



SCHOOL OF BUILT ENVIRONMENT AND DEVELOPMENT STUDIES

**A Critical Analysis of Land Tenure Reform from a Gender Perspective in South Africa: A Focus on Women in Rural Kwa-Zulu Natal, the Case of UMnini Trust Traditional Authority Area; eThekweni Metropolitan Municipality.**

**By**

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**This Dissertation is submitted in partial fulfilment of the requirements for the degree of Masters in Town and Regional Planning in the School of the Built Environment and Development Studies, University of KwaZulu-Natal (UKZN), Howard College, Durban, South Africa.**

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## ABSTRACT

The study set to examine land tenure reform from a gender perspective in South Africa, focusing on women in the rural areas of Kwa-Zulu Natal, particularly using uMnini Trust Traditional Authority Area within eThekweni Metropolitan Municipality as a case study. The intention was to critically analyse the extent to which current land reform programs address the gender disparities that currently exist regarding providing women with equal access and secure land rights. Sub-objectives were thus established as a guide in addressing the main aim. The study was guided by two theories, namely De Soto's theory of secure property rights and the Neoclassical theory of property rights. De Soto's theory emphasizes the importance of secure property rights (tenure security) for economic growth, development and overall prosperity and the Neoclassical theory asserts that property rights play a critical role in providing economic incentives that shape resource allocation.

Both qualitative and quantitative methods to collect relevant data were used. Qualitative research allowed the researcher to rely on the views of participants especially rural women to develop concepts which helped understand and describe the phenomena at hand in detail. The quantitative method helped emphasize objective measurements and statistical analysis of data collected through questionnaires. The study however relied more on the qualitative approach.

Findings of this study suggest that, land remains an emotive fault line in South Africa, when looking at land tenure from a gender lens perspective. Previous policies and legislations that purposefully neglected and isolated women as beneficiaries of any developmental initiatives are still very much entrenched in today's society. Moreover, the complex interplay between statutory laws and informal and customary justice systems has not made things any better. It is evident that rural women in particular are still very much marginalised in owning land in their own right and continue to be subordinate within male centred structures. As recommendation, the design as well as implementation of policies, laws and regulations should be user friendly to rural women. Also, women must be meaningfully included in formulation of such laws to better secure their land rights. Their voices, knowledge, and interests in land programs should be included. Moreover, rural women should be first on the list in terms of policy formulation, given first preference and must be high on the government agenda. Furthermore, the government should ensure women have equal tenure rights as well as access to land independent of their marital status and support any legislative reforms which build on local tenure systems and practices securing the land rights of women.

## DECLARATION - PLAGIARISM

I, Nontobeko, Tholithemba, Valerie, Khuzwayo....., declare that

1. The research reported in this thesis, except where otherwise indicated, is my original research.
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Signed



.....

## **DEDICATION**

I would like to dedicate this thesis to my beloved parents Nonhlanhla and Reginald Khuzwayo.

Words alone cannot even begin to describe my absolute gratitude for their incredible support, their faith, their dedicated partnership for success in my life and their patience with me throughout my academic journey, for they always understood. All that I am or hope to be I owe to them.

“Ngyabonga MaNguni amahle, Osidlabehlezi baka Phakathwayo”

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## **LIST OF ACRONYMS**

CEDAW- Convention on the Elimination of All Forms of Discrimination Against Women

CEO- Chief Executive Officer

CoGTA- Cooperative Governance and Traditional Affairs

DLA- Department of Land Affairs

DOA- Department of Agriculture

DRDL- Department of Rural Development and Land Reform

ITB- Ingonyama Trust Board

KZN-KwaZulu-Natal

LARC- Land Accountability and Research Centre

LARD- Land Distribution for Agricultural Development

PTO- Permission to Occupy

RDP- Reconstruction Development Programme

RSA- Republic of South Africa

SLAG – Settlement Land Acquisition Grant

USA- United States of America

## CHAPTER ONE

### INTRODUCTION

#### 1.1 Introduction

Given that land plays an important role in the livelihoods of the majority of Africans, food security and poverty reduction cannot be achieved unless issues of access to land, security of tenure and the capacity to use land productively and in a sustainable manner are addressed. Women play a fundamental role in both maintaining and strategically using land and natural resources. Besides being managers and providers of food in the family; they are also carriers of local knowledge, skills for survival, and cultural memory (Doss and Kovarik et al., 2013). However, women, do not own land and only have access to land and related natural resources through their spouses or male relatives (Doss and Kovarik et al., 2013). This puts women at a disadvantage, as they remain subordinate within male-centred structures (Doss and Kovarik et al., 2013). Men have primary control and women have ‘weaker’ secondary rights when it comes to land. Primary land rights give direct access to the resource and include rights to bequeath and dispose of land, whereas secondary rights are normally restricted to use rights (Mvududu and McFadden, 2001:110 cited by Makura-Paradza, 2010). A large body of literature on gendered land rights of rural women in Southern Africa suggests that secondary land rights of women leave them vulnerable to poverty and destitution. Moreover, in spite of the strong representation of women in development activism, they have been left out of the benefits of land reform programmes and, when considered at all, they tend to be marginal to the programmes. Although gender gaps do affect both sexes, often it is women who find themselves at the receiving end of gender inequality. This study focused on critically analysing the extent to which current land tenure reform programs address the gender disparities with regard to providing rural women with equal access and security of land rights.

The term land tenure reform refers to a system of recognizing people's right to own land and therefore control of the land (Blom, 2006). Land tenure reform may also be referred to as the terms and conditions on which land is held, used and transacted (Blom, 2006). In South Africa, it is a component of the land reform programme, which embraces land restitution to people dispossessed by racially discriminatory laws or practices and the distribution of land to the poor. The programme was introduced after the 1994 democratic government was elected, to address a legion of inherited social ills that included substantial inequalities based on ethnicity and gender (Ntsebeza, 1999). Although this system has worked in various countries across the world, in South Africa it has proved to be very difficult to implement, especially from a gendered perspective as women are continuously marginalised and suitable policy implementation of laws and policies is lacking in this regard. It is thus safe to say that land reform at this stage is still gender blind. Post-apartheid South Africa has made commendable commitment concerning gender equality, to facilitate the achievement of social justice, and gender equality. Contextually, access to and ownership of land is closely linked with male gender identities than that of women (Razavi, 2005). Moreover, policies introduced to achieve equitable access to land and economic resources for women have largely and repeatedly been unsuccessful to date basically because of the influence of strong patriarchal structures that prevail in primarily rural communities.

## **1.2 Background to Case study**

The study focused on women in UMnini Trust Traditional Authority of rural Kwa-Zulu Natal. UMnini is located some 40 kilometres south-west of the Durban Central Business District (CBD) within Ward 98 under Councillor Magubane and Ward 99 under Councillor Bayeni. The area is enclosed by the Indian Ocean in the east, with Mfume Mission and privately-owned land in the west, the Umsimbazi River in the north, and the Umkomasi River in the south (UMnini LADP, 2006).

### **1.3 Problem Statement**

The enhancement of agriculture and rural development, improvement of food security and eradication of rural poverty is an ideal South African rural woman are very far from realising (Daniels, 2016). Rural women have long been grappling with land issues such as lack of access to land and tenure security. This probing concern has influenced the prevalent nature of poverty, marital violence and weak domestic economic power in most rural areas of South Africa. Women in rural areas face many challenges in terms of land tenure security and are continuously seen and perceived as inferior and have minor roles in society and in land related matters. Despite this challenge, women are actively involved in food production and usually make a significant contribution towards the economic survival of their families and invest valuable resources towards the livelihood of their families (Doss and Kovarik 2013). As such, they are major contributors to agricultural production on lands that they do not own or manage. Women face more obstacles than men with regards to land acquisition and tenure security (Doss and Kovarik 2013). Such discrimination is perpetuated by several social, economic, legal and cultural factors that combine to limit women's ownership and control of land. As a result, women, particularly in rural areas constitute the bulk of the victims of poverty (Daniels, 2016). Land is one of the key resources that determine women's living standards and their economic empowerment and to a certain extent their struggle for equity and equality (Weideman, 2004). The 1997 White Paper on South African Land Policy concedes that a key contributing factor to women's inability to overcome poverty is lack of access to and rights in land (DLA, 1997). Legislation and policy in South Africa puts great emphasis on the issue of gender equality and land ownership. For example, the Green paper on South African Land Reform (1996) expresses a clear commitment to end discrimination and ensure, gender equity in land ownership. The Bill of Rights of the Constitution of the Republic of South Africa also places an obligation on the government to take reasonable legislative and other measures to ensure that equality

includes the full and equal enjoyment of all rights (the right to land included) and freedom. Furthermore, the Department of Land Affairs' gender policy framework (1999) alludes that, much more attention should be directed to meeting women's needs and concerns, because women have much less power and authority than men. Failure to do such, could lead to exacerbation by the land reform programme in terms of existing gender inequities in the allocation of land and its productive use. There is thus a clear commitment to gender equity as laws and policies in place, governing women's, land rights and access to land, appear to be largely adequate. However, lack of political will in terms of such laws and policies hampers their implementation (Weideman, 2004). Policy pronouncements alone cannot result in gender equity in land access and ownership, increased measures and commitments need to be taken with regards to fully implementing such policies. With the above factors at play, women are still faced with challenges in terms of land accessibility, which further impedes their role in enhancing agricultural and rural development, improving food security and eradicating rural poverty.

#### **1.4 Aim**

The aim of the study is to critically analyse the extent to which current land reform programs address the gender disparities regarding providing women with equal access and security of land rights.

#### **1.5 Research Objectives**

1. To explore the modern-day rural women's experience in terms of the eligibility for land ownership.
2. To assess the level of awareness on the importance of women's rights, to access and own land.

3. To assess whether current land tenure reforms are any more gender sensitive than those of the past and the extent to which on-going land tenure reforms and government provisions are addressing gender-based inequalities.
4. To draw lessons based on best practices as well as failures of on-going and past policies and their implementation.

### **1.6 Key Question**

The primary research question that this research aims to address is: To what extent do current land reforms programs address the gender disparities with regard to providing women with equal access and security of land rights?

### **1.7 Research Sub-Questions**

1. What are some of the challenges women face when it comes to being eligible for land ownership?
2. What is the level of awareness on the importance of women's rights to access and own land.
3. Are current land tenure reforms any more gender sensitive than those of the past and to what extent are on-going land tenure reform programs and government provisions addressing gender-based inequalities?
4. What are the lessons learned based on best practices as well as failures of on-going and past policies and their implementation?

### **1.8 Study Justification**

Widely recognized is the fact that women's rights to access and control over land are central to the goal of poverty reduction and rights-based approaches to development. Overall living conditions, the question of everyday survival, economic security and physical safety are determined by the level of women's right to access and control over land, such also greatly

influences and has a profound effect on gender relations (Campus, 2016). The persistence of discriminatory laws, policies, patriarchal customs, traditions and attitudes in various countries, including South Africa is still blocking women from enjoying their rights as state laws and state institutions compete with informal regulatory systems (Campus, 2016). This is despite the fact that women have a great role in management and utilization of land. Their access to and control over land are often overlooked. To frame gender-friendly legislation and remove institutional as well as cultural hindrances, it primarily becomes essential to explore and document the lived experiences of women in relation to land in the country, as well as challenges faced by women in acquisition of land and enjoying their rights to own, control and use land. Therefore, this study aims to fill in the gap by shedding light on the barriers faced by women in accessing, using and controlling land in South African rural areas. The importance of this study lies not only in understanding the legal, institutional and sociocultural obstacles faced by women in accessing land rights; the findings of this study can also help in formulation of appropriate policy to overcome those obstacles.

## **1.9 Structure and Outline of Dissertation**

### Chapter 1: Introduction, Background and Problem formulation

The introduction is based on an outline of the research problem, which investigated the extent to which women's interest are reflected in current land tenure reform programs, considering both the progress as well as repeated failures pertaining to the implementation of laws and policies that are more gender equitable. The background of the research is outlined in this chapter as well as the objectives, subsidiary questions and the research aim.

### Chapter 2: Conceptual and Theoretical framework and the Literature review

This chapter consists of the conceptual framework, theoretical framework and the literature review. The relevant conceptual basis of the study is captured through concepts such as land

tenure, gender, access, livelihood and legal pluralism, which provides a framework to analyse the gender disparities with regards to providing women with equal access to secure and enjoy land rights. The theoretical framework consists of De Soto's theory of secure property rights and the Neoclassical theory which served as a framework for analysis. This chapter also reviewed various literature on land reform issues relating to women and adopted precedent studies from Ethiopia and Australia.

### Chapter 3: Land tenure in South Africa

Land tenure in South Africa from a gender perspective is discussed in this chapter with primary focus on the marginalisation of women with regards to their access to secure land rights. The study analyses both the pre and post- apartheid period in order to provide a clear understanding of the research phenomenon.

### Chapter 4: Methodology

Chapter four focuses on the research methodology. It discussed mixed methods research design adopted by this study. In this chapter, the way in which data was collected, including the sample size selected as well as data collection techniques are described. A detailed description of the limitations faced during the research process were discussed.

### Chapter 5: Research Findings, Data Analysis and Interpretation

Chapter five presents the study area's background and data gathered is presented as well as analysed. Responses from key informant's interviews, focus group discussions, questionnaires, and data collected from a synthesis of existing country level literature on land policies and land laws are also analysed and presented. This chapter provided a critical interpretation of the study findings in line with the outlined objectives.

## Chapter 6: Summary of Findings, Conclusion and Recommendations

The final chapter re-examines the research phenomenon thus presenting a summary of the research findings. Recommendations influenced by the findings were therefore derived.

### **1.10 Chapter Summary**

This chapter outlined the research background of the study by highlighting gender-based discrimination and disparities with regards to equal access and security of land rights for rural women. This chapter however presents how the study basically begins. It emphasized that the realization that access to and control over land produces gender narratives and as such the study set out to examine how land tenure, access and rights to land are managed. Gender and power relations assign and determine different roles and responsibilities to men and women in any given context. A value structure that perpetuates unequal power relations between men and women as they become part and parcel of a nations policies and programs are what these assigned gendered roles and responsibilities create. The existence of a substantial gap between the development of laws and their effective implementation when it comes to the land ownership for rural women is highlighted in this chapter. Also presented is the justification of the study as well as the aims and objectives, research sub questions and dissertation chapter outline.

## **CHAPTER TWO**

### **CONCEPTUAL AND THEORETICAL FRAMEWORK AND THE LITERATURE REVIEW**

#### **2.1 Introduction**

The subsequent sections in this chapter consist of the conceptual framework, theoretical framework and the literature review, which provide a framework to analyse the gender disparities with regards to providing women with equal access and security of land rights. The conceptual framework assists in clarifying concepts and proposes relationships among the concepts of this particular study. The purpose of the conceptual framework is to provide a context for interpreting the study findings and to encourage theory development that is useful to practice. The theoretical framework adopted by this study assists in stimulating and making research findings meaningful and generalizable as well as establishing orderly connections between observations and facts. Moreover, this chapter also provides a literature review, which highlights and discusses issues of concern with regard to land tenure reform and women worldwide, with Ethiopia and Australia, used as primary precedent studies. This will assist in placing each work in the context of its contribution to understanding the research problem being studied.

