



**THE GENDERED POLITICS OF LAND DISTRIBUTION AND
INHERITANCE BY WIDOWED WOMEN IN KWAZULU-NATAL**

By

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**A DISSERTATION SUBMITTED IN FULFILMENT OF THE ACADEMIC
REQUIREMENTS FOR THE AWARD OF A MASTER OF ARTS IN
GENDER STUDIES, SCHOOL OF SOCIAL SCIENCES, UNIVERSITY OF
KWA-ZULU NATAL, SOUTH AFRICA**

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2018

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POEM ON WIDOWHOOD

When will the period of mourning be over for widows?

Culture has laid down this tradition

As some sort of dedication

A time set aside to celebrate the marriage past?

Perhaps an indication of grief on our widows cast!

A month, three months, six months, a year?

Of wearing a prescribed gear

A time to forfeit things held dear

As proof for their husbands they cared

Often times they endured this custom

Accept it as a necessary symptom

Of their solitude, sadness, and sorrow

Of that chasm of pain caused by death's arrow

During the period of mourning they remained melancholy

Having being denied the ethereal bliss of holy matrimony

Hoping that one day they will rise up, then walk, then run

Perchance on the wings of healing soar towards the sun

Like a butterfly finally freed from its restrictive cocoon

The end of the period marks the liberation from the gloom

Alas! The end of the period of mourning

Ushers in another poignant awking

*A heart-breaking and shattering realization
The period of mourning is not a transitory situation
Of endless wrangling over their husband's property
Of being treated as just a part of that property
Of endless rituals that signify the loss of a loved one
Or the manifestation of ill-luck driven away and gone
Our widows are subjected to all these henceforth
Thus continuously reduced to a life of little or no worth
And thus
They were told that the period of mourning
That outward demonstration of grieving
Lasts but for a season
For a laudable reason

But in their hearts, it's a way of life
The dear price to pay for being a wife
The era of dishonour, deprivation, and degradation has come their way
A sad eerie and unnerving acceptance that comes what may
The period of mourning is here to stay
(Poem by Linman, L)*

DECLARATION

I, **Bongi Owusu** declare that this thesis entitled *The Gendered Politics of Land Distribution and Inheritance by Widowed Women in KwaZulu-Natal*, is a product of my own individual research work and has not been previously submitted for publication, any other degree programme, and/or examination at any University. I further maintain that information obtained, cited, and referenced from research studies authored by others have been adequately and appropriately acknowledged.

Signature.....

DEDICATION

This work is dedicated to all widows who have been denied their rights to land inheritance due to the unconstitutional widowhood rights, practices, and rituals.

ACKNOWLEDGMENTS

My gratitude goes to the Lord Almighty for making it possible for me to research on this thesis topic of significant interest to me.

To my siblings: Xolane, Nokuthula, Bonga, Fikile, Zakhele, Hlengiwe, Busisiwe, Nduduzo, Sbahle, Nombuso, Keith, and Tsolofelo, I am grateful for your selfless support you're your encouragement means a lot - "Niphile njalo bo Nzwankele." To my mom, thanks a lot- Mbasha ka Yawa.

To my very supportive, caring and lovely husband Clement Owusu, I thank God for giving me a husband like you. Your contribution to my personal development is always appreciated. To my children, Lungane, Masibulele ku Jehova, Siyabonga and Mayenziwe intando ka Jehova and my last born Ellen Thingolwenkosazana- thank you for letting me use your time to focus on my studies and may God richly bless you.

To my helper Yandisa, I do not even know how to begin to thank you, your willingness to work overtime and take care of my children whilst I was busy with my studies is greatly appreciated

My appreciation also goes to my academic supervisor, Dr. Janet Muthuki for her professional and intellectual guidance and for working with shape my vision, the product of which is this thesis.

My gratitude also goes to my friends Lindokuhle Skhosana, Unathi Mafundityala, Ms. Eyerusalema Amare, and Dr. Anthony Gathambiri for their constant encouragement that helped me stay focus and not lose hope in the course of this academic journey. Inkosi yase Mbo and Mr. Sibusiso Mkhize I would not be doing justice if I leave you out. Without your support I would not have interviewed the traditional leaders - zandla zidlula ikhanda Ndabezitha'.

To the widowed women from Widowed Women of South Africa (WWOSA) organisation, my heartfelt gratitude to you for according me the opportunity to interview you for the purpose of this study and be a part of your shared experiences. This research would not have been possible without your contributions.

Special thanks to Ms. Lukong Shulika for editing my work. Lastly, I extend my sincere gratitude to the management of the Department of Rural Development and Land Reform for letting me use its facilities and beneficiaries to conduct this study.

ABSTRACT

The land question in South Africa is a recurrent debate in today's political and socio-economic atmosphere, so too is the discourse about the rights of women to land inheritance. While the South African Government is making efforts to ensure that the rights of women to land inheritance are protected, women still remain marginalized. They continue to be confronted with numerous cultural injustices and other harmful practices that conflict with the Constitution of the country as well as with international treaties and agreements to which South Africa is signatory.

The thesis examined the gendered politics that are involved in land inheritance amongst the Zulu Speaking widowed women in KwaZulu-Natal. The study focused on the experiences of the Zulu speaking widows who are members of WWOSA which is a non-governmental organisation based in the Northern part of KZN in Richards Bay. Even though the focus is within WWOSA, the study reviewed other relevant and related literature on widowhood rituals and land disinheritance globally, seeing as it is not uniquely South Africa phenomenon and is quite prevalent in other parts of the African continent. Therefore, to investigate the phenomenon and the politics involved in the land inheritance by the Zulu speaking widows, the study sort to answer the following questions: What are the traditional practices surrounding land inheritance for widows in KZN Province? What are the constitutional provisions related to land inheritance for widows? What is the role of the Department of Rural Development and Land Reform (DRDLR) in implementing land reform gender policy? How does the DRDLR partner with other stakeholders in land access and distribution issues? The study adopted a qualitative research approach to address the aforementioned questions, which included indepth interviews with WWOSA and sourcing relevant secondary data like documents from DRDLR, newspaper articles, published books and journals to mention a few.

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LIST OF ABBREVIATIONS

ANC	African National Congress
AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CGE	Commission for Gender Equality
DRDLR	Department of Rural Development and Land Reform
ITB	Ingonyama Trust Board
KZN	KwaZulu-Natal
LRD	Land Reform and Development
LTA	Land Tenure and Administration
MDGs	Millennium Development Goals
NFPOs	Not-for-profit organisations
NGO	Non-Governmental Organisation
OTP	Office of the Premier
P.T.O	Permission To Occupy
RDP	Reconstruction and Development Programme
REID	Rural Enterprise and Industrial

	Development
RID	Rural Infrastructure Development
S.A.	South Africa
SDGs	Sustainable Development Goals
UN	United Nations
WEGE Bill	Women Empowerment and Gender Equality Bill
WPSALP	White Paper on South African Land Policy
WWOSA	Widowed Women of South Africa

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

1.1 Introduction

This study examines the politics involved in the land inheritance among the Zulu speaking widowed women of KwaZulu-Natal in South Africa and critically analyses the conflicting tensions in the Constitution of South Africa, land reform policies, and the Zulu traditional practices. KwaZulu-Natal is one of the nine provinces in South Africa and is the second largest after Gauteng province (Census Report of 2011¹). This study is conducted in this province and aims to examine the discrimination and inequalities that are encountered by the Zulu speaking widowed women in terms of inheriting land for survival after the passing away of their husbands. The study also looks at how the Department of Rural Development and Land Reform (DRDLR) as a custodian of rural development and land allocation, partners with other stakeholders to ensure the rights of widowed women are protected in land distribution and allocation. Most importantly, this is to ensure that land is equitably shared across all genders and race as it is enshrined in the Freedom Charter of 1955².

According to the Census Report of 2011, KwaZulu-Natal is characterised by a high percentage of female-headed households. This owes to the fact that the men have a lower life expectancy as compared to the women, among many other reasons (Statistics South Africa, 2011). As such, the brunt of losing their husbands and taking sole responsibility of their children is heavily shouldered by women, and this burden is further made severe by the discrimination and marginalisation they face through being denied their rights to own the lands left behind by their husbands under the customary law and other traditional practices. (Oduyoue, Kanyoro and Musimbi, 2005) pinpoints that land inheritance is patrilineal in most parts of Africa. More so, the skewed patterns of land allocation leaves most widow vulnerable, especially because they have no one to represent them in the traditional courts where women's voices are not allowed to be heard and are silenced in patriarchal societies. By tradition, a widow is not allowed to go to the traditional leader's palace as it is believed that she carries a bad omen. This study adopted

¹ www.statsa.gov.za/censu/census-2011

² <http://en.wikipedia.org/wiki/Freedom-Charter>

the qualitative research approach and analyses has revealed the following critical points which will be dealt with in depth at a later stage.

- Widowed women in the Province of KZN get access to land through their male relatives or by having a son.
- The traditional authorities also perpetuate the violation of rights of women in general, but the violation is severe for the widowed women since they are the vulnerable groups with no one to fight for them.
- The implementation of the Constitution is superseded by the customary practices which mostly devalue women.
- A boy child is usually preferred more than a girl child.
- There are more initiatives by the government to empower widows versus widowers because of the societal prejudice that a man is strong and must not externalise his grief, which causes the widowers to also suffer some form of abuse and vulnerability.

The study also analysed the tensions between constitutional provisions and traditional practices, while noting that the cornerstone of the South African Constitution is the protection of the rights of every citizen irrespective of their gender and social status. This notwithstanding, harmful practices in the rural areas usually take precedence over the constitution, thus causing conflict of interests with negative implications for land inheritance by widowed women who are often voiceless due to the patriarchal societies in which they live. The study also highlighted the critical role that is played by the Department of Rural Development and Land Reform (DRDLR) in ensuring that women are not denied their rights to land inheritance through implementing land reform gender and other relevant policies.

Key Words: Widowhood, Land inheritance, Land distribution, WWOSA, KwaZulu-Natal, Department of Rural Development and Land Reform.

1.2 Problem Statement

In patriarchal societies, women are always side-lined in relation to men. Traditional leaders are customarily the custodians of customary laws and cultures and it is a culturally normalised practice and norm that no one has a right to either challenge and/or question them. This gendered supremacy has a negative impact on women since they are denied their constitutional rights, especially the rights to land after their husbands are dead (Oduyoe,,Kanyoro and Musimbi: 2005). Likewise, this hegemony of traditional practices and culture over the Constitution is usually in conflict with any attempt by the Government to assist the communities, especially when it comes to ensuring equitable land distribution by the Department of Rural Development and Land Reform (DRDLR).

Basically, women find it difficult to access rights enshrined in the Constitution due to cultural norms that deny them the opportunities entitled to them as citizens. While access to land is one of the most fundamental resources to women's living conditions. In some part of Africa, statutory laws do not provide for women to own land independently of their husbands or male relatives (Food and Agricultural Organisation, 2016). The Regional assessment on access to land by women that was conducted by African Union (AU) on the implementation of Land Policy Initiative (LPI) highlighted that customary laws are a major contributing factor in denying women their constitutional rights to own and inherit land (Odey, 2013).

It is important to mention that the role of the DRDLR has been quite critical in ensuring that marginalized groups are benefiting from land reform programmes and that land goes to the rightful beneficiaries. In 1997, the then Department of Land Affairs drafted the White Paper on South African Land Policy (WPSALP) in order to allow potential beneficiaries an opportunity to access land. Taken as a positive step towards addressing the land question, the White Paper was also considered an intervention aimed at prioritizing women in general (WPSALP: 1997). However, the law failed to recognize that women are not homogenous. This is in the sense that it focused on the empowerment of women in general, thus failing to recognize the plight faced by

windows in terms of land inheritance and other cultural practices that deny widows the rights to land access.

Ogundope (1997) draws attention to the fact that widowed women are subjected to a number of harmful practices in the name of culture. They have to undergo cleansing following the deaths of their husbands so as to be re-integrated back into the society. In most African countries, especially in the rural areas, widows are forced to shave their hair, wear old clothes, and drink the water used to wash the dead bodies in order to prove that they did not kill their husbands, and should they refuse to undergo these dehumanizing practices, they are denied their rights to land inheritance and may even be evicted (Ogundope, 1997). The Zulu speaking widows in the Province of KwaZulu-Natal are also not excluded from these harmful practices. During the recent summit on widowhood that was organized by the KZN office of the Premier in September 2015, about 450 widows from all over KZN attended the summit and outlined the many challenges they are confronted with to include: include marginalization and cruel community customs, denial of their rights to access land, social stigma and widespread patriarchal values and practices. These remain the case in spite the fact that the South African Constitution of 1996 guarantees dignity and equal opportunities to all its people. According to the Commission for Gender Equality Summit (2015) the protection of widows right to inheritance as a constitutional right is superseded by the powers given to the traditional leaders as the owners of land in the traditional bill. . The aforementioned acts of discrimination experienced and challenges faced by the Zulu widows is in line with Magwaza's (2001) finding that in some parts of rural KZN a mourning widow is not allowed to leave the home until her mourning period is over. During this period, she is subjected to numerous unconstitutional discrimination, including land grabbing by the in-laws should she refuse to marry the husband's relative (Magwaza, 2001). According to Cross and Hornby (2002), there are unequal power relations that affect women's ability to gain access to land and this can, in part, be attributed to the conflicting tensions between the constitutional provisions and traditional practices (Ngubane, 1997).

The Protocol to the African Charter on Human and People's Rights calls for the State Parties to take appropriate measures in ensuring that the rights of widows are protected and they do not suffer humiliation and degrading treatment due to unlawful widowhood rites or rituals they are forced to undergo all for the purpose of being re-integrated back into their very own society

(Banda, 2008). The African Union Declaration (AU) on Gender Equality 2004 puts emphasis on the obligation of states to actively promote the implementation of legislation that protects and guarantees women's rights to control, own, and inherit land (Banda, 2008). Also, land policies need to address gender inequalities in access to land because it is a human rights issue. In this respect, discriminating women to own and control land is a violation of human rights which is prohibited in Chapter 2 of the South African Constitution and the Bill of Rights.

In bringing harmony to the politics involved in land access, the Department of Rural Development and Land Reform (DRDLR) through its Gender unit is working with other stakeholders like Widowed Women of South Africa (WWOSA) to ensure that rights to land inheritance by Zulu speaking widows are protected. WWOSA is a Not-for-Profit Organization (NPO) operating in KZN and it caters for widowed women in community development initiatives. The organization operates in different fields of community development and is advocating for the rights of widows to access land. The idea to conduct this study was conceived builds firstly, from personal and occupational concerns and need to understand as well as address the tensions, complexities, and politics that are involved in the inheritance of land by the Zulu speaking widows; and secondly from the perspective that policies and legislation that seek to protect the rights to land inheritance turn to regard women as a homogenous group and fail to critically outline the discriminations that are faced by widows.

Taking these underlying reasons into consideration, this study then seeks to investigate and propose ways to bring harmony to the conflicting tensions in the constitutional provisions vis-à-vis traditional practices on land inheritance by the Zulu speaking widowed women. The study is carried out in Richards's Bay, the Northern part of KwaZulu-Natal, where the head office for WWOSA is located and most of the members for WWOSA reside.

1.3 Research Questions

This study addresses the unfair gendered politics that are involved in the inheritance and control of land by the Zulu speaking widowed women in the Province of Kwa-Zulu Natal. The study further proposes ways to harmonise the relation between the conflicting traditional practices and the legislation with the aim of advancing the rights and empowerment of women in the arena of land inheritance. In this light, the study addresses the following research questions:

1. What are the traditional practices surrounding land inheritance for widows in KwaZulu-Natal Province?
2. What are the constitutional provisions related to land inheritance for widows?
3. What is the role of the Department of Rural Development and Land Reform in implementing the Land reform gender policy?
4. How does the DRDLR partner with other stakeholders in land access and distribution issues?

1.4 Research Objectives

The study aims to achieve the following research objectives:

1. To examine the traditional practices surrounding land inheritance for widows within KwaZulu-Natal Province.
2. To analyse South African Constitutional provisions in relation to land inheritance
3. To investigate the role of the Department of Rural Development and Land Reform in implementing the land reform gender policy.
4. To examine how DRDLR partners with other stakeholders in the land access and distribution issues.

1.5 Significance of the study

This study is significant because of its particular focus on the question of land inheritance by widowed women, an area of interest which though quite relevant to the subject field of gender and women empowerment, is usually overlooked in studies that deal with land access and ownership by women. Most of the studies that have been conducted on widowhood are limited to practices and rituals and little attention is paid to the role of the DRDLR in ensuring that the rights of widows to land inheritance are protected. The study also analyses relevant policies and legislation emplaced to make sure that there is a gender equitable sharing in land administration and distribution. Furthermore, it deliberates on the significant partnership between DRDLR and

other stakeholders in relation to land administration and distribution. Lastly, the study is significant in that it analyses the support that the DRDLR provides to widowed women in rural areas and puts forth recommendations on how traditional leadership can support widows within their communities to ensure that their rights to land inheritance are protected, which is relevant for policy purposes.

1.6 Structure of the study

The study consists of six chapters.

Chapter one is an overview of the study and presents the research problem, research questions and objectives, significance of study as well as structure of the study.

Chapter two reviews relevant literature on widowhood, widowhood rituals, land and inheritance laws and legislation that protect women's rights of land acquisition in South Africa. It also looks at traditional practices surrounding land inheritance and presents the theoretical frameworks upon which the study is constructed. The theoretical framework examines African Feminism in line with the women acquisition to the land and espouses Nego and Legal Feminism as the two suitable theories for this study. The study adopts these two African Feminism theories in efforts to harmonise tensions between constitutional provisions and traditional practices associated to inheriting and control of land by the Zulu speaking widows in the Province of Kwa-Zulu -Natal.

Chapter three discusses the research methodology and methods employed in this study. The chapter, thus, explains the qualitative research design used in order to gain a deeper understanding of the politics that are involved in the land inheritance for widowed women who are members WWOSA. The chapter also outlines the population and the sampling procedure used to identify the research population for this study.

Chapter four discusses the findings on widows' varying experiences in relation to land inheritance. The chapter is further sub divided into sections on the traditional and cultural norms related to land inheritance for widows, violations of the inheritance rights of the widows, and challenging traditional norms and discrimination.

Chapter five discusses the research findings which covers the constitutional provisions that are available to protect and ensure gender equitable land sharing in South Africa and the legislation that is available to ensure that the rights to land inheritance by widows are protected. The findings are based on the research questions and objectives of the study and the chapter further integrates theory, literature, and findings of the study.

Chapter six comprises the summary, conclusion, and recommendation. The chapter provides the study's conclusion, demonstrates the study's contribution to knowledge, puts forth some recommendations that could inform future studies, and proposes the way forward regarding widowed women's rights in the country.

1.8 Conclusion

This chapter introduced the study by discussing the research problem, presenting the research questions, objectives, as well as significance of the study. The chapter also briefly drew attention to the case study of the WWOSA in Richards Bay, located in the province of Kwa-Zulu Natal. The chapter further highlighted in brief, the challenges that the widowed women are exposed to in rural areas in relation to land inheritance as well as the role of the Department of Rural Development and Land Reform in ensuring the distribution of land to rightful beneficiaries, the case here being widowed women. Lastly, the chapter provided an overview of how the thesis is structured. Chapter two that follows reviews relevant literature on the gendered politics of land distribution and the various components that underlie the subject as well as the theoretical framework adopted for the purposes of this study.

CHAPTER TWO

LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 Introduction

The control and access to land by women is a prerequisite towards ensuring better livelihoods, equality, and improved standard of living among women. Having full access and control to this important resource assists women to be able to provide for their families and the reality of being self-reliant also helps them to be protected from several forms of abuse. Besides, studies, as will be demonstrated below, have shown that protecting women's right to land helps in the fight against HIV/AIDS epidemic and gender-based violence, seeing that having access to and ownership of land enables them to cope with the social and economic impact of the epidemic at the level of their households (UNDP, 2008). According to Adebayo (2014), land ownership by women, especially that acquired by means of inheritance, has a significant impact on their bargaining power because land is a major source of wealth. However, the UNDP (2008) report raises some concerns on inheritance as the channel through which land is acquired, seeing as this medium adheres to traditional and customary practices that usually discriminates against women, especially in the African Continent. Deer and Doss (2006) affirm that land is not equitably distributed in developing countries as more men continue to be allocated more land than women, irrespective of the fact that most rural women are dependent on land for agriculture and livelihood and land is a determinant of whether a person lives in poverty or not, especially in rural areas.

While the problems and challenges associated with land access and ownership in South Africa can be traced back to apartheid era, women have suffered and shouldered the greatest part of the burden in the arena of land ownership because of their race and/or gender (Maluleke, 2012). This phenomenon, as the author further notes, is even worst for the widows as they are often evicted from the family home and forced to return back to their parents' home after the passing of their husbands. In cases where they have brothers, going back to their parents home becomes even more problematic as they are likely to also face eviction. This is attributable to the patrilineal ways of land inheritance, whereby land is treated as the property of the husband which is inherited through a male lineage as per traditional customary law should a husband die. In this

case, women are perceived as minors who are not allowed to own and control land because they are also regarded as the property to be inherited (Maluleke, 2012).

Land allocation is considered the duty of traditional leadership who are mostly elderly men. Women are not represented in these structures and without representation, women's rights to access and own land is often not a priority during discussions in these fora of traditional meetings. However, it is important to note that such practices raise tensions and conflict between the Bill of Rights which state that no one should be discriminated upon based on their gender and race, as well as the customary law which is also fully established as law in its own right and should not be based on the set of traditional practices and rituals.

It is against this backdrop that this chapter aims to review the relevant literature on land inheritance laws and legislation that protect rights to own and control land especially by women in South Africa, with a special focus on widows across the continent and in South Africa.

