherland expresses that because the response to social standards and laws isn't uniform crosswise over society, individuals always meet other people who hold diverse perspectives on the utility of complying with the lawful code, Gillian and Richardson (2005:331). This suggests that land criminals capitalise on the fact that as the land commissioners and government officials, they have the first preference of knowing when there is accessible land that the public is unaware of (Gilligan & Richardson, 2005:331).

Also, the fact that the way the land commissioners implement differs from province to province as proved in this study that the KZN province has the highest number of crimes related to the land. This shows that there is no uniformity in the way that the laws are being implemented.

- **Differential Associations may vary in frequency, duration, priority, and intensity**

According to Sutherland, whether a man figures out how to comply with the law or to dismiss it is impacted by the nature of that individual's social collaborations (Andreoni, Erard and Feinstein, 1998:21). Based on the discussed crimes on land grabs, it is a crime that is instigated by the powerful political parties, EFF to be specific (Feinberg, 2018). Therefore, by social collaborations, the general public who are attached to this political party end up committing

the crime of land grabs because of this association. It is therefore difficult to avoid the crimes. And it is political parties which are breaking the law instead of apprehending it.

- **The process of learning criminal behaviour by associations with criminal and anti-criminal patterns involves all the mechanisms that are involved in any other learning process**

“Learning criminal behaviour patterns is like learning nearly all other patterns and is not a manner of mere imitation” (Sutherland cited in Murghal, 2012:220). This stipulates that getting involved in crime is like learning any other behaviour. It does not just come, but one takes their time for them to come to a decision.

It is not always a requirement that there should be a second or third party involved when one commits a crime. One can simply learn how to commit a crime on their own according to Sutherland.

- **Although criminal behaviour expresses general needs and values, it is not excused by those general needs and values, because non-criminal behaviour expresses the same needs and values**

This suggests that the alleged processes in criminal conduct cannot consistently be the equivalent as those for ordinary conduct as the longing to collect monetary superiority or societal position, individual disappointment, and low poise can be reasons for wrongdoing. For instance, land criminals are driven by specific intentions to carry out such a crime just like the case in the commission in the study by Kockott.

Everyone has general needs, for example, owning assets and having status in the society. It is not an excuse for one to commit crime because if that was the case for every individual in a similar case, the country would be full of lawbreakers. So, this theory stipulates that a need should not be a justification of one committing a crime.

### **3.2.2 Analysis of Sutherland's Differential Association Theory**

The DAT is vital since it does not indicate that criminals originate from a disarranged setting or are fundamentally individuals from the lower class. Be that as it may, Sutherland's work neglects to represent the cause of criminal definitions. For example, it neglects to clarify how master lawbreakers show potential criminals how to commit crimes directly. The other feedback is that this hypothesis is just founded on sanity and overlooks the way that a few guilty parties might be propelled by poverty and their 'instructors' to help both the 'educator' and the wrongdoer. Cornish and Clarke (1985) see criminal conduct as the results of choices and decisions made by the guilty party.

Sutherland created DAT, or, in other words, Sutherland's conviction that wrongdoing is an element of the inborn deficiency of individuals in the lower classes. As per the standards of DAT, wrongdoing happens as the after effect of a learning procedure. This infers no individual is conceived a criminal, however that individuals learn criminal conduct at a youthful age; for instance, a teenager could be exposed to how they have possessions in this case land. As he or she grows up, he or she effectively figure out how to carry out different sorts of wrongdoing. It is additionally apparent that individuals learn criminal conduct through cooperation and socialization with other people who know about and skills as far as specific wrongdoing. In addition, there are thought processes or drivers for any criminal demonstration. The use of DAT was urgent in this investigation at it doesn't determine that crooks originate from a confused zone or are individuals from the lower class.

### **3.3 Criticism of the theory**

Edwin H. Sutherland who started the differential association theory believed that criminal behaviour is learned by interaction with other people by communicating. Sutherland theorized that people will either obey or violate the law depending on how they define their life situation (Sutherland, 1947). However, Sutherland's theory had some major criticisms; one of which was the assumption that if you were to interact with criminals that you would eventually become a criminal yourself. Sheldon Glueck criticized and questioned the theory claiming that it was not testable. Glueck asked, "Has anyone actually counted the number of violation of law, and demonstrated that in the predelinquency experience of the vast majority of delinquents and criminals, the former exceed the latter?"

Additionally, there seemed to be a shortage of reason in Sutherland's theory to explain acts of deviance that are not learned or spontaneous. For example, how does a child who is raised in a

nice neighbourhood with a good family and peers go and steal from their local grocery store or commit violent crimes? Simply put, Sutherland's ideas were just too hard to put into action and measure quantitatively so Akers and Burgess revised Sutherland's theory of differential association in their theory called the social learning theory. Akers and Burgess added the idea of reinforcement. Reinforcement would either increase or decrease the strength of behaviour (Akers, 1984). They also applied the principles of Operant Psychology. Operant psychology believes that behaviour is a result of its consequences (Akers). By adding the idea of "non-social situations" Akers and Burgess added that the environment on its own can aid criminality rather than only "social interactions" influencing an individual to commit crime through direct interactions with the environment without having interaction with people (Bernard, 2010).

### **3.4 Routine Activities Theory (RAT)**

RAT is a variation of classical theory. According to criminologists Lawrence Cohen and Marcus Felson (1979 cited in Argun and Dağlar, 2016: 3) the RAT outlines that wrongdoing happens within sight of three components which are an appropriate target, absence of a reasonable guard, and a motivated offender. To be specific, wrongdoing happens when these three components converge anytime. Routine activities theory proposes that if every one of the three components which are an appropriate target, absence of a reasonable guardian, and a motivated offender are all available at the same place and time, at that point the odds for wrongdoing increase and on the other hand, if one of these components is missing at that point chances for wrongdoing diminish.

Cohen and Felson (1979:589) trust that "guardianship by ordinary citizens of one another and of property as they go about routine activities may be one of the most neglected elements in sociological research on crime, especially since it links seemingly unrelated social roles and relationships to the occurrence or absence of illegal acts". In this regard, the government officials who are responsible for the processes of restitution of land have a free will whether to commit a crime or to do legitimately. It is at this moment in their hands to decide to do what is right or not.

With RAT, offenders are not only capable of committing a crime, but they are also willing. It is not factors such as poverty or a need which pushes the offender to commit a crime but rather

easy ways to commit crimes for example in today's technology; one may simply use WhatsApp which is encrypted to organise crimes (Felson and Cohen, 1979). RAT is activated when there is a constant supply of offenders.

### 3.4.1 Three elements of RAT

There are three important elements of RAT which are critical in defining and giving form to what the theory entails. These elements are discussed in this section.

- **Availability of suitable targets/ an accessible target.**

Crime Prevention (2014) defines an accessible target as a person, object or place. These accessible targets are well described using acronyms that are highlighted below:

VIVA -Value, Inertia, Visibility, and Access

CRAVED- Concealable, Removable, Available, Valuable, Enjoyable, And Disposable.

The focus is however on documents and the process of restitution of land. In this case, the suitable targets are divided into two that is;

1. *Uninformed people.* These are claimants who do not have the knowledge and or full knowledge of the restitution process. Sometimes they do not even know their real claim. So, the offenders in the land commission use the fact that claimants are not well informed to their advantage. They sometimes give monetary compensation which is not equivalent to the lost land and take the remaining or make other dealings with the remaining amount or the land. This instance was discussed in chapter two in the Mangethe case. A number of people and communities in KZN Province are filing for restitution of land, and there is already lingering lodgements which are already done but are stagnant, so, this is an available target.
2. *Documents.* Since most if not all the land corruption is done or initiates on paper, documents are available targets to commit land related crimes. As mentioned in the literature, in countries like Cameroun, land restitution crime of selling one piece of land to more than one buyer or giving back to more than one claimant is prevalent. This is because it is only the land commissioners who have the privilege to be hands on the

necessary documentation process. In so doing, they double sell a single land thereby getting money into their pockets through this fraudulent act.

- **The absence of guardianship.**

Crime prevention (2014) defines capable guardians to have a 'human element'. Meaning they should be personnel and physical infrastructures that can hinder or deter potential offenders from committing a crime. For instance, capable guardians can be in the form of CCTV cameras that provide personnel monitoring at the end of a camera detailed information on what is happening to determine early warning signs on the occurrence of any crime. However, a CCTV on its own cannot be an effective guardian if there are no monitoring personnel to act on the unacceptable actions being shown. More so, capable guardians can be in the form of security guards, police patrols, door attendants, friends, or even neighbours. It is important to note that most of the guardians are formal and deliberate (security guards) and some are informal and inadvertent (neighbours). It is essential to note that formal guardians have to be equally equipped with relevant skills to be effective deterrence of crime in any situation.

In this case, the applicable guardians are the human patrols which could be regular check-ups on paperwork in the office of land commissioner. Since there is no single designated person or board which makes sure that all the paperwork is verified a certain number of times, it is easy to perform maladministration because that guardian is not available. CCTV cameras in commissioners' offices could also be used however in cases of documentation they might not be effective.

- **Availability of motivated offenders.**

RAT looks at crime from an offender's point of view. Crime will only be committed if a likely offender thinks that a target is suitable, and a capable guardian is absent. It is the offender's assessment of a situation that determines whether a crime will take place (Crime Prevention, 2014). In this instance, motivated offenders are the power-hungry commissioners who oversee the claiming process. According to Crime prevention (2014), the offender in this instance would have seen that the guardian, which is regular check-ups on the land restitution processes

is absent or ineffective. This is a motivation for one to commit a crime as they know that there are slim chances of getting caught on the wrong side of the law.

### **3.4.2 Analysis of Routine Activities Theory**

Lawrence Cohen and Marcus (1979) introduced the RAT stating that for one to commit a crime, there should be mutual existence of individual motivation and consistent supply of offenders. Offenders are motivated to commit crimes by factors such as greed, lust or other forces. However, RAT theory states that the three above explained elements should be satisfied for one to go on and commit a crime.