#### **2.2 Conceptual Framework**

In any debate on land tenure and livelihoods, gender requires special treatment. Although gender gaps do affect both sexes, often it is women who find themselves at the receiving end of gender inequality. Gender disparities with regards to providing women with equal access and security of land rights are often quite complex and need to be analysed and understood in greater depth. The conceptual basis of the argument outlined above is captured using the concepts of land, land tenure, gender, gender equality, access, livelihood, and legal pluralism.

These concepts are individually explored in this section and assist in describing and analysing empirical realities of rural women in UMnini in relation to land.

### *2.2.1 Land*

According to Agarwal (1994a:3) cited by Rakolojane (2013), land refers to a scarce and highly valuable resource which determines economic wellbeing and shapes power relations. Prakash, (2003) further alludes that land is a property that creates direct economic benefits through renting, sale and collateral for credit. In the context of this study, the concept of land creates a framework that helps analyse how securely owning land defines economic status, social status and political power amongst rural woman. Land constitutes the primary source of livelihood and stands as the most valued property which enhances an individual's socioeconomic status, primarily for rural women in this case. Furthermore, the concept assists in analysing increased perpetuation of unequal power relations between men and women as they become part of a nation's policies and programmes when it comes to the ownership of land. Land is a socio-economic resource that is critical in the livelihoods of rural people. Despite this reality, rural women in South Africa continue to be marginalised in policy formulation, implementation, and other land-related processes. Every individual depends directly or indirectly on land for their livelihood. Thus, every individual needs to be given equal and equitable opportunities without undue discrimination.

### *2.2.2 Land tenure*

The term land tenure is a derivative of the concept of natural resource tenure, which in essence refers to the terms and conditions under which natural resources are held and used (Agarwal, B., 1994). Durand-Lasserve and Selod, (2009) further allude that the concept of 'tenure' is a social construct that defines the relationships between individuals and groups of individuals by which rights and obligations are defined with respect to control and use of land. Thus, land

tenure reform is one of a range of planned changes in the terms and conditions under which land is held, used and transacted through converting informal rights to formal rights and establishing mechanisms for recognition and management of land and natural resources (Durand-Lasserve and Selod, 2009). Moreover, land tenure as described by FAO (2002) cited by Kuusaana, Kidido, and Halidu-Adam, 2013) simply determines who can use what resources for how long and under what circumstances. Tenure security in general terms could be seen as an individual's perception of his or her right to a piece of land on a continual basis, free from interference from outside sources as well as the ability to reap the benefits of investments in land (ISSER, 2005). In the context of this study, the concept of land tenure provides a framework for analysing the insecurity of land tenure as one of the most serious obstacles to increasing agricultural productivity, income as well as overall socio-economic empowerment of rural women. The concept also provides a framework for analysing tenure reform programmes failure in significantly improving the position of women with regards to secure access to land.

### *2.2.3 Gender*

The concept of gender refers to the social differences between women and men that have been learned over time and have wide variations both within and between cultures (Holzner, 2010). Gender also refers to the rules, norms, and practices by which the biological differences between men and women, boys and girls, are interpreted so as to result in unequal assessments, possibilities and opportunities in life (Holzner, 2010). In the context of this study, gender has generally been thought to determine women's access to resources/land and livelihood activities as it defines their identity, position, entitlement, and status through social-cultural meanings, practices and power. Furthermore, gender as a concept is useful in that it highlights dynamics within households. Poats and Sims (1989) cited by Rakolojane (2013), argue that intra-household dynamics reflect gender roles and responsibilities and access to resources, such as

land. The concept of gender regarding this study also provides a framework for analysing ways in which gender inequality in relation to access and control of land makes rural women particularly vulnerable to impoverishment.

#### *2.2.4 Gender equality*

The concept of gender equality implies that all human beings are free to develop their personal abilities and make choices without the limitations set by strict gender roles; that the different aspirations and needs of women and men are considered, valued and favoured equally (Holzner, 2010). Moreover, the concept implies the treatment of men and women as equals, such that gender is not used as a basis for systematic discrimination in access to and allocation of resources (Daley & Englert 2010:99). In the context of this study, gender equality in land rights implies that all men and women be granted equal rights to equal amounts of land. The concept of gender equality in land implies that men and women be given equal opportunities to access land, irrespective of gender.

#### *2.2.5 Access*

Ribot and Peluso, (2003:153) cited in Makura-Paradza, (2010) define access as the ability to derive benefit from material objects such as persons, property, institutions, social and political, economic relations, actions, entitlement, relations of production and their respective histories that shape benefit flows. In the context of this study, access is a benefit which is provided by security of tenure, thus leading to the use, management, and control of resources, that being land in this regard. The access framework assists in recognising how resources are controlled by groups and individuals whereas others maintain their access to resources through those who control them. The access framework recognises that labour, social relations, knowledge, authority, and identity are all possible mechanisms for gaining and maintaining resource

access. Since women are often not formal right holders, a focus on these alternative mechanisms for accessing resources expands the scope of the research.

### *2.2.6 Livelihoods*

The concept of livelihood refers to the way in which households and communities derive food, shelter, and clothing to sustain their living (Adams, 1999). Livelihood can also be defined as adequate stocks and flows of food and cash to meet basic needs (Jacobs, 2002). Bebbington (1999:2021), alludes that a livelihood can be defined as ‘the way people get by and get things done. In the context of this study, security of livelihood includes access to the means to produce the food or generate the income to meet those needs, in this particular case the means being land. In this study, land tenure security thus access to land is regarded as key to human livelihoods, particularly rural women in this case. Sustainable livelihoods exist when systems of human livelihood can cope with and recover from stresses and shocks and maintain or enhance their human capabilities and assets both now and in the future, while not undermining the natural resource base (Jacobs, 2002).

### *2.2.7 Legal Pluralism*

Legal pluralism refers to the idea that in any one geographical space defined by the conventional boundaries of a nation-state, there is more than one law or legal system (Rautenbach, 2010). Griffiths, (1986) and Merry (1988) further argue that legal pluralism is that state of affairs, in any social field, in which behaviour pursuant to more than one legal order occurs. Legal pluralism is the existence of multiple legal systems within one (human) population and/or geographic area. Bekker and Rautenbach, (2010) allude that the narrow interpretation of legal pluralism in the context of South Africa is the co-existence of officially recognised state laws, whilst deep legal pluralism can be regarded as the factual situation which reflects the realities of a society in which various legal systems are observed, some officially

and others unofficially. In South Africa, the common and customary law embodies official legal pluralism. In the context of this study, the concept provides a framework to analyse the persisting challenges such as inter alia the articulation between statutory law and customary law as well as how patriarchal tradition and certain social beliefs curtail women's land rights, even if there is equality on paper (Rautenbach, 2010). Legal pluralism is a relevant framework for analysing multiple legal regimes like communal areas.

## **2.3 Theoretical Framework**

The following section outlines the theoretical framework that guided this study, namely the Neoclassical theory of property rights, focussing principally on De Soto's theory of property rights and, the Evolutionary theory of land rights. The theories will be discussed in the following segments: introduction and the principles/views of the theory, critiques and strengths of the theory and applicability of the theory to the context of this study. These theories rely on property rights as the unit of analysis and focus on how institutions and property rights emerge and function.

### *2.3.1 De Soto's theory of secure property rights*

Hernando De Soto, a Peruvian economist is one of the most influential economists in the world, and the 'guru of neo-liberal populism (Fontana, 2016). His views especially as published in his 2000 book, *The Mystery of Capital*, have had a substantial effect on the global development community since the late 1990s and are also progressively persuading policy-makers as well as planners in South Africa (Davies, Narsoo, and Tomlinson, 2007). His theories, which arose during a season of turmoil for informal housing policies and in which Peru was experiencing a critical political phase, gained a large consensus, at both the national and international levels (Fontana, 2016). A central tenet of his theories, which will be used for the study, is that or giving property titles to the poor can be a powerful anti-poverty instrument. As such, De Soto's

theory emphasizes the importance of secure property rights (tenure security) for economic growth, development and overall prosperity. He believes and further emphasizes the role played by the security of tenure for development and that for growth and development to take place, tenure security with regards to land or property is significantly effective (Williamson and Kerekes, 2011). As will be pointed out later, this is because well-defined property rights provide the poor with access to credit as they can use these secure assets as collateral.

As such, de Soto claims that to further stimulate economic growth, informal property rights should be codified within a written formal legal system and that government codification of unarticulated, informal property rights (tenure security) is needed in order to realise the positive benefits associated with secure and well-defined property rights that promote development (Williamson and Kerekes , 2011) . He argues that to best facilitate economic growth, an integrated system of standard legal titles is necessary. De Soto's theories have thus, been influential in the debate on land tenure and urban housing reform, especially with regard to public policies aimed at legalising informal settlements and other informal economic activities (Williamson and Kerekes, 2011).

In summary, De Soto suggests that the poor, especially in the most deprived portions of the world, are poor only on paper. In fact, they are wealthy, in terms of the land they can control to grow their food and live with their families. De Soto's view is often described by many as 'give the poor a property title, then they will have credit and escape from poverty'. Property rights therefore are not just a description of the physical features of a possession, but particularly of its economic and social characteristics (De Soto, 2000, p. 50). Fontana, (2016) further eludes that according to De Soto the poor are obliged to live and work in informality because they lack easy access to property mechanisms. Because of this lack, they cannot turn their assets into capital. However, assets without property titles are just 'dead capital'. Additionally, De Soto suggests that people without titles cannot invest and negotiate their

assets, and without these conditions, the formal market is restricted, a fact that leads to direct consequences for the socio-economic development of the entire country. Due to such circumstances, ‘informal dwellers’ remain poor and the country cannot start a real capitalistic process. Thus, the only promising solution to change the situation is to, therefore, improve the national legal system, guaranteeing to everyone access to justice and regulating the property rights system. De Soto further states that giving property titles to everyone is the only way to convert the informal system to a formal one, reducing urban poverty and increasing the national wealth (Fontana, 2016).

### *2.3.2 The Neoclassical Theory of Property Rights*

The neoclassical theory of property rights can be traced to the seminal work of Coase (1960) who emphasized the central importance of property rights in the operation of the price system. Later scholars, such as Demsetz (1967), Alchian and Demsetz (1973), Barzel (1989), and Eggerston (1990), among others, provided the framework that couched the discussion in terms of the positive role property rights play towards economic efficiency, while others such as Libecap (1989) and Nobel Prize winner in Economics, Douglas North (1990) provided the historical framework and the role of institutions. The theory asserts that property rights play a critical role in providing economic incentives that shape resource allocation. Property rights refer to social institutions that determine the range of privileges granted to individuals to use or own a particular resource. Rights to a property, such as land give a right to the individual to use the asset, right to earn rent or income from the asset, right to exchange, transfer or trade in that asset, and the right of enforcement of property rights. According to Besley and Ghatak (2009), secure property rights influence economic growth through four main channels, namely, (i) by providing security for investment; (ii) enhancing efficiency by making it possible for resources to flow to where they can be used most productively; (iii) reducing costs related to

protecting an insecure property, thus freeing these resources to go towards productive uses: and, (iv) the use of those fixed assets as collateral and thereby support other transactions.

The neoclassical theory of property rights posits that for investment, which is required for economic growth, to take place, investors need to be assured that they are protected from state or private expropriation. In agriculture, farmers will not invest in land if the tenure system does not provide security of holdings, and neither will they use it in a sustainable way. In other words, secure property rights also help solve the problem of the “tragedy of the commons” whereby due to lack of clearly defined property rights, the resource may be over-exploited and little, or investment takes place. De Soto has extended the neoclassical theory of property rights to argue that under a formal property rights system, investment and efficient exchange of land can take place. In the next section, an outline of the basic tenets of De Soto’s theory of property right that will act as bedrock of our analysis is provided.

### *2.3.3 Critique of De Soto’s theory of property rights concerning the effectiveness of land titling as a strategy for poverty reduction*

Although De Soto’s ideas have remained influential among many policymakers and politicians over the years, a significant body of scholars and land reform practitioners have expressed concern that his policy prescriptions, while literally are highly deceptive. This arises from the fact that while the theory provides important policy insights into how to deal with issues of security of tenure, land titling and poverty reduction, empirical evidence has not only been mixed, but most studies fail to find support for De Soto’s assertions. As such, since the publication of his book *The Mystery of Capital* in 2000 titled, a book that is basically a call for a global reform aimed at overcoming poverty and underdevelopment the theory has over the years attracted harsh critiques from the academic community at large. This section aims at analysing the critical remarks with regards to De Soto’s theory of property rights. Below are

presented the arguments that aroused the most criticism and that warmed up the debate on the effectiveness of land titling programmes.

### *2.3.3.1 Stereotypes and generalization*

The first critique which will be looked at in De Soto's work is that of categorization and stereotyping of concepts and terms representation. De Soto neglects that the 'poor' are not a homogenous group, which means that the poor do not live in the same circumstances and that others have it better or worse than others when it comes to poverty, (there are 'rich' poor, and 'poor' poor) thus meaning that single solutions will not work. Cousins et al., (2005) argues that De Soto portrays the poor and the 'extra-legal' sector as homogeneous, whereas in reality, they are highly differentiated, some of the poor are entrepreneurs, but others are landless rural workers who own virtually no assets at all. Scholars such as Fernandes, (2002); Benda-Beckmann, (2003); Bromley, (2004); Cousins et al., (2005); Sjaastad and Cousins, (2008); Obeng- Odoom, (2013) cited by Van Der Molen, (2012) further allude that De Soto seems to consider the poor as an undifferentiated class, and to merge the different types of property rights into a unique category, he refers to them as all living in the extra-legal sector accumulating capital when they can. Nonetheless, it is necessary to make some distinctions within the extra-legal realm based on the degree of wellbeing or exploitation of every inhabitant or ones' type of job. Additionally, it seems appropriate to underline that many poor do not work in the extra-legal sector, and many of them do not own anything. Thus, in these cases, the concession of property/land titles would not help them to upgrade their social and economic conditions (Fontana, 2016)

### *2.3.3.2 Reinforcing disparity*

It is said that major land titling programs are not implemented for the goal of social inequality reduction but are however implemented for goals different from that Gilbert (2002) and

Sjaastad and Cousins (2008). Only the capital-formation function of property is acknowledged and other functions such as securing livelihoods or underpinning social identity are ignored (Cousins et al., 2005). Moreover, the economic profit that comes from the costs of the implementation of the programs is lower in comparison with the ones of other housing policies (upgrading for instance). For the state, land titling represents a good economic entrance, this aspect could affect the poorest strata of society thus increasing the social gap. Bearing in mind the profits generated by giving property titles is not so unusual that governments manipulate the programs for the economic benefits of a small élite (Gilbert, 2002; Payne, Durand-Lasserve and Rakodi, 2009; Balbo, 2014). According to Fernandes (2003), this model of legalization helps not the poor but the old and new élite of power, who benefit from the enrichment of the urban areas thanks to the new market value assigned by the titling.

#### *2.3.3.3 Weak link between tenure security and land titling*

De Soto alludes that the total guarantee of rights on a property is possible only through the formalization of the titles on that property (De Soto, 2002a, p. 252). According to De Soto, tenure security is the answer to eviction, he emphasises this and endorses the statement that the higher the perceived security, the strongest will be the economic investment of the poor in one's house and vice versa. Several studies have, however, on the topic of tenure security revealed that although property titles facilitate tenure security within informal settlements, land titling does not need to be considered a necessary and sufficient condition in order to guarantee to the poor the maximum protection from eviction (Fernandes, 2002; Gilbert, 2002; 2012; Payne, 2008; Calderon, 2007; 2011; Ward, 2012 cited by Van Der Molen, 2012).