2.2. Historical Legacy of Land Ownership in Africa

2.2.1 Gender and Land Rights in a pre-colonial Africa

In pre-colonial Africa, land was abundant and communally owned in some societies. The problem of a gendered biased land ownership started with the arrival of colonialists in Africa as they introduced laws that devalued women as compared to males and as a result, women were then treated as minors and deprived of rights to own land independently from their male counterparts (Nzwengu 2006, Ngomane, 2016). Generally, land was in abundance during the pre-colonial era (Cross, 1992), especially as the population was not as much as it is today.

Both males and females were allowed to claim land from the chiefs irrespective of their gender (Cousins, B. 2008 and Arends, 2009). However, the status quo with regards to land access and ownership changed with the invasion of the colonizers who introduced the laws that devalued women's rights as compared to the men. This arrangement did not change even after most African continents regained the independence from western colonizers, thus the promotion of the patriarchal systems in most parts of present day Africa, which continues to deprive women of their rights to inheritances, among other rights.

Land as a resources from the customary law angle in pre-colonial Africa also allowed women to have access. Ngomane (2016) avers that the inequalities and discrimination in the land sharing that later engulfed most societies in Africa, including South Africa, was resultant of colonization, whereby about 87% of the fertile land was forcefully taken by the colonizers and the native blacks were left with only 13% of the barren land for food production and human settlement. This dispossession affected the household income and contributed vastly to gender inequalities, wherein men as the heads of the households controlled that 13% of the remaining land while women's rights to same were relegated (Maluleke, 2012).

It is worth noting that the marginal nature of women's land rights in Africa is a historical problem that dates pre-colonialism, wherein land ownership was through accessed and owned through lineages, clans, and male-headed households, and the control of male leaders. The right to use land could only be obtained from male leaders and only sons were the rightful heirs to family land (Kimani, 2008). Though women were not accorded the rights to inherit land on their own, there were some traditional laws that protected them to use the land after divorce or widowhood. In this context, land inheritance was still effected through a male relative as women were considered as secondary claimants. However, these traditional laws also allowed women to appeal if the land was contested (Kimani, 2008).

In some part of Africa, unmarried women were given the temporal rights to use their father's land, but such rights were later lost through marriage as they believed that once married, a woman would gain access to her husband's land. Sadly, should it happen that the husband died and a woman did not have a male child, she lost that right to male relatives (Kimani, 2008). The introduction of colonial rule in Africa further contributed to the question of rights surrounding land inheritance, as the Western system of land ownership was introduced, some of which encouraged privatisation and individual free holding title deeds. In West Africa, for example, most of the land remained under the communal form of ownership that was managed by the traditional leaders at the dawn of independence (Kimani, 2008). In the case of Tanzania, Mozambique and Benin, land was secured under the state ownership following their independence; while South Africa and Kenya adopted a privatization as well as lineage and clan ownership models (Kimani, 2008). Following Nigeria's independence, the state took control of land and this method of ownership weakened customary land tenure.

Basically, many African countries recognised both traditional and Western rules of land ownership and these dual systems were and continue to disadvantage women. A study by the United Nations Development Program (UNDP) in 2000 on gender and agriculture in Africa, established under the human rights law, both men and women have equal rights on land inheritance. The study, however, in the case-specific scenario of Kenya further stated that should a man die without a will, the customary law of his group relating to land will be effected (Kenya's succession Act). It must be noted that Kenya through the 2010 constitution has made remarkable strides in the protection of women's land access and rights as enshrined in section 60 (1) of the constitution. This section of the law provisions that all laws that are gender discriminating when dealing with land access and ownership will not be entertained and that all citizens have a right to own property individually or in partnership with others. Since most African men do not write wills, land grabbing by in-laws in the event of the passing away of the man, remains a huge challenge (Kimani, 2008).

Budlender, *et al* (2011) also highlights some of the challenges that women face regarding land inheritance and ownership in South Africa:

- (i) Once the marriage dissolves either through divorce or death of a husband, women are evicted from the land by the husband's family.
- (ii) Widowed or divorced women are not welcomed to their Natal home after the end of the marriage and are evicted by their brothers.
- (iii) Married brothers often evict unmarried sisters from their Natal homes after the death of the parents as it is the son who can inherit the land.
- (iv) Married women also are not treated as people with rights to land ownership, but as minors both in their homes and communities.
- (v) Single women are faced with a lot of challenges when they want to access land even for residential purposes because tradition demands that the residential sites are allocated to men in patrilineal areas.

- (vi) Women are not allowed to participate in the decision-making structures such as tribal councils where the key decisions on land allocation are taken.
- (vii) Tribal councils that decide on land allocation and family disputes are patriarchal and do not represent the interest of women in general.

Makhtar (2013) points out that Africa has abundant land, but remains poor due to the gap and inequities in land ownership and inheritance patterns as well as the gap between the rich and the poor. The author details that 70% of women in Africa are involved in farming yet they are discriminated against by customary laws in the arena land ownership and access. Another problem identified is the fact that only 10% of the rural land is registered, 90% remains undocumented and is informally administered and susceptible to land grabbing without fair compensation and this falls hardest on women. Makhtar (2013) further pinpoints, despite the apparency of the problems identified, there are some good reports about the administration of land in countries likes Ghana, Malawi, Tanzania, and Uganda that piloted ten steps on the land question. These include; improving tenure, security of individuals, and communal lands to help increase land access and tenure for poor and vulnerable families, as well as resolveland disputes.

With the many challneges surround access and ownership of land rights in Africa, most African countries have undertaken initiatives to develop land policies in an attempt to solve the issues of poor land governance. A study by Ngumbi, 2016) established that only 12% of women own land independently of their husbands or male relative in Africa.

This percentage is low because most traditional and customary laws deny women the right to own land through inheritance after the death of a husband or divorce. In Kenya for instance, women were denied the rights to inherit land unless they produced a valid proof that they contributed when the land was acquired. But, the 2010 Constitution changed this, stating in section 40 (1) hat everybody has a right to own property either individually or in association with others. Section 60 (1) further underscores that land will be shared equitably and all laws that are perpetuating gender discrimination in land access must be abolished. Also, in some parts of Africa, like South Africa, there are laws that allow women to own and control land, but the challenge is to implement those laws and to have a strong monitoring and evaluation mechanism in place (Ngumbi and Da Silva, 2016)

Land inheritance remains one of the most important modes of assets' transfers in African continent which takes place after the death of a spouse (Cooper, 2010). This transfer is usually regulated by both customary and statutory laws, which result in the exclusion of certain individuals, particularly widows and orphaned children. Platteau and Baland (2000) state that gender discrimination in inheritance is a violation of human rights. Studies from across Africa reveal that widows and children are often denied their right to inherit their husbands/father's property upon his death and this has resulted in economic vulnerability and extreme poverty (Carter & Barratt, 2006). More studies in Africa have linked women's access to land with the huge improvement in socio-economic status, equality, and empowerment, and this has also gained resonance in the international development policy arena (Whitehead & Tsikata, 2003). So, owning land has been said to help women to have a bargaining power not only within the household, but also in the community and other public arenas.

In line with the afore-discussed, it is important to also draw attentions to developments that throw light to the subject in focus. It would seem that the global, regional, and provincial perspectives on women empowerment remains crucial, and this was underscored through the commitment of world leaders on the UN's 70th anniversary where the draft outcome document "Transforming Our World: 2030 Agenda for Sustainable Development" was adopted. The adoption of this document aims to show that there is commitment towards positioning gender equality, women's rights and women empowerment at the centre of global agenda. Also, The African Union Summit 2015 also cited women's lack of access to land as a barrier to economic development. In the same vein, South Africa's National Gender Policy Framework for Women Empowerment and Gender Equality (2000) calls for state institutions to put in place Gender Units and creates Focal Points to drive gender mainstreaming processes.

2.2.2 The value and beliefs associated with land in Africa

Even though land is a birth-right to every indigenous African, its distribution remains skewed based on gender. In rural areas, it is the traditional leader has a divine power and authority to allocate and distribute land (Nkosi, 1996). Land to Africans land is sacred and there are a lot of rituals that are associated with land. For examole, when someone from the royal family passes on, especially in the Zulu culture, land is not tilled for at least one year and if a commoner dies the concerned family has to wait for some rituals to be performed before they can make use of

the land. In some families, the dead and the umbilical cord of the baby are buried in the land to show the link between the ancestral spirit, the land, and the living (Nkosi, 1996).

Land is a crucial resource for economic growth and livelihoods. It is on land that shelter is built and food is produced as well as water Nkosi (1996). Karyongi (1996) further affirms that land is the important base of livelihood as it keeps human beings alive. Mufeme (1996) also states that land promotes human development though its access and control is political. Land is not shared equitably, it is skewed across gender and race as is the case in South Africa where land was dispossessed in 1913 and formalised through the passing of the Native Land Act 27 of 1913 (Karyongi,1996 and Plaatjie,1916). Even though land was and remains a subject of liberation in South Africa as stated in the manifesto for African National Congress for the 1994 elections, women are still discriminated against in land ownership. This is not a practice limited to South Africa only, given that in Kenya, the Massai women as well as in many other parts of Africa, women are still denied the right to own and access land to such an extent that men can even sell the family land without consulting the women and the burden is worse for widowed and single women (Kireu, 1996).

2.2.3 Women's inheritance rights in Africa

Most African countries practice different kinds of laws which are sometimes referred to as civil law and/or common law and customary law. Civil law is undertaken by the government, common law is never written down but is understood by people, and customary law is sometimes written down and is practiced by a group of people. All these laws affect women differently from their male counterparts (Scholz & Gomez, 2005).

Ping (2010) highlights the challenges posed by the dominating patriarchal systems which tend to discriminate against women in terms of ownership and control of land. Women, in general are denied rights to inherit land and inheritance rights are usually conferred upon male family members, thus falling to redress the imbalances caused by unequal land sharing.

In customary laws, men are treated as superior to women when it comes to inheritance, meaning that when a man dies, a woman is not be allowed to inherit land because the land is passed on to a male child or a male relative if the widowed woman had no sons. This becomes worse in the case of polygamy where the son of the first wife is considered as the heir and others are left out

of the inheritance. In some parts of Africa, a widow is thrown out of the house soon after the death of a husband. The right to inheritance is a human right because discriminating against women from inheriting the family land leads to extreme poverty as land is an important resource for food production and housing (Scholz and Gomez, 2005).

Uganda recognises both statutory and customary laws of inheritance, whereby each of these laws have negative impacts on the rights of the widows to inherit the family land. Before British colonialism, land inheritance in Uganda was through patriarchal customs and had to be through a male relative. In the case where a natal home had to give land to a woman, she was not allowed to dispose it off to the outsider except through a male clan leader (Birabwa-Nsubuya, 2006; Bikaako & Ssenkumba, 2003). This made it difficult for women to inherit land and they ended up only having user rights and not ownership rights. Also, widows could only act as guardians of land for their minor sons until they were of the legal age to inherit the land (Bikaako & Ssenkumba, 2003). This arrangement further discriminated against widows without male children, because in order for them to secure their position in the family. Also, they were forced to marry their brother-in-laws and should they refuse, they forfeited their social status within the family. These actually remain the practice in some parts of Uganda, even in this contemporary era.

Botswana became independent in 1996. Its constitution sets out provisions and laws that indicate women and men must be treated equally. However, when it comes to land inheritance, women are still faced with some difficulties. According to the statutory law of Botswana, men and women are entitled to inherit and can get land everywhere. Practically, however, this is not implemented since the citizens are not even aware of these laws, and customary laws take deprives women of some of their rights (Scholz & Gomez, 2005).

Ethiopia is signatory to a number of international agreements and as a result, both men and women are treated equally in their constitution. Their constitution goes further to provision that women cannot be treated badly just because they are women. Practically, however, these laws are not obeyed as customary laws always take precedence when it comes to matters of inheritance. Ethiopia has conflicting constitutional provisions when it comes to the implementation of inheritance laws in that they usually go against each other. In some parts of Ethiopia, customary laws allow few women to inherit property, but this is not a widely practiced

trend as only men are allowed to inherit property in some part of the country. More so, they go to the extremes of treating women as their property and widows are inherited by the brother of the late husband (Scholz & Gomez, 2005).

In Ghana the rights of women are protected in the constitution and widows are allowed to inherit the property of the late husband, but again, the customary law precedes the constitution. In some parts of Ghana, children belong to the wife's family and in that case when a man dies the wife and her children do not inherit any property. The property is inherited by the late husband's nephews and often, the widow is evicted from the husband's house (Scholz & Gomez, 2005). As in most African countries, writing a will is very rare in Ghana and in the case where a husband dies without a will, the Intestate Succession law is implemented. Under this law, a widow and her children inherit most of the husband's estate and the smaller part of the property is evenly distributed to other family members. Despite these laws in place, many women in Ghana are still thrown out of their homes after the death of the husbands, as they are ignorant of the fact that they are protected by the law (Scholz & Gomez, 2005).

Nigeria is the most complex African country when it comes to inheritance because of its complicated legal system, coupled with the fact that they are quite diverse groups of people. The Nigerian federal law enunciates that women must not be treated badly just because they are women. But, customary law conflicts with federal law as women are treated badly because they are women. In the recent court cases in Nigeria regarding land inheritance for women in general, it was resolved that women must have a right to inherit land and be treated same as men, but much needs to be done on the ground for this to be attained. The federal law of Nigeria also does not recognise marriages under Muslim and customary laws even though these kinds of marriages are widely practiced; meaning that women married under these laws are denied the rights to inherit. If a woman gets married, she ceases to be part of her father's family, and yet under the customary law, she is not recognised as part of the husband's family either. If a husband dies and a woman is thrown out of the house she has nowhere to go. Nigerian land is administered under both customary and statutory laws, but both laws require a man's name for registration (Scholz & Gomez, 2005).

The percentage of widowhood in Rwanda is very high because of the genocide in the early 1990s. In 2003, the Rwandan government passed the law which allows women to enjoy same

rights as men. Under the law, Rwanda is obliged to promote and protect the rights of women. The law further states that anyone can own land, but it does not say anything about the rights of women to inherit the land. Customary law in Rwanda does not recognise the rights of women and they have no right to own anything. A woman cannot even get a property from her husband even if the husband is still alive. Land remains the property of the husband's family (Scholz & Gomez, 2005).

According to Scholz and Gomez (2005), Senegalese women remain minors under customary law, meaning that irrespective of their age they always have a legal guardian who is a male. Before the woman gets married, the father is her legal guardian and after marriage, the husband takes over as a legal guardian. Should the husband pass on, the brother takes over and inherits the widow. Tradition makes it hard for women to own land even though the constitution states that women have equal rights of inheriting and owning land. The land in Senegal is distributed by the Rural Community Councils and the council members men who always give the land to other men. The Islamic laws prohibit women to inherit or own land.

In Swaziland, women are treated as minors and cannot do anything without the consent from either a father or a husband. After marriage, the husband has a marital power over his wife and when the husband dies the woman is subjected to numerous harmful widowhood practices. Despite the law on the administration of estate which is about the inheritance, a wife is treated as an outsider under customary law and she is not allowed to inherit anything. Hence, the practice of property grabbing remains a major challenge for women and widows in Swaziland. Traditional practices are more powerful in Swaziland and often discriminate against the rights of widows and women in general (Scholz & Gomez, 2005).

In Zimbabwe widows that were married under customary law lose their land inheritance after the death of the husband, since that kind of union is not registered even though Zimbabwe adopted a new constitution in 2013 which provides for equal rights. Many widows become victims of evictions and property grabbing. The court does not offer much help as it relies on the in-laws to confirm their marriages and usually, these are the very same people who are perpetrators³. The report Human's Right Watch titled "*You will get nothing*", older widows in Zimbabwe expressed

³ www.hrw.org/news/2017/01/24

their pain of double loss where they lose husbands and land because of the discriminatory practices that the widows have to undergo. As a result, they struggle to support themselves and their children, since their land is confiscated.

In South Africa, both customary and civil marriages are recognised and protected. South Africa is a signatory to numerous international human rights agreements and the South African Constitution in chapter 2 under the Bill of rights is very clear on protecting the rights of both women and men. South Africa amended property related provisions between 1980s and 1990s to improve the position of women. That amendment was a major breakthrough from a Roman-Dutch common law which granted the husband a 'marital power' that allowed a married man to exclusively administer and control the family property unless it was specified otherwise on the Antenuptial Marriage Contract.⁴ According to Maluleke (2012), women married under customary law in South Africa have long suffered discrimination and abuse under the Black Administration Act of 1927. This Act considered women as minors who could not make their own decisions or take care of/own property or land. But, this was later repealed by the recognition of the Customary Marriage Act of 1998 which grants customary wives full capacity to own, acquire, and dispose assets.

To show its commitment, South Africa has the commission for human rights which is tasked to ensure that no rights are discriminated and constitutional rights are not contravened. Albeit this and the fact that the then customary law that denied women's rights to inherit land was reviewed and amended to promote equality in land sharing irrespective of gender, it is very sad to note that in most rural areas of South Africa, women are still denied their constitutional right to own and inherit land in the name of the customary law. Most women in the rural areas are not aware and do not understand the constitution, hence they end up falling victim to property grabbing and deprivation of their rights to inherit their family land should the husbands dies and there is no male child to take over the ownership.

2.3 The Importance of Land for women's development

⁴⁴ The Matrimonial Property Act of 1984 only applied to marriages celebrated after 1984, the 1993 Amendment Act extended it to all marriages

Land is one of the most fundamental resources to women's living conditions. It is a source of economic empowerment and a key factor to achieve equity and equality. Land access and ownership are therefore vital to rural women's livelihood. Notwithstanding this the importance of land to women, their land rights remain violated because of traditional norms which are in conflict with constitutional provisions. When land is allocated, the males get preference due to the patrilineal system used in land inheritance (Deer and Doss, 2006).

According to Moeng (2011), accessing land in South Africa is a political issue that often puts policy implementers and those who are supposed to ensure just equitable land sharing and inheritance in a compromising situation. This is because they are expected to ensure that traditional and customary practices do not supersede the constitution which is the highest law in the country.

The Regional assessment on access to land by women that was conducted by African Union (AU) on the implementation of Land Policy Initiative (LPI) highlighted that customary laws are a major contributing factor in denying women their constitutional rights to own or inherit land (Odey, 2013). In Africa, land ownership by women is uneven. A study conducted by Paradza (2010) revealed that in Zimbabwe, women with male children experience fewer problems when it comes to land ownership as compared to those women without male children. This pattern of land allocation is more common in the Eastern Cape Province of South Africa.

Although women empowerment and gender equality are at the top of the agendas in most African countries, implementing such agendas become a challenge especially for the most vulnerable women like widows. This challenge of women's ownership and inheritance of land has been severally voiced through mediums other than academia. For example, some of the songwriters and singers like the Zimbabwean born Oliver Mtukudzi in one of his songs chants about the hardships faced by women after the death of their husbands. He highlights how a widow suddenly becomes nobody just because the husband is no more. (Chukwu-Okoronkwo 2015) concurs with this view, relating that in the Igbo community in Nigeria, a woman loses her dignity the moment she loses the husband, widowhood mark the start of hostility, loss of freedom for the widow, and she becomes the suspect in the death of the husband.

According to a report by Vumelana Advisory Fund (2016)⁵, land reform in South Africa is still at a snail's pace even though South Africa and the adoption of its Constitution are 20 years post-independence. This slow pace affects both men and women negatively, but women are the most affected since they do not have bargaining power and are marginalized and discriminated against as compared to men.

Looking at the aspect of feminism and land ownership, note is taken that land is an important resource that contributes to women's livelihood and there are a number of treaties and legislative frameworks, both international and national that seek to protect and promote the rights of women to own land. Nevertheless, women still suffer numerous injustices as far as land inheritance and ownership is concerned (Ngomane, 2016). In South Africa, it is legislated that no law is above the constitution (Maluleke, 2012), but in reality, there are conflicting tensions between constitutional provisions and the customary practices that regard and classify women as minors who cannot own land independently of male relatives except through marriage, a son or brothers. This kind of patrilineal arrangement does not give women full rights to own and control land but user rights which can be forfeited upon the death of that male relative.

2.4 Contextual Background of Land Reform in South Africa

The implementation of land reform policies during the 20th century perpetuated racial and gender discrimination and promoted numerous land distribution and allocation related inequalities in South Africa (Kloppers & Piennar, 2014). A number of injustices were a direct result of apartheid and this led to the introduction of the 1913 Native Land Act which formalised the limitations on black South Africans to own land. This Act further discriminated against women given its skewed gender relations, especially in land allocation. Actually, land reform in South Africa has been based on racially discriminative laws and practices during the apartheid era and this led to the extreme inequalities in land ownership and control. Women suffered more than men since they were firstly dispossessed of land due to their race, and secondly for not being protected under customary laws (Kloppers & Piennar, 2014; Maluleke, 2012).

The inequalities on land distribution and sharing were formalised through the passing of the Natives Land Act 27 of 1913. According to this shameful act as Plaatjie (1916) labels it, blacks

⁵ Vumelana Advisory Fund, 2016

only owned 13% of land and were removed from the arable land and were neither allowed to purchase or rent the land. An estimated 3.5 million people were forcibly removed from their land as a result of colonialism and apartheid laws, and the period following the white only election which brought the National Party to power in 1948. Many people who had to inherit lands of their forefathers inherited nothing. Instead, their legacy was at best, a small portion of a water scarce country with skewed spatial patterns and deep inequalities in the distribution of both land and water. About 16 million South Africans live in these homelands with another 3 million without the security of tenure.