As per the theory, wrongdoing rates are not influenced just by the supreme size of the supply of guilty parties, targets, or guardianship yet additionally, the variables influencing the recurrence of their assembly in space and time (Sherman, Gartin and Buerger 1989:31).

RAT has its own pros and cons. It has mostly observed experimental help in the territory of presentation of victims to guilty parties. As a matter of first importance, "Routine Activity Theory" gives a straightforward and great knowledge into the reasons for wrongdoing issues. This is vital in giving the judiciary system knowledge on why some people commit crime.

### **3.5 Criticism of the theory**

*Various shortcomings are incorporated as below;*

While RAT gives profitable commitments to the study of space and crime, researchers evaluate the hypothesis on various grounds. For instance, while it assumes the presence of motivated guilty parties, numerous researchers talk about how inspirations differ among guilty parties (Clarke and Cornish 1985). Others contend that RAT neglects to legitimately address the job of criminal open-door settings – the conditions in which motivated offenders and reasonable targets merge without proficient watchmen (Wilcox, Land and Chase 2003). In this regard, it does not necessarily mean that if one of the above-mentioned elements is absent, one does not commit a land crime. There are various instances mentioned in the previous chapters where one, for example, a land guard may commit a crime but not need to fulfil all the three requirements.

Brunet (2002:75-76) delineates the shortcomings of RAT on a few reactions: The primary feedback focuses on the issue of wrongdoing removal. This is persevering feedback of the RAT. Some contend that the demoralization of a criminal occasion today does nothing to lessen the probability that comparative wrongdoing will be submitted by the guilty party at some other time and place. As the contention goes, guardianship basically moves wrongdoing starting with one region then onto the next zone.

Second, RAT tends to disregard the exploration writing that partner's crime with guilty party attributes (social learning, mental, personality, and confidence). The most recent emphases of the theory have remedied this, partially, by advancing toward a more mind confusing and sensible conceptualization of the presumable wrongdoer. Argun, & Dağlar (2016:3) In this regard, one could commit crimes associated with land because of other different reasons as mentioned above.

Third, there is a warmed discussion inside the normal exercises camp over the best possible conceptualization of the theory as a reduced scale or large-scale way to deal with wrongdoing.

Fourth, most examinations which test the theory are post hoc and unmistakable. At this phase in its advancement, the theory is constrained in its prescient limit.

### **3.6 Chapter Summary**

This chapter presented the DAT and RAT and demonstrated their relevance to the topic. The chapter explored these theories and linked them to the possible human behaviours which may be the cause people why people commit land related crimes. These theories were used to unlock other doors in terms of locating the study in the broader theoretical context. The theories assisted the researcher in looking at the conditions which may cause individuals or groups to commit land related crimes. This chapter has brought to light that although there are theories guiding the committed crimes, they are not excuses for one to commit a crime. In the chapter, the importance of each theory was presented by giving examples from different authors on what each of these theories believes in as reasons for one to commit any crime.

It however should be noted that, the theories used by this study are not the only application. However, there is space for other scholars to add to the findings of other theories which may be used. South Africa is known as the country that has established a strong foundation for democracy across the country, and South Africa's Constitution is recognized across the world.

The next chapter presents the methodology which was used in conducting and completing this research.

# CHAPTER FOUR

## RESEARCH DESIGN AND METHODOLOGY

### 4.1 Introduction

This chapter will give an understanding of the methods utilized in doing this exploration. This implies that it will fundamentally talk about the procedure of information accumulation utilized in this investigation by expressing how subjective, sorts of research strategies utilized and how information was broken down. Finally, the part will express a portion of the ethical issues experienced while doing the exploration and the limitations which were confronted.

This is a very important chapter as it presents the research method used by the researcher to get the desired results. There are many kinds of research methods authors use which are relevant to their studies. Some methods of research are determined by the nature of the research topic. The researcher of the topic of the present study saw it fit and relevant to use a Qualitative Research Method as the study deals with qualitative matters. Qualitative Research methodology is a method of enquiry employed in many different academic disciplines. It investigates the *why* and *how* of the decision making.

### 4.2 Research Approach

The researcher used Qualitative research approach. In a qualitative based approach, the data is extracted from words, sentences, photos, symbols and so forth, unlike quantitative research approach which uses hard data such as numbers which may make a study inappropriate or irrelevant (Neuman,2013). This is true in this study because if it used the provided statistics of decided, undecided, reported and unreported cases. The qualitative approach uses a language of cases and contexts. The emphasis is on conducting detailed examinations of specific cases that arise in the natural flow of social life. In this regard, the study examined specific decided and ongoing cases in KZN on how cases are concluded with the intention of tracing if there is a crime aspect in the process. This was done in the problem statement and in the literature review.

Unlike quantitative approach, qualitative research is not simply a matter of trying to verify or falsify a relationship or a hypothesis (Neuman, 2013), but it is a matter of developing a new

hypothesis or improving the one that is already there. In his study, Klinenberg (2002) developed several new hypotheses about class and death rates. He investigated mechanisms that caused death in different societies. He learned that in a poverty-and crime-ridden neighbourhood death rate is higher as compared to a community which is low density and has most people who have above average income. Similarly, this study has new hypotheses on why and how KZN has more land related crimes recorded.

This is because according to KZN Top Business Portfolio (2018), KwaZulu-Natal is South Africa's best-watered province; it has a bigger zone of high calibre horticultural land than some other area, and it is the national pioneer in a few rural items. The Midlands zone among Pietermaritzburg and the Drakensberg is the core of this high calibre farming territory, another region of significance is the North Coast area. Regardless of the way that KwaZulu-Natal covers such a little bit of South Africa's territory region, a critical level of the nation's little scale ranchers is based here. Agribusiness in KwaZulu-Natal is to a great degree different and identifies with the examples of its geology. Most the world's agrarian exercises can be drilled in the district. Because of the great solid precipitation and prolific soils, the agrarian area has turned out to be exceptionally beneficial and is known for its expert ability in a few kinds of cultivating. The logic in a qualitative study arises from ongoing practice and the issue of land-related crimes is a perpetual one. Therefore, the researcher explored the decided cases on land restitution process in the KZN Province.

Subsequently, this is a criminological study, which explored the land restitution process in the KZN Province by closely looking at decided cases. To this course, this research brought an understanding of the extent of damage that is caused by a criminal element in the land restitution process. It informed certain non-criminal conditions that exist to promote a more supportive and just system that caters for the restitution people. Triangulation of data was presented geared at different sources on land restitution process. Thus, the information obtained through the systematic literature review was collected and integrated with the decided cases, to add any other nuance that might reside in the sources collected. These documentary sources will be compared with the-said cases and then added as new information to this research.

### 4.3 Research Design

Kumar (2014:122) defines a research design as “the roadmap that you decide to follow during your research journey to find answers to your research questions as validly, objectively and economical as possible”. The researcher is concerned with exploring the link between criminology and land reform policy, a topic that very little research exists. Neuman (2011:38) explains that exploratory research is used when the subject is very new, we know little or nothing about it. There is wide literature on land reform, however, there is little research done on the criminal elements affecting land restitution in SA in the post-apartheid era. Similar knowledge has been discussed in chapter two, however, not the exact topic. According to Bless (1993), the process of the researcher looking for a road map to follow when conducting their research refers to the set of procedures that guide the researcher in the process of verifying a hypothesis and excluding all other possible hypothesis or explanations. It allows the researcher to draw conclusions between variables.” On the other hand, Polit (1985) states research design refers to the researcher’s overall plan for obtaining answers to the research questions.

In this study, the researcher used a non-empirical research design (systematic review) to find new knowledge on the topic. The researcher followed the pre-determined steps as explained by Punch (2014:108), namely; initiate review and specific aims, formulate review questions and decide on nature and method of review; develop inclusion/exclusion criteria search strategy for relevance and acceptability of literature to be reviewed; this includes types of literature, key variables, time-frame and publication types.

#### *Systematic literature review*

According to Cough, Oliver and Thomas (2012:5), systematic review is a form of research that identifies, describes, appraises and synthesizes available research literature ‘using systematic and explicit accountable methods. Punch (2014:108) points out that systematic review uses pre-specified protocols and formalized tools for searching, screening, coding, weighting and integrating literature. Bryman (2012:102) defines systematic literature review as a replicable, scientific and transparent process, that aims to minimise bias through exhaustive literature search and unpublished studies by providing an audit trail of the reviewer’s decisions, procedures and conclusions. The research topic, research aim, research purpose and research

questions of this research were defined in line with the documentary documents detailing the decided cases and available literature. This was done in chapters one and two.

For the purposes of this study, the researcher visited libraries, including the UKZN library and the Internet to search literature on the existing evidence relevant to research questions to collect and analyse data from the indicated (Supra) dissertations, journal articles, academic books and conference papers on land reform and the crimes which are included thereof. Bryman (2012:103) seeks out studies relevant to the research aim, purpose and questions and the search will be based on keywords / phrases. This systematic review of literature used in chapter two and in the analysis of data chapter was derived on local and international studies of land restitution process in the KZN Province and elsewhere. The date which the search was being conducted, data collection methods (documentary and systematic literature review).

#### *Sample size and procedures*

Singleton, Straits and McAllister (1988:153) define sampling as the technique by which a sample is drawn from the population. The researcher is concerned with finding information where the issue exists as there is limited or no research on the topic to address the research problem. Denscombe (2010:41) explains non-probability sample can also be particularly useful in exploratory research where the aim is to find if the problem exists in a quick and inexpensive way.

Purposive Sampling was used for this research as described by Maree (2007:178) that this type of sampling is done with a specific purpose in mind about specific people or events who are deliberately selected because they are likely to produce the most valuable data. For the study, the sample did not deal with specific individuals but data primarily from printed mass media reports related to the research topic.