#### *2.3.3.4 Doubts about the relation between land titling and poverty reduction*

De Soto has made claims with regards to land titling in countries in the Global South in relation to the reduction of urban poverty. Many authors such as, (Gilbert, (2002); Fernandes, (2002);

Sjaastad and Cousins, (2008); Otto, (2009) argue that the fact that the concession of titles promotes the tenure security and personal wellbeing of some people might be true, does not unavoidably mean that this operation activates a general process of socio-spatial integration. Additionally, if regularization programs are isolated from broader and more structured public policies, they have no substantial impact on poverty. Bromley (2008) and Payne, Durand-Lasserve and Rakodi (2009) further allude that property titles could even have negative effects in the long term and reduce the security of tenure, both for new owners and tenants, because of the increased value of the 'new' legal properties. Moreover, analyses conducted on some titling programs in countries of the Global South by experts like Fernandes (2002; 2003), Calderon (2007; 2010; 2011), Gilbert (2002), Ward (2012), Varley (2002), Durand-Lasserve and Rakodi (2008; 2009) show that titling is not a good strategy for poverty reduction or for guaranteeing tenure security to the poor.

#### *2.3.3.5 General critiques*

Scholars have also critiqued De Soto for neglecting a vast number of issues in relation to his theory of property rights. For instance, Siegel (2009) argues that De Soto neglects the fact that past experiences reveal that titling does not work. He does not adequately acknowledge that titling programmes have been tried (at huge cost) all over the developing world and failed to produce the results he predicts. In fact, many titling schemes have been shown to disadvantage the poor. Furthermore, central criticisms revolve around his oversimplification of the informal economy and associated property relations. Although De Soto does not explicitly state that 'formal property' is equivalent to an individual, private property, this is clearly his assumption. Additionally, it is said that De Soto also downplays the role of customary tenure and management as existing legal institutions, although not under the formal "bell jar" (Bruce, 2012). He fails to acknowledge the rather different principles that often inform the 'extra-legal' property systems found in rural areas and informal settlements.

Furthermore, when it comes to land distribution the theorist neglects the skew access to land in many countries (Cousins, 2007 and Granér, 2005). Large areas of land occupied by the poor are already owned (for example, by private landlords or the state) the question of redistribution of this land is not discussed. Formalizing is not a simple confirmation of informal rules. It legalizes thievery, dispossession and colonial grabbing and neglects the gender issue, this is also an issue avoided by the theorist. In relation to the role of the state and the rule of law, De Soto relies heavily on political will and functional governments, while current statutory legal frameworks exclude the poor and lack of enforcement hampers providing protection (Bromley, 2008 and Besley 2009). In many countries, the state is the owner of key economic resources such as timber, minerals, energy resources, and wilderness areas. The distribution of benefits from these resources is a key political issue not considered by De Soto.

#### *2.3.4 Strengths*

Despite all the criticism, De Soto's work provides a useful conceptual framework to formulate questions on the security of tenure, land titling and poverty reduction. It is important to note that De Soto's case for land titling essentially rests on economic grounds. Few would dispute that property rights matter for productive investment. Secure tenure provides farmers with an incentive to invest in the land and use it productively (as well as sustainably). Another important advantage of titling is that it may reduce the transactions costs related to land transfers for the rural poor, leading to an emergence of a market for land and commercialisation of agriculture. Furthermore, titling minimises disputes and conflicts over land and thus frees up resources for possible investment. Also, as argued by De Soto, formalisation allows the poor to use the land as collateral for accessing credit.

While the weight of academic empirical literature finds little relationship between land title and access to credit, there is a significant body of literature showing that land titling has a

positive impact on economic growth and development, and this impact works through the productivity and investment channels, and not necessarily through credit. For example, in a study of a poor urban area in Buenos Aires, Schargrotsky and Galiani (2010) found that land titling had a modest effect on mortgage credit and none on other forms of credit, but however, a substantial impact on investment, especially on housing and children's education. They thus, conclude that land titling can be an effective tool for poverty reduction through the slow channel of increased physical and human capital investment, and not necessarily through access to credit. In a more recent systematic review of studies on the importance of security of tenure for investment and agricultural productivity for selected countries in Africa, Asia, and Latin America, Lawry, et. al., (2017) find strong positive gains to investment and income following land titling in Asia and Latin America, but positive but modest gains in Africa. They attribute the modest gains in Africa to (i) pre-existing institutions, such as customary and other indigenous tenure system; (ii) the fact that the poor in Africa may lack resources to translate ownership into higher levels of productivity; and, (iii) lack of complementary public investments in say, institutions and infrastructure.

With regards to gender, there is also another strand of literature showing that secure land rights, however, defined (formal, indigenous or customary) generate significant economic and social benefits for women. Rogers and Menon (2012), and Giobarelli and Wamalwa (2011) argue that women benefit through having access to land as an input in production and entrepreneurship, increased income through rent, and where markets exist, through increased access to credit. For example, an impact evaluation of Rwanda's nation-wide Land Tenure Regularisation (LTR) programme found that significant and large investment impacts accrued to women. In a review of a similar programme in Ethiopia, Deinenger, et. al. (2008) found that the programme was successful because of its gender focus. Finally, studies have also found that women with

the secure land title have higher self-esteem and are better able to participate in community activities and structures (see Baruah, 2010).

As mentioned before, it is the land titling-formal credit nexus that has been most difficult to establish. However, while the majority of the evidence finds little or no effect of land titling on increased access to credit, a recent study on Panama, by Cordoba (2017) on the impact formal land property rights on agricultural productivity and access to credit found that not only does land titling increase yields, but household level data also shows that households with registered land titles were more likely to obtain an agriculture loan. As such, the relationship between formal land title and increased access to credit remains empirical.

#### *2.3.5 Application of the theory to the study*

With regards to this study De Soto's theory applies, in the sense that if women's interests are taken more seriously when it comes to land tenure security and if such is actually fully implemented, various economic, as well as social benefits, would accrue for rural women. If land tenure reforms are more gender equitable, putting women in the forefront, women who own land or otherwise would control assets and be in better positions to improve their lives and cope with any potential crisis. Secure land rights would also make it possible for women to use land as collateral for credit during a financial crisis or invest in a small business or other income-generating venture. By owning land, women would also directly gain from such benefits as the use of the land and higher incomes, as well as having a secure place to live. Furthermore, research has shown that individuals who own land generate much higher rural non-farm earnings from self-employment than people without land. It is thus evident that the inequality of access to land is a key obstacle to women's economic empowerment and tenure security seems to be the most significant contribution towards poverty alleviation, growth and development amongst women.

### *2.3.6 The Evolutionary Theory of Land Rights*

A related theory that emphasises property rights and has dominated most of the discussions on land tenure reforms in Africa is the evolutionary theory of land rights (ETLR), extensively discussed by Platteau (1996). The ETLR theory considers communal based land tenure systems as an obstacle to economic development and considers an evolution to individual property rights as a natural progression à la Rostow “stages of economic growth”. According to this theory, due to population pressures together with the commercialisation of agriculture, the land becomes increasingly scarce, resulting in land rights individualising until private property rights emerge. For proponents of ETLR, the progression towards private tenure is inevitable since institutions evolving maximise benefits and minimise costs.

The move towards private or individual land tenure rights is beneficial to development as it improves the security of tenure, accelerates investments in land, creates a market for land and reallocates resources to more efficient producers. Brasselle, Gaspar and Platteau (2002) identify three channels through which more secure property rights can act as an incentive for investments in agriculture. The first, which they term the “assurance effect” posits that when farmers are secure in their rights to land, either through ownership or long-term lease, they have an incentive to undertake investments in the land because the returns from a long-term investment are likely to be higher. The second channel, which they term the “realisability effect” postulates that as result of security of tenure, a market for land may develop, making it possible for land to be easily converted to liquid assets through sales. In such situations, farmers have an incentive to invest in land improvements to increase the value of their land in the exchange. The third channel is the “collateralisation effect” whereby secure title gives the land collateral value and increases access to credit.

The policy implication of the ETLR theory is that governments should take steps to put in place

formal systems of individualised land tenure systems. For a long time, this was the staple policy advice and policy support given to developing countries by the international development community, including the World Bank and the UK's Department for International Development (DFID)<sup>1</sup>.

### *2.3.7 Critiques*

Although the ETLR thesis has been subjected to a withering criticism from a number of scholars, there is considerable evidence to support this proposition in Africa. According to Platteau (1996) in Africa, the ETLR thesis is “grounded in the well-ascertained fact of considerable flexibility of indigenous land tenure arrangements in the region” (p.32). Early on, Kenya provided much of the fodder for experimentation with the ETLR thesis following the Swynnerton plan of 1954, which was aimed at creating a class of black commercial farmers through registration of rights for Africans to land in individual freehold title. The policy, which has continued in recent land reform programmes in Kenya followed market-based principles and seeks to formally register all land rights with the aim of securing and clarifying all land rights under statutory laws to encourage greater investments in land and agriculture.

Also, a number of studies in Cameroon (Firmin-Sellers and Sellers, 1999), Kenya (Hunt, 2005), Rwanda throughout the 1980s and 1990s (Andre and Platteau, 1998) and Lesotho (Lawry, 1993) have found support for the ETLR in which population pressures have led to an increase in the demand for land, and thus its relative price to labour. As a result, governments have either promoted individualised land tenure or tolerated the sale of land previously held under the customary land tenure systems. However, the practical application of the ETLR thesis has

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<sup>1</sup> For example at the World Bank organised “Land and Poverty Conference 2017” under the theme : Why Secure Land Rights Matter”the Bank’s Senior Director for Social, Urban Rural and Resilience Global Practice” noted that “Addressing land tenure issues is at the centre of building sustainable communities—countries, regions, cities, and rural communities need secure rights, clear boundaries, and accessible land services for economic growth.” <http://www.worldbank.org/en/news/feature/2017/03/24/why-secure-land-rights-matter.print> (accessed 23 August, 2017).

been fraught with shortcomings. One shortcoming pointed out by Platteau (1996) is that registration of title, far from increasing security, may increase uncertainty and conflict or litigation over land rights. This is because while land registration may create security and reduce transactions costs for one group, while for those groups relying on customary land tenure systems, it may create uncertainty. This was especially true of women, who, under customary tenure may not have ownership rights, as their rights are considered secondary, but have usufructuary access or rights to land.

Women are more likely to lose out when land becomes registered in the name of the male head. In the case of Kenya, Platteau (1996) has asserted that not only did the application of the ETLR not show any clearly discernible impact on investment behaviour, the policies have also created inequalities regarding access to land, especially for women and opened up new possibilities for conflict and insecurity. Vulnerable groups, which included women were, tended to lose out during the registration process while male household heads tended to strengthen their hold on the land. Furthermore, because of general gender discrimination that confronts women, they also lack resources to acquire land in the market place. Furthermore, the assumption that customary tenure is less secure is also dispute by empirical findings. Some authors argue that customary or communal tenure systems need not necessarily entail insecurity. Customary land rights may be subject to other rules and traditions which rural farmers may find trustworthy.

The other criticism ETLR theory is that it ignores the complex and pluralistic land tenure systems that pervade most of Africa (see Whitehead and Tsikata, 2003). Demarcations between communal and individual tenure rarely fit most of Africa, where farmers practice mixed farming (cropping and herding), sometimes leading to overlapping land rights.

Furthermore, the static view of customary tenure ignores the fact that it does adapt over time to meet the needs of the community (see Basset, 2007). As noted by Stamm (2009) customary

or communal tenure systems at the local level are complex and dynamic and rights may be held by individual persons or group of persons. Another criticism of the policy implications of ETLR theory is practical administrative challenges with regard to recording title and keeping records of changes in land ownership. For many African countries privatisation through land titling often strains the administrative capacity and tends to be costly. In many countries governments lack the personnel or resources required to carry out the bureaucratic demands of registering title, such as site visits, land surveys, and maps, just to mention a few. This has led to fewer titles being issued. Byamugisha (2013) estimates that in Sub-Saharan Africa, about 10% of the occupied rural land is registered.

#### *2.3.8 Strengths and justification of use of theory*

Despite its criticism and the weak empirical evidence on the impact of security of land tenure (especially formalised rights) with the investment required to improve agricultural growth, the theoretical predictions of the ETLR appear to be reasonably credible. Moreover, the policy implications of the theory are also straightforward. However, it is important to point out that in the application of these policy prescriptions, the existing institutional arrangements should be respected. Hence policy responses require a juxtaposition of recognition of individual land rights with the legal recognition of customary or communal land rights.

#### *2.3.9 Application to the study*

In the context of this study and in terms of the evolutionary theory of land rights view, there is a direct relationship between land reform and economic development. The theory states that agriculture development (particularly in undeveloped countries) has a vital role to play in economic development (Zarin & Bujang, 1994). However, customary land tenure stymies the contribution of agriculture to economic development. Women have a significant contribution to agriculture and it is the most important source of employment for rural women. If women

are subject to the ownership of land, they are sure to improve their lives through agriculture both socially and economically. Rural land ownership or other secure forms of tenure, which assures an individual of some control over the returns from one's labour, is the real and only practical means of participation in the political and economic life of the country thus a sense of empowerment.

## **2.4 Literature review**

The literature review section basically gives an overview of issues that pave the way for a clearer understanding of the research problem and identifies the knowledge gap this study seeks to fill. This section is a critical analysis of published sources and literature regarding access to land and secure land rights amongst women worldwide. It will highlight and discuss perspectives on the importance of secure land rights for women, women's current status in terms of ownership of land, how they access land and further elaborate on the challenges many women face in securing land tenure from an international level. Furthermore, Ethiopia and Australia will be used as primary precedent case studies to provide insight into international countries that are dealing with land tenure issues from a gender perspective. This will also provide an understanding of land tenure reform from a gender perspective outside of the Apartheid context before shifting the focus to women and land rights in South Africa.

### *2.4.1 International perspectives on the importance of land and having access to it as a rural woman.*

Land is one of the most important components of the life-supporting system and is of immense importance in that it is the original source of all material wealth and a country's economic affluence and standard of living is closely interconnected with the richness of this particular natural resource Agarwal (1994a:3 cited by Rakolojane 2013). According to Rakolojane, (2013), land has a strategic importance and is very different because of this from other concerns

of the state such as education, health or social welfare. In the case of the proposed study, throughout the international body of literature, it is argued that land is considered the most fundamental resource to rural women's living conditions, economic empowerment and, to some extent, their struggle for equity and equality. Mutangadura, (2004) argues that most women in rural areas are dependent on land for the sustainability of their livelihoods and that land is the single most important source of security against poverty in rural communities and a productive asset in that it creates wealth. In many developing countries, where most rural poor rely on subsistence agriculture for their survival, land remains a critical asset. Small-scale food production and the women involved in it are the backbones of rural livelihoods (Namubiru-Mwaura, 2014). Even in countries where the rural economy has become less dependent on agriculture, land remains a primary resource for rural people (FAO 2002 cited by Namubiru-Mwaura, 2014).