Inability to access the rights to land due to the male-gendered customary and social practices that buttress gender inequalities is a significant factor that impacts negatively on their social, political and economic progress of women and the country at large. Women's underrepresentation in political and decision-making processes impedes their attainment of productive and fulfilling lives. In most cases, leadership is dominated by men who ascertain that they have their own culture and traditions, but that mind-set is not constitutional and discriminates against women. South Africa's land allocation and distribution is not only race-based but is also gender-based, a phenomenon that has resulted in the skewed distribution of resources which further perpetuate inequalities and women powerlessness.

In looking at what the Native Land Act of 1913 meant and means to South African women, it is recognized that the Act placed a huge burden on the shoulders of African women, as they were forced to take care of the homesteads and their families after the men migrated in search for jobs in the cities. This led to social and economic fragmentation within families. Earlier studies on the impact of the 1913 Act mostly focused on how it affected the lives of men. However, mention is made of a widow who had three children. Sol Plaatjie points out that after the death of her husband, the widow worked on the land to support her children, but when the 1913 Native Land Act was passed, she was forced to vacate the land and take her livestock and children away from the farm. No one knows what happened thereafter; she disappeared like many other women who disappeared and faced destitution.

The 1913 Land Act turned away and affected the lives of many black South African women and they were not heard of ever again.⁶ Sizani Ngubane who is a founder and director of the Rural Women's Movement, also explains the 1913 Native Land Act continuous to affect women even today. This is in the sense that the traditional authorities have continued to exercise their unconstitutional powers over women each time they are administering the land in communal areas (Ngubane, 2013). Ngubane further gives an example of a single woman from the rural part of KZN who was denied her right to inherit land despite the fact that her late father left a will stating she should inherit the land. That her right to land inheritance was denied owes to the fact that the local chief colluded with the victim's half-brother and together as men, they questioned how a woman could inherit the land. This incident shows that there is an evident conflict between the constitution and the then customary law that regarded women as minors who cannot inherit land on their own. So, to say that the legacy of this particular Act and other apartheid laws placed women in difficult situations is an understatement because it is owing to this 1913 Land Act that traditional leaders still continue to exercise their power and authority over matters of land without taking into account the wellbeing of women.

The present state of affairs in South Africa with regards to the land question remains similar to past experiences. For example, the 2014 report on women access to land by the Land Access Movement of South Africa (LAMOSA) details that women are treated as legal minors who cannot access land without the permission from the husband or a male relative. This inequalities persist despite the fact that South Africa's African National Congress election manifesto of 1994 established the Reconstruction and Development Program (RDP), which aimed to transfer 30% of land from white commercial farmers to the previously disadvantaged blacks. This goal, however, was not achieved by the ruling party, as only less than 1% of the land was transferred in 1999⁷. This slow pace was attributed to lengthy negotiations that took place for a smooth transition of the country from the apartheid era to democracy (Hall, R 2010; and Ntsebeza, 2007), which further raises questions about the status of access and ownership to land, especially as women's rights are concerned.

⁶ <http://www.agenda.org.za/women-and-dialogue-launch>

⁷ Reconstruction and Development Program

When delivering his keynote address at an African National Congress (ANC) rally held in KwaDukuza in KwaZulu-Natal (KZN), Mr Sihle Zikalala⁸ stated that 70% of the arable land must be expropriated into the ownership of the state to ensure equitable land sharing to people who want to use land. He further outlined that the ruling party wants to make expropriation South Africa's land policy in order to speed up land reform in the country. The chairperson criticized willing buyer and willing seller concept as a hindrance to land access by the majority poor (The Mercury, 2017). Also, the Minister of Rural Development and Land Reform, Mr. Gugile Nkwinti highlighted that land reform programme is faced with serious challenges that relate to incoherent institutional transformation. He further stated that land reform is a very complex issue that must not be seen as a sole responsibility of the Department of Rural Development and Land Reform. Land reform requires a targeted partnership approach so as to overcome land related complexities. Land reform is broader than taking land from one racial group to another as noted by Minister Nkwinti, while debating about the state of the nation address on 14 February, 2017. The Minister further highlighted key elements that need to be transformed in South Africa for the land reform programme to be a success. Among them was; the legal systems, land control and ownership, and land institutions.

2.5 Widowhood and Land Ownership

By definition, widowhood is a tragedy that befalls a married person due to the passing of the spouse, who could either be a wife or a husband. This phenomenon which is reinforced by the patriarchal society fuels a number of gender imbalances (Adeyemo, 2015). Such imbalances is evident in the different treatments received by widowers and widows. Daber (2003) asserts that Zulu-speaking widowers are not treated the same way as the Zulu-speaking widows who experience a number of dehumanizing rituals following the death of the husband. This seems to be a widely practiced phenomenon across Africa because among the Yoruba community in Nigeria, Widows are not allowed to inherit land from their dead husbands since they are also considered as part of the husband's estate to be inherited by the relatives (Adeyemo 2015).

In Africa as well as in other developing countries, widowhood is also characterised by gender-based violence, coupled with property grabbing from the widows by the in-laws under the banner

⁸ He is the chairperson of the African National Congress and the Member of Executive Council (MEC) for KZN Department of Economic Development and Tourism (DEDT).

of customary practices that perpetuate gender inequalities (Kaori, 2007). Generally, widows lack land and inheritance rights and most widows are evicted from their properties by in-laws (Owen, 1996). In Zimbabwe for example, thousands of widows are evicted from their properties and are accused of killing the husbands and this leaves them without land to produce food to care for their children (Human Rights Watch, 2016). Peterman (2011), however, states on a general scale that only a small percentage of widows inherit property or any other assets.

2.6 The History of Widowhood

2.6.1 Who is a widow?

While widowhood and its rites and rituals is a well-researched area in Africa, not much has been said about land inheritance and control by widows especially in the Province of Kwa-Zulu Natal. Also, studies and researchers have often omitted to link and elaborate on how land ownership can improve widows' livelihoods.

Daber (2003) and Magwaza (2011) define a widow as the woman whose husband has died. This definition does not clarify whether a woman who decides to re-marry will retain the social status of widowhood linked to the passing of the first husband or will just be regarded as a married woman without any stigmatization. In some parts of Asia, a woman is called a widow when she had lost both the husband and the father-in-law and she has no male child. For the purpose of the study I will adopt Daber (2003) definition of widow, i.e. a woman who has lost her husband.

2.6.2 Widowhood: A condition or Construction?

A passage of life that is particularly fraught with danger for women is becoming a widow (Magwaza, 2013). This becomes more traumatic for widows as compared to widowers due to the expectations from the society that are more severe on women. Also, the number of rituals they are forced to undergo as a form of cleansing or removal of isinyama is distressing.

Widowhood is a condition that is shared by both men and women. It occurs after the death of one's partner. Though it is a shared experience, it is deeply gendered because of the contrasting experiences that are reflected in the patriarchal society (Chukwu- Okoronkwo:2015). Ayodele (2014) asserts that there are skewed power relations against women even after her marriage has been nullified by death. Besides, widowhood practices are borne out of patriarchal ego. When a

man dies, there is a widow who must not only internalize a sense of loss but also externalize the pains for others to see. The death of a husband becomes more traumatic for a woman not only due to the pain of lose, but for what awaits her in the name of widowhood rites (Chukwu-oronkwo, 2015). However, when a woman dies, the tragedy also creates a widower who simply sits down several days to entertain visitors who come to commiserate with him over the death of his wife. Shortly the wife's dead, he can take another wife without anyone raising any righteous anger against such an act. To this, Ayodele (2014) contends that our culture should be an amplifier of justice and not an author of unfair criminal discrimination.

Widowhood rites are one of the harmful and discriminatory prejudices that are deep-rooted in different African cultures (Chukwu-Okoronkwo: 2015). In most African countries a woman is always a suspect when the husband dies and after the death of the husband, a woman may be subjected to a number of unfair discriminating practices to prove her innocence. A widowed woman has to also externalize the pain of losing the husband for the family and community members to see. The widowed woman's hair is loosened and made untidy, they are forced to wear old clothes and not allowed to bath, they are expected to weep all the time, never leave home until the mourning period is over, wear black clothing, and sleep on the mattress, plus claim no rights of inheritance (Odooye & Kanyoro, 1992 in Ayodele:2014).

The widowhood summit that was organised by the Commission for Gender Equality and the Office of the Premier in KwaZulu-Natal in 2015 highlighted numerous obstacles that a widow encounters when she wants to claim her property rights after the passing of her husband. In Kwa- - Natal, as in some part of Africa, the lives of widows have been marked by exclusion, marginalization, and demeaning community customs. Widows from rural areas and low-income sectors are more susceptible to these customs. For instance, 450 widows from all over KZN province who attended the summit stated that patriarchal values and practices cause widowed women's organisations to be dysfunctional. As a result, they are unable to influence change. These patriarchal values supersede the Constitution of the Republic of South Africa which guarantees the respect of dignity, equal opportunities, and active participation of all its people in all works of life irrespective of race, gender, sex, marital status, age, religion, belief or culture. Therefore, the rights of widows just as for all categories of women need to be upheld, promoted and protected, and discriminatory and harmful practices eliminated (Maluleke, 2012).

2.6.3 Widowhood Practices/ Rites/Rituals

In many cultures prejudice against women is deep-rooted and widowhood practices are one of the prejudices that have constantly affected the dignity and the rights of women from different cultures across Africa (Chukwu-Okoronkwo, 2015). According to Magwaza (2013), there are no regulations stating the length of the mourning period and the type of rituals that a widow has to undergo in order to be re-integrated back into the society. From my personal observation, widowhood rituals is also clouded with power relations in that the expectations from the society and the “correct” method of mourning enforced by the older women to the younger widows shows the element of domination within the same gender. Being in this position gives the older women a sense of domination over young widows. Though these rituals may vary according to different cultures and communities, some cut across the African continent like the shaving of hair, which is widely practiced in Western and Southern parts of Africa (Korieh, 1996).

Korieh (1996) further describes widowhood practices as those rites that are performed for a woman after the death of her husband and there are set expectations regarding the behaviour of the widow including actions by others towards the widow. In Nigeria, when a woman loses her husband, she loses her dignity as well and the status that the society accords to married women/wives (Chukwu-Okoronkwo, 2015). Similarly, the Igbo culture in Nigeria strongly believes that a husband aids the god that owns a woman and this divinity accorded to husbands make the performance of certain rituals a necessity if he passes on. Labeodan (2002) observes that most Yoruba women are silent on the prejudice of culture. Women have been made to believe that their bodies and minds should be managed by culture. Labeodan (2002) further states that failure to fulfil cultural requirements is regarded as a taboo that might lead to death or ostracism.

2.6.3.1 Widowhood Practices and Rituals in Africa

According to Ayagiba (2005) widowhood rituals/rites are cultural activities that a surviving spouse has to undergo after the death of the partner. Both widows and widowers have to

undergo those rites as prescribed by the society though the emphasis is more on widows as compared to widowers (Dolphyne, 2005). Women also suffer from emotional, mental, and spiritual problems and at times, their health deteriorate because of the pressure to conform to widowhood practices (Asantewaa:2017). Their situation is even more problematic because widows group or societies do not fight for widows. Often, they instead make it more difficult for widows to express their viewpoints and this denies them the right to enjoy the constitutional provisions for equality.

In Malawi, becoming a widow means abject poverty and this is aggravated by the widespread grabbing of property by local authorities despite the efforts to promote gender equality and calls to end gendered violence against women. Among the traditional communities of Malawi, widowhood represents a social death for women (Asantewaa:2017). Following the husband's death, the widow is suddenly associated with the very margins of society where she suffers the most extreme forms of discrimination and stigma, and their interests are not well represented in the platforms of the State (Kapuma:2001).

Ngoleka further highlighted that even though widows are not recognised, they contribute a lot to the community by raising and educating their children, though it is very unfortunate that their contributions are hardly noticed. Widows are faced with a lot of challenges in Africa, ranging from food insecurities due to the lack of access to land, lack of proper shelter, and different kinds of victimization by harmful cultural practices (Eboh & Boye, 2016). Widows often become victims of character assassination as they are accused of practicing witchcraft and killing the husbands or snatching them within the community, which contributes to their vulnerability to gender-based violence (Kapuma:2001).

It was only during the 1990s after the United Nation World Conference on Women in Beijing where the right to property inheritance received attention in Malawi. This raised a lot of awareness amongst women to such extent that in 1998 they fought for the revision of Wills and Inheritance act of 1967 to include the criminalisation of property grabbing. Their attempt was not approved by the male-dominated parliament on the basis that women would kill their husbands for financial gains (Customary law of succession report: 2004). In Malawi, therefore, an unmarried woman is protected by her father and the married women are protected by their husbands, and once the husband dies it means that the widows have no one to protect them. So,

the grief of widows does not stem from widowhood only but also from the lose of their status in the family and the society which leads to utter abandonment, destitution, and dishonour.

According to Lasebikan (2001), a widowed woman in Africa faces oppression, suppression, affliction, neglect, suspicion and insults. She further contends that in the Yoruba culture, the believe is that most men do not die a natural death because the wives are always suspected of killing their husbands. Tei-Ahontu (2008) details that in the GA tradition in Accra-Ghana, no matter how natural the death of a husband may seem, there is always a cause of it and the widow becomes a prime suspect.

According to Daber (2003), in the Zulu culture, a widow is expected to sit on the mattress and cover her head and can only remove the veil if people around are not. This practice equals discriminations against towards women since widowers do not undergo same treatment. Similarly, Zulu culture does not allow widowers to sit on the mattress and their period of mourning is very brief as compared to women. Magwaza (2011) further affirms that in the Zulu culture, bodily appearance and the head shaving is an integral part of mourning. Women are expected to be dressed in black during the mourning period that lasts for almost a year, and during the first ten days of mourning a widow is expected to go to a stream for a bath as a way of removing bad luck and her room is then smeared with cow dung. Daber (2003), also stresses that in some communities amongst the Zulus, widowhood practices can go to extremes of not allowing the widow to use the family utensils, but is allocated her own as if she had some contagious diseases.

2.6.3.2 Widowhood Rites in South Africa

Literature on widowhood rituals and practices is quite replete now as compared to the past twenty years. Several studies examine widowhood rituals from different angels and most of them concur on how discriminatory and dehumanizing these rituals are. Manala's (2015) looks at and highlights the number of widowhood rituals that a South African widow has to undergo after the death of a husband. In her study, she links widowhood and Christianity and analyses the treatment that widows received especially from their closest family members as being against christian values. Manala also draws attention to the fact that South African society treats widows inhumanly which is against the spirit of Ubuntu. The plight of widows in South Africa was also a

key discussion in a Two-Day workshop organised by the NGO called Khulumani on 08 August 2011 in Limpopo, where widows across all provinces of South Africa, from urban and rural areas alike, took part in the discussion. They cited a number of cruel and unjust practices they are forced to undergo after the death of the husband (Khulumani support group), most of which have already been severally highlighted in this chapter.

2.6.3.3 Widowhood rituals in Kwa-Zulu Natal

The former Premier of KwaZulu- Natal, Mr. Senzo Mchunu commissioned a project in April 2015 to address the rights of the widows in KwaZulu-Natal. The process was carried out through dialogues which culminated to the Provincial Widowhood summit that was held on 4-5 September 2016 and attended by 450 widows from all parts of KwaZulu-Natal. The Summit explored different challenges that the widows are facing and these included:

Social and cultural issues

- (i) ukuphucwa komhlaba⁹
- (ii) ukuphoqwa ukungenwa¹⁰
- (iii) ukumeleka kwezinhlangano zabafelokazi emakhosini¹¹
- (iv) kanye neminye imikhuba ehlukekumezayo¹²

Legal

- (i) Education of widows by SARS on taxation
- (ii) Once off tax deduction before distribution (lump sum)
- (iii) Review of tax legislation
- (iv) Widows monthly grant

⁹ Land grabbing

¹⁰ Levirate Marriage

¹¹ Representation of widows in tribal courts

¹² Harmful widowhood rites

- (v) Prioritization of bursaries for orphans in the institutions of higher learning
- (vi) Amnesty on tax debts accumulated before 1994

Economic Empowerment

- (i) Recognition of widows as a special group by ring-fencing government tenders for widow-owned cooperatives and to set targets for the land to be bought for widows
- (ii) Training on farming

The hosting of this two-day summit was not in vain as it produced a plan of action where each government department was and is mandated to ensure implementation and enhance radical economic transformation for widows in the Province of KZN. The Department of Rural Development and Land Reform was tasked to ensure that land access by widows in the province of KwaZulu-Natal is accelerated and submit the progress report every financial year to highlight the progress and challenges on the implementation of the program.

2.7 Rights of widows in Africa in the context of International, Regional and National Protocols/ Agreements and Laws

2.7.1 The Rights

Rights are rules that each and every country uses to guide people on what people can and cannot do. These rules differ per country but each goes with a responsibility and obligation of protecting these rights from both the government and the citizens. Each country has a list of rights written down and enshrined in the constitution which is the highest law of each and every country. This obliges the citizens of the country to do as the constitution says and the government must not pass laws that are in conflict with the constitution. There are also laws that are specific on how people should be treated irrespective of their gender and those laws are called human rights. There are so many agreements that have been signed and ratified by different countries to ensure the protection of human rights. While I will list some of these agreements, for the purpose of this study I will only look at the agreement on women's rights.

- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Protocol to the African Charter on Human and People's Rights on the Rights of women in Africa

2.7.2 The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international treaty that was adopted in 1979 by the United Nation General Assembly. CEDAW is an international bill of rights for women with permeable and 30 articles explaining in details what constitutes discrimination against women. It has a clear agenda of how to end discriminatory practices against women.

In the Convention, discrimination is described as “Any distinction, exclusion or restriction made on the basis of sex which has an effect or purpose of impairing or nullifying the recognition and enjoyment or exercise by women irrespective of their marital status on basis of equality of men and women of human rights and fundamental freedoms in the political, economic, cultural, civil or any other field”. Countries that are signatory to the CEDAW are required to do everything in their power to stop women’s abuse and to make sure that women are treated equally as men.

CEDAW is a very critical tool used to advance land rights for women, as land is the most important resources for women’s livelihood and the realisation of gender equality. Studies have shown that most women depend on land for many things, including shelter, food security, and other necessities. So it becomes very important especially to single women who are household heads to own land to assist them in providing for their families. The right to own land by women is extremely important as it links with the realisation and achievement of many other rights. Land improves the socio-economic status of women as well as helps in the fight against epidemic diseases at a household level. The challenge here lies with the realisation of protecting women's rights, hence women are vulnerable to several other discrimination due to the lack of bargaining power that can easily be achieved by advancing their access to and ownership of land. Therefore, it is noted that:

- Land inheritance and ownership continues to follow patrilineal system especially in many African countries, where land is inherited through the male and a woman would only be given user rights through her male relative
- Widowed women through customary laws are not allowed to inherit land, and after the death of the husband widows become vulnerable to property grabbing by the in-laws
- If a woman is allocated land, it is usually a very small piece of land that cannot assist a woman farmer to even graduate to a commercial farmer. So, due to the lack of secure land rights for women, they end up being evicted and dispossessed of their land

The CEDAW, Universal Declaration of Human Rights, International Covenant of the Civil and Political Rights and the Protocol to the African Charter on Human and People's rights on the Rights of Women in Africa, are critical tools in ensuring that women have access to land and are not denied inheritance to the family land should the husband dies.

Globally, women work on land for the purpose of food production to sustain their families and communities and to also generate income that can cater for their health care as well as the health of their loved ones. Hence, it is critical to remove all hindrances and restrictions placed on women to access and own land. In most part of the African continent, women are not allowed to own land and their rights are only restricted to the secondary users which prohibit them from taking measure decisions. They cannot use land as collateral to obtain credit and most widows are still subjected to property grabbing and eviction by the in-laws. It is due to these factors that International Human Rights Law and the CEDAW in particular, have a critical role to play in tackling these issues to ensure that women's equal rights to land are protected and are well established in international human rights laws and standards ¹³

2.8. Identifying gaps in existing literature

Most studies on land inheritance by widowed women have been focused on how women are devalued and their rights to inherit disregarded through customary practices and how. So, these studies as reviewed above on widowhood are limited to practices and rituals and little attention

¹³ Preliminary study of the Human Rights Council Advisory Committee on the Advancement of the rights of peasants and other people working in rural areas

is paid to the role played by the Department of Rural Development and Land Reform in ensuring that the rights of widows to land inheritance are protected. This study therefore seeks to fill this gap by shifting the focus to include the critical role and responsibility of the DRDLR towards the protection of widows' rights to access and ownership of land through the implementation and domestication of land reform gender policies, especially in the rural areas with WWOSA in KwaZulu-Natal being the case in point here. It ascertains the meaningfulness of the partnership between DRDLR and other stakeholders in relation to land administration and distribution and examines relevant policies and legislation to ensure that there is a gender equitable sharing in land administration, distribution, inheritance, and ownership.

2.9 Theoretical Framework

Theoretical frameworks are crucial in every research as they assist in providing understanding on how the society functions, offers a deeper meaning on how a certain phenomenon came into existence, and assist a researcher to generalize on different phenomena and how these phenomena are related to each other (Ngomane, 2016). So, theory is crucial in any research study. When a researcher undertakes to conduct a research he/she is either assessing the validity of a theory in a deductive approach or constructing a theory using inductive approach (Asantemungu, 2011, Kitchin & Tate, 2000 in Hopkins: 2007). Theory as further explained by these authors is a set of explanatory concepts that are used to explain a particular phenomenon and without theory, there is no research (Creswell: 2014)

For this study, two theories - Nego and Legal Feminism - are used to gain a deeper understanding on the phenomenon and politics of widows' rights to access, inheritance, and ownership of land. These theories are also used to assist in the provision of new information on whether the implementation of the international treaties and specifically the South African Constitution have had any positive impacts in obliterating the inhumane practices and widowhood rituals that widows are subjected to after the death of the husband. So, the use of Nego feminism and Legal feminism in this study, builds on the fact that they are legislations involved to ensure that the rights of widowed women to inherit family land after the husband has died are protected and again there is a lot of negotiation that has to take place before land is distributed and allocated equitably irrespective of gender and the social status.