#### *Methods of data collection*

Maxfield and Babbie (2005:209) emphasise that the value of research depends on how the data is gathered. According to Denscombe (2002:70), it is crucial to gain access to documents and people for the purpose or else researchers will engage in speculation on the subject. In order to address the research objectives, the researcher will gather data by means of the following:

The data was collected using primary and secondary sources. Primary data sources are referred to as “the term primary source is used broadly to embody all sources that are original. Primary sources provide first-hand information that is closest to the object of study” (Persaud, n.d.).

Examples of secondary data sources are newspapers and textbooks. For the orientation of this research subject, the researcher read the existing and published literature that appeared relevant to this research topic. Considering this, herewith the selection of primary and secondary sources, among others, that were consulted by the researcher:

- Constitution of the Republic of South Africa Act (Act No. 108 of 1996);
- Relevant publications on land restitution process, Government Information Brochure / Documentations; Strategic Plan; Annual Reports; Statistics South Africa; and Integrated Development Plans (IDPs) of KZN.
- Other local and international statutes on land restitution process.

Also, consulted was:

- Textbooks on the research subject;
- Journal articles on land restitution process;
- Internet sources on land restitution process; and
- Dissertations and theses on land restitution process.

#### *Documentary sources*

The researcher visited the library and went online to access data from an electronic database such as Sabinet (South African Media –newspapers). Matthews and Ross (2010:282) explain that one can ask questions of documents in the same ways as one might ask questions of research respondents. The design of this research is exploratory in nature, in the form of a literature study (systematic literature review), which provides a sound overview of existing publications about the land restitution process.

The views of different authors, which will relate to the problem that will be researched, were discussed to place this current research within a conceptual and theoretical context. The information sources for this research comprised of recent academic books, academic journals articles, practice-oriented and popular journal articles, white papers, national instructions, circulars, policy documents and information available on the internet.

### *Methods of data analysis*

The researcher used the Content Analysis (CA) to sample documents. Bryman (2012:289) explains that CA is an approach to the analysis of documents that seeks to quantify contents in terms of predetermined categories and in a systematic and replicable manner. Bryman (2012:293) provides that CA is a method that can be applied to many kinds of documents. Flick (2014:429) state that CA is a classical procedure for analysing textual material it may range from media products to interview data. In this regard, since it desktop research and no interviews needed, the researcher will analyse documents and available literature.

#### **4.4 Justification of the Methodology**

Radebe (2014: 86) says “a literature review is said to be the best example of this type of research as it looks at the findings of the previously published studies”. For the purposes of exploring the crimes involved in the land restitution arena, this study looked at the previous datasets which entail cases, books, journals and newspaper articles to summarise and critique them with the view to make a case for the present study.

Benfield and Szlemko (2006: 1) espouse the view that “by its very nature, the internet appears to be a very promising medium for researchers. As a vehicle for data collection, it promises an increased sample size, greater sample diversity, easier access and convenience, lower costs and time investing and many other appealing features”. The researcher additionally utilized the web to source some data as it is upheld by research scholars. The researcher discovered this strategy effortlessly available and efficient except if the site or the substance of the website page required the specialist to put the secret word to get to the data. The researcher also chose to use a desktop approach as it is faster and time conscious. It allows for detailed exploration of issues from a broad view.

#### **4.5 Methods to Ensure Trustworthiness**

It is essential for every research to be trustworthy, credible and reliable. To ensure that this research achieves these factors necessary measures were put in place and they are explained and indicated in this section.

#### **4.5.1 Validity**

Fox and Bayat (2013, 144) validity mean that measurement represents what it is supposed to represent. Denscombe (2002:100) indicates that validity is about the accuracy of the data collected and the explanation offered.

To ensure the validity of documents used in this study, the information was derived from relevant sources such as published books, relevant online websites (news outlets, government websites and research blogs), journal article and organizational reports and publications. This ensured that valid and trustworthy information is used in conducting this research.

#### **4.6 Documents, journal articles and books**

Denscombe (2010:221) argues that validity on documents needs to be established and evaluated in relation to authenticity, representativeness, meaning and credibility. The researcher used documents found on the **DRDLR** website, and Sabinet, South African media newspaper and all sources consulted were acknowledged on the list of reference. Academic journals and commercial publishers have their material refereed by experts in the field, so the researcher has some assurance about the quality of their content (Denscombe, 2010:222).

#### **4.7 Triangulation**

Bryman (2012:392) explains that triangulation entails using more than one method or source of data in the study of social phenomena or multiple approaches to analysing data to enhance the credibility of the study concern. The research used qualitative research to conduct a study and data analysed to report findings. Neuman (2011:164) points out that triangulation is the idea that looking at something from multiple points of view improves validity.

#### **4.8 Bracketing**

Gearing (2004:1430) explains bracketing as a “scientific process in which a researcher suspends or hold in abeyance his or her presuppositions, biases assumptions, theories or previous experiences to see and describe the phenomenon” about the natural world to instead focus on the analysis of experience. The researcher held on his assumptions and ensured that none of his experience, ideas and concept about restitution of land over clouds his judgment as explained by Gearing (2004:1430) when conducting a documentary review provided us with relevant concepts and theories to engage with the study. Ahern (1999) explain that bracketing is a means of demonstrating the validity of the data collection and analyses process.

#### **4.9 Reliability**

Kumar (2014:380) defines reliability as a research instrument that can provide similar results when used repeatedly under similar conditions. Bryman (2012:169) describe reliability as the consistency of a measure of concepts. Silverman (2014:116) states that reliability requirements of CA categories precise to enable different coders to arrive at the same results when the body of material is examined. This will ensure that when other researchers conduct the same research, they will obtain the same results.

#### **4.10 Ethical Consideration**

The researcher considered the following to ensure ethicality as suggested by Leedy and Ormrod (2001:101-102):

##### *Informed consent*

The researcher adhered to the UKZN Policy on Research Ethics - General Guidelines for the Ethics Review Processes. This guideline was read in conjunction with the Guidelines for Completing the Human and Social Sciences Research Ethics Application Form (UKZN, 2014:1-2) and obtain ethical clearance from the UKZN Ethical Committee thereof.

##### *Honesty with professional colleagues*

The researcher acknowledged all sources that were used during the research and the list of reference is included. This was done to avoid committing plagiarism.

#### **4.11 Limitations to the Study**

Verial (2015: 1) of the Demand Media holds that “studies usually have at least one limitation that makes some aspects of their results less likely to be accurate, such as the hypothesis not being proved though it might be true, the introduction of bias, a necessity of to rely on estimates for some data or limitations on the scope and applicability of the study”.

In this regard, this study was limited in terms of not having human participants. This was because the issue of land and crime is a sensitive and political one. However, the quality of the work might have compromised by lies or withholding of information from the participants.

Verial (2015: 1) believes that funding has a huge impact on the success of the study. The author states the following: “in addition because scientists across the globe have different sources and amounts of funding, not all scientists can use large groups of subjects. The small sample sizes that make the statistics of a study less dependable, the results of a study that lacks sufficient funding might not be strong or mathematically strong”.

For one to conduct a study, funding is vital. However, this research adopted the desktop approach, and no funding was needed as there are available libraries, computers and internet at the institution.

#### **4.12Chapter Summary**

The researcher collected information by means of reading journal articles, textbooks, newspapers, and other government documents. The researcher followed the recommendations of his supervisor Dr Siyanda Dlamini to use the desktop-based research method to collect information and then supplement it with other data collection strategies such as dissertations on the restitution of land.

Therefore, the researcher explored the decided cases on land restitution process in the KZN Province; with the use of Content Analysis (CA). Bryman (2012:289) explains that CA is an approach to the analysis of documents that seeks to quantify contents in terms of predetermined categories and in a systematic and replicable manner. To this course, this research brought an understanding of the extent of damage that is caused by a criminal element in the land restitution process. It informed certain non-criminal conditions that exist to promote a more supportive and just system that caters for the beneficiaries of land restitution.

Building from this chapter to the next, chapter five is about Discussion of all the data that was gathered for this research, analysing it and interpreting it. This was done by incorporating the theoretical framework and in line with the research objectives and research questions of the study. It will be followed thereof by the chapter which will conclude the whole of this research and giving recommendations on what could possibly be done based on the findings of the research problem identified by the researcher.

## **CHAPTER FIVE**

### **DATA PRESENTATION, ANALYSIS, INTERPRETATION AND DISCUSSION**

#### **5.1 Introduction**

The previous chapter discussed the methods used in collecting data under the methodology title. Because this research is desktop based, data was collected from literature which is the findings of other scholars, decided and undecided case laws, journals and various statutes which applied for the purposes of this research. In this discussion and analysis chapter, the views from the literature were engaged and related to the theme, and it reflected on what should be done or could have been done considering the examples of cases discussed. The data was analysed using Content Analysis (CA).

#### **5.2 Content Analysis**

Bryman (2012:293) provides that Content Analysis is a method that can be applied to many kinds of documents. Flick (2014:429) state that CA is a classical procedure for analysing textual material it may range from media products to interview data. In this regard, it is desktop research, and no interviews were needed, the researcher discussed, analysed and interpreted documents and available literature.

#### **5.3 Discussion of Findings**

This section discusses the findings of this study. The findings presented and discussed are grouped into related content to reflect on similar trends and patterns in the various issues that might be happening in different setting but indicating similar traits. This helps in outlining content and themes that was dominantly identified in this research. This helps the researcher to present these findings in a simple and logical manner that can be easily interpreted.

### **5.3.1 The procedures of Land restitution processes in SA**

Section 25(1) of the Constitution of the Republic of South Africa guarantees everyone the right to property by explicitly preventing the dispossession of property except by way of applicable law. The section further guarantees that no law may allow dispossession of property based on or derived from uninformed opinion. Several existing laws, amongst others, the Local Government Municipal Systems Act (32 of 2000) seem to limit the owner's power to transfer property without a certificate issued by the municipality to the effect that the consumption charges due during a period prescribed by the Act or by-law have been paid.

The constitutional provisions permit the state (*Pretoria City Council v Modimola 1996 (3) SA 250 (A) at 258*) either to deprive an owner of some of the entitlements of ownership or to expropriate ownership. These dual powers refer to the well-established distinction between the exercise of eminent domain and exercise of police power. *Harksen v Lane 1997 (11) BCLR 1489 (CC) at 1502C-D*).