One of the most powerful components in possibly increasing the collection of assets beyond labour to the full portfolio necessary for sustainable livelihoods for rural women is the ownership of land as a resource. However, access to or rights to land are governed by what is referred to as a tenure system, which according to Grigsby, (2004), tenure is “a bundle of rights and in this context the right to land and the resources it can produce. One could also in the particular case of this study refer to such ownership according to (Kanji et al., 2005: 3; Reerink, 2011:1 cited by Ribeiro and Wassel, 2016 as the protection that landholders have against involuntary removal from the land they hold, and the loss of benefits they derive from that land, caused by state or other persons’ intervention, unless due to legal process and adequate compensation. Thus, then meaning that a person has rights to land which according to Duncan and Ping (2001 cited by Namubiru-Mwaura, 2014) can only be defined as complete when the following three conditions are met; legal recognition, social recognition and enforceable by external authorities.

The manner in which rights to land are actually distributed and used can be very complex. Rights to land may derive from the state, however, they can also derive from a range of customary and religious laws, through inheritance and through marriage. In rural settings, customary norms and religion are often more important in determining women's rights than statutory laws.

People who have extensive rights to land are generally more able to enjoy a sustainable livelihood than those who have only limited rights to land, those who have limited rights are, in turn, often better off than those who are landless. When it comes to rural development interventions which place an emphasis on building people's endowments of assets, so they can enjoy sustainable livelihoods, land tenure is significant. Jacobs, (2002) alludes that a livelihood is sustainable when it can cope with, and recover from stresses and shocks, and maintain or enhance its capabilities and assets both now and in the future, while not undermining the natural resource base. Therefore, in this instance, a livelihood comprises the capabilities, assets (including both material and social resources) and activities required for a means of living. Rights to land, together with labour, form the most common endowments used to produce food for home consumption as well as cash crops, thus as mentioned above comprising as one of the most prevailing resources accessible to rural women in this particular case, to upturn and extend their collection of assets beyond land and labour to the full portfolio necessary for sustainable livelihoods (STUDIES, F.L.T, 2002). i.e., social, human as well as financial capital and natural resources and physical assets.

Evidence from numerous empirical studies shows a positive correlation between women and land ownership. A woman with control over her own land, educated about her rights, and in a setting sensitive to gender equality is less likely to become economically vulnerable when she reaches old age or in the event of the death of or separation or divorce from her spouse.

Rakolojane, (2013) alludes that the ownership of land delineates political power, economic as well as social status amongst rural women.

Authors such as Forsythe, et al (2015) suggest that land and land-based natural resources are the foundation of rural women's livelihoods and are related to social, cultural and spiritual identity. They further argue that access to and control over land also contributes to a number of sustainable development pathways and the Sustainable Development Goals. According to Stiftung, (2009), land has long been recognised as a key to advancing the socio-economic rights and wellbeing of women and their position in society. The right to use and control land is central to women's lives in rural communities and lack of such rights deprive them the right to economic empowerment and their struggle for equity and equality within a patriarchal society (Wiggins, 2003).

Previous research by Leavitt et al. (2006) and Stanley et al. (2012) has also further revealed that the provision of sufficient land rights for women is fundamental to fighting hunger and poverty, and particularly reducing women's vulnerability to contracting as well as spreading the Human Immunodeficiency Virus. Poverty can possibly lead to behaviours that expose people to the risk of HIV infection. Women's lack of land rights can compromise their personal and economic security, reduce agricultural production and food security, and lead women to resort to transactional sex to cope with resulting poverty, ultimately leading to increased rates of HIV infection and spread. Therefore secure land rights empower women to mitigate the effects of HIV/AIDS (Giovarelli et al. 2013). Having access to land rights has also been linked to violence against women, women's participation in the political arena, and women's voice in the domestic, local and national spheres. In the quest to create more egalitarian societies, women's rights to land are thus critical. Indeed, it has been demonstrated that granting rights to women contributes to the national and household imperatives of family welfare, food security, empowerment, economic efficiency and poverty alleviation (Stiftung 2009).

Panda and Agarwal, (2005); UN, (2013); WB, FAO and IFAD, (2006); UNDP, (2008) cited by Forsythe, et al (2015) also suggest that women's access to and control over land, in particular, is related to improved household food security and nutrition, greater investment education, greater gender equality, and bargaining power, increased social status and social capital, reductions in gender-based violence and HIV prevention. Rodgers and Menon, (2012) also support the statements mentioned above by arguing that strengthening women's land rights can have direct beneficial effects for women in terms of lower fertility, improved health and freedom from domestic violence.

Given the centrality of land to development and the fact that access and ownership of land are fundamental to basic livelihood sustenance, women's equal access, use, and control over land is a basic human right. Mutangadura, (2004) argues that justice in development requires that women's right to land be treated as a priority human right as such rights are directly linked to the protection of their other human rights, such as the rights to life, housing, food, and health. Thus, implying that discrimination of women from owning this basic good is a violation of women's human rights.

Gender equality when it comes to land is at the very heart of human rights and United Nations values and has been framed by international law as part of global concern on human rights and basic freedoms for social, economic and political rights (Arisunta, 2010). Furthermore, with development practitioners recognising that secure land rights have a strong empowering effect on women and the positive implications of gender- equitable land tenure for poverty reduction, food security and rural development as well as the right to land consisting as a human right, great focus and attention by several international conventions and agreements have for many years been on ensuring that countries globally commit and honour such a right.

The commitment arises out of numerous key global policy documents and international standards including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1981), which is perhaps the most fundamental convention, it came into force in 1981 and has so far been ratified by 187 countries (Arisunta, 2010). It defines what constitutes discrimination against women; provides a framework to identify and suppress all forms of discrimination, particularly in the political, social, economic and cultural spheres and sets up an agenda for national action to put an end to such discrimination. It is then followed by the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1976) (FAO, 2015).

Women's land rights have also been addressed by regional legal and policy frameworks including the African Charter on Human and People's Rights of Women and the Framework and Guidelines for Land Policy in Africa. The African Charter on Human and Peoples' Rights (ACHPR) - adopted in 1981 and ratified by 53 countries, sets standards for the promotion and protection of human rights in the African continent (FAO,2016). It emerged in 1979 under the auspices of the Organisation of African Unity (OAU), which called upon a committee of experts to draft a human rights instrument that would mirror those that already existed in Europe (European Convention on Human Rights, Rome, 1950) and in the Americas (American Convention on Human Rights, San José, 1978) (FAO, 2016).

The Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol, Maputo, 2003) came into force in 2005 and has so far been ratified by 28 countries. This instrument is particularly relevant for gender equitable land tenure as it strives to ensure that the rights of women are protected, realized and promoted to enable them to fully enjoy all their human rights (FAO, 2016).

#### *2.4.2 Status of women's access and control over land*

Gender equality in land tenure has been the focus of a large number of international instruments in the form of conventions, protocols, and recommendations in recent years. The issue of gender equality in land tenure has further been researched by international organizations and development agencies and reports have been produced as well as tools and recommendations to document the state of land tenure from a gender perspective. Although statistical information is far from complete and, where it exists, it lacks uniformity thus making comparison difficult, this section of the study however tries by all possible means to draw from the minimal available data from these sources so as to measure the status of gender equity in land tenure, making global comparisons from different studies and evidence in regard to the matter at hand. However, before one proceeds, it is vital to firstly conceptualize access to and ownership of land.

##### *2.4.2.1 Conceptualizing Access to and Ownership of Land*

The status of women's access and control over land is a very complex and complicated picture, and one that differs greatly depending upon the country, region, what type of land is considered, what definition of landholding is used, and whether joint ownership is considered (Doss et al 2013). Although land rights have been briefly mentioned in the above section, to measure women's land rights that can be compared across countries and across time, one needs to be aware of the complexity of these rights and what access to land really means in greater depth, identifying women's land ownership is conceptual, rather than empirical (Doss et al 2013). There are two dimensions in particular of women's land rights that should be understood in the case of this study and with respect to agricultural productivity and rural livelihoods so as to be able to analyse and identify relevant gender gaps in access and ownership of land.

##### *Bundle of rights*

The first dimension is the bundle of rights, this concept has risen due to the fact that rights to land are diverse and, in practice, multiple rights to an object (land) can be held by several persons or groups (Bruneli et al 2015). These relevant rights refer to privileges to access, control and own land. While there are no standard definitions, rights of access to land can take the form of use rights; of which in this case is the right to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc. STUDIES, F.L.T., (2002), further suggest that access usually involves the right to farm a piece of land and obtain at least some of the produce. The second bundle is that of control rights; which encompasses more rights, including the rights to make decisions about what is grown and often to make improvements on the land. These rights also involve the right to make decisions on how the land should be used and to benefit financially from the sale of crops, etc. Finally, there also exists the right of ownership or also referred to as transfer rights, this is the most comprehensive bundle of rights and usually involves the right to transfer the land through lease, sales, or bequest and also involves the ability to reallocate use and control rights (STUDIES, F.L.T., 2002).

### *Tenure security*

The second dimension which should be understood is tenure security, which refers to in this case, ownership implying holding all rights within a bundle of rights that typically includes the right to make improvements on, rent out, and decide how to use the land. However, it is the right of alienation, or the right to transfer land to another party, that defines true ownership (Doss et al, 2013). Different people may have some of the rights that make up the bundle of rights, but only the owner has the right of alienation (Doss et al, 2013). The security of the above rights is highly critical for rural women, as evidence reveals that secure tenure is associated with higher levels of investment and productivity in agriculture as well as greater livelihood sustainability. This ownership could either be reported ownership, which refers to where one identifies him/herself as the owner of the land (Bunelli, et al 2015).

Ownership documents may or may not exist for this type of ownership and fully relies on the one's own report of ownership (Bunelli, et al 2015). Ownership could also be documented ownership which is whereby one reports that some type of ownership documents exists for the land and those documents actually exist. Greater tenure security, however, lies within documented or titled ownership, which is what rural women should strive for and not just be subject to sticks of the bundle of rights ("sticks" represent an individual right) however rather hold the overall bundle of rights.

According to FAO, (2016), without full legal capacity women cannot freely exercise their land rights. Furthermore, the most common approach advocated by development communities and agencies is that the full enabling of secure rights to land is titling. Land titling and registration are considered as necessary instruments that provide landholders formal recognition of their rights by the state, so as to ensure landholders security. Additionally, protagonists of land titling claim that this security, therefore, increases investment in land, and reduces land-use conflicts at the same time making access to financial services easier, and common areas are protected from infringement through land use plans (De Soto 2002; Domeher and Abdulai 2012; Pedersen 2010). Certain theories such as the Neoclassical theory of property rights and De Soto's theory of property rights also recommend land titling is essential for land market efficiency and claim that such efficiency enables land to be shifted to those who can use it most productively and efficiently thus contributing to economic growth (De Soto 2002).

#### *2.4.2.2 Disaggregated land-related statistics review between men and women globally*

Now that one is aware of the two dimensions inclusive of the definition of rights/ownership, with respect to agricultural productivity and rural livelihoods, one can now analyse land ownership from a gender perspective globally and the state of women when it comes to owning land looking at relevant evidence and statistics. Although the study particularly focuses on

discovering whether women have individual formal ownership/titling of land, thus the security of tenure, a variation of other facets relating to gender inequality in land will also be investigated. This is done to distinguish the gap between men and women in terms of gender inequality in land overall, thus being able to detect as to where women stand regarding gender inequality in land. The following review includes the little data available, found in published studies, technical reports as well as grey literature on gendered bundles of rights over land globally. Existing estimates will be investigated from large-scale comparable data, by the Food and Agriculture Organization's Gender and Land Rights Database, Demographic Health Surveys (DHS) and the Living Standards Measurement Study-Integrated Surveys on Agriculture. This review is a necessity as the lack of a clear understanding and reproduction of statistics on gender and land is problematic as it may lead to an inability to clearly articulate a policy response to the inequalities faced by women with regards to land ownership.

#### *DHS Review*

The first review of approximately 10 countries is from Demographic and Health Surveys, which is the leading source of representative data that started collecting information on individual land ownership between men and women of reproductive age at household level from the year 2009 (Doss et al, 2013). The individual-level statistics are disaggregated by gender and include whether the individual owns any land (either sole ownership or joint ownership) and whether the individual owns any land alone, as shown on the table below.

Table 2. 1: A table depicting an analysis of landownership, by households, women, and men from the year 2009 to 2011.

Country (year)	Household		Women			Men		
	Sample size households	Percentage of households owning any agricultural land	Sample size women	Own any land (sole or joint)	Own any land (sole only)	Sample size men	Own any land (sole or joint)	Own any land (sole only)
Burkina Faso (2010)	14,422	79	17,071	32	12	7,304	54	43
Burundi (2010)	8,589	86	9,372	54	11	4,280	64	50
Ethiopia (2011)	16,693	73	16,503	50	12	14,107	54	28
Lesotho (2009)	9,385	53	7,624	38	7	3,317	34	9
Malawi (2010)	24,818	80	15,399	48	23	NA	NA	NA
Rwanda (2010)	12,540	81	13,666	54	13	6,328	55	25
Senegal (2010–2011)	7,902	47	15,688	11	5	4,929	28	22
Tanzania (2010)	9,592	77	10,137	30	8	NA	NA	NA
Uganda (2011)	9,029	72	8,667	39	14	2,292	60	46
Zimbabwe (2010–2011)	9,756	63	9,171	36	11	7,480	36	22
Total	–	71	–	39	12	–	48	31

Source: *Demographic and Health Surveys 2* cited by Doss et al, 2013, Pg. 18.

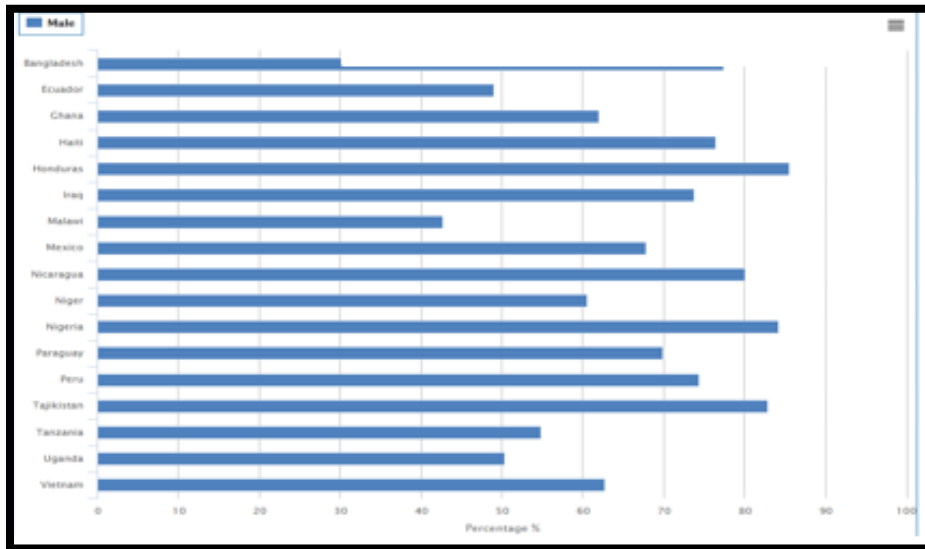
Table 2.1 indicates that globally, a great percentage of men are landowners as compared to landowners that are women. On average, across 10 countries in Africa, 39% of women and 48% of men report owning land, including both individual and joint ownership (Doss et al, 2013). An amount of as little as 12% of women report owning land individually, while a greater 31% of men own land individually. Only one country (Lesotho) has a percentage of 38 for sole and joint ownership for women and 34% for men in sole and joint ownership. The figures for two countries (Zimbabwe and Rwanda) for men and women are roughly comparable. Although the statistics derived above are not strictly comparable, they do provide insights into patterns of gender inequality in landownership.