2.9.1 The History of African Feminism

The term feminism like all other English words is an import to Africa. The concept in its simple terms means opposing patriarchal systems that devalue women in relation to men. Feminism in its sense should be transformational and focus on ending patriarchal domination which is a root of all other oppressions (Hooks, 2010). The world we live in is dominated by politics and the belief that males are superior to females, hence men get preferences in many opportunities. This belief has a negative impact on the lives of women and their personal development because they are regarded as minors incapable of making their own decisions. Because of this domination, it has been argued that feminism should aim to liberate and eradicate all forms of domination (Hooks, 2010).

While referring to feminism as the new concept does not necessarily mean that there were no feminism movements before the term was borrowed, African women were vocal on fighting for women's rights and unfair patriarchal systems as early as the twentieth century. Some of the prominent African women who stood up for women's rights include Adelaide Casey-Hayford from Sierra Leone, Charlotte Muxeke from South Africa who founded Bantu Women's league, Hilda Sharaawi who established the Egyptian Feminist Union in 1923, and there are many other women who fought for emancipation of women in other parts of Africa like in Kenya, Guinea, and Angola. These women fought alongside their male counterparts for state autonomy and women's rights (Ramphela:2013)

Korany, Sterb, and Tong (1993) view feminism as consisting of two things, namely a theoretical paradigm and a movement. As a theory, it advocates and enhances women's emancipation in the world dominated by patriarchal values, and as a movement, it mobilizes women's emancipation and equality with regards to gender.

The subject of African feminism is of great importance to African women, as it provides interventions that are pro-African. The importance of using African feminism theories when dealing with African issues was further affirmed by Okome, (1999) who highlighted that Western feminism portrays African women as powerless and confused. African feminists also highlight the importance of using African feminism in providing pro-African interventions, since it would seem that Western feminism does not acknowledge the agency and potential of African women

(Nnaemeka, 2004) . African Feminism is critical of Western feminists' approach towards African Culture which considers African culture as in-human and barbaric. Neco –feminism which is part of African feminism offers an opportunity for the western feminists to learn from African women. It helps to implement interventions that are pro- African. This feminism is useful in this proposed study in providing Pro-African intervention as brought forth by Nnaemeka (2004).

In 1975-1985, the United Nations -solidified African Feminism, and as a result, more feminist activism and scholarship spread widely across the continent and the entire world. Since then, African feminism has expanded in policy, legislation, scholarship, as well as into the cultural realm. African feminism deals with both grassroots and intellectual activism such as poverty reduction, violence prevention, and reproductive rights in order to confront unfair patriarchal systems

2.9.2 Key Issues in African Feminism

There are seven key issues in African Feminism, but for the purpose of this study, the researcher will only focus on four issues that are relevant to women empowerment, namely patriarchy, race, tradition, and underdevelopment.

2.9.2.1 Patriarchy

African feminism pays attention to the ways patriarchal systems devalue women through law, tradition, forced ritual customs and traditions in order to keep women governed by men in both public and private domains.

2.9.2.2 Race

African women are not only affected by male-female imbalances, but there are also racial hierarchies and politics that come along with them. Hence African feminists' writings aim to reconstruct the roles and conditions that made both African men and women to be dependent on their colonizers in different ways.

2.9.2.3 Tradition

African history is marked by male dominance and usually women are devalued in relation to men. African patriarchal systems disadvantaged women in a numerous ways like the abusive and dehumanizing institution of polygamy, widow abuse, genital cutting, and women's lack of access to property and power in traditional society. African feminism does not seek to abolish or abandon culture but to create a conducive environment for both men and women within the society (Msimang, 2002).

2.9.2.4 Underdevelopment

Africa has most of the poorest countries in the world and meeting basic needs in those countries is a challenge. This has devastating effects on Africa's coping mechanism for HIV and AIDS which affects men and women disproportionately, while poverty affects women worst than men.

2.9.3 Nego Feminism

Nego feminism is one of the cultural specific theories regarding gender and women empowerment. The theory was developed by Obiama Nnaemeka after identifying a gap in the Western feminism. Nego feminism allows for co-existence and interconnection and interaction of thoughts and dialogue (Nnaemeka, 2004). She further describes Nego-feminism as a non-ego type of feminism, a feminism of negotiation, a feminism of compromise contending with the number of aspects of patriarchy in the continent and this kind of feminism deals with all those issues in an African way.

This study adopts Nego- feminism due to its emphasis on negotiation, especially as the study aims at providing harmony between constitutional and traditional practices that usually demonstrate tensions. At the end of this study, I provide recommendations on how best the two can work together for the protection of women's right to land inheritance. This theory befits the objectives of the study as the aim is to examine how well the DRDLR can partner with other stakeholders in ensuring that the rights of widows are addressed effectively through the negotiation of policies and cultural norms that stifle widows' access to land. The use of this theory will further assist the policymakers to be able to synergize democracy and tradition.

2.9.4 Legal Feminism

Legal feminism is the study of how legal discourse constructs various meanings of women and uncovers how these discourses are constructed by gender (Kennedy and Katherine, 1991; Rhodes, 1997). Kennedy and Katherine (1991) argue that legal theory poses a challenge on the assumption embedded in the traditional legal doctrine and make suggestions on how the law plays a role in women's subordination and the ways of changing and improving it to ensure equality. Rhodes (1997) looks at equality and difference within a legal context and highlights how women are not allowed to own property within patriarchal societies. It is against this background that the study uses legal feminism as a theory because it investigates equality and possible legislative intervention in the distribution and inheritance of land to the widowed women. As such, this theory is used in this study to interrogate how policies and laws guiding land acquisition are gendered, before identifying some possible interventions needed to effect changes that could enhance equality in the land acquisition process.

2.10 Conclusion

The chapter looked at the types of land ownership by women in general and how women especially in the African continent are devalued as compared to men. This was highlighted looking at the extent to which the brother in-laws grab the property as soon as a woman is widowed. The chapter further presented and discussed the theoretical framework of African feminism employed in this study for the seek of ensuring that African challenges are dealt with in an African way. It further highlighted how widowed rituals are used under the umbrella of 'culture' to perpetuate discrimination against widows and deny them their rights to inherit family land. The levels of education and the types of marriages contracted and how they enhance or reduce the opportunity for widow to inherit family land, was also looked at. In effect, the review of literature in this chapter focused on the discrimination and marginalisation that women, particularly widows, suffer through cultural and customary practices, and gaps in literature were also identified. The next chapter focuses on the research methods employed in conducting this study.

CHAPTER THREE

RESEARCH METHODOLOGY AND METHODS

3.1 Introduction

This chapter presents information about the research methodology and methods employed in this study. So this chapter discusses the research design, the delimitation of the study, study population, data collection and analysis methods, ethical consideration, as well as the method and challenges of the data collection process.

3.2 Research Design

According to Ngomane (2016), a research design is a plan that the researcher uses to identify and obtain respondents in order to collect data. In this study I used a qualitative research design since the aim of the study was to obtain the deeper meaning on the phenomena/ experiences of land inheritance for widowed women in KwaZulu-Natal and to understand the gendered politics that are involved thereto. Unlike the quantitative design that has a fixed meaning, qualitative methods allows the researcher to interpret a given *datum* and even socially interpreted it within the respondents' ambience. As opposed to quantitative design, qualitative design gives a good perception of those experiencing the phenomenon (Fox & Bayat, 2007).

3.3 The area of the study

The study was conducted in KwaZulu-Natal (KZN) which is one of the nine provinces in South Africa. The KZN province was created in 1994 after the merger of Zulu Bantustan and the Natal Province. According to the 2011 Census, KZN province is the second largest province after Gauteng and is characterised by a high rate of unemployment and most households are female-headed due to migration of men to Johannesburg or death because of the province's high rate of HIV infection (Dugger, 2009). The Province of KwaZulu-Natal has ten district municipalities which are mostly rural and one is metro. The capital city of the Province is in Pietermaritzburg under uMsunduzi local municipality, which is part of uMgungundlovu district.

The Northern part of KwaZulu-Natal, where this study was conducted is the home to the Zulu Monarchy - King Goodwill Zwelithini Zulu - and as a result, a number of traditional practices are observed in this part. Most of the land is owned by Ingonyama Trust¹⁴ and the King of the Zulus, Zwelithini is the chairman of the Trust. According to the Zulus, no one can own the land except the chief and land in the areas that are ruled by the traditional leaders cannot be sold.

The decision to choose the Northern part of KwaZulu-Natal as research area for this study was informed by the fact that the head office of WWOSA, which is the main focus of the study is located in Richards Bay and most members of the organisation reside around Richards Bay. However, the focus group discussions were conducted at Umuziwabantu Local Municipality which is under Ugu District Municipality in the lower south coast of KwaZulu-Natal. So, the focus group discussion was conducted away from Richards Bay where the respondents reside because of the need to also perceive how different regions and traditional leaders of the different regions react to the same issue of land inheritance by widowed women. This was also done to examine the extent to which they understand the constitution of the country versus the customary laws.

Table 3.3.1 The Number of Municipalities In Kwa-Zulu Natal Province and Population

MUNICIPALITY	CODE	POPULATION
Amajuba District Municipality	DC 25	531,327
EThekweni Metropolitan Municipality	ETH	3 702,231
Harry Gwala District	DC 43	510, 865
ILembe District	DC 29	657,612
Umzinyathi District	DC 24	554, 882

¹⁴ Ingonyama trust is a corporate entity that was established to administer the land that is traditionally owned by the king for the benefit of the Zulu Nation

King Cetshwayo District	DC 28	971,135
Ugu District	DC 21	753,336
UThukela District	DC 23	706,588
Zululand District	DC 26	892,310
UMgungundlovu District	DC 22	1095,865
UMkhanyakude District	DC 27	689,090

Table 3.3.1 above illustrates the number of districts and the population per district. The highlighted districts are those where this study was conducted¹⁵

3.4 Study Population

According to Barbie and Mouton (2001), a population is a total set from which the researcher draws the sample. The population for this study was the Zulu speaking widowed women who reside in the rural area of KwaZulu-Natal Province under the district municipality of King Cetshwayo. The study population was taken from the members of the Widowed Women of South Africa (WWOSA), which is an NGO that has its headquarters within uMhlathuze Municipality in King Cetshwayo District in the Province of KwaZulu-Natal.

3.5 Sample Selection and size

According to Barbie and Mouton (2001), a sample comprises of elements of the population that poses characteristics that are considered to be actual in order to be included in the study. Purposive sampling was employed for this particular study simply because the researcher used her knowledge of the population, its elements, and the nature of the research aims. Babbie and Mouton (2001) states that the benefits of purposive sampling are that people who do not meet

¹⁵ https://en.wikipedia.org/wiki/List_of_municipalities

the requirements are eliminated and it is less expensive as it involves lesser search costs. The initial participants in the study comprised of the Chief Director of KZN DRDLR Provincial Office, who is the overseer of all programmes that are undertaken by the DRDLR; the Director of Land Reform Program who is tasked to ensure equitable land sharing for people in KZN; two Traditional Leaders who are members of the KZN House of Traditional Council, and the President of WWOSA who is the founder of WWOSA. However, due to unforeseen occurrences, the Deputy Director for Land Reform in the province was interviewed instead of the Director because of his busy schedule and unavailability for an interview. Also, instead of the Chief Director of DRDLR in KZN, the interview was conducted with the Deputy Director for Legal Services who is responsible for policy implementation within the Department of Rural Development and Land Reform.

The final research sample therefore included twenty one widowed women who are the members of WWOSA and share the same experience of land rights issues; the President of WWOSA (who is also widowed); two Traditional Leaders; a Deputy Director for Land Reform in the DRDLR ; and the Deputy Director of Legal Services. The total sample size remained at twenty-five as initially planned. All the women interviewed had different experiences of customary practices such as patrilineal inheritance of land after the death of their husbands. So, the choice of this sample size of twenty-five was informed by Creswell's (1997) argument that 20 to 30 is a good number that can enable the researcher to reach a saturation point, whereby no more ideas emerge.

Policies and legislative frameworks from which the DRDLR draws its mandate from also formed part of the sample, which were obtained from the DRDLR registry office and the office of the Information Manager of DRDLR. The policies that formed part of the sample were the following: Customary Law of 2004, Intestate Act 81 of 1987, National Gender Policy Frameworks, the Constitution of South Africa, the Green Paper on Land Reform, and the Land Reform Gender Policy.

Customary law: This is one of the most important laws in the lives of people residing in rural areas. The law controls the important aspects of their lives like marriages, the right to inherit, property rights, and this law can also contribute to discrimination and vulnerability.

Intestate Act of 81of 1987: This act includes any part of an estate which is not willed or in respect to section 23 of the Black Administration Act of 1927¹⁶.

National Gender Policy Framework: This is a policy that outlines the vision of South Africa in its commitment to ensuring that there is an equitable share of resources across all sectors and that social cohesion is achieved¹⁷.

Constitution of South Africa: It is a supreme law of the Republic of South Africa, meaning that any law that contravenes or is in conflict with the South African Constitution should be abolished.

Green Paper on Land Reform: This is a piece of legislation that has clear socio-economic goals that are in line with the South African Constitution and are intended to redress the past wrongs that resulted from colonialism and apartheid¹⁸.

Land Reform Gender Policy: This is the policy that gives context to women's land rights in land reform, land redistribution, and the communal tenure.

These policies will be further explained in chapter four on the Policies and Legislative Frameworks that the Department of Rural Development and Land Reform draws its mandate from.

3.6 Data Collection Methods

3.6.1 Pre-testing: Focus group discussions

According to Braun and Clarke (2014), pretesting of interview guide is the most critical stage in a data collection process, given that it is a method of checking whether the questions workweather it gives intended results, and it is comprehensible to the research participants. I pre-tested the interview guide through a focus group discussion, whereby the widowed women who are also members of WWOSA were chosen as per the similarity of their experiences with

¹⁶ www.justice.gov.za/legislation/act/1987

¹⁷ <https://www.parliament.gov.za/storage/app/media/projectsAndevents/2015-womens-roundtable-discussion/docs/National>

¹⁸ www.lssa.org.za/upload/documents/LSSACOMMENTSONGREENPAPERLANDREFORM

the chosen sample. The only difference was that the twelve women who participated in the pretesting of interview guide were from Ugu District, which is one of the District Municipalities in the Province of KwaZulu-Natal and is 350 Kilometres from King Cetshwayo District where the twenty-one respondents reside. The focus group discussion with women took about two hours. Another informal focus group session was held with the traditional leadership during their three-day capacity building session, where I requested permission from the organisers of the workshop to go through the interview guide with the traditional leaders for a period of an hour. The session ended up exceeding the time allocated because of the interests that the traditional leaders showed on the topic of land access by widowed women. Some of the leaders even suggested that I should consider interviewing more than two traditional leaders when conducting the in depth interview, so as to obtain rich data that truly reflects what is really happening on the ground in terms of land inheritance by widowed women in rural areas.

3.6.2 Data Collection process

Data was collected using in-depth interviews, focus group discussions, and sourcing out information from documents that address and discuss land and inheritance as well as widowhood practices across the African continent. Documented international treaties were perused to gather more policy information. According to Moeng (2011), an interview schedule is a tool that guides the interview process. Generally, interviews involve constitutes of a process through which information flows from the world of everyday behaviour and opinion into the world of research. The data collected for this study was subdivided into two categories, namely primary and secondary data. Primary data included policy documents and data gathered through in-depth interviews and focus group discussions. The secondary source of data comprised of data derived from the existing literature publications and other documents that were relevant to the study's topic.

3.6.3 In-depth Interviews

According to Daber (2003), in-depth interview is the one on one method that a researcher uses to collect the qualitative data from the respondents. This method of data collection is characterised by a set questions that each respondent has to answer. However, a researcher might have a follow-up question when clarity is needed.

The study interviewed twenty-five research participants who comprised of the two key officials from the DRDLR namely; the Deputy Director for Land Reform Programmes in the DRDLR, Deputy Director Legal Services within DRDLR who is an overseer of the implementation of any legislation within the Department, twenty-one (21) widowed women (inclusive of the WWOSA President) who are the members of WWOSA, and two traditional leaders. An interview guide was used as the tool to collect data from these participants. The in-depth interview sessions with these respondents captured information based on the ten questions that each of them were asked. Carrying out the data collection process through this method enables and assisted me to collect not only rich data from the participants, but also understand the phenomenon of widowhood practices and land inheritance.

3.6.4 Documentation

There is varied literature on land access and ownership in Africa. This is because land is a highly political issue, especially in South Africa where remnants of colonisation effects and the passing of the 1913 Native Land's Act (Ngomane, 2016) continue to be challenge the country even two decades after democracy. Data was sourced from the policies and legislation documents from which the DRDLR draws its mandate. These policy documents oncluded the Constitution of South Africa, the Green Paper on Land Reform 2011, Gender Policy for Land Reform, Customary Act of 2004, Intestate Act of 2009 and the reports of the organisations that deal with the issues of land rights, like the Landless Movement of South Africa (LAMOSA) and Food and Agricultural Organisation (FAO). Reports and other documents from the DRDLR and legislation from the Department of Justice were also consulted. Documents are a cost-effective method of collecting data and provide a good source of information (Ngomane, 2016).

The Department of Rural Development and Land Reform granted me tpermission to use its strategic documents as a point of reference and this enable the production of relevant content for this study as well as the link with the research findings. Therefore, the use of documents was very important for this study because I viewed and used the information therein to also address the research questions, attain the research objectives, and critically analyse its content to arrive at the recommendations provided at the end of the study.

3.7 Data Analysis Methods

qualitative data analysis is the process that brings together order, structure, and meaning to the raw data that has been gathered during data collection (Du Ploy 2012). Content analysis was used to analyse the existing literature, document information, and primary data collected from research participants through interviews. The interviews were recorded using audio recorder and the information was later transcribed onto summary sheets and stored on the computer. Also, I compared and contrasted the data received from different respondents

3.7.1 Document analysis

The study also use document analysis. This method of analisis helped me to gain an understanding of the phenomenon that was being investigated as contained in the policies and legislative frameworks that the DRDLR uses to ensure gender equitable land sharing and protection of the rights of women in relation to land access and inheritance. The use of documents has been critical in the study and has in part contributed to the formulation of the policy recommendations.

The study further sourced information from journals, books and other publications on land access by women and widowhood rituals and practices, which constituted the most critical part of the document analysis.

3.8 Credibility and Transferability

3.8.1 Credibility

Credibility in a qualitative research refers to a degree to which the researcher presents the actual meaning of the research to the participants and shows that the findings of the phenomenon that is researched demonstrate a true picture of the fieldwork (Shenton, 2004). Credibility addresses internal validity of the study which ensures that the study measures what it wants to measure. To ensure credibility of the study, I pre-tested the questions before the actual in-depth interviews with the actual sample. This was done to ensure that the correct operational measures are incorporated. I also ensured that all twenty one women that were interviewed were widowed woman and members of WWOSA.

This was done to assist the researcher to be able to pick up some differences in widowhood and land inheritance practices that the widows are subjected to, and to investigate if widowhood practices and land inheritance is the same or guided by the locality where a widow stays.

3.8.2. Transferability

Transferability refers to external validity and is concerned with the extent to which the findings of the study can be applied to other situations (Shenton, 2003). Though the study focused on a small group of widowed women who are members of WWOSA, the findings can be applied in a wider population. This is because widowed women, especially in rural areas, are exposed to almost the same treatment when it comes to inheriting land after the death of the husband and undergoing harmful rituals in order to be integrated back into society.

3.9 Ethical Consideration

The study adhered to the ethical considerations and requirements as stipulated by the University of KwaZulu-Natal. I received an ethical clearance letter from the University of KwaZulu-Natal authorizing me to continue with the study. Also, the gatekeepers' permission letters were received, granting me the go ahead to use the selected population as the sample for this study.

Three gatekeepers' letters were issued to me from: the Chief Director of the Department of Rural Development and Land Reform allowing me to use DRDLR as one of the focus of the study; the president of WWOSA, authorising me to draw the sample and collect data from her organization; and the chairperson of the Traditional Leaders to allow me access to the two chiefs interviewed for this study, respectively. It is very important to consider ethics in research as it makes the study to be reliable and can be used for future researches.

3.9.1 Voluntary Participation and Informed Consent

Participants were informed of their voluntary participation and were made aware that they were allowed to withdraw at any given point of the interview should they feel uncomfortable to continue participating. The researcher also translated the English version of the consent form to the language of the respondents so that they would understand its content and context before

signing the consent form. The participants were also notified that they would not be remunerated for participating in the study, since it is strictly for academic purposes. It is important to have a voluntary participation in the research as this contributes to obtaining rich data as the participants will not withhold some information that will contribute positively to the study that is conducted.

3.9.2 Privacy and Confidentiality

Although the researcher used the actual name of the participating organisations, Department of Rural Development and Land Reform and WWOSA, when it came to data analysis and presentation of the research report, pseudonyms were used for the research participants. Maintaining privacy and confidentiality during research is critical to ensure that the lives of the participants are not in danger as a result of what transpired during interviews as some questions were related the inhumane treatment that widows are subjected to by the members of the same communities they reside in.

3.9.3 Protection from harm

The subject of widowhood and land inheritance is a sensitive issue. As a result, some of the widowed women became emotional and began to cry as they to share what they went through for the first time. As a researcher, I managed to refer those who seemed to be traumatized to the social workers for psycho-social support.