The purpose of the distinction between expropriation and deprivation is to enable the state to regulate the use of the property for the public good, without fear incurring liability to owners of rights affected during such regulation. The distinction may be phrased in two ways. The first one being the requirements for deprivations of property may be separate from those of expropriations of property. This would mean that section 25(1) and (2) of the constitution would be treated in unison but would rather be regarded as relating to two different unrelated types of limitation according to Silberberg and Schoeman (2006).

The Restitution of Land Rights Act 22 of 1994 was enacted to provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 because of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and Land Claims Court; and to provide for matters connected therewith.

According to section 2 of the Act, “ a person shall be entitled to restitution of a right in land if he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices ; or it is a deceased estate dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices; or he or she is the direct descendant of a person referred to above who has died without lodging a claim and has no ascendant who is a direct descendant of a person referred ; and has lodged a claim for the restitution of a right in land; or it is a community or part of a community dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices, and the

claim for such restitution is lodged not later than 31 December 1998. No person shall be entitled to restitution of a right in land if -) just and equitable compensation as contemplated in section 25(3) of the Constitution; or any other consideration which is just and equitable, calculated at the time of any dispossession of such right, was received in respect of such dispossession.”

However, the final day of lodging a claim has since been extended to the last day of 2019 due to an increase in claims which are new and a number of unsolved cases which were already lodged.

### **5.3.2 Traditional Authority in Land reform**

In the province of KwaZulu-Natal, a very large segment of land is communal land and is held under Ingonyama Trust. Ingonyama Trust is a state entity established at the collapse of the apartheid). The only trustee of the trust is the current Zulu King, King Goodwill Zwelithini and is administrated by Ingonyama Trust board. In the case of the people of *eMakhaseni* who were not consulted on the case of mining in their village by their traditional chief who the *eMakhaseni* community members confronted, a public meeting organized by the local headmen and his village members in response to the mining activities, admitted to having given permission to Jindal Africa to conduct prospecting activities. (As discussed in Chapter Two).

The data gathered from the literature reviewed discussed corruption as a crime that is involved in the land restitution process in KZN. The Makhaseni chief received bribes from Jindal to the land that was not legally solely his, but the community too had the right to the same communal land. These issues remained unsolved as there always have been problems where communal land is involved.

It is imperative to investigate the administration of communal lands as noted by the problems between communities and their traditional leaders in relation to land and land rights. It is a general known practice whereby mining companies use gifts and promises of personal wealth to co-opt traditional leaders into supporting them at the expense of the communities who reside in those areas, thereby the need to investigate matters of whether restitution is being fulfilled where no title deeds are held by the members of those communities (Larc.uct.ac.za, 2016).

It is apparent that Tribal leadership, as the research showed, is not democratic in any sense of the western tradition that defines governance in the country. Amakhosi are not elected leaders and cannot be held accountable through a vote. However, they are subject to powerful mechanisms of accountability, recourse and communication within the tribe (Yeni, 2018) As if the conflict and confusion between the community properties associations and the institution of traditional authorities were not enough, two pieces of legislation that have been passed over the last few years – the Traditional Leadership and Governance Framework Act (41 of 2003) and the Communal Land Rights Act (11 of 2004). Couple with the KwaZulu-Natal Ingonyama Trust Act No. 3KZ of 1994, appears to give traditional authorities more power than the CPAs (Claassens & Cousins, 2008). With these new laws, the state has effectively presided over the disempowerment of the community members while traditional authorities continue to be land administration authorities in the villages.

#### **5.4 Inconsistences in KZN land reform cases under traditional authority**

##### *The Bakgatla ba Kgafela community case*

The Bakgatla ba Kgafela community brought a successful land claim over various pieces of land in the North West. This meant that they had to create a legal entity that was able to receive ownership of the land on behalf of the community for administration purposes. In the year 2005, the claimant community voted in favour of the creation of a Communal Property Association (or CPA) to hold the land, elected a committee to run the Communal Property Association and adopted a draft constitution. The community then made an application to have the Communal Property Association registered. However, the traditional council and traditional leader, Chief Nyalala Pilane, were not concurring with the decision to form a Communal Property Association. He wanted the community to create a trust instead, noting that a trust would give power to the traditional authority rather than the intended community (*Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others, [2014]*).

Because of his intervention, the then Minister of Agriculture and Land Affairs Lulu Xingwane called a meeting with the government officials and community representatives dealing with the registration of the CPA. The Minister suggested that the community register a provisional CPA in terms of section 5(4) of the CPA Act for 12 months other than a permanent CPA in terms of

section 8 of the CPA Act. After some discussion, the Minister instructed the government officials to make sure that a provisional CPA was registered. However, importantly so, it is apparent that the community itself did not change the formal application process to apply for the registration of a provisional CPA, thereby the minister abused power in this instance (*Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others*, [2014]).

The fact that the minister abused power is also a reflection of inconsistencies in the implementation of statutes which govern the restitution of land. The Restitution of Land Rights Act does not give the authorities powers to abuse their powers, but they are at all times required to act according to the law. This was gathered in the data collection in the case of Mangethe when the leaders delayed processes because no one was aware of the process.

In the month of September 2007, the Department registered the provisional CPA as per the direction of the minister contrary to the wishes of the community and official recommendation. The Department did this even though there are memos that show that the Department commented that the CPA be permanently registered. In 2008 the land claimed by the community was transferred to the provisional CPA. However it must be noted that the Department had almost no contact with the community. The Department did not help the community to convert the provisional CPA into a permanent CPA (*Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others*, [2014]).

The traditional authority authorized that a shopping centre to be constructed on land that it owned. The CPA tried to block the construction by applying for an interdict in the Land Claims Court. In court the traditional council argued that section 5(4) of the CPA Act meant that a provisional CPA is only valid for 12 months – after 12 months, if the CPA has not been turned into a permanent CPA, it no longer exists. This, the chief argued, was what had happened to the Bakgatla ba Kgafela CPA. According to the chief, this meant that the Bakgatla ba Kgafela CPA did not have the legal standing or *locus standi* to interdict the construction of the shopping centre. On this backdrop the Bakgatla ba Kgafela CPA applied to the Land Claims Court for an order confirming the fact that it had been registered as a permanent Community Property Association or in the circumstance that it is not permanently registered, that the Community

Property Association has substantially complied with the requirements to have a permanent CPA registered (and should therefore be recognized as a permanent CPA).

In the Land Claims Court, the Bakgatla ba Kgafela CPA won a significant victory. The judge noted that the people had made their voice heard and had clearly emphasized their decision in choosing to create a community property association as compared to creating a Trust. The judge noted and pointed to the extensive consultation in various villages that preceded the choice, by the members. The court precluded the technical argument that the CPA no longer existed thereby it automatically meant that the CPA was still the owner of the land that had been transferred to it (*Bakgatla ba Kgafela Communal Property Association v Kgafela and Others (LCC219/2012) [2013] ZALCC 6 (3 January 2013), [2013]*).

The court also found that the CPA had been permanently registered, because it clearly should have been registered in terms of the CPA Act. Thus it should effectively be registered, as the only reason the CPA had not been registered as a permanent CPA was the administrative mismanagement by the Department and the unlawful interference by the Minister. In support of this decision, the court pointed out that the CPA had complied with most of the requirements for the registration of a permanent CPA and that the Department's own memos showed that it recommended that a permanent CPA be registered accordingly as per the wishes of the community (*Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others (CCT231/14) [2015] ZACC 25; 2015 (6) SA 32 (CC); 2015 (10) BCLR 1139 (CC) (20 August 2015), [2015]*).

The ruling was not satisfactory to the Tribal Authority and Kgosi Pilane, and thus they then went on and appealed to the Supreme Court of Appeal. The Supreme Court of Appeal made it clear that the Association's status was at the heart of the appeal and confined itself to deciding that issue only. In determining this issue, that Court based its decision mostly based on the provisions of section 5(4) of the Act, which they argued that it implies that a provisional association exists for a period of 12 months from the date of registration unless the Director-General extends the period for a further 12 months, thus the association at the lapse of 12 months had ceased to exist. Since it had been noted that no extension had been granted prior to the presentation of this case before the courts. The Supreme Court of Appeal thus highlighted in its decision that the Association had ceased to exist on the expiry of 12 months. Thereby as a result of the ruling meant that the order of the Land Claims Court was suspended subsequently

*(Bakgatla-Ba-Kgafela Tribal Authority v Bakgatla-Ba-Kgafela Tribal Community Property Association (939/2013) [2014] ZASCA 203 (28 November 2014), [2014]).*

Following the order made by the Supreme Court of Appeal that favoured the position of the traditional authority and the traditional leader, the association went on and approached the Constitutional court. The association argued that when the land was transferred to the CPA it became the official holder of the land legally on behalf of the claimant community, however if the CPA no longer exists it became unclear who owns the land as a result of the decision *(Bakgatla-Ba-Kgafela Tribal Authority v Bakgatla-Ba-Kgafela Tribal Community Property Association (939/2013) [2014] ZASCA 203 (28 November 2014), [2014])*. The ownership issue has significant implications for the implementation of the Constitutional right to restitution of land rights process.

The Constitutional court in its decision that the order of the Land Claims Court prior to the Supreme Court decision be revived thus returning the ownership exclusively to the CPA. The court highlighted that there appears to be no foundation for this Court to interfere with the factual findings made by the Land Claims Court that the CPA met the requirements of section 8 were satisfactory. Further, the court noted that the recommendation by the department that the Association qualifies for registration constitutes an administrative action that remains in existence until set aside, it meant that the association qualified to be registered and should be *(Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others, [2014])*.