#### FAO Review

The second review, which includes two graphs, is by the Gender and Land Rights Database which was launched by UN Food and Agriculture Organization (FAO) early March 2015 (Doss et al, 2013). These graphs measure the share of female and male agricultural landholders in the total population of landowners globally. An agricultural landowner refers to the legal owner of

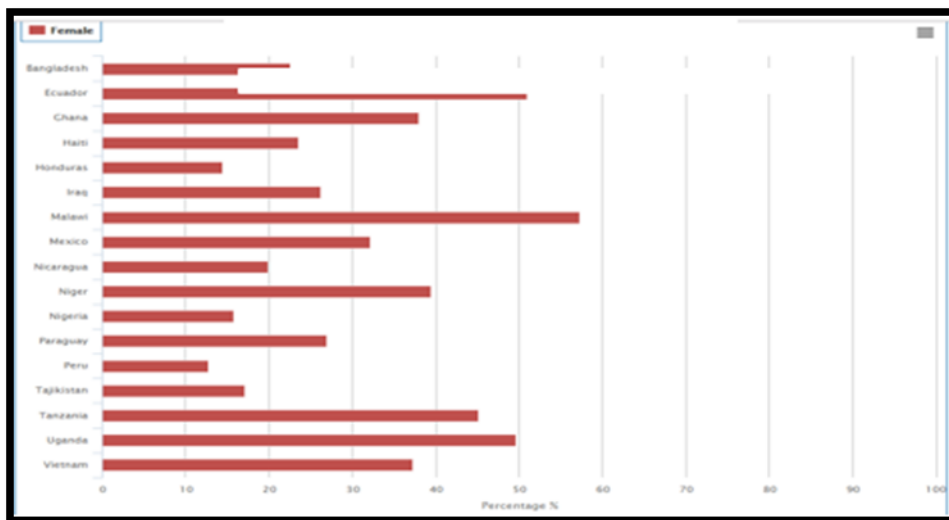
the agricultural land; however, definitions of ownership may vary across countries and surveys (Bunelli, et al., 2015). (See figure 2.1 and figure 2.2).

*Figure 2. 1: Depicts what proportion of landowners globally are men (male agricultural holders)*



Source: FAO: Gender and Land Rights Database 2015

*Figure 2. 2: Depicts what proportion of landowners globally are female (female agricultural holders)*



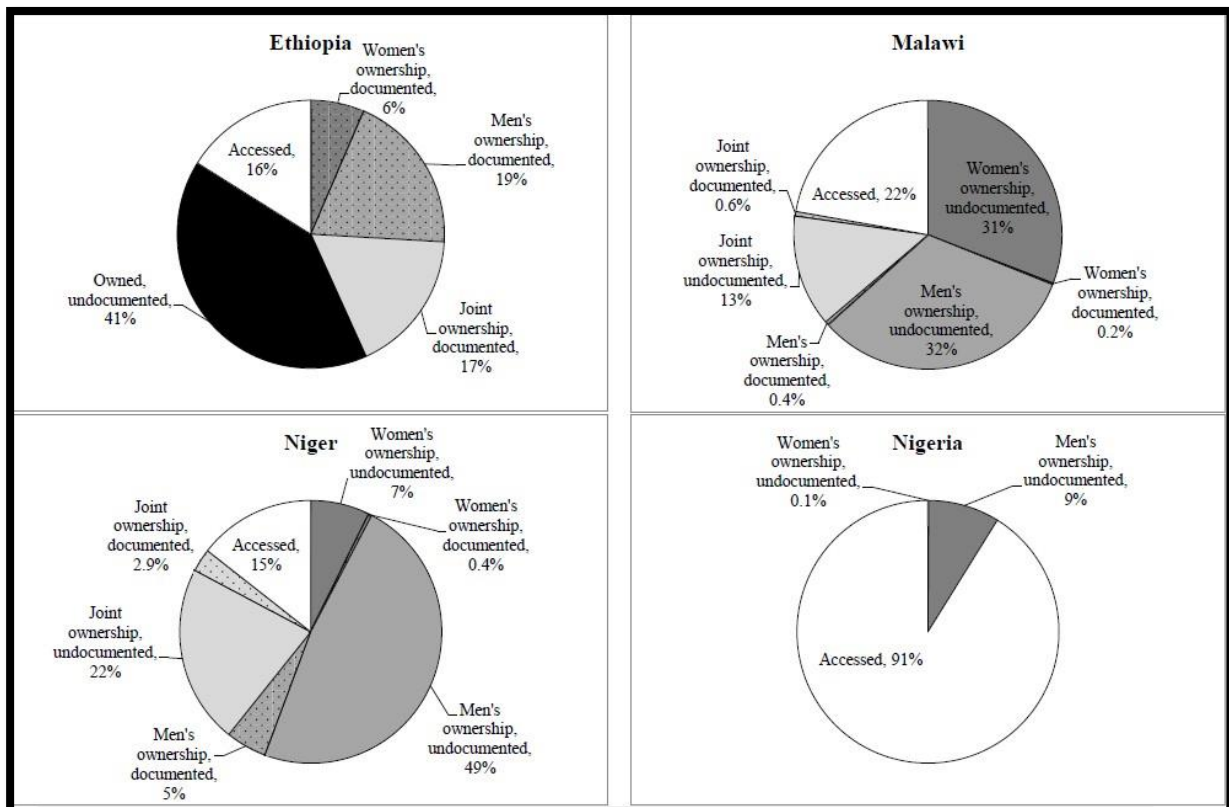
Source: FAO: Gender and Land Rights Database 2015

Figure 2.1 and 2.2 indicate what proportion of landowners globally are women and what proportion are men. Women do not even go beyond 60% in land ownership whereas men reach 60% and supersede to about 80%. The gap between the two comparisons in regard to gender inequality is rather very evident as there is a substantial percentage of men owning land relative to women. So far, the reviews done convey the important generalization that large gender inequities exist in the ownership and control of an asset of primary importance, both globally and in Africa.

#### *LSMS-ISA review*

The third review that will be analysed is by the Living Standard Measurement Surveys: Integrated Surveys on Agriculture (LSMS-ISA). The review will look at the proportion of value of land owned (and for some countries, which proportion of that value is for documented or undocumented land) or accessed, out of the total value of all household land. Household and agricultural surveys collect detailed information on gender-specific ownership and decision-making and labour contributions to household cultivation efforts, allowing more nuanced, descriptive, and complex analyses of gender (Carletto, et al, 2010). In addition, the LSMS-ISA collect land area, value, and detailed titling indicators, allowing for estimates beyond simple indicators of ownership. (See figure 2.3).

Figure 2. 3: Depicts the area of accessed or owned land (by gender) as a proportion of the total area of all household land (in acres).



Source: Living Standards Measurement Study—Integrated Surveys on Agriculture (LSMS-ISA) Ethiopia (2011–2012), Malawi (2010–2011), Niger (2011), Nigeria (2010), cited by Doss et al, 2013, Pg. 23.

Figure 2.3, by LSMS-ISA reveals that, in all of these countries, namely, Ethiopia, Malawi, Niger and Nigeria of the (undocumented and documented) land owned, men's sole ownership of land is higher than women's sole ownership of land. The total land area owned or accessed by households, women solely own (documented and undocumented) a high of 31 percent in Malawi, followed by Niger (8 percent), and Nigeria (less than 1 percent). Comparatively, men solely own, on average, 99 times as much land area as women in Nigeria, and between 1.1 to 6.9 times as much land area as land solely owned by women in the other countries. The charts also depict that men solely own a greater share of documented land than that owned solely by women in terms of area measures.

These findings, as well as the various analysis process presented from figures 2.1, 2.2 and, 2.3 reveal that many gaps remain, across countries, as the pattern that women own less land than men, regardless of how ownership is conceptualized, is remarkably consistent. Women are disadvantaged relative to men in nearly all measures of landownership and bundles of rights; however, the gender gap varies widely. Additionally, despite the numerous reasons of the importance of land to rural women discussed in Section 2.4.1 and despite the strong representation of women in development activism, they have still been left out of the benefits of various policy mechanisms and, when considered at all, they tend to be marginal to these mechanisms.

Bunelli, et al (2015) argue that although there is a global consensus that women's land rights are fundamental for the realization of food security and rural development, women's land rights are still largely discriminated against. Deere and Doss 2006 cited by Rodgers, and Menon, 2012 further allude that existing evidence closely ties land tenure with increased investments in land and improved agricultural productivity, however also shows that very few women share land or own land directly. The Secretary General of the World Conference of the United Nations' Decade for Women stated that women are "basically powerless and propertyless" yet the often-quoted statistic reveals that women produce 60 % to 80% of food in the developing world (Ngadaye, 1991, p.51 cited by Weideman, 2004 and Quisumbing et al 2015). Irrespective of this statistic, gender-based inequalities in access to land continue to exacerbate women's economic insecurity, and bargaining power within households. Evidently this has left women vulnerable and still constituting as the bulk of the victims of poverty.

Several studies by Rao (2011) for Asia and Lastarria-Cornhiel (1997) and Kameri-Mbote (2006) for Africa cited by Namubiru-Mwaura, (2014), further reveal that, in developing countries such as northern, western, and central Africa, and some parts of Asia, a common and persistent trend in gender inequality when it comes to land rights exists. The situation is not

quite as bad in eastern and Southern Africa as well as some parts in Latin America and the Caribbean and Eastern Europe as there seems to be better access to land for women, however abundant literature additionally reveals that overall, worldwide women tend to own less or no land compared to males. (Patel et al, (2014) adds that, in every developing region, women own substantially less land than men do and gender inequalities in land rights are still very much prevalent. A woman, for example, may have the right to use land to grow crops to feed the family, while her husband may collect the profits from selling any crops at the market. While such simplifications can be useful, it should be noted that the exact manner in which rights to land are actually distributed and enjoyed can be very complex (Doss et al, 2013). Secondary land rights are prevalent in Africa and Asia and they have significant implications. This is indicated by Namubiru-Mwaura et al. (2012), in their study on customary land tenure in Liberia, whereby the researchers found that women risk losing entitlements in case of divorce, widowhood or their husband's migration. Unless a woman is guaranteed land rights or ownership, they can be snatched away during economic or political turmoil, leaving her landless and destitute.

#### *2.4.3 Institutions and discrepancies that affect women's land rights in rural areas.*

There are two main institutions that determine an individual's land tenure or land arrangements, in this case that determine a women's rights to land, namely the rights to access, withdrawal, management, exclusion, and alienation (Namubiru-Mwaura et al. 2014). These institutions consist of both formal institutions (statutory laws) at the national level, which are written instruments that provide a legally enforceable framework for the economic and social activities of a society as well as informal or customary laws which are mostly dominant in rural areas (local or village level), and refer to unwritten rules that govern everyday human behaviour in economic and social exchanges (Ostrom 1990 cited by Bunelli, et al, 2015). While every country has its formal structure of laws, government policies, and property rights, social

constraints form an equally important parallel system of rules based on cultural norms and social conventions (Bunelli, et al 2015). To specifically address gender inequality in rural areas, one needs to understand both statutory and customary laws as they relate to land. There are many examples of how the two systems/institutions can both prevent and promote women’s access to land, however this section aims to focus on briefly highlighting components of these systems/institutions that affect and prevent women’s land rights in rural areas.

#### 2.4.3.1 Land tenure systems

An important indicator of the character, nature and organization of a society is the ways in which titles and rights are allocated in that society, as the holding of land rights can mirror rights in other areas of public life (Payne, and Durand-Lasserve, 2012). Therefore, there are as many systems of land tenure as there are societies. The first components looked at are land tenure systems, land tenure systems determine who can use what resources for how long, and under what conditions and are a component in this regard of institutions that could possibly hinder women’s access and control of rights to land. Below one will mention and explain the typologies of ownership/tenure systems that exist globally and then move on to how they perpetuate the inequalities and complexities of women accessing and controlling land. Land tenure is often categorised into the following primary tenure systems:

Table 2. 2: Tenure Systems

Land Tenure Systems	
Statutory systems	<ul style="list-style-type: none"> <li>Statutory systems are categories that are established by law or statutes. These consist of two main type’s</li> </ul>

	<p>public and private tenure, however a range of collective tenure categories are also included (Payne, and Durand-Lasserve, 2012).</p>
<p><b>Public Tenure</b></p>	<ul style="list-style-type: none"> <li>• This statutory system is in play in countries such as Ethiopia, Vietnam and Cuba, it refers to all state owned land allocated according to officially determined priorities. Namubiru-Mwaura, (2014), also alludes that property/land rights under public tenure are assigned to some authority in the public sector. This type of tenure frequently achieves higher levels of equity than systems based on individual ownership, however it is usually inefficient due to bureaucracy and can produce patronage (Wily, 2011).</li> </ul>
<p><b>Private Tenure</b></p>	<ul style="list-style-type: none"> <li>• The private tenure system, a largely imported concept in developing countries refers to land that is owned by individuals, non-government organisations or companies (Wily, 2011). STUDIES, F.T.L (2006) also refer to this tenure system as the assignment of</li> </ul>

	<p>rights to a private party who may be an individual, a married couple a corporate body or a group of people.</p> <ul style="list-style-type: none"><li>• In principle it is transparent and efficient if backed by effective land governance and administrative frameworks, but limits access to the highest bidder, usually society's elite or most influential. Most rural women cannot afford to buy land thus being left out.</li><li>• Despite the appeal of private tenure systems, experience demonstrates that significant irregularities of money, power, and knowledge between men, women, communities, investors, and governments have frequently left women on the losing end of the deal (Payne, and Durand- Lasserre, 2012).</li><li>• Statutory law often does not provide for women's independent rights and when such legislation does exist, mechanisms to enforce it are often absent (Bunelli, et al</li></ul>
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	2015 and Payne, and Durand-Lasserve, 2012).
<b>Collective Tenure System</b>	<ul style="list-style-type: none"> <li>• Within statutory tenure systems, examples also exist of collective categories. Collective tenure systems are found in countries such, Ethiopia, China and Kenya. This tenure system refers to land or property that is held communally and agreement of other members is required should there be sales or transfers made (Payne and Durand-Lasserve 2012).</li> <li>• According to STUDIES, F.T.L (2006), a right of commons may exist within a community where each member has a right to use independently the holdings of the community. The rights under this system can be temporary or permanent and produce benefits for members or a community, but can exclude the poor or vulnerable, the poor and the vulnerable in this case being women.</li> </ul>
<b>Customary Land Tenure Systems</b>	<ul style="list-style-type: none"> <li>• This tenure system which falls under the informal institution regarding land tenure is</li> </ul>