3.10 Reflexivity – The process of Reflection

Reflexivity in a research refers to the process where a researcher examines his or her position as the researcher and the relationship. It is where as a researcher you need to examine your assumptions and conceptions on the phenomenon that is being investigated.

Being a gender advisor within the Department gave a researcher access to the information that someone who would have been regarded as an outsider might not have a privilege to access. The challenge came when the respondents were not able to separate between the role of the researcher for academic purposes and her role as a gender specialist within the Department of Rural Development and Land Reform, hence the researcher had to explain and assist the respondents to understand these separate roles and that the research was purely academically,

although the researcher will take some of the recommendations from the field to her day to day work.

Reflexivity is very important in qualitative research as it focuses on how meanings are produced and reproduced within a particular phenomenon and each interview is an interactive meaning-making (Finlay, 2002).

3.10.1 Positionality

It is important to determine the position of the researcher in any study, seeing as it determines how ethical the findings will be. A researcher can be an insider or an outsider during the study, but each position has benefits and challenges and different impacts during the study. Positionality during the study can either be good or strong depending on the lenses and the belief that the researcher has for the phenomenon that is being investigated. According to England (1994) the position of the researcher during the research is important as it contributes to the understanding and deeper knowledge of the participants and the phenomenon that is being investigated. In this study, my position as an insider in the department assisted me to access some of the information that an outsider would not have accessed. Also, having undergone the personal experience of widowhood that subjected me to harmful rituals and denied land inheritance helped me to relate with the experiences of the widow participants in this study. My Positionality and understanding of the topic made the participants to be willing to share their experiences since I had established a rapport with them before carrying out the study. My personal experience as a widow also had a positive impact on how I looked at widowhood in relation to human rights and gender equality and I could also relate easily with some of the experiences that the widowed women had gone through following the deaths of their husbands.

3.11 Referral Protocol

Some women raised some challenges that were not related to land inheritance and access. The researcher referred them to the relevant authorities for assistance.

3.12 Fieldwork Challenges

There were some challenges that I encountered during the data collection and these included the following:

- Some originally targeted key respondents were not available for one on one interviews. I resolved this challenge by interviewing the deputies in the place of the senior managers who were unavailable for interviews and also consulted departmental reports to source some information, which I felt the participants' omitted or were unable to cover. However, the use of the reports did not mean that I was deviating from the methods because sourcing information from documents and using documents analysis were also highlighted as parts of the methods used to attain the objectives of this study.
- The participants could not separate my role as a researcher from my position and work with the DRDLR. To address this, the gender specialist for the department and I had to have a session with the participants to explain that the research is not part of a gender specialist post for the department.

3.13 Conclusion

This chapter outlined the research design and methods that the study employed, that is, the qualitative research methodology. The chapter also clarified reasons for using these research methods and designs in the data collection process that was conducted in King Cetshwayo District Municipality in the Province of KwaZulu-Natal. It discussed the research population and sample, the methods used to collect and analyse the data, credibility and transferability of data, ethical issues, reflexivity, as well as the fieldwork challenges. The next chapter presents the research findings and analyses.

CHAPTER FOUR

THE EXPERIENCES OF WIDOWS IN RELATION TO LAND

INHERITANCE

4.1 Introduction

This chapter presents the findings on the varying experiences of widows in relation to their rights to access and own land through inheritance. The chapter is divided into three sections that focus on the traditional and cultural norms related to land inheritance for widows, violations of the inheritance rights of the widows, and challenging traditional norms and discrimination. Traditional and cultural norms governing land inheritance by women in general can be traced back to the apartheid era in South Africa. The discrimination and denial of the land inheritance rights of widowed women is exacerbated by traditional practises that regard women as minors incapable of owning or controlling land in their own right.

There is vast literature readily available on traditional practices and violations of widow's rights with respect to land inheritance. In traditional societies, land inheritance governed by customary laws usually exclude women as consideration is centered on male lineage and the custom of a widow benefiting only because she has a son (Kimani, 2008). Maluleke (2012) further confirms that women are considered as second class citizens who cannot own land in traditional communities, and the possibility of a widow inheriting land is greatly dependent on the relationship she has with her in-laws and male relatives.

Different studies have shown that women are subjected to different experiences and different levels of inhuman practices soon after the death of their husbands. In South Africa the challenges of land ownership by women are traced back to the apartheid era where women faced double discrimination in the arena of land ownership and control, further made worst by the traditional practices which often overlooked them as compared to men. This mal-treatment was often compounded by further abuse from family members who in most cases evicted the widow from family land, and this continue to be the case today.

Aiming to understand and analyse these experiences of widows, the in-depth interviews was conducted with the widows. From their recounts and narratives as elaborated in this chapter, the study found that widowed women not only facing abuse from immediate family members and relatives, but also from the community and traditional leaders.

4.2 Traditional and cultural norms related to land inheritance for widows

Literature reveals that the control and access to land by women is a critical factor for achieving livelihood and improving quality of life of widows and society in general. Ngomane (2016) articulates that land is an economic tool and it helps to give women the bargaining power to be able to negotiate for a meaningful place within the household as well as the community. It is this kind of negotiation that is stressed in Nnaemeka's (2004) nego feminism theory in the African feminism, where she stresses the importance of living in harmony for both women and men by negotiating the space within the community to benefit all human beings equally. In patriarchal societies, women are not allowed to own property, which goes to show that even though the theory of negotiation attempts to provide a conducive space for compromise and negotiation, challenges still abound. And, when it comes to the legal theory, it conflicts with traditional doctrines and norms that discriminate and treat women as inferior to men. African feminists, Nnaemeka in particular, focuses on how patriarchy is used to marginalize women both in public and in private spheres. As such, she advocates for Africa people to solve African challenges in African way by negotiating with the aim of building social cohesion within the communities.

Following the interviews conducted with the research participants, I found that some of them were and are in accepting of how things, in keeping with the culture and tradition that when a husband passes on, a widow cannot inherit the family land. Most of the respondents highlighted that in the Zulu culture, a husband does not own land property because culturally, ownership remains with the father in-law, usually referred to as *umuzi kababa*¹⁹. This cultural belief that the land remains a property of the forefathers poses a challenge to widows, in that, they are never allowed to inherit the land after the death of the husband. Therefore, rights to inheritance and

¹⁹ Umuzi kababa means the father's property meaning that even if a son is married the land or property remains the property of the forefathers which makes it difficult for a widow to inherit that property once her husband passes on

landownership remains patrilineal, so women are often suffer the brunt of such cultural practices and in the event of being accorded land, their entitlement remains at the level of user rights only (Oduyoue, Kanyoro and Musimbi: 2005). Through the interviews, it was established that in patrilineal patterns of land inheritance, a widow is never regarded as part of the family of her husband, hence she cannot become an heir as confirmed in the statement below.

“When my husband passed on I knew that all property will be controlled by my in-laws because I am not part of their lineage and inheritance in my village is per lineage” (Nonzwakazi).

This statement concurs with literature which says African history is highly male dominated and women are devalued and in most cases, they face inhuman abuse especially in the hands of relatives with regard to issues of land ownership and inheritance. If a widow wants to protect her land inheritance, she must agree to be inherited by a close relative of her late husband through a levirate²⁰ (Msimang, 2002).

4.2.1 Control of land by in-laws

In most African countries, women are not viewed, positioned, or assigned as owners of land though they may be accorded just the rights to cultivate land (Kevane and Gray, 2008). Cohen (2006) indicates that in patrilineal society widowed women lose their land after the death of the husband because of the tradition and custom that their inheritance is entitled to her husband, his male heir, and male relatives. Should a woman inherit in the absence of a male heir, she is challenged by other male relatives. This practice compels widowed women to rely and be dependent on their in-laws and in some cases a male child who is named heir. Inheritance, as stated by Cooper (2010), is the most critical mode of property transfer across the continent of Africa and the redistribution of assets to the rightful heirs can have both negative and positive impacts depending on the method used in conducting the inheritance. In her study titled *“Women and Inheritance in Sub Saharan Africa”*, Cooper asserts that when assets are shared, some groups become more vulnerable than others due to prejudice that is involved in the inheritance practice, especially inheritance through patrilineage. When it comes to inheriting family land in

²⁰ Levirate marriage is a cultural social practice whereby a widow is required to marry a male relative of her late husband, usually the brother.

a patrilineal society, widowed women and orphaned children are particularly vulnerable and prone to lose their rights. This control of land by through parternal line calls for the negotiation of space between the widow and her in-laws, then again, this will depend on the relationship the widow had with her in-laws before the death of her husband. The study found that if the relationship has not been good when the husband was still alive, negotiations will not work as the in-laws will want nothing to do with the widow.

In some cases having a son does not count in a widow's favour if she does not have a good relationship with her in-laws. The in-laws tend see a widow as their property who cannot take her own decisions and control everything that is rightfully hers. It is important to note that traditionally, women have always and continue to be denied rights under customary law that is based on the principle of primogeniture which only allows males to be heirs.

Under customary law, land rights are generally communal and not owned by an individual This means land is shared by members of a specific community and this makes it even harder for a widow to contest inheritance and control of land. However it is critical to note that customary law is fluid and it changes over time, therefore it is not surprising to find out that different communities may have different interpretation of land and property rights as well as different method of allocating it (Beninger, 2006). There is also the perception that in Africa, death does not end the marriage. Widow remains married to the deceased until her death (Ogolla, 2014).

This is demonstrated in the following excerpt by one of the participant's narratives:

“As soon as we received the news of my husband's untimely death, my father in-law told me that he will be taking over the control of land where my husband and I were ploughing. He said the land belongs to the family and the plot was allocated to my husband. Now that he is gone I cannot control the land as it is not allowed traditionally” (Thulile).

The control of inheritance by the in-laws is well documented as it is a practice that is very common across Africa. This view also resonates in Msiyazviriyo's (2016) research on the violations of property rights in Zimbabwe, where a 57 years old widow recounted her widowhood experience as involving not only the pain of losing her husband, but also forfeiting to the in-laws the field she had cultivated for years and being left with nothing.

4.2.2 Widow inheritance- especially the younger widows

Literature presents that most widows in Africa are forced to marry their late husband's relatives in order to secure their inheritance. Should they refuse the practice of levirate, they are evicted and denied user rights to family land.

The term levirate derives from the Latin word "*levir*" which means a husband's brother, hence levirate marriage refers to the practice where a widow is taken by one of her late husband's brothers to raise children for him (Ogolla, 2014). Jemphrey (2011) also describes levirate marriage as a cultural practice wherein a widow is inherited by the brother of the deceased husband. Further distinction is made of levirate marriage from two cultural practices, which are, widow inheritance and a ghost marriage. Meanwhile, widow inheritance and levirate marriage is often used interchangeably. As states by Jemphrey (2011),

"Levirate is only applicable when children born of the second marriage are attributed to the woman's first husband, whereas ghost marriage means providing a wife and offspring for a man who died without having married."

This practice is burdening and sordid when a widow is still young as compared to women who lost their husband later in life. During the field work, I discovered that young widows reported more issues of the forced re-marriages to their late husband brothers as compared to middle aged and the senior citizens. Zimbili and Thulile relate their experiences of what happened following the death of their husbands and their eventual eviction and rebuff of their rights to inherit their late husbands' lands.

At the age of 28 I lost my husband, and we had a sugarcane farm which was our source of income. My husband died and as I was still on the mourning mattress, my in-laws told me that the only way I can still control the land or protect my inheritance is for me to marry my late husband's older brother and if I am against that family tradition I must just pack my things after the funeral and return to where I came from. I was so shocked and disturbed because all this happened even before

my husband was buried, I then decided that I will leave everything and go back to my maternal home and try to start afresh (Zimbili).

My husband passed on when I was 35, he had land and was also a taxi owner. He was murdered during factional fights and I was blamed for his death. The traditional leader supported the family when they wanted to force me into marrying one of my brothers in-laws and they said it is culture and the only way to make sure that my land inheritance and my children are well protected as the tradition does not allow women to own or control land in the Zulu culture. I did not agree to this because for me, marriage should be out of love and not be based on the so called traditions that are discriminating of women, as a result I was forced to leave everything with my children and go back to my maternal home with nothing, that is the reason I decided to join WWOSA to be able to associate with other widows that shares the same challenges as myself and learn from them while we are producing some vegetables to sell and take care of our kids (Thulile).

These excerpts from the young widows reveals that young widows are more prone to forced marriages as compared to older ones. This in my view actually raises some concerns and the question whether marrying a husband's relative is really a way of protecting the widow's inheritance or just some kind of jealousy from the in-laws that a widow is young, might get someone else to marry and take-over of whatever inheritance that left behind?

The study also found that widows between the ages of 56 to 61 years of age and above, are not forced to re-marry within the family after the death of their husbands just in order to protect their rights to land inheritance. These findings concur with what is documented in literature and history about the Yoruba culture that older widows were and are not allowed to take another husband even if they are yet to give birth for their deceased husband's child(ren) (Olanisebe & Oladosu, 2014).

In fact, there are similarities in cultures across the African continent and the idea of levirate marriage is part of most customs. The levirate marriage is still widely practiced especially in the continent of Africa and for it to be valid, each party must consent to the union. If one party is forced, it becomes unconstitutional and the widow is protected by the law should she want to

challenge the practice (Maluleke, 2012). However, Maluleke (2012) further establishes that in the Eastern Cape and KwaZulu-Natal, widowed women are forced into this practice and if they refuse, they are banished from their homes and forced to forfeit their inheritance. From the perspective of a researcher, I believe that both in-laws and the widow need to carefully negotiate whether a widow is willing to enter into a levirate marriage or not once the husband is death. Should a widow not be willing she must not be forced since there is no guarantee that a levir will take a good care of the widow. Besides, documented literature shows conflict between this practice and the Constitution of the country.

This study established that while levirate marriages are unconstitutional, they remain culturally accepted and some widows end up agreeing it due to the fear of violence and not because they fully consent with the practice. Going by the laws of human rights, widows are also humans with rights that should be and are protected in the Constitution like all other humans. Acknowledging this shows that there is a need to integrate culture and legal reform into land inheritance for widows, thus negotiating how such a culture can be navigated to empower instead of marginalize women is very important. According to Nnaemeka (2004), women in Africa, especially in rural areas must be empowered so that they are able negotiate and overcome cultural practices that prevents them from inheriting land after the death of their husbands.

Drawing from the experiences of the research participants, I found that some widows were in agreement with levirate marriage because of the believe that once you are married as per the Zulu culture, it becomes a taboo to return to your maternal home because you no longer have a place there. Interviewing widows made me to look deeper into the levirate practice and question why it is supported by some women; maybe the problem is not with the practice? The issue my point of view is the lack of integration and negotiation between the cultural and the legal. Should women be allowed to participate in choosing a levir and those who do not want to practice be allowed to, this cultural practice can be accepted.

“I should have never gone back home after the death of my husband, I should have stayed and agreed to be married to the levir my in-laws wanted me to marry because I realise now that things are not well for me, I think the ancestors are punishing me for going against my culture” (Hleziphi).

From the viewpoint of a women and a researcher, I am of the opinion that the practice of levirate marriage must be negotiated so that those that are not against it can enter into it, also a levir must not be someone who is already married to avoid conflict. Should levirate be practiced in a more consultative way, it will not be seen as contravening the constitution because the decision to participate or not will rest on the widow.

4.2.3 Spiritual beliefs associated with widowhood

There are a number inhumane widowhood rituals and practices that the widows are forced to undergo as part of a cleansing process. This is done so that a widow can be integrated back to the community because she is regarded as being unclean or having bad omen after the death of her husband (Manala, 2015). According to Daber (2013), Africans believe that death brings misfortune to family members and the need to cleanse after the passing of a family member becomes critical. The Zulus use water with herbs to wash hands after the burial, but for the widows, the cleansing goes beyond the washing of hands and is very intense to a point that it can be detrimental to the health of the widow. The cleansing ceremony for a widow is usually organised by the in-laws and they set an expected time and a proper ‘way of cleansing. This is done to remove the stigma of death (Daber, 2013). I agree with Daber (2003:23) when she states that:

“In most cultures widowhood is associated with women and is imbued with a lot of patriarchal biases resulting from male dominance”.

Several studies ²¹ have examined the subject of widows and widowhood rituals. In the practice of some of these rituals, a widow is expected to externalise her grief, and failing to adhere often results in her being accused of killing the husband (Daber, 2003:64). Surprisingly, most widows see the rituals as something that important and as a way of showing some respect to their departed husbands, aside the idea of their reintegration into the community (Daber, 2003:78). This is demonstrated in the following excerpts:

My husband died in winter and I was forced to go to the running river in the dawn before anyone woke up and bath with cold water to remove the bad omen. The old

²¹ Robert Nuckols (1982), Hilz (1978), Dillenburger (1992), Korieh (1996), Mensah (1999), United Nations Publication (women,2000), Auché (2001)

women told me that if I do not do that I will have some bad luck all my life and the cold running water will help me to be clean and be integrated back to the community". (Tholani)

After twelve months of wearing black mourning clothes, my in-laws slaughtered a goat and told me to use the offal (inside) to bath so that I can cleanse myself from the bad omen of widowhood, my whole body was stinking of the goats inside but I had no choice. For me to be integrated back to the society I had to do it, it is part of culture if you do not do it, things will not be well with you" (Zanele).

In my village it is believed that in order to be cleansed after the death of your husband, you need to have sex with a mad man to remove the bad omen, some widows are doing it but for me it seemed not realistic and I did not do it" (Nomfundo).

I had to smear my whole body with the offal and then remove with cold water, and all this had to be performed outside the homestead so that the bad omen will not befall my household again" (Thobile).

The study found that all twenty one respondents had undergone similar cleansing ceremonies during their period of mourning. They believed that the rituals help them to be integrated back to the community. Even though they are aware of the fact that the rituals are sometimes very harsh, they felt that it is necessary to undergo them so as to supposedly avoid living with bad omen all their lives. Further discussions with the president of WWOSA of her thoughts about the element of widows being regarded as bad omen revealed that:

Widow cleansing is a known practice that has been practiced since centuries, it has good intentions though the results might be negative. If you did not undergo a cleansing ceremony as a widow you can cause the whole community to have bad luck. In some villages there is a dedicated village cleanser who is responsible to cleanse all widows so that they can be re-integrated back to the community, but the only challenge nowadays is the prevalence of HIV and AIDS and other sexual transmitted diseases that may be passed through the sexual cleansing. For me I feel

cleansing should be a widow's choice it must not be imposed to those widows who are against the cleansing rituals but I cannot say we must totally do away with it as it is part of our culture as Africans and is not only limited to South Africa only. It is practiced across the continent. My suggestions will be to say we only need to try and negotiate for the ones that are not harsh and not imposing any danger to widowed women "(Nomfundo).

There is a well-documented literature on the negative impact of widow cleansing to the well-being of the widow. There are different kinds of rituals that are performed to cleanse the widow. It is also believed that if the widow is not cleansed, her bad omen will befall her children and the whole community. A widow who has not undergone cleansing is not allowed to inherit land and other assets from the late husband, cannot proceed with the levirate marriage, is stripped of everything, and forced to go back to her maternal home (Lacey, 2003). Adding to this, Durojaye (2013) states that widowhood practices are often dehumanizing and demeaning to widows and may endanger their health. These practices actually perpetuate gender inequalities and are unethical because they are an infringement to the women's rights to dignity which is one of fundamental rights recognised in almost all the international and regional human rights instruments (Durojaye, 2013).

The study further found that these cleansing rituals are imposed by older women in the community who themselves still have husbands or are widows. The behaviour of the older women towards the widows speaks to the post structuralism feminist's theory of power, which pinpoints that the element of power is forever present anywhere there are human relationships. In the context of this study and beyond, it was noted that power is not always exerted only by the men to suppress the women, it can also be used by women on other women because of the dominant position and authority they have over the other at each or any particular point in time. .

The fact that widowhood rituals and cleansing ceremonies are mostly imposed by women on their fellow women, was an interesting lesson learnt in this study. The men were not mentioned as being dominant voices when it comes to cleansing ceremonies. This particular finding constitutes an angle of discourse that can change the manner in which society views or perceives power relations between men and women. As a researcher, this observation also let me to resolve that African theoretical feminist frameworks should not be seen as applying to males

only but also to women because we tend to focus more on men to women violence and forget that violence can also be exerted by women to suppress other women.

4.2.4 Having male children

There is unequal positioning of male versus female child in a patriarchal society that is sustained by culture and certain practices. This can be traced back from biblical times where a girl child was not allowed to inherit land and other property since it was believed that she will get married and have access to her husband's land (Obioha, 2003). Even before colonial rule, women were marginalised when it came to issues of land rights, and ownership was through lineages, clans, male headed households, and control by male leaders. The right to use land could only be obtained from male leaders and only sons were the rightful heirs to family land (Kimani, 2008).

Following the interviews with the widows, this study arrived at the finding that having a male child did not help them to secure their land inheritance. While I cannot conclusively say that the sex of the baby does not play a significant role in protecting the land inheritance rights of the widows, the reality maybe that the significance depends on the area and the level of patriarchal behaviours. Out of twenty one widowed women interviewed, eleven had male children but the fact of having these preferred sex of children did not help them to secure or protect their land inheritance rights.

Zikhona, one of the participants recounted her traumatic experience where the land was seized by the in-laws following the death of her husband and irrespective of the fact that she had a son who was almost reaching adulthood to whom the land could have been transferred.

“When my husband passed on I had a 16 year old son, but that did not stop my in-laws from chasing me from a family land. I was not even given a small plot to produce food for my kids but was forced to return back to my maternal home and leave everything that my husband and I worked hard for. This was a huge setback as I was forced to start everything from scratch; our culture does not cater for someone who is returning from the marriage, you are regarded as an outcast who has failed her duties as a woman. This was also abuse and trauma on my children as they

faced insults from the neighbours because they were/are the kids of umabuya emendweni²².