In the Supreme court of appeals, *(Bakgatla-Ba-Kgafela Tribal Authority v Bakgatla-Ba-Kgafela Tribal Community Property Association (939/2013) [2014] ZASCA 203 (28 November 2014), [2014])* it should be noted though that although the Minister supported the setting aside of the order of the Supreme Court of Appeal, his legal team argued that the matter be referred to mediation, however mediation process apparently were not fruitful. Moreover, the court articulated that there is simply no legal basis for the request to have the matter referred to mediation in the situation of the present matter in question. The court noted that once an association qualifies to be registered, it must be registered as the Director-General or any member of the department's officials has the legal discretion to interfere with the process of registering the association *(Bakgatla-Ba-Kgafela Tribal Authority v Bakgatla-Ba-Kgafela*

*Tribal Community Property Association (939/2013) [2014] ZASCA 203 (28 November 2014), [2014]).*

Further it was argued that the fact that a traditional leader or some members of the traditional community prefer a different entity to the association is not good enough justification for the withholding of the registration of the CPA or does it warrant the imposition of mediation procedures on the parties as argued by the minister here in question.

In conclusion the court found that it was fair to order the Minister and the Director-General to pay those costs of incurred by Bakgatla-Ba-Kgafela Communal Property Association in the Supreme Court of Appeal and constitutional court of South Africa, as they were the legal structure of the community responsible for the land here *restituted (Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others, [2014])*. This case highlights the nature of traditional authorities who generally operate of feudal principles and scholars have argued that they are despotic in nature. Further, it shows how the restitution process can be tampered with by officials such as the intervention of the minister who was contrary to the interests of the *society (Bakgatla-Ba-Kgafela Tribal Authority v Bakgatla-Ba-Kgafela Tribal Community Property Association (939/2013) [2014] ZASCA 203 (28 November 2014), [2014])*.

## **5.5 The Challenges to effective Land Reform Processes in KZN**

The study found out the land restitution process in KwaZulu-Natal is affected with various challenges and inconsistencies. These challenges are criminal in nature and may impose danger to the land reform processes soon if they continue. Thus, this research unpacked these challenging factors in KZN as an alert measure.

### **5.5.1 Land crimes in KZN**

Crimes associated with land reform are not unique to KZN, South Africa but also the rest of Africa. (Azeng, 2016) pointed out that in Cameroon, fraudulent land documents and land transactions, such as simultaneous sales of same property are common. In a different country,

with increased demand for land, Zimbabwe has witnessed numerous cases of corruption in which several actors in the land sector have used various forms of power to accumulate primitively, thus the problem is not unique but can be dealt with through learning from the other cases and how they failed to prevent the loopholes which open up the process to abuse (Chiweshe 2016), (Corruption Watch, 2013).

As per one of the objectives of this research which is to evaluate the procedures used in fighting against corruption in land-related issues, Zimbabwe failed to deal with its land related crimes that is one of the reasons even today the economy is still degrading. Linked with the data collected, the procedure of dealing with land-related crimes in KZN is still undermined. This is because as discussed in the literature, it is the members of the parliament who instigate crimes. Crimes such as land grabs are being instigated by powerful politicians.

Since launching in January 2012 Corruption (2013) Watch has received a substantial number of complaints implicating the Department of Rural Development and Land Reform involving abuse of power, corruption in procurement processes and bribery, thereby it is apparent that the abuse of the system is serious and rampant across the nation (Corruption Watch, 2013). According to the data gathered,

Corruption Watch (2013) highlights that since most of the land exchanges are largely between commercial farmers and formerly dispossessed communities is in the rural areas, and consequently that is where most of these complaints from the public come from. The greatest number of cases are noted to be from KwaZulu-Natal province with 35.7% of the cases, followed by the Gauteng province which has a 21.4% share of the complaints. The North West, Northern Cape, Mpumalanga and Eastern Cape provinces all accounted for 7.1% of cases each, while the remaining 14.3% of complaints came from an unspecified location (Corruption Watch, 2013).

On analysis of the complaints of corruption cited in most of the tip-offs had to do with the abuse of power by government officials with almost 65% of the complaints. While there are also cases involving corruption in procurement processes and bribery of officials, thus the system is largely open to abuse by the people who understand it and administrate it rather than outside (Talane, 2013).

Analysing of the reports received by Corruption Watch from the public, it is vividly clear that Communal Property Associations are very vulnerable to abuse by government officials, raising

questions on the capacity to deliver restitution from the government (Corruption Watch, 2013). CPAs are landholding institutions created in terms of a national law called the CPA Act (CLS, 2015). Beneficiaries of the land reform, restitution and redistribution programmes who want to own land as a group can establish legally recognized structures. The Community Properties Associations act provides for government registration of community properties associations and government oversight to enforce the rights of ordinary members. An important feature community properties association is that they are advised in operation by democratic principles which encompass concepts of fair and inclusive decision-making processes. Community properties associations are made up of community members and are formed in a process oversight by the government. This process is done in those areas where original occupants are given back land that was previously taken away during the apartheid regime, as part of the restitution process of government.

The trend which however has been noticed across the board is a situation whereby public official is registering portions of land, originally meant to be given to a community properties association as part of a land restitution claim, to themselves, other public officials or members of the public aligned to them or even to private companies. Corruption watch highlights that in cases where private companies are gaining access to the land meant for restitution the cases mainly emanate from mining companies or, in one complaint we received, a company that farms citrus (Corruption Watch, 2013).

Public officials are gaining access to these CPAs either by delaying the formation of the bodies or dragging their feet when it comes to registering the land to the CPA. “We’ve also received complaints that land reform officials are taking bribes for delaying the process of forming community properties associations” (Corruption Watch, 2013).

Further in other cases reported to corruption watch, community properties associations committee members are also found to be misusing funds and in other cases illegal selling portions of the land for their personal gain with no consultation with the rest the members. In one complaint, money received from a development agency was reported to have been used by the head of a community property association to upgrade his own house, instead of going towards the intended objective of funding the development of agricultural land acquired through the restitution process (Corruption Watch, 2013)

Moreover, corruption watch reports of a trend whereby the individual laying the complaint tries to gain access to more senior officials to lay a complaint, or question why the process is taking so long, bribes are requested for one to be able to be given an appointment to meet officials (Corruption Watch, 2013).

In November 2012 a workshop held for CPAs, Rural Development and Land Reform Minister Gugile Nkwinti confirmed the fact that the Community Property Association model has loopholes which open it up to forms of abuse not only from within by officials, but that it is also vulnerable for abuse from people from outside the structures and general members of the communities. the minister mentioned that “We [the department] had to take the money from our budget, R208-million, and put a guarantee with the Land Bank to save some of you [community property associations] who sold the land [restituted land],” he told the gathering (Corruption Watch, 2013).

### **5.5.2 The impact of crimes to land reform procedure in KZN**

Proactive Land Acquisition Strategy (PLAS), which empowers state officials to buy farms on the open market and allocate them to selected beneficiaries. Three-year test period after which title would be transferred to ‘emergent farmers. Hall and Kepe (2017) found in two cases that government has concluded leases with the strategic partners (i.e., agribusiness companies), rather than with ‘beneficiaries’ themselves, who therefore neither own the land nor lease it, but remain workers on state farms, working for strategic partners.

The Tramway Road Trust sold the property in 2014 after receiving it for free from the City of Cape Town in 2001. The elderly claimants sold the land after they were unable to develop the properties themselves thus in the process of restitution one should consider if the community are capacitated to manage the restitution properties (Feinberg, 2018).

In the Eastern Cape Province irregularities were noted such as in the case of Norman Benjamin, a farmer who approached the MEC of Agriculture, at that time, Max Mamase, with a proposal to sell nine of his farms to the department as part of an empowerment deal for forty-four of his farm workers in the year 2002. Party to the agreement, the Department of Agriculture, arranged that it would acquire a 49% share of the farms on behalf of the beneficiaries while the remaining 51% would remain under the ownership of the farmer here in question (Trollip, 2013). Kangela Citrus Farm refers to the farms combined as a unit, and as such, it was agreed that a trust would be set up known as the Kangela Empowerment Trust which would represent the benefactors

and manage the forty-nine-percentage point shareholding of the farming business on their behalf (Trollip, 2013).

The Department of Agriculture In the year 2004, made a transfer of funds amounting to R15.68 million to Uvimba Bank, which is a micro-financial service provider to emerging farmers, itself owned by the government. The deposited amounts were further transferred to companies owned by Norman Benjamin from Uvimba Bank (Trollip, 2013). Uvimba Bank being a parastatal should not have received transfers from any other government departments without approval as it actually had its own budget allocation set aside by the Treasury for its functions, thus applying statutory legislation the process of the farms acquisition can be deemed illegal as it broke all tender procedures and more so the transaction was also finalized before the property had been valued by the Department of Agriculture, which inconsistent procedure thus leaving much to be desired (Trollip, 2013).

(Trollip, 2013) highlights that at the time an evaluation of the property was made after the transaction had been finalized, the property was valued at R16 million, coupled with the fact that the department had irregularly transferred R15.6 million to Uvimba Bank to buy a 49% share of the property, this then meant that in actuality the department spent almost double the actual price of the share it acquired worth. Not only did the deal contravene tender procedures and breaking the law, but it is also further alleged that the minister in question was paid kickbacks by the farmer selling thus raising more credibility issues to the conduct of officials (Trollip, 2013)

After the details of the deal and the subsequent legal proceedings, Mr Mamase resigned and the following month was arrested together with his wife who held a similar post as the was MEC for Local Government and Housing, and the businessman and his bookkeeper. However, just over a year, later charges against 89-year-old Norman Benjamin were dropped. His defence team argued that the elderly businessman was no longer fit to stand trial and they won within a short period after the dropping of the charges against him, Benjamin transferred over his 51% shares in the farm to the agriculture department, leaving the farm under the curatorship of the department (Trollip, 2013).

In 2009, the National Prosecuting Authority (NPA) lost a technical challenge in the Supreme Court of Appeal. Charges were also withdrawn against former MEC, Max Mamase and his wife Neo Moerane-Mamase (Trollip, 2013). NPA later reinstated the charges against the former MEC and his ex-wife who had applied to the high court to have the charges removed,

however the Grahamstown High Court refused to grant Moerane a permanent stay of prosecution because of the delays in the case, the charges were reinstated but however the former MEC was found to be not fit to stand trial on the basis of his dilapidated mental health. The case continues, however, the delays it is faced with have meant that culprits go scot-free while the process of reform is curtailed.