	<p>commonly equated to insecure land tenure. It is a major tenure system on a worldwide scale, and refers to the communal possession of rights to use and allocate agricultural and grazing land by a group sharing the same cultural identity; a single person usually administers on behalf of the group (Payne and Durand-Lasserve 2012).</p> <ul style="list-style-type: none"><li>• Wily, (2011) also refers customary land tenure to the systems that most rural African communities operate to express and order ownership, possession, and access, and to regulate use and transfer. Unlike introduced landholding regimes, the norms of customary tenure derive from and are sustained by the community itself rather than the state or state law (statutory land tenure) (Wily, 2011).</li><li>• This tenure system is simple to administer and maintains social cohesion but is vulnerable to outside encroachment influenced by</li></ul>
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	<p>commercial pressures, and poor leadership can weaken its legitimacy (Wily, 2011). Inheritance of land is the main mode of land acquisition under this tenure system. In traditional or “customary” societies, women’s direct access to land through purchase or inheritance is often limited, yet they may have greater management and use rights than men (Kuusaana, et al 2013).</p> <ul style="list-style-type: none"><li>• Women are usually subject to customary provisions for indirect access to land in terms of use rights acquired and provisions through kinship relationships and their status as wives, mothers, and sisters.</li><li>• In most cases these rights do not grant enough security for women and other family dependants when traditional family structures dissolve (Wily,2011; Doss et al,2013 and Kuusaana,et al 2013). Furthermore, these limited rights become null and void in the case of divorce, separation</li></ul>
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	<p>or death of the primary holder. This in turn leaves an increasing number of women as head of households, making day to day decisions regarding food production, shelter as well as household economics, yet in most cases only a small proportion of these women hold secure land rights.</p>
<p><b>Religious Land Tenure System</b></p>	<ul style="list-style-type: none"> <li>• The religious land tenure system refers to land that is owned and managed by religious authorities as in the case of various Islamic countries (Payne, and Durand-Lasserve, 2012).</li> <li>• At times, this tenure system facilitates family/group tenures as well as inexpensive and accessible land management procedures, however may inadequately manage such, due to the fact that land is not within the market system. In certain cases, women tend to be marginalised and discriminated when it comes to religious rules regarding land (Namubiru-Mwaura, 2014).</li> </ul>
<p><b>Hybrid Tenure System</b></p>	<ul style="list-style-type: none"> <li>• In the case of the hybrid system, there are numerous</li> </ul>

	<p>tenure classifications that co-exist, such as formal and informal rights or cooperatives within a statutory regime. The holding of this system may result in most individuals in a community having access to land, however such may not result in full legal status thus being riddled with land tenure insecurity (Wily, 2011 and Namubiru-Mwaura, 2014).</p>
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*Source: Authors from various sources such as, Wily, (2011), Namubiru-Mwaura, (2014), Payne, and Durand-Lasserve, (2012), Doss et al, (2013) and Kuusaana,et al (2013), STUDIES, F.T.L (2006), Bunelli, et al 2015.*

#### *2.4.3.2 Land legislation and administration*

The second component under institutions that affect women’s access to land is land legislation and land administration, which comprises the main element overriding the study and its objectives. Technical systems of land administration regarding land delamination, titling and registration of land or user rights play a crucial role in creating equal access to land in different systems of land tenure. It ensures that informal agreements on access to land are formalised thus improving tenure security, it also provides opportunities for ensuring that policies and laws based on equality in access are implemented. Ravnborg, and Spichiger, (2014) also allude that many developing countries have been swept across by a new wave of land reforms during the past decades. The land reforms have primarily been promoted based on economic concern with enhancing tenure security, encouraging economic investment and thus promoting economic growth.

Such have often been supported by the World Bank as well as other donors, most of the land reforms focus on the registration of existing rights and offer formalisation of these rights through strengthened and decentralised land administration institutions, as well as strengthening mechanisms for land dispute resolution (Ravnborg, and Spichiger, 2014). Studies however display that even in countries that have land laws and policies mandating equality of men and women, in principle, the institutions for land administration still discriminate against women, either explicitly or implicitly (FAO 2010b; UN-HABITAT 2008). Ensuring gender equality with respect to land rights is hailed as a key element of past and recent land reforms, but actual results in this respect are limited (Ravnborg, and Spichiger, 2014). Regardless of several countries passing legislation that formally abolishes discriminatory practices, including based on gender, under customary as well as under statutory land tenure, these legal provisions do not automatically translate into gender equality in terms of land tenure. It seems that the focus of these reforms has often been introduced as an ‘afterthought’ and that it has only rarely been followed up with efforts to monitor progress in terms of gender equality. Moreover, these efforts are hampered by the generalised shortage of gender-disaggregated data on land-related issues (Ravnborg, and Spichiger, 2014).

#### *2.4.3.3 Inheritance and women’s land rights*

Family law is as crucial as land legislation in terms of the provision of women’s access to land. Gender equality with respect to land not only depends upon the legal ability to hold land rights provided for through land legislation, but also upon family law such as laws regulating marriage and inheritance (Ravnborg, and Spichiger, 2014). One of the primary means by which women access land in rural areas is through inheritance, however, according to the UN (2010), there are inequitable inheritance rights in 45 out of 48 African countries studied and in 25 out of 42 Asian countries studied. While they might inherit their late husbands’ land, they are not permitted to sell it and can only pass it on to their sons or male relatives. In some cases, you

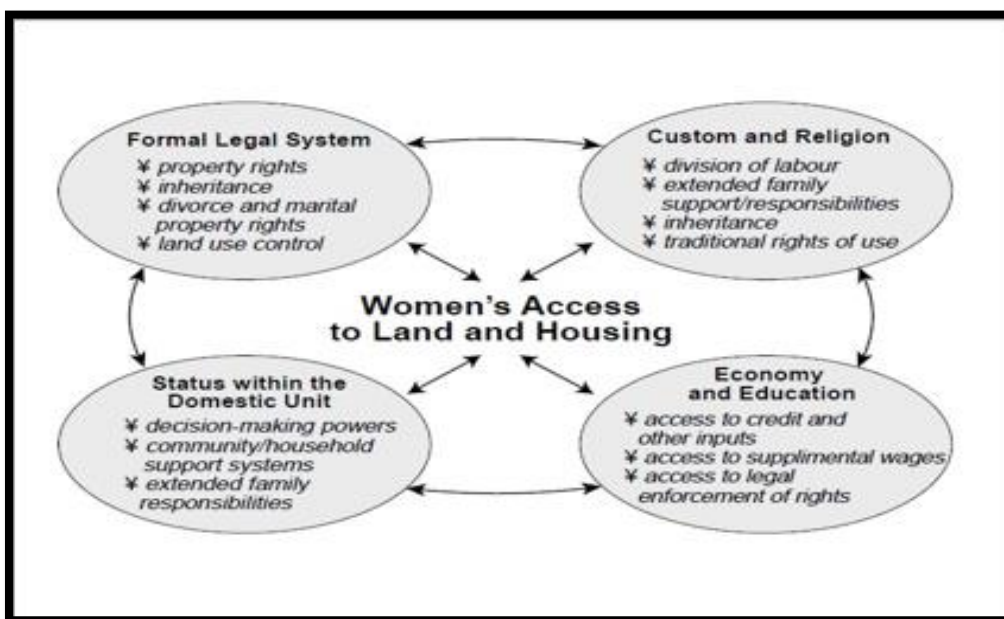
find that, some cultural contexts consider it shameful for a woman to claim property, as a result, daughters often cede their share to their brothers (FAO, 2016). Ravnborg, and Spichiger, (2014) further add that in some places individual female ownership or even joint ownership is not in line with customary practices. Women are often seen as not supposed to, and do not pretend themselves, to claim land rights, as this would be a sign of disrespect for their husbands, or disrespect for customs or, even, disrespect for God. Customary laws in Europe and Central Asia, and African countries like Kenya, Liberia, and Uganda prevent women from inheriting land even though statutory laws in these countries allow land to be divided equally among heirs regardless of gender (Bunelli, et al 2015). In countries like Ghana and Karnataka, India, inheritance practices in are also strongly male biased (Bunelli, et al 2015).

#### *2.4.3.4 Marital property regimes*

As mentioned above, marriage is also in many rural areas, the primary means in which women obtain access to land, through their husband's family or clan. This access may however be lost upon divorce or the death of the husband. In patri-local areas, women relocate to their husband's communities upon marriage and therefore access land for housing and farming there (Namubiru-Mwaura, 2014). Though access rights to land accrue to women in their spouse's community, they generally do not extend to full ownership of land. Marital regimes also define the ownership of property/land within a household (Deere et al. 2010). Two different default marital regimes exist in most countries, such as community property, whereby property obtained during the marriage is considered to be jointly owned. The second default marital regime is separation of property, whereby what is purchased with an individual's own earnings during marriage constitutes that persons individual property (Bruneli et al 2015). In this case if a woman did not own any property or land individually, they are left in destitute and without land.

In some rural areas, women’s access to land depends on the type of marriage. If the marriage is patrilineal, land inheritance is through the male lineage and women can only access land through their husbands and sons (Deere et al. 2010 and Wily, 2011). Divorced women lose the right to cultivate their field and thus have to return to their own families. Upon the death of a woman’s husband, she can use the land that her husband owned as long as she remains unmarried. According to Shawa (cited by Bruneli et al 2015, as the sons come of age, she shares her land with them, thus diluting her ownership rights in due course. Furthermore, in regions where polygamy is practiced, registry at the household level worsened the tenure insecurity of numerous households as the land registration records simply reflected only one of several households (Bruneli et al 2015). Households of subsequent wives were not included in the registration process thus being deprived of the corresponding rights to land. In addition, the limited registration of marriages and divorces often intensified the tenure insecurity of polygamous wives (Bruneli et al 2015). (See Figure 2.4).

Figure 2. 4: Depiction of institutions affecting women’s access to land rights.



Source: STUDIES, F.L.T., 2002, Pg. 15.

## **2.5 Closing remarks on Tenure systems**

The issue of gender inequality with regards to land access for women is mainly because many developing countries especially African countries are under dual tenure systems and multiple legal frameworks, thus making legal coherence challenging, as there are often discrepancies between statutory and customary law. This is most visible where statutory law allows for customary law to be applied, even when the latter is entrenching discriminatory practices. Land tenure is affected by many and often contradictory sets of rules, laws, customs, traditions, and perceptions as land rights belong to not one legal arena but are rather fixed through various and sometimes contradictory bodies of law, which range from land titling law, constitutional law to marriage and divorce law and a mix of customary and religious laws. (Namubiru-Mwaura, 2014). These multiple legal frameworks can create contradictions and confusion in what women's rights are and which ones should be recognized. Moreover, many of these rules continue to reinforce gender inequities.

According to Razavi, (2005), the new generation of land reforms introduced to address gender inequality and rectify the matters mentioned above is not necessarily more gender equitable than earlier efforts, even though women's ability to gain independent access to land is increasingly on the statutes. Razavi, (2005) further argues that irrespective of new possibilities for land reform, placing inequalities in land distribution back on national agendas and numerous attempts of commitment by various national policy and legislation to give women and men equal rights towards access and ownership to land, gender equality is still marginal to policy, and land reform is yet still gender blind. For most rural women, land tenure is complicated, with access and ownership often layered with barriers present in their daily realities: discriminatory social dynamics and strata, unresponsive legal systems, lack of economic opportunities, and lack of voice in decision making. Yet most policy reform, land

management, and development programs disregard these realities in their interventions, which ultimately increases land tenure insecurity for rural women. (Fleming, et al, 2013)

Over the past few decades, governments and civil society have been attempting to implement land regulations that seek to improve women's land rights (Lastarria-Cornhiel and García-Frías, 2005). Nevertheless, most initiatives developed to promote land reform programmes continue to underestimate the implications that gender-asymmetric land policies entail for women (Jacobs, 2002). The legion of commitments put in place have not translated into significant gain for women. Literature also suggests that although many of the changes in policy and law appear to be legal and technical, access to and control over land is in practice related to socio-economic characteristics and governed by cultural practices and power relations at the family, community and country levels (Lastarria-Cornhiel and García-Frías, 2005).

Additionally, while legal frameworks/ laws are important, their implementation and enforcement are also quite vital. However, it seems that where land reform policies include gender quality goals, these tend to fade when it comes to implementation. The lack of serious attention to gender equality thus reinforces the marginalised position of women and undermines mainstreaming efforts to improve women's rights (Stiftung, 2009). It is important to note that laws alone are not enough to secure women's access to land. The effectiveness of laws depends on awareness about them, the abilities to invoke them, and to what extent cultural norms and traditions are practiced and followed (Ravnborg, and Spichiger, 2014).

## **2.6 Precedent studies**

The final part of this section will provide insights on international countries that are dealing with land tenure issues from a gender perspective, particularly focusing on women. These international perspectives will essentially provide an understanding of tenure issues and best practices outside of the Apartheid context before shifting the focus to South Africa. In terms

of the precedent case studies used, the researcher will focus specifically on two countries, one developing, and one developed namely Ethiopia and Australia. The first precedent study is based on the Ethiopian context, with regards to their current land tenure rights from a gender perspective, in the rural areas, the focus being that of women.

### 2.6.1. Women and Land in Ethiopia

Ethiopia is located in the Horn of Africa on the continent's northeast coast. Ethiopia borders six countries in total: Sudan, South Sudan, Kenya, Djibouti, Somalia and Eritrea. Addis Ababa, the capital city, is located in the middle of country and the land contains a wide altitude range, from 100 meters below sea-level on the north-eastern border to more than 4000 meters above sea-level in the country's mountain ranges (Bezabih 2010). The Abbai (Blue Nile) River, a tributary connected to the Nile River that flows in to Ethiopia and ends in Lake Tana is located northwest of the capital city (Holden and Ghebru 2011). (See Figure 2.5)

Figure 2. 5: Location of Ethiopia



Source: Google images, 2017.

According to Lavers, (2017) the ruling Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) which originated in a Marxist revolutionary movement, early in its struggle against

the Derg (1974–91) recognized the widespread discrimination against women in Ethiopia and placed gender emancipation at the centre of its revolutionary strategy. Since coming to power in the year 1974, the EPRDF has initiated reforms intended to enhance women's rights, including land registration, the objectives of which include improving the security of women's land access. Lavers (2017) further alludes that the reforms introduced by the Ethiopian government in recent years to promote gender equality in land rights, including legislative changes and a registration programme that requires the names of both husband and wife on the certificate, with regards to policy changes related to gender equality and women's empowerment in Ethiopia, seem to be mutually reinforcing.

The World Bank (2011) additionally adds that in Ethiopia, a government-sponsored land certification program, aimed at promoting gender equality, used joint land ownership certificates that include a photo of both spouses. Certification allows husbands and wives to be listed as joint holders of the rights (these rights are inheritable by the remaining spouse when the other spouse dies) (Holden and Bezu, 2013). The joint titling program in Ethiopia is commonly cited as one of the successful programs in addressing land tenure security problems, especially for women. Although the first registration of land in Ethiopia dates as far back as 1909, and land certificates have been issued since 1998, joint titling was not introduced until 2003 (Deininger et al. 2007; Holden and Tefera 2008).