Tholani, another participant's pronouncement that having a son does not protect women from land disinheritance resonated with Nomfundo's record of her experience that:

“When my husband died, my son was three years old and my husband owned a sugar cane farm, but after his death everything changed. I was forcefully removed from my husband's home and my brother in-laws even threatened to kill me if I do not return to my maternal home. They accused me of plotting to kill my husband because I wanted inheritance and said they were going to make sure that I do not inherit anything as I am a witch and a witch must go back to where she came from or she will face consequences. I decided to stay and mourn for my husband but all changed when I was attacked one night and nearly raped. So I decided to go back home with my four children with the youngest being three. I tried to report the matter to the traditional leaders who did not help me much because they said according to culture I am not entitled to inherit any land from my late husband since a woman cannot own land irrespective of having a son who will grow up and take over.

4.3 Consequences of being widowed

A number of studies have highlighted the plight of widowed women in most of Africa after the death of their husbands. In most patriarchal societies, the gender supremacy over the rights of women, especially regarding inheritance, has a negative impact on women's livelihood and wellbeing and is against their constitutional rights. The unequal power relations and dehumanizing practices that a widow encounters during the mourning period, especially in rural areas, often leaves her in a state of destitution (Magwaza, 2001; Cross & Hornby 2002).

The study found out from most of the respondents that widowhood almost often comes with the problem of their forced evictions aside the grabbing by the in-laws and other relatives. Most land is grabbed while the widow is still mourning because it is during that time that she is most

²² Umabuya Emendweni is a Zulu term which is usually used to discriminate against women who have come back from the marriages either through divorce or widowhood, this term implies that a woman is a failure who could not keep her marriage against all odds, a man is never referred to as umabuya emendweni if he has failed in his marriage

vulnerable and is not allowed to go to tribal court because of the believe that she will leave *isinyama*²³. More so, the study observed that violence, destruction of property and displacement are some of the vulnerable experiences women encounter during widowhood, as captured in the narratives below.

“The community harvested my potatoes without my consent and told me that a widow cannot own land or inherit land and I must go back to where I came from because I was married to another village. I tried to go and report to the local chief and I was denied entrance to the traditional court because they believed that I will pass on the bad luck to traditional court since I was still wearing my mourning clothes” (Thabsile).

“After the death of my husband I was forced to go back to my maternal home since my husband did not have a house of his own and we were staying with the in-laws. He had a plot he was farming that was a source of income for our kids. I was told that that plot belongs to my father in-law and I cannot inherit it since it is a family property. When I arrived at my maternal home, my brother denied me inheritance over family land as he said I am no longer part of the family as I am married. He told me that all the family land belong to him as he is the first male child in our family, though I am the eldest I cannot inherit because I am a woman” (Thembelihle).

When my husband died, my in-laws took his sugar cane farm and I was told that I cannot inherit the farm since according to customary inheritance is true male patrilineal, And because of my disability I suffered multiple abuse as my in-laws accused me of feeding my husband with the love portion because there was no way their sibling could marry a disable women”(Zuziwe).

My husband owned a very big land that we used for commercial farming to provide for our family, and I was working with him in the farm. Things changed on the day he was murdered, I was accused of having planned his killing because I want to

²³ Isinyama is a bad omen that is usually associated with widowhood and the widow needs to be cleansed before she is integrated back to the community

inherit all the land to myself and because of that false accusation my in-laws grabbed all my land whilst I was sitting on the mattress mourning for my husband. Even the traditional authorities could not help as culture forbids a mourning widow to enter the tribal court because you are unclean at that period” (Tholani.)

The heartrending stories of these widows are one of many untold stories and sufferings that a widowed woman have to endure after the death of the husband. As a widow you suddenly become a nobody as you are forcefully removed from the place you called home, left destitute and lost in the process of mourning and cleansing rituals. While most of the activities imposed on widows by their in-laws, relatives and society contradicts the constitutional provisions which promote human rights and the rights to own property, the study found that in rural areas, most women are not accorded these human rights. . A widow remains the property of the in-laws and culturally they have a right to take decisions on her behalf.

4.3.1 Violence and Abuse

It is a sad truth that when a husband dies, a widow does not only lose a husband but also her dignity, freedom and the right to inheritance. This phenomenon is prevalent in the African continent. Literature as well as the finding of this study recorded that a number of human rights violations encountered by widows. Inheritance of property and land are greatly embedded in the notion of culture in Sub Saharan Africa that it should follow a male lineage because women are considered inferior as compared to men (Maluleke, 2012 And, since the focus of this study is on the violation of widows rights to land inheritance, the study found during the interviews that most widows identified brother in-laws as the main perpetrators of the violence and abuse that are directed at widows. In some few cases a widow might be abused by her biological children, especially the first son who is culturally regarded as a sole heir of the father’s assets. Thandazile recounts:

“I was abused by my own biological son who felt that I had to hand over everything to him upon death of my husband, my son took everything and I was left destitute and could not provide for my other children”.

This form of abuse is often overlooked in literature and the focus is more on the abuse and violence that a widow is suffered from in-laws and the community. The case of Thandazile and

many other widows are in line with the documented literature that widows inhumanely even by family members (Angela, 1999). Thandazile further related that:

“My brothers in law will come and violently knocked at my door around 1:00 am, and they will be calling me all sort of names, I reported the matter to the local Chief who did not even entertain my case because according to tradition I was supposed to get married to one of my brother in-laws in order for me to protect the inheritance for my children, I did not want to marry my husband’s relative which is why I decided to go back to my maternal home because I was scared that one day the brother in-laws will rape me”. I then left everything my husband had owned and returned to my family as the authorities did not do anything to help my situation” (Thandazile).

From the perspective of a researcher and a women, I believe the laws need to come out very strongly on the inheritance issues and clearly state that no child will inherit or control the late father’s land whilst the mother is still alive. By virtue of being the spouse of the late husband, a widow should become a primary heir unless the will says otherwise. Also the children of the deceased husband should be treated equal irrespective of their sexes, because equality provides a sense of belonging that is important to individual and societal growth Further narrations of the widowhood experiences of violence and dispossessions are related below.

“When my husband died I was moved from the big house we were staying in with my husband, they told me that the next heir must stay in the house since the house belongs to my father in-law. As if that was not enough I was also dispossessed of the plot we used to farm in when my husband was still alive. I was left with nothing, no shelter and no land to produce food for my children. This was followed by verbal abuse and threats as my in-laws were accusing me of having a hand in my husband’s death so that I can inherit the house and the land. This was the most painful period of my life as I was mourning for my husband’s death I also had to deal with the false accusations, and the whole community was treating me as a witch and women who are still with husbands do not feel comfortable to see me talking to their husbands, and some husbands do not want me to be friends with their wives as they think I will

teach their wives witchcraft. I felt disgraced and decided to go back to my maternal home though conditions are not good as me and my kids are forced to stay in a one roomed house with my sister who is still waiting for her RDP house, and being widowed you suddenly becomes a target for the criminals, as the house I am sharing with my sister was broken into just after few weeks of my arrival and they took everything, we thank God they did not rape us” (Zikhona).

“After the death of my husband, my own son suddenly changes to something else. He was violent and confiscated everything that my husband owned; he threatened to kill me as he thought I have killed his father” (Ziphi).

“I was beaten up by my in-laws and was accused of killing my husband” (Thobile).

4.3.2 Dispossession

Dispossession is a traditional practice that follows the death of a husband especially in the African continent. This is a practice that refers to land encroachment where a widow forfeits most of her assets including land and household items to the in-laws (McPherson, 1962). This practice has negative impact on the socio-economic status of the widow as she is left with nothing to provide for her children and the in-laws neither provide for her even after confiscating the land (Women2000, 2001). In the context of such experiences, the theory of legal feminism needs to be strongly enforced, seeing as widows are usually not protected by laws, both customary and statutory. The challenge with the laws, like statutory laws, is that they are usually very good on paper than in actual implementation especially because traditional practices supersede all other laws in patriarchal societies.

The study found that the extent of dispossession varies if the widow is suspected of having a hand in her husband’s death the harassment and the level of dispossession is intensified and can be very violent. Although some of the widows experience some form of dispossession it was not as severe as the ones that are suffered by the widows suspected of killing their husbands. The study further derived from the discussions with the widows that some husbands do not own any property or land while alive as they are accommodated within the family property. In the event

of the passing of such a husband, the wife is forced to go back to her maternal home especially if she still intends to date or even re-marry outside the family. This was the case of Zikhona, one of the research participants, who was moved from the family big house she used to stay in with her late husband because the house belonged to her father in-law and not her husband.

“My late husband did not own any land or property, we were staying in a big family house and upon his death I was told to vacate the house for the next heir to move in. I was given a one room house to use with my children and this was disgracing to me and I decided to move back to my maternal home and I am waiting for the RDP house (Zikhona).

“When my husband died I decided to go back home since I was still very young and wanted to be in relationship and my in-laws were not going to allow me to marry someone else whilst living with them. Things were not really easy when I returned home as my brother did not allow me to use the family house as he said I was no longer a member of the family and returning from marriage is disgracing the family as it is not allowed in the Zulu culture” (Zimbili).

“When my husband died, my in-laws took his sugar cane farm and I was told that I cannot inherit the farm since according to the type of marriage I am married in, inheritance is through a male. My rights were further violated due to my disability and was accused of bewitching my late husband and tricked him into marrying me since according to my in-laws I was not a woman enough to get married because I am disabled” (Zuziwe).

“My husband owned a very big land that we used for commercial farming to provide for our family, and I invested a lot of my time working with him in the farm. Things changed on the day he was murdered, I was accused of having plotted against his murder so that I can inherit his land and because of these false accusations my in-laws grabbed all the land and I was forced to return to my maternal home with nothing. I could not even report the matter to the traditional authorities as I was still in the mourning clothes and according to culture a widow is not allowed to go to a traditional council/ tribal court as it is believed that she will leave her bad omen

there as she is regarded as unclean, having a three year old son did not help me to inherit my late husband's land (Tholani).

Though widow's rights to inherit are protected under civil marriage act, the in-laws often contest the inheritance in traditional courts, claiming that they are the real blood relatives to the deceased not the widow.

Despite these violations to inherit, widows are still not mentioned in most of the critical policy documents that talk about women and poverty alleviation. Most policy documents treat women as homogenous groups and are not explicit in dealing with different categories of women with different needs. Take South African constitution for instance, though it provides for equal rights in property and inheritance for both men and women, practically it becomes very difficult to claim those rights for widows or women in general.

Laws are not protecting of widows, thus their vulnerability to the violations. Widows are robbed of their inheritance of land and this leaves them destitute such that they cannot provide for their children. Zikhona recounts her sad story and experience, stating:

“When my husband passed on, my in-laws told me that I cannot inherit his land as I am not part of the family. I felt that my right to inheritance was being violated since I had invested a lot on that land when my husband was still alive and this was the only source of our income. I was left with nothing to provide for my kids. I tried to take the matter up with a local authority and I did not get any help as I was told that traditionally a widow cannot inherit from her husband because they are not blood related ”(Zikhona).

There are many cases that are similar to that of Zikhona across Africa as widows rights are not taken into consideration especially by those in power. Similar concerns were raised during a two day summit that was organised by the office of the Premier in Kwa-Zulu Natal where 450 widows raised a number of issues on rights violations that they have encountered in their communities like obstacles in claiming property rights, low levels of awareness of their rights, and cruel community customs. These findings were in line with the reviewed literature. During the interviews, Nomfundo related that:

“When my husband was killed during political unrest in KZN, I had a three year old son and was five months pregnant. My husband was a sugarcane farmer. After his death my in-laws forcefully removed me and grabbed all family land my husband had owned. Even my son could not inherit his late father’s land as I was accused of having a hand in my husband’s death and I was nearly raped” (Nomfundo).

4.3.3. Displacement

According to Women2000 (2001), widows of all age groups are vulnerable to all sorts of violation of which displacement is one of them. Majority of African widows suffer displacement soon after the death of a husband. These widowhood victims are forced to seek refuge with the maternal relatives (Manala:2015). The fate of the widow is often decided by her in-laws after the death of the husband and this is usually based on the nature of the couples’ relationship, whether the marriage was customary/ traditional or civil union (Abdellaoui, 2015). The study established the family of a deceased husband often evicts the widow and her children from their marital home back to their maternal home. Such displacement has a negative impact on the livelihoods of widows and their children as they are forced to life afresh, amidst the many other challenges that comes with being displaced. One of these challenges is poverty, which often cause the children of the widows to drop out of school and work as cheap labourers and the girls becomes vulnerable to rape and early marriages (Abdellaoui, 2015).

“When I was forced to go back to my maternal home after the death of my husband, my children had to drop out from school because I was not from the same village as my husband and it was towards the year end examinations. There was nothing I could do; I had to live for the safety of my children and mine. My in-laws told me that me and my kids had no place in that household and they do not have a place to keep witches as they accused me of killing my husband” (Tholakele).

It is because of this unfair displacement that most widows become victims of all kinds of abuse because society knows that they have no one to protect them. During the interviews, three widows stated that after their displacement, their houses were broken into and valuable things were stolen. Compelling the widows to go back to their maternal home is not always the best

decision as they also encounter abuse from the brothers who are not willing to accommodate them as they believe that they are no longer part of the family. Tholani recounted:

“When my in-laws forced me to leave my marital home, I had no other place that to go back to my maternal home, my brother told me that I was no longer part of the family as I was married and I cannot return home because all land and properties are now belong to him as he is the heir and as a daughter I am not allowed to inherit anything from my biological parents” (Tholani).

As earlier noted in this study, patriarchal societies tend to discriminate against women, and the experiences of the widowed women interviewed for the purposes of this study speak to this.

4.4 Widows agency in challenging traditional norms and discrimination

During the interviews, I found out that some widows were able to fight for their rights by challenging traditional norms and discrimination based on their level of education and the type of marriage they had previously contracted.

4.4.1 Level of education and economic independence

The level of education seemed to play a critical role in how the widows challenge the traditional norms and discrimination. During the interviews, I found out that the widows who have a certain level of education were able to challenge the traditional stereotypes on the issue of land inheritance after the death of the husband. Nomfundo, for example stated:

“when my husband died, the family wanted to take everything and all this happened when I was still seated on the mourning mattress, it was then that I decided I will not sit in that mattress I had to stand up for my rights. I challenged them in court and definitely the court ruled on my favour as I was married in a civil union and had a marriage certificate. That is one of the reasons why I decided to retire from my job as a school principal and decided to establish an organisation that will fight for the rights of the widows” (Nomfundo).

Nomfundo has a four year BA degree in Arts, and because of her level of education she was able to fight for her rights to inherit all husband’s properties. This is indicative of the fact that

education plays a critical role in creating self-awareness in all human beings. However, the study also found that the widows with low levels of education were more exposed to social stigma and deprivations as compared to educated widows. The sad story of Yandisa is a true reflection of the suffering that widows with very little or no education suffer in the hands of the in-laws.

“My husband passed after a very long illness, when he was sick I was a sole care giver for him since his family did not want to help as they accused me of witchcraft. Before my husband got sick he was working in Johannesburg and used to come home once a year, life was good and I was respected in the community. Things changed drastically when he died, whilst I was still on the mourning mattress my in-laws took over, they were the ones who went to my late husband’s work to fill some forms and they told me they were assisting me since I cannot read and write. I did not have a problem since all documents were written in English; even if I wanted the documents I was not going to understand a word. It was after the funeral that I learnt that in actual fact, my in-laws were claiming all my inheritance and I could not challenge them because my marriage was not registered and I have never been to school I do not even know where to start if I want to fight for my inheritance” (Yandisa).

The impact of such inhumane treatment of widows is also hard-felt in the economically. Zodwa explained recounted her experience thus:

“My husband was a sole breadwinner and after his death my children had to dropout from school since I had no money to pay for their education, I was left destitute with six children to feed with the youngest being three years old” (Zodwa).

4.4.2 Type of marriage contracted

The type of marriage contract entered into by the widow with her late husband plays a role, in that,, it gives the widow ammunition to fight traditional discriminations that are related to land inheritance. In the old customary marriage, a woman was regarded as a minor incapable of inheriting land unless she was represented by a male relative.

However the amended customary marriage of 2004 of South Africa protects and gives widows the rights to inherit land/property should the husband dies. But this is not the case as the widow

is made to believe that she is a bonafide property of the in-laws and even if the husband is no more she cannot take any decisions for herself without consulting the in-laws. As earlier noted in the literature chapter, death in most African societies does not end the marriage, given that the widow is usually expected to fulfil the obligations towards her deceased husband by participating in traditional practices (Jemphrey, 2011).

The relationship between a widow and her in-laws is also considered a very critical factor, especially if the woman was married customarily. This is because, the rulings of whether a widow should inherit land or not is often based on the testimonies that are given by the in-laws regarding whether marriage rites were completed or not. In most cases the in-laws will not testify to the marriage and would discredit the widow because of their own interests and plans to confiscate or inherit the land of their deceased relative. During the interview session, I found out that fifteen out of twenty one widows were married under customary law and most of them were vulnerable to land disinheritance because their marriages were not registered and their in-laws were using that against them.

“When my husband died, I was forcefully removed from my home and my in-laws told me to return to my maternal home and live everything behind as I was married in a customary union. When I arrived at my maternal home I endured so much abuse from my brothers because they said I had no place at home anymore because they have accepted a lobola²⁴. I suffered double discrimination, both from my in-laws and my siblings just because my marriage was customary and it was never registered at home affairs” (Tholani).

The abuse suffered by widows in customary marriages are more severe compared to those married in civil union as recorded by Nomfundo and Thulile that:

“When my husband died, we were married in a civil union and in community of property, my in-laws tried to take everything and they were claiming that I am not a rightful heir to my late husband’s estate. They did not succeed because I had to

²⁴ Lobola in Zulu referred to a bride price which is in the form of cash or cattle which a prospective groom pays for his bride

challenge them in court and I had a marriage certificate to prove it. They left me alone and did not bother me about my inheritance again” (Nomfundo).

“I was married in a customary marriage and we did not register the marriage, I could not get a son and my husband was forced to have an extra marital affair as he was looking for a son, after his death my in-laws disowned me and supported her girl friend since she had sons”(Thulile).

4.5 Conclusion

This chapter explored different experiences of the widows in relation to land inheritance in the province of KwaZulu-Natal in South Africa. It was found that women lose their dignity in various ways after the death of their husbands and forfeit their rights to inherit land left behind by their husbands. The chapter also found that having a male child does not always guarantee that a widow will not face abuse and dispossession after the death of the husband. Even though some widows had male children, they were still maltreated by traditional leaders and the in-laws, and forced to enter into a levirate marriage in order to continue enjoying family protection.

This chapter highlighted the plight of widows after the death of their husbands. It also asserted based on research finding that the level of education seemed to play a critical role in how the widows challenge the traditional norms and discrimination and that widows who had a certain level of education were able to challenge the traditional stereotypes on the issue of land inheritance. In addition, the chapter established that the type of marriage contract entered into by the widow with her late husband plays a role, in that, it gives the widow ammunition to fight traditional discriminations that are related to land inheritance.

The next chapter looks at available constitutional provisions and legislations that speak to the subjects of human rights, gender equality in land access and allocation, land reform and land inheritance. It also presents research findings on the role of the Department of Rural Development and Land Reform in implementing land reform and gender policies.

CHAPTER FIVE

THE ROLE OF THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM IN IMPLEMENTING LAND REFORM AND GENDER POLICIES

5.1 Introduction

This chapter explores available constitutional provisions and legislations that that specify and focus on the subjects of human rights, gender equality in land access and allocation, land reform and land inheritance, including the protection of widows rights. The chapter also uses the theory of legal feminism to examine the gains and the gaps in South African legislation and presents research findings on the role of the Department of Rural Development and Land Reform in implementing land reform and gender policies.

5.2 Background of Land Reform and Legislation in South Africa

At the dawn of democracy, the South African government also inherited a skewed land system from the apartheid government, which was characterised by extreme gender and race-based inequalities. South African history catalogues that the land reform question in South Africa had from the very onset been a highly political and contested topic and a tool for oppresseion and several forms of injustices. Today, the land reform subject is at the center of the country's political and socio-economic debate.

However, the history of land dispossession did not begin with the enactment of the Natives Land Act of 1913, it dates back to the 17th Century. Land dispossession initially began with the annexation of territory and with the passage of time, proclamations were made by the colonial and apartheid governments to dispossess African people of their land through the passing of laws. So, the Natives Land Act (No. 27 of 1913) set in motion a process that saw the removal of thousands of black families from their land. These families also got stripped of their homes, livelihoods and their dignity and were forced to relocate to poorly planned and poorly serviced townships. Sol Plaatjie encapsulates this experience thus: “awakening on Friday morning, June

20,1913, the South African native found himself not actually a slave, but a pariah in the land of his birth”(Plaatji,1916).