### **5.5.3 Poor Cooperation in Government Departments on Land Related Issues**

Another critical challenge found in this study, is that there is lack of cooperation amongst government departments that deal with land related issues in South Africa. This lack of cooperation has resulted in various inconsistencies and sustained corruption and fraud to consistently thrive on land related issues. The case studies highlighted in this study clearly indicate how authorities in different government departments are implicated in land fraud and are being bribed to overlook certain land restitution processes. This is essential since such circumstances might create an ungovernable land reform system like what has happened in Ghana where people might find themselves with two legitimate title deeds for the same piece of land due to corruption and land fraud by government officials. Thus, this section presents how this lack of cooperation has affected land restitution in KZN and sustained criminality in the land reform processes.

#### **5.5.3.1 Creation of Community Properties Associations (CPAs)**

Following the creation of CPAs, according to the data gathered, although these are functional, the literature shows that decisions are being made without consultation of some members. This is against the law because according to the CPA clause, every involved member should be consulted before any decision is made. Also, the issue of misuse of funds was discussed in the literature as some funds are not being accounted for by the responsible leading members of the CPAs.

#### **5.5.3.2 Lessons learnt and the way forward for KZN**

The findings of this study brought to light the use of land guards in Ghana. This is a system of using unemployed individual or groups for protecting one's land illegally. These people at times use violent measures when they are protecting this land. There have been no cases

reported in KZN on the use of land guards. However, this should be avoided before it affects the province.

Literature has shown that in Zimbabwe, due to crimes related to lands such as land invasion and land grabs, the economy might be affected. This may be due to a reduction in the production of agricultural activities as some claimants do not have the knowledge as discussed later in the chapter. South Africa should learn that if land reform procedures are not carefully implemented, similar situations may happen. This will derail the economy of South Africa.

## **5.6 Criminological perspective towards good practices in land restitution processes in KZN**

Views from different sources showed that the criminology arena is having initiatives in terms of land-related crimes. The crime stats have been publishing land related crimes percentages consistently which have been showing that KZN has the largest percentage of recorded crimes. This is also because KZN is the second most populated province in South Africa and has the largest area of land (media club South Africa: 2018). In the case noted by Kockott (2018) of a legal practitioner who wanted to take advantage of the lack of knowledge of the claimants, he was taken to the crimes court, and heavy penalty was given to him. The issue of land grabs has also been dealt with as the police made sure that all the suspects of the illegal land invasion were apprehended as criminals.

## **5.7 Chapter Summary**

This chapter discussed the findings from chapter two linking them with the objectives of the study. It started by stating who has the right to own property (land), according to the Constitution of the Republic of South Africa. Limitations imposed on ownership of such land were briefly stated. It further outlined the steps or procedures taken for one to qualify as a claimant under the Restitution of Land Rights Act. From the above analysis, it is evident that there is a need for the Restitution of Land Rights Act to be well-implemented hand in hand with the criminal justice department. This is because according to the data that has been analysed in this chapter, there is a lot of crimes involved in land-related issues. Crimes such as bribery, fraud and corruption are the most common in KZN. The issue of conferring power to the chief to be the sole heir to the communal land under the Ingonyama Trust is also a

controversial one. It is also noted that the impact of these crimes' leaves deserving claimants or rightful owners of land with grievances some 24 years after the Act which is supposed to cater for their needs was enacted.

The following chapter concluded the whole research and gave the recommendations the researcher found necessary to the discussed topic for the benefit of individuals, communities and all spheres of the government both locally and internationally. If the suggestions are well taken into consideration, other scholars could further develop the findings, and it could be used as a reference academically.

## **CHAPTER SIX**

### **GENERAL SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **6.1 Introduction**

According to (Firestone 2003: 1), “the summary is the condensed version of an original text, usually a full article or a book.” In her view, “summaries are used in a variety of situations”. By this definition, the summary is a snapshot of the whole research without repeating everything. The reader should get the gist of the whole research, and at the same time, it should be brief and meaningful.

Radebe (2014: 115) contends that for most scholars at postgraduate level, concluding a research has been established to be the most troublesome section all through the entire research. It necessitates that every one of the resources of the mind ought to be cautious and that the researchers ought to go past the ordinary daily schedule of revealing unbiasedly to be an educated expert of the discoveries and their implications. With the end goal to ensure that the researcher goes past the everyday practice of announcing or displaying the discoveries, the researcher will go on to give recommendations so that the next researchers will further or critic similar research having in mind what the original researcher thinks about the work. The recommendation is however not only for other researchers but in this instance; it is also for the government and the criminal justice system to be aware of the crimes which are happening within the scope of land reform programs, in particular, the restitution aspect of it.

#### **6.2 Summary of the Study**

The aim of this research was to explore how decided cases were determined taking note of the crime aspect so that good practices of responding to the cases of land restitution process in KZN Province may be recommended, with a projection that if applied correctly, this study’s findings can be enhanced and aid to the criminological arena. Not only decided cases were investigated but also cases such as land guards which do not necessarily case law.

Interest in this topic came from combining criminology and law as these two-works hand in hand. The motivation to use Kwa-Zulu Natal was because it was stated statistically as the one with the highest percentage when it comes to land-related crimes. Also, because the researcher

has been based in the province for the past couple of years. Another contributing factor is that KZN is the province which is well known for using chiefs when it comes to land-related issues which are also an area interest when it comes to restitution of land and land crimes.

### **6.3 Conclusions pertaining to the objectives of the study**

The objectives of this study were to evaluate the procedure used by the government in addressing corruption associated with land restitution process in KZN Province. With the aim of improving on the procedure based on the strength and weaknesses of the spheres of government (National, Provincial and Local levels). Also to explore local and international sources to assess the outcomes of cases of land restitution process in KZN Province, as it is known and how it is used elsewhere and to recommend good practices of responding to the cases of land restitution process in KZN Province, with a projection that if applied correctly, the performance of the responsible sphere of government can be enhanced and aid to criminological arena.

The findings were that indeed there is a crime involved in the restitution of land process. According to the findings of this research, the main source of commitment of land-related crimes in the KZN Province comes through the traditional authority. This is because all the power is conferred to the Ingonyama to be the one overseeing the communal land. In the case of *Bakgatla* where the chief responsible for the communal land consistently accepted bribes for the land to be used for the purposes of mining instead of being given back to the people. Pertaining to the laws on traditional authority, it is evident that up to now (2018), the powers given to chiefs are still consistent. This was guaranteed by the enactment of statutes like the Traditional Leadership and Governance Framework Act (41 of 2003) and the Communal Land Rights Act (11 of 2004). Couple with the KwaZulu-Natal Ingonyama Trust Act No. 3KZ of 1994, which gives traditional authorities more power than the CPAs (Claassens & Cousins, 2008).

The researcher found out that powerful political parties and or individuals play a role in the commitment of land-related crimes. This was found out through the case of this year (2018) where the Economic Freedom Fighters (EFF) Party leaders incited people to do land grabs. This was done in the KZN, Limpopo and Western Cape Provinces.

The Issue of land guards was analysed as part of land-related crimes which are happening elsewhere and have a danger of also happening in the KZN province. This was done because

the issue of land-related crimes is not unique to South Africa only. Maladministration is also another loophole found by the researcher. This goes hand in hand with negligence. As witnessed in some cases, there are issues of double entering one land even in Cameroon as international literature.

#### **6.4 Recommendations**

The researcher's recommendation goes to the reader as a layman, as a fellow researcher and as authority. To the general reader, especially those who qualify as claimants under the Restitution of Land Rights Act, the researcher recommends this research to be used as a guide to equip them so that no one uses crime during the process of claiming back of the land. To fellow researchers, the researcher recommends that further research could be done pertaining to this area. Also, a similar could be done in other to ensure triangulation as a method of reliability so that the relevance of this research could be known. To the responsible authority, the research recommends that the below mentioned suggestions together with this document could be taken into consideration during the process of restitution of land.

**For the purposes of good practice to ensure a better working relationship when it comes to claiming of land between the public and authorities, this study has recommended that;**

- Individual beneficiaries of land restitution may be given directly to the owner because they would have won the court case and would be the rightful owners. Otherwise, they can choose a curator of their choice.

Administrative strategies such as monitoring offices of commissioners through quarterly submission of transparent cases they would have handled or pay them to surprise visits may put in place to improve the land restitution process of KZN cases. It will add value in solving the practical needs of the restitution process and will set a precedent in South Africa which will forever be referred to.

- The study analysed how the land restitution process delays are a result of criminality. If the problems mentioned are not resolved, the society might end up implementing land grabs which is also a criminal act on the part of the victims. Although it might be

forced crime, it does not change the fact that land grabs are not regulated by the South African law.

- Because of the land guards discussed, South Africa could make a provision which allows owners of private land to either register people they would employ to guard their land for better identification or;
- To make a provision which does not allow the use of land guards.
- Expropriation of land without compensation as it is currently in courts (2018), should be done according to the books not according to feelings. This might cause South Africa to end up having a Zimbabwe-like situation whereby agricultural land ends up in the hands of someone inexperienced, and it lowers the production rate.