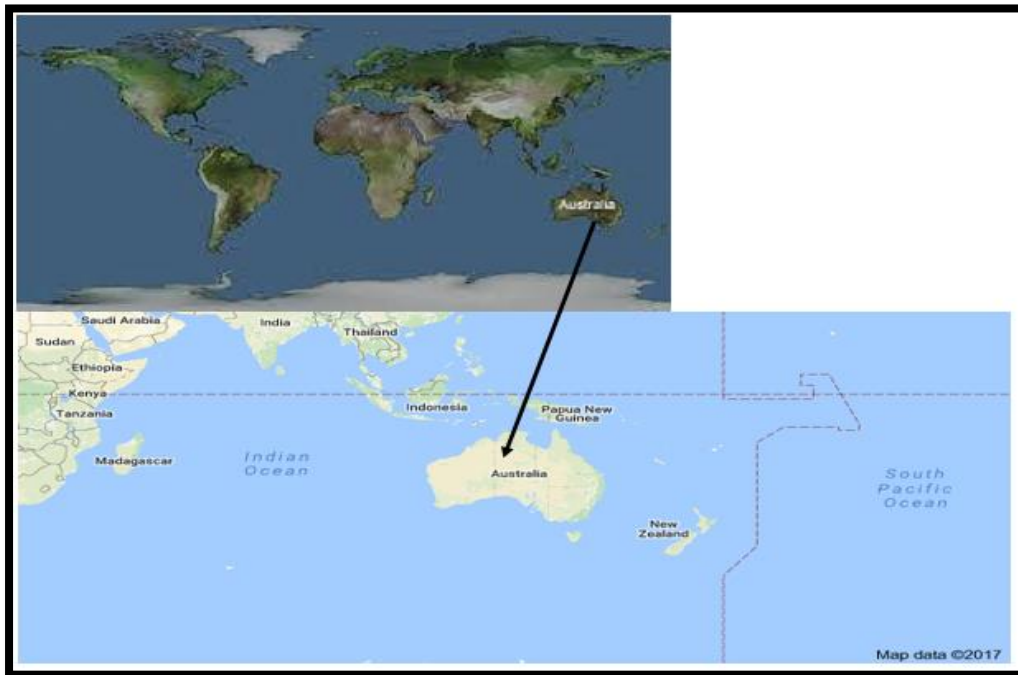
Lavers (2017) further argues that, unlike many studies on other countries, the few papers to examine the gendered impacts of registration in Ethiopia conclude that registration has enhanced tenure security and willingness to rent out land for female headed households and has enhanced the role of women in household decision-making. Research further shows that land registration and certification has also helped reduce the number of border disputes and inheritance disputes and certification has been wealth-neutral in the implementation (Holden and Tefera, 2008). Poorer households have had the same probability of receiving land

certificates as less poor households. This in itself is a big step in the right direction as compared to many reforms in other countries that have been de facto anti-poor (Holden and Tefera, 2008). Improvements in women's land rights in Ethiopia result not only from land registration but also from efforts by state actors to transform informal institutions and power relations in society. While this example is obviously rooted in the Ethiopian context, it raises the possibility that similar reform efforts may be complementary in other countries as well. This suggests that coordinated policy efforts may be particularly helpful at closing the gender gap.

### *2.6.2 Land and women in Australia*

The second precedent study is based on Australia, a country recognised as a developed country. Australia, officially the Commonwealth of Australia, is a sovereign country comprising the mainland of the Australian continent, the island of Tasmania and numerous smaller islands. It is the largest country in Oceania and the world's sixth-largest country by total area. The neighbouring countries are Papua New Guinea, Indonesia and East Timor to the north; the Solomon Islands and Vanuatu to the north-east; and New Zealand to the south-east. Australia's capital is Canberra, and its largest urban area is Sydney (Connell, 2014). (See figure 2.6).

Figure 2. 6: Location of Australia



Source: Google images, 2017

Australia is lagging behind the rest of the developed world in empowering rural women in terms of access to land thus enabling them to practice sufficiently in the countries agricultural sector. Despite being highly developed in many areas, the face of Australian agriculture is still primarily that of males (Connell, and McManus, 2016). Women are under-represented and marginal when it comes to access to land and decision-making processes of farm organisations (Connell, and McManus, 2016). This is merely a gender equity issue. Women make up half of the rural workforce; consequently, their lack of influence denies the sector half the potential of its workforce. Research conducted by the Food and Agriculture Organisation of the United States (FAO) indicates that given the same opportunities and inputs, female farmers are just as efficient as their male counterparts (Willer and Kilcher, 2011). Closing the gender gap in access to land for women would increase agricultural productivity, reduce poverty and hunger, and produce significant economic gains for the Australian society. It is therefore necessary, as a matter of urgency and for the sake of the sustainable future of Australian agricultural industry,

that women's empowerment is taken seriously. The government needs to initiate structural changes that encourage women's access to land and prioritise women's involvement at all levels.

## **2.7 Lessons learned**

In many societies, improving access and security for women will require changes in policy and legislation, for example specifically recognizing the rights of a woman to hold land, and allowing a legal title to be issued in her name, either individually or jointly with her spouse. More importantly, it may require changes in cultural norms and practices. A country's laws may declare that men and women have equal rights to hold property and to inherit it, but if cultural norms and practices conflict with such laws, the rights of women are likely to be ignored. The discussion above also indicates that today, for women to gain effective rights in land, it will require not only removing existing gender inequalities in law but also ensuring that the laws are actually implemented. Such should involve contestation and struggle at every level, the community, the household and the state on both economic and non-economic fronts. Additionally, policy reforms and any other interventions must be tailored to the physical, social, and economic contexts. The challenge is to find appropriate reforms or interventions that take into consideration economic factors, issues of equity, and less tangible concerns such as the social or religious beliefs that people attach to land. Policies and laws have been alleys of hope and windows of opportunity as they introduce norms that promote women's access to and control over resources. If comprehensive, and applied coherently, they can change land rights holdings and ensure that women have access to the land they need.

## **2.8 Chapter Summary**

This chapter started off by defining key concepts in relation to the topic at hand and phenomena to provide background of theories surrounding the study. The concepts defined ensured the

understanding of their use throughout the study as well as offered a narrowed view to the discussion of the study. The theoretical components that are considered relevant to the notion of individual tenure rights for women were also highlighted. The chapter further highlighted evidence from various authors that shows that secure land rights have positive effects for poor people in general and women in particular and that there is a direct relationship between women's right to land, economic empowerment, food security and poverty reduction. The chapter also suggests that although numerous countries in both developing and developed countries have undertaken land reform initiatives to prohibit gender-based discrimination, results however reveal the existence of a substantial gap between the development of laws and their effective implementation.

## **CHAPTER THREE**

### **WOMEN AND LAND IN SOUTH AFRICA**

#### **3.1 Introduction**

The aim of this chapter is to provide the historical prelude that gave rise to the need for land reform in this new constitutional dispensation to place land tenure rights of women as important feature within the South African context of land discourse. An understanding of the dynamics of this period will, to a large extent, make it possible to understand the current situation regarding the land issues amongst South African women with particular reference to those in the rural areas. This chapter also contains an inspection into the legislation guiding land tenure reform and women in South Africa. Furthermore, the nature of land tenure reform practice and gender issues were discussed as central to policy formulation and implementation.

#### **3.2 Women and land in South Africa – A historical perspective.**

The historical denial of access to land to the majority of South Africans is well documented. South Africa experienced many years of colonialism, racial domination and land dispossession that resulted in the unequal distribution of resources, including land, with the bulk of the agricultural land being owned by a white minority (Rugege, 2004). Black people resisted being dispossessed but were defeated by the superior arms of the newcomers (Rugege, 2004). Many authors such as Lewin 1944; Davenport 1977; Lacey 1981 cited by Letsoalo and Thupana, (2013) also argue that, upon colonisation, areas that were found to be suitable for European settlement were alienated, despite the fact that Africans were already there. Furthermore, misinterpretation of the African land ownership system or a deliberate capitalisation on the functional nature of the system was used to dispossess Africans of so-called unoccupied or vacant lands.

Africans were reduced from being land owners to a status of labour tenant and were only able to graze their livestock, and the new land owners (whites) got free labour. Africans thus provided free labour in exchange for access to some lands for their livelihood. Land reform is a historical issue in South Africa dating back to 1652 and racially discriminatory laws and practices had already been in place for a long time, especially those related to land ownership (Kloppers, and Pienaar, 2014). The period from 1652 until 1910 laid the foundation for conflict over land between the various race groups in the country (Saunders, 2003). Saunders, (2003), further argues that, the colonial and apartheid regime used prominent instruments such as legislative intervention to establish and enforce its policy of racial segregation with regards to land. Past land policies were a major cause of insecurity, landlessness, homelessness and poverty in South Africa and resulted in inefficient urban and rural land use patterns and a fragmented system of land administration (Saunders, 2003). The application of these discriminatory laws and practices resulted in extreme inequalities in relation to land ownership and land use. Land was one of the most emotional, basic and controversial issues of settler colonisation and apartheid.

*3.2.1 Main legislative framework and discriminatory laws and practices related to land which gave rise to the need for land reform.*

*3.2.1.1 Native Land Act 27 of 1913*

The first racially based segregation law that was promulgated and implemented to explicate land segregation was the Natives Land Act 27 of 1913 (Saunders, 2003). For most of this century, right to own, rent or even share land in South Africa depended upon a person's racial classification. The Act laid the foundation for apartheid and territorial segregation and, for the first time, formalised limitations on black land ownership (Kloppers, and Pienaar, 2014). Its

aim was to bring about territorial segregation based on race, where natives were prohibited from occupying or acquiring land (Kloppers, and Pienaar, 2014).

Davenport (1990) cited by Kloppers, and Pienaar, (2014), further stipulates that the Act laid down an absolute barrier in law between black and non-black land holding. Ntebeza, (2007), argues that the Natives Land Act of 1913 which subjected the African majority to only 13% of the land in the country continues to haunt the majority of black South Africans as they are still trapped in the cycle of poverty and unsettling discourse on land. According to Saunders, (2003), this Act forms the crux of the current land distribution issue and was the first formal Act to forcefully take land away from the country's black population.

### *3.2.1.2 The Native Trust and Land Act 18 of 1936*

Following the Native land Act of 1913, the white Parliament in 1936, passed the Native Trust and Land Act (Feinberg and Horn, 2009). The 1936 Native Trust and Land Act also referred to as 'the Trust Act' in South Africa passed a law that served as the reorganization of its agricultural structures. This followed the recommendations of the Beaumont Commission (Dodson, 2013). The Act integrated land identified by the 1913 Act into African reserves, and thereby formalised the separation of White and Black rural areas. Similarly, Saunders, (2003) argued that the 1936 Land Act, in addition to supplementing the 1913 Land Act on the separation of land for whites and blacks, also instituted the South African Native Trust. The purpose of the Trust were to acquire land for settlement of Blacks, to develop such land, and to promote agriculture in native reserves under the 1936 Land Act. Kloppers, and Pienaar, (2014) further argue that the Act abolished individual land ownership by black people and was an important instrument used by the then government to facilitate its policy of racial segregation. Moreover, black South Africans were stripped of their right to land ownership or inhabit demarcated areas without proper authorization by the relevant authorities due to the

Act. Evidently so, the Act furthered the objective of racial segregation, which eventually necessitated the need for land reform (Kloppers, and Pienaar, 2014)

### *3.2.1.3 The Group Areas Act 41 of 1950*

The Group Areas Act, 1950 was promulgated on 7 July 1950, and was implemented for several years (Dodson, 2013). It was one of many pieces of legislation used to control the lives of Indians, Coloureds, and Africans, in this instance by limiting land and property rights. The primary aim of this Act was to make residential separation compulsory and lay down legal provisions on the specific areas where different population groups could own property, reside and work (Feinberg and Horn, 2009). The Act cut across all traditional property rights and led to the evictions of thousands of Blacks, Coloureds and Indians. Its functions were essentially through the control and ownership of immovable property, and of the occupation and "use" of land and premises, on the basis of race (Dodson, 2013).

### *3.2.1.4 The Group Areas Act 36 of 1966*

The above-mentioned Act of 1950 was further complemented by Group Areas Act 36 of 1966, which is the final Land Act discussed in this section that, similar to the other Land Acts already discussed, sealed the unequal distribution of land between races and consists of the main legislative framework and discriminatory law related to land which gave rise to the need for land reform. According to Kloppers, and Pienaar, (2014), this Land Act aimed at consolidating the law related to the establishment of group areas and to regulate the control of the acquisition of immovable property and the occupation of land as well as premises. The Act was enacted to provide for the establishment of group areas, for the control of the acquisition of immovable property and the occupation of land and premises, and for matters incidental there to (Dodson, 2013).

In many ways the above land acts amongst others formed the legal basis for the colonial and apartheid era and provided a framework for the policy of racially-based territorial segregation and ensured that the bulk of the land in South Africa was not accessible to Black people, forcing them to be perpetual tenants with very limited rights. In addition, it is under the application of these restrictions that amounted to the theft of black people's homes, the restriction of economic activities, the tearing apart of communities and often the denial of people's right to exercise their cultural and religious practices and the main reason for Africans facing such great imbalances with regards to land ownership and land use. The history of black land rights in South Africa is characterised by insecure ownership and rights under the different bodies and these inequalities were mostly felt by African people in the rural areas (Saunders, 2003). This is the main reason for the implementation of the land reform program in 1994.

### **3.3 How historical Land Acts affected women**

When it comes to women, along with the African population at large, women were also impacted negatively by past colonial and apartheid Land Acts and were denied economic justice. According to Letsoalo, (1990), an African women's place especially those in former and settler colonies had never only been in the kitchen, however their significant role as farmers, basic needs providers through water and firewood gatherers had been dealt a deathblow by land dispossession. Colonial land act paradigms introduced exclusive, commodity-based legal concepts which favoured land ownership primarily by the white minority while confining the black majority, women included to insecure land tenure in Bantustans/Homelands (Claassens, 2014). Mathis, (2007) cited by Murugani, (2013) adds that, during the apartheid era in South Africa, land was allocated to male farmers in the homelands, disregarding women's prior claims to land.

Letsoalo and Thupana, (2013) further argue that, with the former government forcefully pushing Africans into reserves and Bantustans in the case of land dispossession and cultural imperialism with the rationale of this land dispossession as preservation of their traditions, this however interfered with African traditions not only in the sense of chieftaincy but more particularly the economic and social status of women. Moreover, Letsoalo and Thupana, (2013), add that the historical process of African land rights erosion, together with the traditional African land management systems i.e. The Native Administration Act of 1927 not only restructured the traditional management system, so as to make African Chiefs minor officials under white Governor Generals and later under Bantustan chief ministers, however this legislation also turned African women into minors. Both chiefs and women became victims of customary law and within this framework, women, irrespective of marital status, age or number of offspring were minors.

For many years, under apartheid, South Africans were second class citizens, when considering gender discrimination, focusing particularly on women, such means that women were doubly discriminated, firstly as Africans and then as women, thus making them third class citizens. According to Weideman, (2004), it was only through legislation introduced in the year 1985 and again in 1988 in South Africa that rural women were no longer legally considered minors in land related matters. However, this new presumed legal status was not necessarily reflected in customary law and practices. South African women, particularly black women who were obviously doubly disadvantaged as a result of their race and their gender, constituted the bulk of the victims of poverty, due to land related issues. The law, in various forms, has had a significant role in this prejudice. Customary law, for instance, gives black women the status of minors and excludes them from rights regarding children and land ownership (Weideman, 2004).