In effect, the passing of the 1913 Land Act affected women more than men. This is because women had to take care of the families since their husbands had migrated to work on the farms of the white people and in the mines and this marginalisation also disoriented many family structures. It owing to this discrimination and marginalization of the black South African population that the democratically elected government of 1994 committed to redress in accordance with the relevant laws to abolish inequalities in land ownership.²⁵ There are numerous reforms that took place before 1994 to ensure that the right to own land is equitably shared in South Africa. In 1992, the African National Congress adopted a land policy that promoted equality in land sharing and ownership for both men and women. Also the Rural Development Programme (RDP) recognised the rights of women to own land. South Africa, as a member of the international community was and remains further obligated to address women’s inequitable access and right to land by two international developments, the first being the Fourth World Conference on Women which took place in September 1995 in Beijing. During this conference, the Ministry of Land Affairs committed to take legislative and administrative measures to give women and men equal rights to economic resources including access to ownership and control over land and other properties like credit facilities, natural resources and appropriate supporting technology. The second was the United Nations’ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by South Africa in December 1995. Article 14 of this convention recognises rural women as a group with special problems who should be empowered to participate in, and benefit from rural development. The convention draws attention to the fact women make a significant contribution to the economic survival of their families, which includes unpaid labour and subsistence farming. It further stipulates that rural women must be able to participate in development planning at all levels, have access to adequate health services, receive training and education, have equal access to loans and credit for farming, marketing and technology, receive equal treatment in land and

²⁵ www.drdlr.gov.za

farming reform – including plans for resettlement as well as enjoy adequate living conditions – especially housing, sanitation, water supply, transportation and communication²⁶

5.3 International, regional and national provisions for land inheritance by women

South Africa has ratified international agreements to ensure that the country is committed to gender equality and women empowerment as well as protection of women's inheritance. In 2010 the United Nations issued a statement highlighting that the denial of widows their rights to inherit family land is still practiced in 45 African countries. Internationally, this was framed as a global concern that continue to resurface despite the signing and adoption of the Universal Declaration of Humans Rights since 1948 (Namubiru-Mwaura, 2014). Also, the CEDAW and Beijing declaration compel member states to ensure that women have access to economic resources including land and right to inheritance.

The CEDAW was adopted in 1979 and came into force in 1981, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified by South Africa in 1995 and acceded to the optional protocol in 2005. CEDAW is regarded as an international tool that aims to ensure gender equality and women's rights. Article 14 of the Convention recognises rural women as the special group with special problems to be empowered and to participate in and benefit from rural development. Hence, this study employed the theory of nego feminism as a framework that aims to also empower rural women in a way that is related to their day to day struggles and and compliment both culture and the constitution. There are notable conflicts in implementing CEDAW because of the following reasons:

- In many countries, women do not have equal legal rights to own or use land and often women are restricted to secondary land rights and they hold their rights through a male family member

²⁶ United Nations Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW, CEDAW in South Africa, National Institute for Public Interest Law and Research, Pretoria, 1995

- Under customary law, widowed women are not allowed to inherit their deceased husbands land and they are subjected to property grabbing by the in-laws
- In cases where women have access to land, they usually have smaller parcels which are of poor quality as compared to men.

The use of nego feminism in this study is key in addressing the afore-mentioned challenges, in that, its application can be used to create a conducive environment where we negotiate how culture and legislation can be integrated for the benefit of women. Articles 14 and 16 of the CEDAW are more relevant in case of the protection of widowed women's rights to own land. Article 14 specifically deals with rural women and highlights the obligation of the state to ensure that women have access to agricultural credit and loans, whereas article 16 obligates the state parties to make sure that women have equal property rights in relation to marriage, divorce and death. This compliments chapter two of the Bill of Rights of the South African Constitution which is based on the premise of equality and humans rights, which has called for an end to discriminatory family law. However, South Africa still faces some challenges in implementing CEDAW due to the fact that in some parts of rural South Africa, women are still regarded as minors and are not allowed to own or inherit land. This is resonated Thokozani, one of the widow participant's experience.:

“According to tradition women are not allowed to inherit. After the death of my husband I knew I had to let my brother in-law to control the land my late husband was farming. I did not have any problem because this gave me security to still enjoy protection from my in-laws even after my husband was no more. However, a problems started when my brother in-law now wanted to get married because it meant my children were now in danger of losing their inheritance” (Thokozani).

The experience of Thokozani reveals the conflict that exists between the international laws and the South African Constitution. While the constitution compliments CEDAW in promoting and protecting human's rights, customary laws, though maybe with good intentions, end up discriminating against women in respect to severl cultural rights like widowhood rights.

In article 21 of the CEDAW, the rights to property are emphasised as critical in ensuring that women earn livelihoods for themselves and their families. The article also strengthens the right to land for vulnerable groups, especially women. Also, the Beijing Platform for Action (BPFA) and its Protocol which resulted from the Fourth World Conference on Women held in Beijing in 1995, advocate for the full rights to inheritance and land ownership. It recognises that women are facing numerous barriers to full equality because of factors like race, age, language, culture, religion and/or disability.

5.3.1 Continental Legal Framework: Southern African Developing Countries Level

5.3.1.1 African Charter on Human and People's Rights

The African charter was adopted in Nairobi in 1981 and it came into force in 1986. The charter aims to address the gaps that existed in international human rights instruments. Looking at the context of nego feminism, the assertion of Nnaemeka (2004) that Africans need to sort their problems in African ways, aligns with the charter aims to integrate international norms and African values, thus the African charter. The charter also puts emphasis on ending discrimination against women as stipulated in international treaties.

5.3.2 Legal frameworks underpinning land reform and gender equality in South Africa

5.3.2.1 South African Constitution

In 1996 the democratic Republic of South Africa adopted a Constitution that is founded on rights and equality. Non sexism and non-racialism are the founding values and section 9 confers the rights to equality. Equality here means the full enjoyment of rights and freedoms when it comes to land rights, it means that the government must take proactive measures to ensure that women's rights to own and inherit are protected. Section 25 of the Constitution conceptualises access to land as a basic human right which must be equitably shared and enjoyed by both men and women. The Constitution sets out the following frameworks for land reform:

- The State must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on equitable basis (Section 25(5))

- A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (Section 25 (6)).
- A person or community dispossessed of property after June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress (Section 25 (7)).²⁷

5.3.2.2 1997 White Paper on South African Land Policy

The Land Reform policies are still guided by the provisions of the white paper on South African Land Reform policy of 1997 (Lahif, 2008). The South African government has recognised that land ownership and distribution is a source of conflict which was based on racial distribution that favoured white minority as compared to the majority of black people. This is one of the reason the government had to introduce a number of legislations after 1994 to address the skewed distribution of land, hence the birth of the 1997 white paper on land policy in South Africa. This policy has four folds, to redress the injustice of the past, foster national reconciliation and stability, underpin economic growth, and improve household welfare and alleviation of poverty. The then department of land affairs introduced three programmes to implement the 1997 Land Policy, which are Land redistribution, Restitution, and Land Tenure.

Though the white paper prioritizes women as a priority group, the policy fails to accommodate different groups of women; it treats women as a homogenous group and does not focus on widows as special groups that are more vulnerable when it comes to land sharing. The white paper focuses on equitable land sharing for commercial farmers, of which, there are very few women that are commercial farmers. This is because most of the women involved in agriculture practice a subsistence farming and therefore do not control land for the reason that the land belongs to their husband and they are dependent on them. It is stated in the white paper that the government seeks to outlaw discrimination against women as does chapter two of the South African Constitution.

²⁷ 1996, The Constitution of the Republic of South Africa, 1996 Section 25 (5-7)

In conducting this study, I observed that most our legislations are very good on paper, but as a country we face the challenge of implementing and domesticating well the legislations. This is the case with the White Paper on Land Reform wherein though it specifies that women must be prioritised in land distribution, the reality on ground says otherwise, given the numerous discriminations women continue to face in the arena of land access and control especially in rural areas. In my opinion, the land policy must formalise the right to land access for women. Formalising will, to an extent, help address the problem where women's rights to land are still linked to male relatives; where widows are more vulnerable in customary land sharing and inheritance even though they may have been cultivating the land with the husband; and where women's rights are still secondary to that of the men (Arends, 2009).

It is also important to mention that the ill treatment faced by widows was one of the key points of discussion in the 2009 State of the Nation Address, where the former President Mr Jacob Zuma addressed women. Also, a two day widows' summit that was facilitated by the KZN office of the Premier in 2015, pinpointed that women become more vulnerable to poverty once their social status changes, that is, from married to widow

5.3.2.3 National Gender Policy Framework of South Africa

South Africa through the office on the status of women, developed a national gender policy framework to outline its vision for gender equality and women empowerment as stated in the Constitution. The National Gender Policy framework outlines the guidelines that need to be followed to ensure that Constitutional provisions are implemented as stated. The policy further emphasises the importance of collaboration between public and private sector. Having this policy in place is a way of showing commitment as a country that women empowerment and gender equality needs to be addressed both at a strategic and practical level. The policy lays a positive foundation for both government and NGOs to function at a conducive level and for the establishment of instruments like gender machineries which are tasked with the implementation and monitoring gender indicators. The national gender policy outlines numerous historical factors that are prohibiting women from accessing and controlling land. These include that fact that:

- Women's land rights are still limited and insecure and lack of information about land rights further hinders women's ability to access land;
- What rights women hold are threatened by the negative attitudes of some service providers such as the chiefs, the rules and practices of customary law, and the patriarchal households and community relations;
- The ability of women to claim land entitlements is variable and depends to a large extent on social status and the goodwill of male partners and relatives;
- The laws of inheritance in which sons have tended to inherit land from their deceased fathers, sometimes leaves widows [and daughters] without rights of tenure;
- Inheritance rights are still limited by customary practices. Even when women can inherit land, they may have to forfeit control of it, usually to male relatives;
- The power and dominance of traditional systems often deny women their rights to represent themselves in land claims;
- Pilot projects under reform programmes have not always included women. Thus, women usually have less information than men on the procedures for accessing land;
- Women do not have sufficient access to agricultural resources such as land, credit, technology, marketing and other information that would promote their contribution to agricultural production;
- The role of women in the agricultural sector is likely limited to being labourers and subsistence farmers rather than commercial farmers; and
- There is not enough capacity building targeted at women to help them increase their participation in land reform programmes and projects.

These afore-mentioned factors that prohibit land access by women are in line with the finding of this study that most of the widows are denied inheritance of the family land due to the fact that inheritance is through male relatives. Traditionally, widows are not allowed to represent

themselves in tribal courts as it is assumed that they are or have a bad omen. In ensuring commitment and implementation of the national gender policy, the Department of Rural Development and Land Reform has developed a sub directorate on Land Reform Gender Policy and Implementation. The role and functions of the sub directorate are discussed subsequently in section 5.5 of this chapter.

5.3.2.4 Land Reform Gender Policy of 1997

The then Department of Land Affairs developed land reform gender policy which was adopted in April 1997. The aim of the policy was to operationalize the chapter two of the South African constitution and to translate the broad objectives stated in the White Paper Land Reform Policy into action. The Land Reform Gender Policy is a critical tool for the department as it assists the department to identify factors that prohibit women from gaining full access to land ownership and control. These include power relations, social practices, discriminatory customs, and legal restrictions. The Land Reform Gender Policy also managed to stress that women and men's needs are not similar and every initiatives that seek to empower both women and men must address their needs differently. The policy also highlights the importance of a multisectoral approach and partnership with NGO in initiatives that seek to empower women, as the Department cannot work alone. What the policy failed to address is the fact that women are not homogenous and their need for land should not be treated as such. It also failed to address the needs of the widows as a separate group that needs more attention in the distribution of land because they are usually negatively affected by changes in their social status. The land reform gender policy is also not translated to operational plans of the directorates that are tasked to distribute and allocate land. There is no integration between the policy and the customary law of succession and this means that women in rural areas are not protected under the policy as the main focus, since the targets are commercial farmers, of which, very few women are able to compete at that level for lack of skills in agriculture.

5.4 South African Gender Machinery

Discussing the element of gender machineries, the Nairobi Forward Looking Strategies of 1985 noted that "appropriate government machinery for monitoring and improving the status of

women should be established where it is lacking. So, a machinery should be established at the highest level of government and should ensure adequate resources and commitment, as well as authority to advise women on the impact of all government policies. Such machinery can play a vital role in enhancing the status of women, inter alia, through the dissemination of information to women on their rights and entitlements, through collaborative action with various ministries and other government agencies, and with non-governmental organisations and indigenous women's groups." After lengthy consultations and deliberations by the South African government, a National Gender Machinery was formed as a mechanism to ensure that the country achieve its international, regional and constitutional commitments on gender equality and women empowerment. At a global level, South African gender machinery is one of the best practices, though implementing gender commitments still remains a challenge at country and community level. Women are still subjected to unfair patriarchal practices. This was confirmed by the state, looking at the manner in which access to land and inheritance by the widows is administered. Most traditional leaders still hold on to the old customary practices that regards women that marginalize women and disregard their rights. Thandolwethu related:

"After the death of my husband, my brother in-law took my land and the family supported him since they said I cannot be able to inherit land because I am a woman, I went to the tribal court to report and they did not allow me access as I was still wearing my mourning clothes and they said should they allow me to enter the tribal court's premises I will have to pay a cow to the Induna to cleanse the premises of my bad omen. I then had to leave without being assisted as I do not own any cows and I did not have money to buy the cow" (Thandolwethu).

The department is represented in the Provincial machinery which is chaired by the office of the Premier. However, the work of the provincial machinery is not without challenges because most reports are not submitted on time and even though the department has a target of 50% land allocation to women. This target is not often met as women are disadvantaged when it comes to producing collaterals when applying for land because most of them are not credit worthy.

The rationale behind establishing machineries was a positive step to ensure that gender is achieved. But this is not happening practically and even level of gender focal points is not senior

enough to hold other branch heads accountable when the set targets on women empowerment and gender equality have not been met.

5.5 The role of the Department of Rural Development and Land Reform in implementing land reform gender policy

To show its commitment in implementing the land reform gender policy, the department has set targets to acquire land for women within its two major programmes of land reform, and these are Land redistribution and Land tenure. In 2009, the department further established a gender unit which is based at a provincial level and participates in the provincial gender machinery. The department also work with NGOs who share similar vision as the department.

The Department of Rural Development and Land Reform was established in 2009 by then President of South Africa, Mr Jacob Gedleyihlekisa Zuma's administration. In his State of the Nation Address in 2009, he emphasised that the Government will not rest or falter as long as there are still people in the rural areas who cannot make a decent living from the land they live in. He further mentioned that even though the Department of Rural Development and Land Reform is mandated to ensure holistic development for people in rural areas, this should not be a silo approach, hence partnership with other stakeholders is critical. It is because of this mandate from the ANC which is the ruling party in South Africa that the Department works closely with other partners who have interest in rural development and land. The Department was then mandated to develop a Comprehensive Rural Development Programme (CRDP) and this required a fresh approach to rural development which meant more emphasis on partnerships with civil society and other government departments. The Department developed an effective stakeholder liaison strategy which is supported by most stakeholders in the land sector and this strategy seeks to promote partnership and empowers local government and communities including vulnerable groups.

Apart from the strategy the Department also has a framework for Intergovernmental relations guidelines for effective integration with other government departments. The Department employs the following three prolonged strategy to ensure that it achieves its mandate and objectives of agrarian transformation, rural development and land reform.

Agrarian strategy: involves the sustainable use of natural resources, cropping and food security.

Rural development: this strategy involves improved economic structure and improved social infrastructure and land reform which deals with the pace at which land is redistributed and access by previously disadvantaged people through 30% redistribution of previously white owned agricultural land. It also involves reviewing of land reform approaches and products through Land Redistribution for Agricultural Development (LRAD), Settlement Production Land Acquisition Grant (SPLAG) and Pro- Active Land Acquisition Strategy (PLAS), for greater effectiveness and relevance to the Comprehensive Rural Development Programme (CRDP). During the interview with one of the key informant from the Department, he mentioned that the Department of Rural Development and Land Reform has nine branches that are responsible for different functions which seek to achieve the mandate of the Department as a whole, and these are:

- Land Redistribution and Development (LRD)
- Land Tenure & Administration (LTA)
- Spatial Planning and Land Use Management (SPLUM)
- Rural Enterprise & Industrial Development (RID)
- Deeds Registration
- National Geomatics Management Services
- Corporate Support Services (CSS)
- Financial Services

The branches perform different duties and functions towards the fulfilment of the Department's mandate. The key informants from the department indicated that the department has a separate directorate called land tenure which deals with land rights and ensures that beneficiaries have security of tenure, most especially for farm dwellers as the department is not responsible for communal land that falls under Ingonyama Trust Board. Also within the department, there is a

critical office that deals with the registration of title deeds. To my disappointment this office is only centralised at a provincial level which means that it is not accessible to the widows residing in rural areas where I conducted my research, an area where most of the widows were denied the right to inherit land because they did not have title deeds. The following statement resounds the difficulty that widows are subjected to if they want to get a title deed:

“It is very difficult to get a title deed since the office is located in Pietermaritzburg and you need to have close to R1000 transport money if you are going there, this becomes a problem to most of us as we are not working and we also do not have money to pay the lawyers for deeds registrations, I wish the DRDLR can decentralise deeds registrations or at least send someone once a week to assist us in rural areas to register our properties so that we will be protected from illegal evictions and property grabbing once our husbands have passed on” (Nomfundo).

There are many other widows across the province of KwaZulu-Natal who are experiencing what Nomfundo related above and as a result they are dispossessed of land because they do not have title deeds and cannot legally contest it because most traditional leaders are still using the old customary law which denied women the right to access land (CGE, 2015 KZN Summit).

The land reform gender policy is not explicit about the protection of the right of women to inherit land. Its only focus is to ensure that the department achieve the 50% target which was set after 1994 stating that out of the total hectorage that the department buys. The 50% must be allocated to women and that is only for commercial farmers of which very few women reach the stage of commercial farming since they cannot produce collaterals when applying to lease farms and automatically they do not qualify. The gender unit that is within the department monitors and ensure that the department meet the policy target of 50% allocation of land to women in general, among other duties. As already mentioned the gender unit within the department was established in 2009, it had a limited scope, which is that of monitoring and ensuring the implementation of gender land reform policy because the department was still called Land Affairs. When the Land Affairs changed to Department of Rural Development and Land Reform, the scope of the work broadened but the capacity remained the same.

5.5.1 Gender Unit within Department of Rural Development and Land Reform

The unit for gender and women empowerment was established in 2009 and the main purpose of this unit was to ensure that the Land Reform Gender policy is implemented and that the Departments meet the 30% targeted land allocation to women. When the Department changed its mandate to focus more on the empowerment of people in rural areas, more duties and functions were added to the already stretched unit that has only one employee at a Deputy Director level who is responsible for the whole Province of KwaZulu-Natal. The unit completely changed its focus from monitoring of the land reform gender policy implementation to more welfare oriented, thus focusing more on the empowerment of vulnerable groups. This new focus required that the unit develop a mainstreaming strategy as the tool of achieving the mandate and the new focus of the unit. Also the aim of the strategy was to define and outline the partnership between the unit and other stakeholders that were/are already involved in the empowerment of vulnerable people in rural areas. The Directorate for Women, Children and Persons with Disabilities is the lead section in the mainstreaming of designated persons in the department. The Directorate's roles are to coordinate, facilitate, monitor and report on mainstreaming strategies for women, children, persons with disabilities and older persons within and outside the DRDLR. The Directorate performs this function by providing support to the Departmental strategic goals and objectives. The following are summarised functions of the WCPwD sub directorate (the detailed job description as requested from the human resources section is attached).

- Ensure that women, children, persons with disabilities and older persons' issues are considered in Departmental strategic planning exercises;
- Facilitate and encourage the development of policies and strategies for the mainstreaming and empowerment of women, children, persons with disabilities and older persons through Departmental activities;
- Provide secretarial functions for the relevant departmental forums;

- Ensure economic empowerment of women, children, persons with disabilities and older persons through integrated programmes and projects;
- Ensure collaboration and partnerships with government, civil society and the private sector; and
- Represent the Department in the provincial gender machinery and inter-departmental committees coordinated by the National Department of Women and Social Development.

This restructuring of the sub-directorate has both positive and negative impact for women. The noted gains was that the sub-directorate is able to expand its focus and advocate for the rights of the children of widowed women through its programmes under the children's rights directorate unlike previously when the focus was only on monitoring the implementation of land reform gender policy. The sub directorate is also more involved in working with both NGOs and other government departments as it has a broader scope than the previous gender unit that focused on commercial farmers only. Although the department at the moment is not able to issue title deeds for communal land due to reasons already alluded to earlier, through WCPwD sub directorate, the department has been able to assist widows with agricultural tools to help them produce food through subsistence farming. This assistance has helped contribute to food security for the widows and their children. However the key informants during the interviews outlined that though the unit is trying its best to monitor the implementation of land reform gender policy, there are still some setbacks as indicated through the following statement:

“The unit has only one person who is at a deputy director level and this means she cannot hold senior managers accountable for non- performance, nor force them to have gender indicators” (Jean).

“The DRDLR is mandated to ensure that land is distributed equally to rightful beneficiaries and due to capacity constraints of this unit, vulnerable women end up being discriminated and they are denied their right to own land, also this unit has no dedicated budget to implement programmes and projects (Jean).

The formation of the gender unit within DRDLR does not comply with what is stated in the National Gender Policy Framework. The policy framework provides for departments to have gender focal persons at all levels and this means each district office must each have a dedicated person who is employed to deal with women empowerment issues and the gender focal person should not be based at a provincial office only. Also the policy advocates that government should adopt a gender responsive budgeting approach in order to make sure that women's needs are met.

5.6 The Widowed Women of South Africa (WWOSA)

Through partnership with NGOs, the department of rural development and land reform is working with a group of widowed women called WWOSA. Though the group has membership throughout the province of KZN, this study's case study was delimited to the headquarters of the group in the Northern part of Kwa-Zulu Natal, which is under King Cetshwayo municipality. The group is registered as a non-profit organisation and has been operating since 2005. The main purpose of WWOSA is to unchain widows from the chains of poverty, fear, isolation, HIV and AIDS as well as all other illnesses and involve/introduce them into the world of business and self-empowerment.