## **6.5 Concluding Remarks**

In Conclusion, this researched looked and the crimes involved in land reform procedure in KZN specifically restitution. The crimes were singled out to find the causes through theoretical frameworks and determine the root cause. The purposes of the overall research were not mainly to catch the criminals but rather the crimes and raise awareness of what is happening with the Act that is supposed to be helping the native South Africans. Similar matters were also investigated from different provinces, South Africa and Africa as a whole. The issue of restitution of land has been proven by this research that it is accompanied by crime. Recommendations were given in this final chapter for the purposes of readers regardless of their personal status

## References

- Abel, M., 2015, January. Long-run effects of forced removal under apartheid on social capital. Harvard University Economic History seminar. <https://www.ekon.sun.ac.za/seminars/long-run-effects-of-forced...u/abel.pdf>
- Assembly, U.G., 1948. Universal declaration of human rights. *UN General Assembly*.
- Atuahene, B., 2014. *We Want What's Ours: Learning from South Africa's Land Restitution Program*. OUP Oxford.
- Baldwin, A. (1975). Mass Removals and Separate Development. *Journal of Southern African Studies*, [Online]. Vol. 1, No. 2, 215-227. Available at: <https://www.jstor.org/stable/2636572>
- Bansah, D.K., 2017. Governance Challenges in Sub-Saharan Africa: The Case of Land Guards and Land Protection in Ghana.
- Barry, M., 2011. Land restitution and communal property associations: The Elandskloof case. *Land Use Policy*, 28(1), pp.139-150.
- Boshoff, T. (2017). Land value calculation is flawed. *Mail & Guardian*. [online] Available at: <https://mg.co.za/article/2017-06-15-00-land-value-calculation-is-flawed> [Accessed 12 Jul. 2018].
- Caldas, M., Walker, R., Arima, E., Perz, S., Aldrich, S. and Simmons, C., 2007. Theorizing land cover and land use change: The peasant economy of Amazonian deforestation.
- Centre for law and society (2015). Notes on the bakgatla ba kgafela cpa court case. Centre for law and society, rural women's action research programme, University of Cape Town [online] Available at: [http://www.cls.uct.ac.za/usr/lrg/downloads/CLS\\_BakgatlaCPACase\\_Factsheet\\_May2015.pdf](http://www.cls.uct.ac.za/usr/lrg/downloads/CLS_BakgatlaCPACase_Factsheet_May2015.pdf) [Accessed 13 Jul. 2018].
- Chiweshe, M.K., 2017. Analysis of land-related corruption in Zimbabwe. *Africa Insight*, 46(4), pp.112-124.
- Claassens, A., 2008. *Land, power & custom: Controversies generated by South Africa's communal land rights act*. Juta and Company Ltd.
- Cohen, L.E. and Felson, M., 1979. Social change and crime rate trends: A routine activity approach. *American sociological review*, pp.588-608.

Cls.uct.ac.za. (2015). Land rights under the Ingonyama trust. [online] [http://www.cls.uct.ac.za/usr/lrg/downloads/FactsheetIngonyama\\_Final\\_Feb2015.pdf](http://www.cls.uct.ac.za/usr/lrg/downloads/FactsheetIngonyama_Final_Feb2015.pdf) [Accessed 8 Jul. 2018].

Corruption Watch. (2013). Corruption and land: what the public have told us - Corruption Watch. [online] Available at <http://www.corruptionwatch.org.za/corruption-and-land-what-the-public-have-told-us/> [Accessed 11 Jul. 2018].

Cousins, B., 2016. Land reform in South Africa is sinking. Can it be saved? *University of Western Cape, PLAAS*.

Dale, S., 2011. New attitudes key to progress in Malawi, Cameroon. *Women and land: an in\_focus case study; Cameroon, Malawi*.

Darkwa, L. and Attuquayefio, P., 2012. Killing to Protect: Land Guards, State Subordination and Human Rights in Ghana. *SUR-Int'l J. on Hum Rts.*, 17, p.141.

De Vos, A.S., Strydom, H., Fouche, C.B., Poggenpoel, M. and Schurink, E., 1998. *Research at grass roots: A primer for the caring professions*. Pretoria: JL van Schaik.

Denscombe, M., 2010. *The Good Research Guide: for small social research projects*.

Denscombe, M., 2011. *Classroom control* (Vol. 170). Routledge

Dlamini, M.A., 2010. *A Case Study of a Land Reform Project in KwaZulu-Natal with Reference to the Nkaseni Restitution Land Claim* (Doctoral dissertation, University of KwaZulu-Natal, Westville).

ELD Initiative, 2015. The value of the land: Prosperous lands and positive rewards through sustainable land management. Available from [www.eld-initiative.org](http://www.eld-initiative.org).

Erlank, W. (2014). Green Paper on Land Reform: Overview and Challenges. [online] Ajol.info. Available at: <https://www.ajol.info/index.php/pelj/article/view/107141/97031> [Accessed 25 Jul. 2018].

Farzanegan, M.R., Gholipour, H.F. and Nguyen, J., 2016. Housing Costs and Inequality in Post-revolutionary Iran. In *Economic Welfare and Inequality in Iran* (pp. 111-128). Palgrave Macmillan, New York.

Feinberg, T. (2018). Land grabs – Should we be worried? South African Jewish Report. [Online] Jewish Report South Africa. Available at: <http://www.sajr.co.za/news-and-articles/2018/05/03/land-grabs-should-we-be-worried> [Accessed 12 Jul. 2018].

Freud, S. and Strachey, J., 1984. *On Metapsychology: the theory of psychoanalysis: 'Beyond the pleasure principle,' 'The ego and the id' and other works*. Penguin.

Foyer, C.H., Lam, H.M., Nguyen, H.T., Siddique, K.H., Varshney, R.K., Colmer, T.D., Cowling, W., Bramley, H., Mori, T.A., Hodgson, J.M. and Cooper, J.W., 2016. Neglecting legumes has compromised human health and sustainable food production. *Nature plants*, 2(8), p.16112.

Hall, R., 2004. A political economy of land reform in South Africa. *Review of African Political Economy*, 31(100), pp.213-227.

Hall, R., 2004. Land restitution in South Africa: Rights, development, and the restrained State. *Canadian Journal of African Studies/La Revue canadienne des études africaines*, 38(3), pp.654-671.

Hall, R. and Kepe, T., 2017. Elite capture and state neglect: new evidence on South Africa's land reform. *Review of African Political Economy*, 44(151), pp.122-130.

Hart, P.A., Kamisawa, T., Brugge, W.R., Chung, J.B., Culver, E.L., Czakó, L., Frulloni, L., Go, V.L.W., Gress, T.M., Kim, M.H. and Kawa, S., 2013. Long-term outcomes of autoimmune pancreatitis: a multicentre, international analysis. *Gut*, 62(12), pp.1771-1776.

Home, R., 2011. LOCAL CASE STUDIES IN AFRICAN LAND LAW. 1st ed. Cape Town: Pretoria University Law Press (PULP)

Hopkins, K., 2006. Should whites necessarily qualify as 'claimants' for the purposes of land restitution?: journal. *SA Publikereg= SA Public Law*, 21(1), pp.175-184.

Idang, G.E., 2015. African culture and values. *Phronimon*, 16(2), pp.97-111.

Ingonyama Trust Board. (2018). About the Ingonyama Trust | Holding land for the benefit of the people. [online] Available at: <http://www.ingonyamatrust.org.za/ingonyama-trust-holding-land-for-the-benefit-of-the-people/> [Accessed 12 Jul. 2018].

Jili, N. and Masuku, M. (2017). Access to Land and Women's Participation in Small-Scale Farming at uMlalazi Local Municipality. [online] Journals.co.za. Available at: [http://journals.co.za/docserver/fulltext/jpad\\_v52\\_n3\\_a5.pdf?expires=1531591038&id=id&ac\\_cname=57926&checksum=399F57A67C7A756908F04A85B5E43349](http://journals.co.za/docserver/fulltext/jpad_v52_n3_a5.pdf?expires=1531591038&id=id&ac_cname=57926&checksum=399F57A67C7A756908F04A85B5E43349) [Accessed 10 Jul. 2018].

Johnson, E.R., Keinan, S., Mori-Sanchez, P., Contreras-García, J., Cohen, A.J. and Yang, W., 2010. Revealing noncovalent interactions. *Journal of the American Chemical Society*, 132(18), pp.6498-6506.

- Kloppers, H.J., 2012. Improving land reform through CSR: a legal framework analysis.
- Kloppers, H.J. and Pienaar, G.J., 2014. The historical context of land reform in South Africa and early policies. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 17(2), pp.676-706.
- Kockott, F. (2018). Public servant guilty of land theft. SUNDAY TRIBUNE. [online] Available at: <https://www.iol.co.za/sunday-tribune/news/public-servant-guilty-of-land-theft-13474320> [Accessed 12 Jul. 2018].
- Larc.uct.ac.za. (2016). Community celebrates as iron mine plan shelved | Land and Accountability Research Centre. [online] Available at: <http://www.larc.uct.ac.za/news/community-celebrates-iron-mine-plan-shelved> [Accessed 10 Jul. 2018].
- Lahiff, E., 2001. Land reform in South Africa: is it meeting the challenge?
- Mabvurira, V., 2016. *Influence of African traditional religion and spirituality in understanding chronic illnesses and its implications for social work practice: a case of Chiweshe communal lands in Zimbabwe* (Doctoral dissertation, University of Limpopo).
- Madalo, M.J., 2001. The Controversial Land Code of the Russian Federation: A Balanced Approach to Resolving Russia's Land Reform Question and Encouraging Foreign Investment. *Santa Clara L. Rev.*, 42, p.577.
- Majangaza, S, 2014. Mamase 'too ill' to go on trial. DispatchLIVE, 15 November 2014. Available at: <https://www.dispatchlive.co.za/news/2014-11-15-mamase-too-ill-to-go-on-trial/>
- Manby, B., 2001. *Unequal Protection: the state response to violent crime on South African farms*. Human Rights Watch. *Mangethe Committee v Regional Land Claims Commissioner*,
- Marbourg, A.C., 2015. *Land inheritance and gender: social factors affecting land inherited in rural Bangladesh* (Doctoral dissertation, University of Missouri--Columbia).
- Matsepane, M. and Gameda, B. (2015). Land Invasions and Land-Grabbing. [online] Cplo.org.za. Available at: <http://www.cplo.org.za/wp-content/uploads/2018/02/BP-390-Land-Invasions-and-Land-Grabbing-Sept-2015.pdf> [Accessed 12 Jul. 2018].
- Mbhense, K.S., 2015. *Africa's bid for permanent seat in the United Nations Security Council (UNSC): prospects and challenges for Nigeria and South Africa* (Doctoral dissertation).