WWOSA was established because of the plight of rural widows and their exposure to HIV and AIDS, poverty, discrimination and isolation. These factors led to the establishment of prayer groups for widowed women. These women organised themselves to reach out to other widows in similar situations, with the aim of developing strategies and finding ways to self-develop, alleviate poverty, create jobs, enter into the business world, and improve of their wellbeing as head of their families.

WWOSA has a number of operating stations within uThungulu district municipality and they are involved in agriculture and environmental activities as skills development. WWOSA farms a variety of nutritious organic vegetables such as cabbage, spinach, butternut, maize onion and beetroot. They also farm indigenous chickens, are involved in the waste management activities, and reproduce craftwork that is sold for profit. Furthermore, WWOSA has established a skills

development centre to capacitate widows and their children on different skills as a tool of alleviating poverty. WWOSA has members who are passionate, dedicated and business oriented. They receive mentorship from the University of Zululand, Department of Agriculture and Rural Development ,and Independence Development Trust (IDT).

Apart from the afore-mentioned support, WWOSA has some challenges as it has no stable funding and this has forced the widows to live from hand to mouth because their group constitutes of the mostly unemployed, uneducated widows who are raising their children alone, and most of them are affected by HIV and AIDS. Apart from the evident challenge of access to land by the widows, the president of WWOSA further highlighted the following challenges they are experiencing as the organisation:

- No proper land assigned to the organisation to expand into commercial farming that will make WWOSA to be internationally compatible, hence they use small pieces of vacant land and as a result, their work is scattered all over uThungulu area
- No proper transportation to reach all their work stations that will help them to deliver their produce to the local retailers in desired bulks within the required time
- No proper storage facilities for produce in transit to make sure that it is still fresh after harvesting and during delivery
- Getting the consistent market is a challenge as their production is not consistent due to the lack of major resources such as the land
- Theft of animals and invasion since the community gardens are not fenced
- Lack of sustainable financial support, which has caused WWOSA not to achieve its anticipated level of performance within the programmes.

WWOSA has been empowering widows through the provision of skills and other empowerment programmes in partnership with DRDLR. This was mentioned by the founder of WWOSA and is resonated in the following statement:

“WWOSA is a non-profit organisation and we are depending on government support and funding to execute our activities, our main aim is to advocate for widows right to land and we are working DRDLR in this aspect, though we are currently having land parcels in communal land, the department has managed to buy a tractor for us and agricultural implements, the gender specialist for the department is also motivating for us to get a bigger farm so that we can be commercial farmers, what I appreciate from the department is that they are also helping other widows within the organisation who have no interest in farming but art and craft, the department purchased beads and outsourced trainings for them and they are now able to sell their beadwork in various markets.

As earlier mentioned, the role of the department, amongst other things, is to ensure that the national gender policy is implemented. The statement by one of the research participants, Nomfundo, confirms that there is a partnership between the department and WWOSA to implement the policy through the support that the widows are getting from the department.

The department also work with the traditional leaders to ensure that land reform gender policy is implemented. Traditional leaders are represented in one of the most critical structures that allocate land, called District Land Committees (DLRCs). All decisions concerning who the department should allocate land to are taken by this structure and the department also works with the traditional leaders in case of boundary disputes. The establishment of land district committees by the department was a positive move to ensure that communities are represented, given that traditional leaders form part of the members. However, the challenge remains that these traditional leaders who are members of the committee are men and women still are not represented. So, the situation when it comes to land allocation and inheritance to widowed women is the same because they are still not represented given that the system favours patriarchy.

The second programme that seeks to strengthen working relationship between traditional leaders and the department is the programme ‘one hectare one household’ where the department allocates land to the majority of women in rural areas. The programme is a poverty alleviation programme and is a good programme which empowers women who reside in rural areas. The programme does not however prioritize widows. It treats all women as a homogenous groups and

this is a weakness on the part of the department because land reform gender policy cannot be fully implemented if the department does not take into account the needs of the vulnerable groups.

5.7 Conclusion

The chapter looked at the role of the DRDLR in implementing land reform gender policy. The department works with different partners to achieve gender equality as stated in chapter two of the South African Constitution. The constitution states that no one should be discriminated on the basis of gender and race and section 27 compels the state to take reasonable measures to ensure that the right to property for both men and women are protected²⁸. To implement the constitution as indicated in this chapter, the government developed different policies that make mention of women as one of the priority targets for different programmes within the department. More so, the department established a gender unit to monitor the implementation of the 1997 white paper on land reform and land reform gender policy with its main focus being the empowerment of women through land reform programmes and projects and strengthening the department's legal framework to guarantee the right to land whilst eradicating poverty.

The chapter also drew attention to the establishment of the gender unit in 2009 as a positive gain for both the department and women who are denied access to land on the basis of gender. The work of this unit, as further highlighted in the chapter, is not without challenges that include insufficient resources allocated to the unit, which makes it difficult to ensure full compliance and implementation of the programmes. Furthermore, the scope of the unit is limited to women commercial farmers as the land reform gender policy is only committed to 30% allocation of hectorage to women who are in commercial farming. As asserted in this chapter, the policy is silent when it comes to communal land because it falls under the Ingonyama Trust Board which is under the Zulu Monarchy. This this means that the land parcels in rural areas are administered by the traditional leaders who are predominantly male and who turn to disregards the rights of women to access, control, and/or own land. The chapter also noted that attachment to the old customary law by some of the traditional leaders contradicts both constitutional and international

²⁸ 1996, The Constitution of the Republic of South Africa, section 9 (2) & 27

commitments that advocate for the full rights of all to inherit and control land, which in the case of this study would also include the rights of widows to land inheritance after the death of their husbands.

In my view, if institutional mechanisms like gender machineries can be capacitated and empowered, the country can achieve most of the targets set for empowerment of women and gender equality, given that the machinery is comprised of experts from different backgrounds. Since the machineries are located at the most senior offices like the office of the premiers, it should be given more powers to hold policy makers and implementers accountable if targets are not met.

CHAPTER SIX

RECOMMENDATIONS AND CONCLUSION

6.1 Introduction

The study discussed the politics involved in land inheritance for widowed women in the Province of KwaZulu-Natal. The main focus of the study was WWOSA which is a widows' organisation based in the Northern part of the KwaZulu-Natal Province. During the in-depth interviews with the twenty one widowed women, it became clear that despite of the progressive Constitution that the country has, widows are still denied their inheritance to family land and this is as a result of the misconceptions and myths associated with women in general when it comes to land access and inheritance. In most part of the African continent women are treated as minors who cannot inherit land unless a male representative which is usually a relative or a son is willing to register the land in his name on behalf of a woman (Maluleke, 2012). Misconceptions about women's rights to access and own land negatively impacts on their livelihoods, especially as most women depend on land to provide for their families. In rural areas, land is still administered by the traditional leaders who are mostly men and who view the Constitution as the document that has come to disempower them as the traditional leaders. Also, most traditional leaders indicated that they were not consulted during the drafting of the Constitution, hence they are still using the old customary law which do not allow women to own land. This conflict between the Constitution and the old customary law has caused widows to remain the unprotected victims without a voice because there are no policies specifically focussing on their well-being as a special group.

6.2 Summary of research findings

6.2.1 Traditional practices surrounding land inheritance for widows

This study revealed numerous instances of discrimination and unfair treatment that widowed women who are members of WWOSA are subjected to, especially on the issue of family land inheritance following the death of their husbands. In the review of literature, studies indicated that the most important assets are transferred through inheritance (Cooper,2010). This means that women especially widows are denied the right to inherit one of the most critical assets, which is

land. This denial is in conflict with the most supreme law of the country, the Constitution which states that everyone is equal irrespective of gender; as well as other international commitments like the CEDAW and BPFA. The results revealed that widowed women suffer discrimination especially in the hands of traditional leaders who are still holding on to the old customary law that do not recognise the rights of women to own land. It was also found that writing a will is still not taken seriously in most African traditions and Zulus are no exception. The right to land inheritance for widows is usually dependent on the relationship a widowed woman had with the in-laws prior the death of the husband. If she did not have a good relationship, then her right to inherit land is forfeited and they are not protected by the traditional courts as these are dominated by men who feel that women have no right to own land.

The study also established that widows leave in poverty and are usually displaced because their in-laws either seize or grab the property left behind by their late husbands. To overcome this, there is an urgent need for partnership between the department of traditional affairs, department of Justice, Ingonyama Trust Board and Department of Rural Development and Land Reform to ensure that the rights of widows to inherit and own land are protected and those who abuse widows face the law. Also the proposed communal Bill which advocates for community to have individual title deeds even within the communal land will help to ensure that widows land inheritance is secured and any person who tries to deny that right is brought under the law.

The study further linked unfair widowhood practices to the denial of widows right to land. A widowed woman has to undergo numerous rituals as a way of cleansing to integrate her back to the society. , Before this process of cleansing is completed they cannot fight against the disinheritance as they are not allowed to go to tribal courts because they are viewed to have a bad omen, meanwhile, most dispossessions happens during this period. During the interviews I realised that it will be difficult to abolish the widowhood rites/rituals as some widows believe that bad luck would befall them if they did not undergo the cleansing process.

The study also found that the application of the South African Constitution seemed lacking in this regard, considering that these rituals are only performed by widows and not widowers.

6.2.2 The Constitutional provisions in relation to land inheritance

The South African Constitution is a supreme law in the entire country and any conduct that is inconsistent with it is invalid and the bill of rights applies to all.²⁹ However, this not always the case when it comes to land inheritance for widows. The right of widows to inherit land are not protected. The widows are exposed to numerous unconstitutional discriminations in terms of land inheritance and the Constitution is not recognised in rural areas, especially when it comes to land sharing.

The traditional leaders are the custodians of land which is administered by the Ingonyama Trust Board and the Department of Rural Development and Land Reform has no control over that land and this limit the scope of work of the department in implementing the land reform gender policy which only consider 50% of land allocation to women commercial farmers only. As the department cannot control land that is in the communal areas which is reported to be thousands of hactares.

The study found that the level of the gender focal person within DRDLR makes it difficult to hold branch heads accountable for issues regarding the implementation of land reform gender policy. This has a negative impact to women, especially as they are seen as minors in the context of land ownership and control. The national gender policy framework states that the gender focal person's level must be at a senior management level so that he/she is able to hold other implementers accountable if they are not implementing in line with the policy. If the department of rural development wants to make sure that its role in the implementation of land reform gender policy is meaningful, the position of gender focal person must be seen as one of the critical posts to be filled in all district offices and not only at a provincial offices because implementation happens at the district level.

In my view, this should be a collaborated approach between public and private sector, because from the field interviews, both the key informants from DRDLR, traditional leaders, and the widows, all emphasized the need of working together. This is resounded in the statement by one of the key informant within the department that:

²⁹ 1996 South African Constitution

“the department has no mandate in controlling land inheritance for widows, as inheritance falls under department of justice, we can only link our beneficiaries when there are violations of their rights” (Jean).

This statement highlights the importance of sector collaboration when providing services as a silo approach does not produce intended outcomes. The study also identified the following issues outlined below to be among the factors affecting the implementation of the land reform gender policy aimed to benefit widows.

- Although the White Paper on South African Land Policy for 1997 states that women are a priority group for land distribution, its focus is on women who are beneficiaries of land distribution and restitution programmes. The policy does not recognise the rights of women who are residing in communal land and who are mostly affected by unconstitutional land grabbing and denial of their rights to inherit the family land.
- There is no link between the recognition of the customary law and the policy and this might be due to the fact that the coming into effect of the 1997 White Paper on South African Land Policy focused on large scale land access. Meanwhile, the customary norms focused mainly on the traditional practices affecting inheritance in rural areas.
- The capacity constraints within the gender unit has a negative impact on the implementation of the land reform gender policy as the province is too big for one person
- Lack of integration between public sector on the empowerment of widows.

As much as the aforementioned gaps have negative impact on the implementation of the land reform gender policy, the DRDLR must be applauded on the good work and the partnership that the department is involved in, especially on the empowerment of widows. I strongly believe that we will see much improvement in future since it must be considered that before 2009, the only focus of the department was land reform, hence it was known as the department of land affairs. It was only in 2009 where it broadened its mandate to include other services which led to the partnership with WWOSA.

6.3 Contributions of the study

According to Yin (1994), a study can contribute to development of more robust theories that identifies a link between the problem and the outcome. Much has been researched on widowhood but there is little that is said about the widows experiences in relation to land inheritance and the role of DRDLR in implementing land reform gender policy to protect the rights of the widows. This study has managed to critically investigate and link harmful practices to politics that are involved in the land inheritance by widowed women. The study further outlined the benefits of maintaining a good working relationship between the government and other stakeholders to ensure effective policy implementation. The collaboration will most definitely help the government, seeing that it is mostly under-capacitated in the arena of its human resources and NGOs possess expertise knowledge and there are closer to beneficiaries as they are usually situated within the communities they serve.

6.4 Recommendations for policy

In South Africa land is a highly political and contested issue and often, the vulnerable groups are completely left out or not prioritized in land distribution programmes. Therefore the government needs to:

- Enforce accountability and strong monitoring of policy implementation.
- Facilitate a good working relationship between the DRDLR and the Department of Justice and the Ingonyama Trust Board since the majority of land parcels in rural areas fall under its administration.
- Train the traditional leaders on relevant policies and the importance of the constitution as the supreme law of the country.
- Review and amend the land reform gender policy to include land allocation for women in rural areas, and there should also be a specific mention of widowed women.

- Disaggregate land reform policies so as to have a more targeted approach as the current laws treats women as a homogenous group.
- Capacitate the Gender unit at all levels within the DRDLR. A gender focal person must not be expected to perform other programmes like in the case of the gender focal person for DRDLR who has to also do the programmes on the rights of children, people with disabilities, and older persons.
- Implement and monitor Polokwane resolutions of 2007 and the recommendations on the National Gender Machinery on capacitating gender desks in all government departments.
- Embark on creating awareness on the importance of having a will and this service needs to be provided for free as the majority of people do not have access to private lawyers who would assist them at a fee. This exercise will help in protecting the rights of widows to inherit land should their husbands die. Not having a will is one of the causes of the widows' evictions and denial of their rights to inherit the family land after the death of the husband.

6.5 Suggestions for future Studies

Many challenges regarding land inheritance by widowed women are embedded on cultural norms that are guided and supported by patriarchal systems which devalue and treat women as minors with no rights to land inheritance and ownership. However, if sector departments, traditional leadership, and NGOs can have a meaningful collaboration in tackling land inheritance issues, then all the aforementioned discriminations can be alleviated. The government is also in a process of adopting a Communal Land Bill which seeks to ensure that the department adopts a system of separate title deeds, as highlighted by one of the key informants during the interviews from the department. In view of this, it is the recommendation of this study that further studies should be conducted with a focus on how the process of individual title deeds will have impact on current land inheritance rights for widowed women in the Province of Kwa Zulu Natal as well as other parts of South Africa. In addition, research on the relationship between the government sectors and traditional leaders on how they can work

together in promoting the protection of widows in rural areas has not really been explored. To this effect, future studies can be initiated with a focus on enhancing the working relationship between the government sectors and traditional leaders in promoting and protecting the rights of land inheritance of widowed women residing in rural areas.

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LIST OF APPENDICES

APPENDIX 1: GATEKEEPER'S LETTER – WWO SA



06/September, 2016

The Humanities and Social Sciences
Research Ethics Committee
University of Kwazulu Natal,
Pietermaritzburg

Dear Madam

RE: LETTER OF APPROVAL TO CONDUCT PROPOSED M.A. RESEARCH WITH OUR ORGANIZATION

This letter serves to inform the University of Kwazulu-Natal Research Office that our Organization is aware that Mrs. Iris Bongi Owusu wants to carry out the proposed MA research titled: *The Gendered Politics of Land Distribution and Inheritance amongst the Zulu Speaking widowed Women in Kwa-Zulu Natal* with our Organization.

Having read her letter of introduction and explanation of the aim of this proposed research, we do believe it has relevance and can indeed help generate knowledge on how to improve practice, inform policy and extend theory in the field of work we do. Hence, we support the conduct of this research in this Organization and we are willing to assist the researcher with the necessary help that she will need to generate the data needed for the proposed study.

We are aware that this proposed research involves recruiting the staff of this Organization for the purpose of conducting interviews in order to generate data and information on the work we do. We also understand that the data of information collected from individuals (our staff) will be done with duly informed consent from the participating individuals and that Organization members can refuse participation with no negative consequences for said individual.

For more information please do not hesitate to contact Ms Khethiwe Dlamini @ 0760543715/khethiwedlamini@yahoo.com

Regards
Mrs Khethiwe Dlamini
President-WWO SA
Date:

APPENDIX 2: GATEKEEPER'S LETTER – TRADITIONAL AUTHORITY

VUMUKWENZA TRADITIONAL AUTHORITY



06/September, 2016

The Humanities and Social Sciences
Research Ethics Committee
University of Kwazulu Natal,
Pietermaritzburg

Dear Madam

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For more information please do not hesitate to contact @ Sbu Mkhize 0833847465
Sibusiso@aids.org.za

A handwritten signature in black ink, appearing to be 'Sibusiso Mkhize', written over a horizontal dashed line.

Date: 07 September 2016

APPENDIX 3: GATEKEEPER'S LETTER – DRDLR



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

KZN: Provincial Land Reform Office, P/Bag X 9000, 188 Hoosen Haffjee Street, Pietermaritzburg 3200
Tel (033) 3554300 Fax (033) 3943753

06/September, 2016

The Humanities and Social Sciences
Research Ethics Committee
University of Kwazulu Natal,
Pietermaritzburg

Dear Sir/ Madam

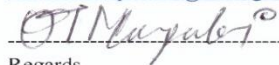
RE: LETTER OF APPROVAL TO CONDUCT PROPOSED M.A. RESEARCH WITH OUR ORGANIZATION

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For more information please do not hesitate to contact Mr. Themba Maphalala @ Themba.Maphalala@drdlr.gov.za 033 355 4300 / 071 6773945



Regards

Mr O.T. Maphalala
Director: Service Delivery Coordination: DRDLR KZN Provincial Shared Service Centre

APPENDIX 4: ETHICAL CLEARANCE LETTER



25 January 2017

Mrs Iris B Owusu 213574344
School of Social Sciences
Pietermaritzburg Campus

Dear Mrs Owusu

Protocol reference number: HSS/1850/016M

Project title: The gendered politics of land distribution and inheritance amongst the Zulu speaking Widowed Women in KwaZulu-Natal.

Full Approval – Full Committee Reviewed Protocol

In response to your application received 26 October 2016, 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 Shenuka Singh (Chair)
Humanities & Social Sciences Research Ethics Committee

/pm

cc Supervisor: Dr Janet Muthuki
cc Academic Leader Research: Prof M Naidu
cc School Administrators: Ms L Shulika & Ms N Mudau

Humanities & Social Sciences Research Ethics Committee
Dr Shenuka Singh (Chair)

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Website: www.ukzn.ac.za

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APPENDIX 5: INTERVIEW SCHEDULE

Traditional Leaders

1. What kind of experiences do widows undergo in your community?
2. What kind of support does the traditional leadership give to widows within the community?
3. What are the traditional requirements that widows face with regard to land inheritance?
4. What is your understanding of women's rights and women empowerment?
5. What is your understanding of gender equality?
6. What is your understanding of the right to inheritance?
7. What is your understanding of women's rights in relation to land inheritance?
8. What kind of working relationships exists between the traditional council and the DRDLR?
9. What kind of working relationships exists between the traditional council and WWOSA?
10. What are the ways in which you think cultural rights and constitutional rights can be harmonized so that widows can be able to inherit land?

Beneficiaries (WWOSA MEMBERS)

1. What kinds of experiences have you gone through as a widow?
2. What kind of support have you received from traditional leadership?
3. What kind of support have you received from WWOSA?
4. What have been your experiences of being a widow in relation to land access?
5. What is your understanding of women's rights and women's empowerment?
6. What is your understanding of the right to land inheritance?
7. What kind of support have you received from the DRDLR and is it sustainable?

8. What support do you think you should be getting from DRDLR?
9. What are the ways in which you think that access to land can be made easier?
10. What are the ways in which you think that land inheritance can be made easier?

Key informants from the Department of Rural Development and Land Reform

1. What is your understanding of gender equitable land sharing?
2. What are different legislations that the DRDLR is using to ensure gender equitable land sharing?
3. How are these legislations being implemented, evaluated and monitored?
4. How is the Department involved in the protection of right to land inheritance for widows?
5. How is the DRDLR works with other stakeholders to secure land access and inheritance for widows?
6. What are the ways in which you think cultural rights and constitutional rights can be harmonized so that widows can be able to inherit land?

WWOSA President

1. What was the rationale behind establishing WWOSA?
2. What kind of support does WWOSA offer to widows?
3. What kind of support does WWOSA offer to widows in relation to land inheritance?
4. What support does WWOSA get from the traditional leadership?
5. How would you describe the working relationship between the DRDLR in securing widow's rights to inherit land?
6. What challenges has WWOSA faced in addressing widow's inheritance rights?
7. What are the ways in which you think cultural rights and constitutional rights can be harmonized so that widows can be able to inherit land?

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November 30, 2018

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To Whom It May Concern

CERTIFICATION OF ENGLISH LANGUAGE EDITING OF MRS. IRIS BONGI OWUSU'S MASTER RESEARCH

This document serves to acknowledge that the thesis titled: *The Gendered Politics of Land Distribution and Inheritance by Widowed Women in Kwa-Zulu Natal* by Iris Bongsi Owusu for the award of Master of Arts in Gender Studies, has been thoroughly edited for correct English language usage, syntax, spelling, punctuation, and overall style.

The author's ideas, research content, and context were not altered during editing. Where meaning was not explicit, recommendations were advanced and the responsibility of implementing them rests with the author of the thesis.

Sincerely



Shulika Lukong Stella