Maxfield, M.G. and Babbie, E.R., 2014. *Research methods for criminal justice and criminology*. Cengage Learning.

Merten, M. (2018). Running circles around land reform - ANC has tools, but implementation's a problem - BizNews.com. [online] BizNews.com. Available at: <https://www.biznews.com/undictated/2018/06/06/land-reform-anc-tools-implementation-problem/> [Accessed 12 Jul. 2018].

Mettler, J., 1998. The Process of Land Restitution in South Africa. *Afr. J. Int'l & Comp. L.*, 10, p.123.

Murphy, R.A., Sunpath, H., Lu, Z., Chelin, N., Losina, E., Gordon, M., Ross, D., Ewusi, A.D., Matthews, L.T., Kuritzkes, D.R. and Marconi, V.C., 2010. Outcomes after virologic failure of first-line ART in South Africa. *AIDS (London, England)*, 24(7), p.1007.

Ntsebeza, L., 2004. Democratic decentralisation and traditional authority: Dilemmas of land administration in rural South Africa. *The European Journal of Development Research*, 16(1), pp.71-89

Ntshona, Z., Kraai, M., Kepe, T. and Saliwa, P., 2010. From land rights to environmental entitlements: Community discontent in the 'successful' Dwesa-Cwebe land claim in South Africa. *Development Southern Africa*, 27(3), pp.353-361.

Pienaar, Gerrit. "Aspects of land administration in the context of good governance." *PER: Potchefstroomse Elektroniese Regsblad* 12.2 (2009).

Polit, D.F. and Hungler, B.P., 1985. *Essentials of nursing research: Methods and applications*. Lippincott Williams & Wilkins.

Punch, K.F. and Oancea, A., 2014. *Introduction to research methods in education*. Sage.

Puttnam, R., 2002. *The role of social capital in development: An empirical assessment*. Cambridge University Press.

Quan, J., Tan, S. and Toulmin, C., 2004. Land in Africa: market asset or secure livelihood?

Ramutsindela, Maano. "The geographical imprint of land restitution with reference to Limpopo Province, South Africa." *Tijdschrift voor economische en sociale geografie* 98.4 (2007): 455-467.

Rakotondrasoa, L.M., 2015. L'histoire de Ramaharavo.

Roberts, D.A., Keller, M. and Soares, J.V., 2003. Studies of land-cover, land-use, and biophysical properties of vegetation in the Large Scale Biosphere Atmosphere experiment in Amazônia. *Remote Sensing of Environment*, 87(4), pp.377-388.

Ruraldevelopment.gov.za. (1997). White paper on South African land policy April 1997. [online] Available at: <http://www.ruraldevelopment.gov.za/phocadownload/White-Papers/whitepaperlandreform.pdf> [Accessed 12 Jul. 2018].

Sida.se. (2015). Women and Land Rights. [online] Available at: <https://www.sida.se/contentassets/1cc2e9756fd04d80bba64d0d635fe158/women-and-land-rights.pdf> [Accessed 12 Jul. 2018].

Saran, R., Robinson, B., Abbott, K.C., Agodoa, L.Y., Albertus, P., Ayanian, J., Balkrishnan, R., Bragg-Gresham, J., Cao, J., Chen, J.L. and Cope, E., 2017. US renal data system 2016 annual data report: epidemiology of kidney disease in the United States. *American journal of kidney diseases*, 69(3), pp.A7-A8.

Scholz, B. and Gomez, M., 2005. A Place to Live: Women's Inheritance Rights in Africa.

Scoones, I., Marongwe, N., Mavedzenge, B., Murimbarimba, F., Mahenehene, J. and Sukume, C., 2011. Zimbabwe's land reform: challenging the myths. *Journal of Peasant Studies*, 38(5), pp.967-993.

Sibanda, S' 'Land Reform and Poverty Alleviation in South Africa' (2001) Paper presented at the SARPN

Shandu, S. 2017. Exploring perceptions of South African police service investigators and national prosecuting authority prosecutors on personal income tax fraud in Durban, KwaZulu-Natal. MSS. thesis, University of KwaZulu-Natal.

South African Lawyer. (2018). Case reveals how easy it is to steal land. [online] Available at: <https://www.southafricanlawyer.co.za/article/2018/02/case-reveals-how-easy-it-is-to-steal-land/> [Accessed 12 Jul. 2018].

Talane, V. (2013). Corruption and land: what the public have told us - Corruption Watch. [online] Corruption Watch. Available at: <http://www.corruptionwatch.org.za/corruption-and-land-what-the-public-have-told-us/> [Accessed 16 Jul. 2018].

Timse, T. (2015). 'King's Trust sells people out to mining'. Mail & Guardian. [online] Available at: <https://mg.co.za/article/2015-06-04-kings-trust-sells-people-out-to-mining> [Accessed 14 Jul. 2018].

Thomas, J.R., Nelson, J.K. and Silverman, S.J., 2018. *Research methods in physical activity*. Human kinetics.

Trollip A. (2013). The corruption of land reform: The case of the Kangela Empowerment Trust - DA. [ONLINE] Available at: <http://www.politicsweb.co.za/archive/the-corruption-of-land-reform-the-case-of-the-kang>. [Accessed 12 July 2018].

United States Agency for International Development (2010a) USAID Country profile: Property Rights and Resource Governance – Colombia.

UN General Assembly. (1948). *Universal declaration of human rights* (217 [III] A). Paris

Venter, Z. (2018). Baphiring clan go home after 40 years. IOL. [online] Available at: <https://www.iol.co.za/news/baphiring-clan-go-home-after-40-years-1841445#.VjMyh7crLIV> [Accessed 12 Jul. 2018].

Verheye, W., 2007. The Value and Price of Land. Land Use, Land Cover and Soil Sciences.

Visser, O., Mamonova, N. and Spoor, M., 2012. Oligarchs, mega farms and land reserves: understanding land grabbing in Russia. *The Journal of Peasant Studies*, 39(3-4), pp.899-931. Vorster, Jakobus M. "The ethics of land restitution." *Journal of religious ethics* 34.4 (2006): 685-707.

Weinberg, T., 2015. The Contested Status of Communal Land Tenure in South Africa.

Welsh, B.C. and Farrington, D.P., 2004. Surveillance for crime prevention in public space: Results and policy choices in Britain and America. *Criminology & Public Policy*, 3(3), pp.497-526.

World Health Organization (2008) Closing the gap in a generation: Health equity through action on social determinants of health. Available at: [http://whqlibdoc.who.int/publications/2008/9789241563703\\_eng.pdf?ua=1](http://whqlibdoc.who.int/publications/2008/9789241563703_eng.pdf?ua=1)

Yeni, S. (2018). Traditional leadership, Violation of Land Rights and Resistance from Below in Makhasaneni village KwaZulu-Natal. [online] Available at: [http://www.mistra.org.za/Media/InTheNews/Documents/Sithandiwe%20Yeni\\_Working%20Paper%203.pdf](http://www.mistra.org.za/Media/InTheNews/Documents/Sithandiwe%20Yeni_Working%20Paper%203.pdf) [Accessed 24 Jul. 2018].

Young, G. (2017). South African land reform as peacebuilding: integrating perspectives from Social Identity Theory and Symbolic Politics in a peacebuilding conceptual framework. Ph.D. Stellenbosch University.

## CASE LAW

*Pretoria City Council v Modimola* 1996 (3) SA 250 (A) at 258

*Harksen v Lane* 1997 (11) BCLR 1489 (CC) at 1502C-D).

Bakgatla-Ba-Kgafela Tribal Authority and Others, [2014]).

Crafcor Farming (Pty) Ltd v Regional Land Claims Commissioner, Kwazulu-Natal and Others (LCC46/2007) [2009] ZALCC 10 (4 September 2009) [2009] (land claims court of South Africa).

Elandskloof Vereniging Re: Plase Elandskloof Nr 475 en 476 [1996] ZALCC 4 (15 October 1996)

KZN and Others (LCC36/09) [2011] ZALCC 4 (17 February 2011) [2011] (LAND CLAIMS COURT OF SOUTH AFRICA).

KwaZulu-Natal and Others (LCC03/2009) [2017] ZALCC 9 (12 June 2017)

Barnard v September and Others (LCC71R/2016) [2017] ZALCC 16 (7 March 2017)

Nongoma Commonage Community and Another v Regional Land Claims Commissioner, KwaZulu-Natal and Others (LCC52/2016) [2017] ZALCC 2 (28 March 2017) [2017] (LAND CLAIMS COURT OF SOUTH AFRICA).

Mangethe Committee v Regional Land Claims Commissioner, KZN and Others (LCC36/09) [2011] ZALCC 4 (17 February 2011)

## **STATUTES**

Natives Land Act 27 of 1913

The South African Development Trust and Land Act 18 of 1936

The Subdivision of Agricultural Land Act 70 of 1970

The Expropriation Act 63 of 1975

Ingonyama Trust Act No. 3KZ of 1994

Restitution of Land Rights Act 22 of 1994

Constitution of Republic of South Africa Act 108 of 1996

Interim Protection of Informal Land Rights Act 31 of 1996

Local Government Municipal Systems Act 32 of 2000

Traditional Leadership and Governance Framework Act 41 of 2003

The Communal Land Rights Act 11 of 2004

Property Valuation Act No. 17 of 2014





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27 September 2018

Mr Arnold Tawanda Milos (216076/97)  
School of Applied Human Sciences – Criminology  
Howard College Campus

Dear Mr Milos,

Protocol reference number: HSS/1657/018M

Project title: A criminological exploration of the South African land restitution process: A non empirical study of KwaZulu-Natal

**Full Approval – No Risk / Exempt Application**

In response to your application received on 19 September 2018, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number. PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

Dr Ronicka Mudaly (Deputy Chair)

/ms

cc Supervisor: Dr Siyanda Dlamini  
cc Academic Leader Research: Dr Maud Mthembu  
cc School Administrator: Ms Avanaa Ntuli

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