### **3.4 The repeal of the land acts; measures between 1991 and 1997**

Although black people were still not allowed to vote, by the early 1990s the last of the apartheid legislation was scratched. At this time, it had become quite apparent that South Africa was in desperate need of land reform. The Bantustans were facing high levels of poverty, the agricultural productivity was low and not to mention the incredibly deeply unstable political situation in the country. To address issues concerning the restitution of land tenure, the Abolition of Racial Land Laws Act no. 108 of 1991 was enacted (Letsoalo and Thupana, 2013). This Act aimed at repealing Land Law Acts of 1913 as well as 1936 (Letsoalo and Thupana, 2013). Those who were deprived of their land during the creation of the homelands could now claim back their land, if not that than they could be compensated for any matters relating to land dispossession.

This signalled an end to an ill-fated chapter in the history of South Africa as in almost 80 years, for the first time ever, non-whites in South Africa were no longer prohibited from owning land (Kloppers, and Pienaar, 2014). In addition, the post-apartheid government elected in 1994, showed commitment to eradicate the inequalities and injustices of the past and initiated measures aimed at redressing the land inequality in the country (Hall 2007; Lahiff 2007). The first measure initiated in 1994 was the Reconstruction Development Programme. This programme had a strong constitutional basis and acknowledged that land represented the most basic need for the rural population, a need that resulted from the discriminatory practices of the past regime (Kloppers, and Pienaar, 2014). South Africa was identified as a country with possibly one of the most extreme levels of income distribution disparities and subsequently extreme levels of incidence relating to impoverishment thus the reason of the enactment of the RDP. This programme recognised poverty was the country's biggest burden mostly carried by millions of those residing in rural areas.

The programme therefore identified the need for the establishment of a comprehensive national land reform programme, in order to effectively address the issues of inequality, poverty and landlessness caused by the injustices of forced removals and the historical denial (Saunders, 2003). Although the programme to date has not been concluded, it focused on three areas, namely; redistribution; to address the legacy of racial inequalities in access to land and to create opportunities for development: restitution of land rights taken away due to racist laws or practices after 19 June 1913; tenure reform to give tenure security for people living on land without secure tenure; and (Saunders, 2003). The land reform policy attempted to alter the distribution of land while maintaining productivity. Furthermore, the interim Constitution of 1993 and the final Constitution of 1996 recognised and protected existing land ownership, but also created an obligation to ensure land reform (Letsoalo and Thupana, 2013). Land reform was identified in the Constitution and was then legislated and made part of the government land reform programme (Kloppers, and Pienaar, 2014).

In order to further address the issue of land reform, the White Paper on Land Policy, 1997 was released. The White paper on Land Reform provided that the government is of the opinion that a programme for the restoration of land to the individuals and communities who were forced to give up their land on account of the previous policies or other historical reasons would not be feasible (Kloppers, and Pienaar, 2014). Therefore, the White Paper, based on this reality was meant to provide an overall platform for land reform consisting of the same three pillars as identified in the RDP, namely; restitution, redistribution and tenure reform.

### **3.5 Women and land in South Africa – A post-apartheid perspective.**

In terms of policy and legislation, a number of different laws regulate women's right to land in South Africa. Weideman, (2004) argues that, as women have long been denied equal rights to own land under customary and statutory law, the ANC's 1992 Land policy document called for special procedures to ensure that women gain equal access to land and participate effectively in policy formulation and decision making. The South African government has thus introduced various laws and policies focused on land reform since apartheid, with an emphasis on land redistribution, (which was first through the Settlement Land Acquisition Grant, or SLAG, and then through the Land Distribution for Agricultural Development, or LRAD); restitution and tenure reform (Murugani, 2013).

According to the Department of Agriculture (DOA), (2001); DLA, (1997), women were made a target group in this instance. Furthermore, the Reconstruction and Development Programme (RDP) which represented a very important first step in post-apartheid South Africa, recognised women's land rights, stating that women face specific incapacities in the procurement of land and thus for that reason urged that the land redistribution programme target women (Weideman, 2004). In addition to that, the RDP stipulated that, any practices, institutions and laws which discriminate against women's access to land must be revised and brought in line with national policy. Further commitments by the 1996 Green Paper on South African land reform suggest that there must be a clear obligation to end discrimination and guarantee gender equity in land tenure (Murugani, 2013). The Constitution is the supreme law of South Africa in which land rights are addressed and it includes a Bill of Rights which guarantees the rights of all South Africans and is based on the principles of freedom, equality and dignity (Republic of South Africa (RSA), 1996). The Bill of Rights, of the 1996 Constitution of the Republic of South Africa thus places an obligation on the government to take rational legislative and other processes within its obtainable capitals to guarantee that equality includes the full and

equivalent satisfaction of all rights and freedoms (Republic of South Africa (RSA), 1996). Additionally, unfair discrimination on several grounds, including gender are prohibited by the Bill.

Another measure that places considerable emphasis on gender equality in land rights as well as effective involvement of women in decision making procedures is none other than the 1997 White Paper on South African Land Policy. According to the (1997) White Paper, women's inability to overcome and conquer impoverishment is due to the lack of accessibility to land. Also pointed out in the paper is that legal limitations hamper women's access to land and the fiscal amenities to develop it, and that gender-neutral land reform policies pose an undesirable effect on the equality of gender (Department of Land Affairs [DLA], 1997).

In addition to the above commitments, women's access to and rights in land are to be addressed by the South African governments as per international developments and obligations. According to article 17 of the International Declaration of Human Rights, which is one of the international developments/law that protects the equality of women and the right of all people to own land, everyone (including women) has the right to own land alone as well as in the association of others. The second is the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), approved by South Africa in 1995 (Weideman, 2004). This international treaty protects the rights and equality of women. According to article 14 of the convention, South Africa is obligated in ensuring equality in terms of treatment when it comes to land and agrarian reform and land resettlement schemes between men and women. Additionally, Weideman, 2004 argues that under article 14, the convention recognises rural women as a group with special problems who should be empowered to participate in, and benefit from, rural development. Moreover, stipulated in article 15(2) of the convention women have equivalent rights to manage land, whereas article 16 defends women's equal rights to tenure and enjoyment of land within marriage.

In the year 2000, the government also passed the Promotion of equality and Prevention of Unfair Discrimination Act. The Act, in its objectives aimed at preventing, prohibiting and eliminating unfair discrimination as contemplated in the Constitution and to promote equality (Mann, 2000). Murugani, (2013) also argues that in 2001 a revision of SLAG to LRAD stated that 30% of land claims were to be allocated to women. Additionally, the government also passed the Traditional Leadership Governance and Framework Act (TLGF) in 2003 and the Communal Land Rights Act (CLRA) in 2004, which strengthens the powers of traditional authorities in land governance by making them central to the land reform process (Mathis, 2007). The CLRA is however currently being contested as it is seen as legalising discrimination against women in rural and customary law settings (Cousins and Hornby, 2009).

Looking at the discussion above, it is clear that South African government is committed to gender equality in the country in terms of legislation and policies. Women in particular are obviously protected by a full range of rights guaranteed in the new Constitution, particularly the right to equal land rights and land ownership in this case. The prohibition of discrimination on the grounds of gender, is clearly intended to protect women. The result is therefore that this section leaves no doubt that no unfair discrimination based on any feature of being a woman will be accepted.

### **3.6 Customary Law and Land Tenure in South Africa**

The discussions above have mainly pondered on statutory laws regarding South African land tenure, however customary law also plays quite a pivotal role in this case, thus customary law and land tenure will also be looked at in the South African context. The 1996 South African Constitution recognises the customary law as part of the system of laws that governs the rights and freedoms of individuals and communities in South Africa. According to Pienaar (2012), the customary laws, which have existed in pre-colonial times have survived assimilation by the

Roman-Dutch and English Common Laws that have dominated South African jurisprudence. These laws, though uncodified and outcome based, rather than rules-based, have strong ties with culture and tradition.

As applied to land tenure, Okoth-Ogendo (2005) has noted that under customary law, can only be understood in the context of the social organisation of that particular community. As such, under customary law, control and access to land do not always coincide. Control is communal, usually vested in the community, and often exercised through traditional leaders who hold the land in trust and have powers to allocate the land to families and individuals. The individuals have user rights to land. He refers to this as the “African Commons”, a system through which African agrarian societies were and continue to be organised. A principal characteristic of this system is “social embeddedness” through which membership and social status in a group imbues one with access rights to land. Often, these rights follow familial lineages.

In South Africa, Section 211 (1) of the Constitution recognises the institutions, status and role of traditional leaders according to customary law, but subject to the Constitution. As such, the Constitution recognises customary law, especially in the case of land, as a source of rights. Under apartheid Africans could not own or buy land outside tribal control. Rather, land bought by Africans had to be held in a trust, such as, for example the South African Development Trust, with traditional leaders as trustees. As noted by Okoth-Ogendo (2005), the imposition of trusteeships emanated from a colonial insistence of applying common law concepts to define African customary law, and as such, regarded concept of ownership as only applicable to what they considered civilised societies. As such, various points Africans resisted the restrictions placed on them by the imposition of these trusteeships. A case in point is the 1927 case of *Rathibe vs. Reid* heard in the West Transvaal, where the powers of the chief to sell land without consulting the community was being challenged. The court ruled in favour of the chief, that under native law and customs, the chief was under no obligation to consult the community in

a formally constituted meeting. Another example is the *1908 Petlele vs. Minister for Native Affairs case*, where a group of Africans challenged the legal requirement for the land they had purchased to be held in a tribal trust. The judge in the case ruled that *“if any individual or group of persons had been allowed to hold land separately from the rest of the tribe, it would have meant the destruction of the tribal system.....individual ownership was unknown, and the ownership was a common ownership by the whole tribe.”*

### *3.6.1 Women and current tenure systems in SA*

An inspection into the legislation guiding land reform policy and the government’s commitment to more gender equitable efforts when it comes to land focusing primarily on women has been done in the above paragraphs. However, this study mainly ponders on the third subprogram of the land reform policy brought about the government of 1994, namely, land tenure. As already briefly mentioned throughout the study, land tenure reform refers to a system of recognizing people's right to own and therefore control the land (Ntsebeza, 1999). Tenure security is addressed through section 25(6) and states that: 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 (Republic of South Africa (RSA), 1996). The writer will therefore now analyse the nature of land tenure reform in South Africa in the context of land ownership and management primarily focusing on rural areas and whether gender issues are central in the above-mentioned policy laws as well as in implementation.

When it comes to land rights, like most other Sub-Saharan African countries, South Africa consists of a dual land rights system (Murugani, 2013). The first being, statutory land law, which is vested in the Constitution and accords equal rights to women and men. Section 25 of the South African Constitution states that men and women, irrespective of their race or creed

can own land as individuals, or as part of a group, according to group rules (RSA, 1996). Women can, in the case of statutory land law, buy, sell, inherit or manage land. Additionally, women can also hold individual rights to land and register it in their own names, regardless of their marital status (Lastarria-Cornhiel, 2006). The second system is communal land law, which is most relevant in the case of rural areas, women's land ownership in this case is governed by patriarchal, tribal or community customs which are enforced by a local chief or a traditional leader of that rural settlement. Land in rural areas is vested in the chief's trust and he allocate it to his citizens and adopted citizens on the basis of need and other social customs (Cousins & Hornby, 2009; Toulmin, 2008).

Most customary law is patrilineal, giving men primary rights to productive resources, and relegating women to secondary beneficiaries (Joireman, 2008; Lastarria-Cornhiel, 2006; Yngstrom, 2002 cited by Murugani, 2013). In these cases, land is allocated to the male household head on behalf of his household and women access land as secondary beneficiaries whose rights are to cultivate and control what they themselves produced (Goebel, 2007; Yngstrom, 2002).

They however cannot own, inherit or allocate land. Mutangadura, (2007) further adds that, women access land through their male relatives, whose rights are superior because they own, control, use, allocate and can also alienate the land (Women's land rights are restricted to user rights, which they hold as long as their relationship with the man has not changed and he does not want to use the land for other purposes) consequently, even in the absence of migrant male household heads, women still only have access, user and limited control rights over land. In the case of any conflicts which may arise over access and control of land, such are settled in traditional courts whereby men have more power and influence than women do and men's rights take precedence over women's rights.

### **3.7 Discussion**

The previous section depicts that the South African tenure reform policy (particularly with regard to communal areas) has done very little (aside from stated commitments to gender equity in policy documents like the 1997 White Paper) to address the needs of the majority of poor, black, women in South Africa's rural areas (Weideman, 2004). Although the South African government exhibits a commendable commitment (and has a legal obligation) to gender equity, the current status of tenure for rural women signals that the policies introduced to achieve equitable access to land and economic resources for women have been largely unsuccessful. The land reform programmes have failed women because policies and procedures did not take account of the fact that women's position in society is fundamentally different (inferior) and there is still no independent law that provides for women's independent access to land in South Africa.

Another issue that is evident is the case of conflicting rights between statutory and customary law as communal laws have maintained the status of women as secondary citizens and them still being regarded as social and legal minors who cannot contract or own land individually. Women are constantly viewed as property and themselves cannot own land/ property. Statutory law and communal law both govern people's lives but they have different bases, and so in some instances accord different bundles of rights to different individuals. Existing literature on gender and land rights further highlights the challenge of translating legal reforms into real change at the local level where state reform efforts frequently conflict with customary institutions and local interests (Joirman (2008); Daley and Englert (2010) cited by Lavers, 2017). Thus, while legislation can be an important starting point for transforming local practices, implementation is where the real struggle begins (Daley and Englert 2010,103 cited by Lavers 2017).

### **3.8 Chapter summary**

This chapter has highlighted the dichotomy in land laws in South Africa and consequently sought to establish the land arrangements and land rights under which South African women operate, particularly those in rural areas. In addition, it is also evident that in spite of the existence of current laws that support women's access to land, these laws are not known in the rural areas and women's access to land is still mediated by customary law, which discriminates against them. Consequently, rural women are still governed by discriminatory laws because of where they live. Not much seems to have changed from colonial and apartheid discriminatory land acts against women and current repealed laws which are said to be more gender sensitive. This chapter has also shown that women's access to land in the two regimes (statutory and communal/customary law) is diverse, as statutory law offers equal access whereas customary law offers access to land only to the male household head. Furthermore, the chapter depicts that customary law is more predominant due to the accessibility of tribal traditional authorities.

## CHAPTER FOUR

### RESEARCH METHODOLOGY

#### 4.1 Introduction

This chapter presents the research methodology for this study. The purpose of the research methodology is to determine how the objectives of the study were achieved and how the subsidiary questions were answered. In addition, the research methodology will explain how data was collected through the use of primary and secondary sources as well as outline the sampling method that was used to collect data.

#### 4.2 Research Methodology

The study employed both qualitative and quantitative methods of research to provide inputs pertaining to the study's objectives and questions. According to Creswell, (1998) qualitative data is whereby the researcher relies on the views of participants by asking broad and general questions in order to develop concepts which help one to understand social phenomena in natural settings. A qualitative research approach was considered appropriate as one of the methods for this particular study based on the following statement; "Qualitative research refers to the meanings, concepts, characteristics, metaphors, symbols and descriptions of things" (Berg's, 2001: 3).

The qualitative approach addresses the questions of what, why, how where and when, things are happening, or people are behaving in a specific way (Berg's (2001: 3). Additionally, the study called for a research process that gave women a voice, that took their concerns and actions into account, and that ultimately enabled them to be actively involved in the process. In the case of the quantitative approach, Babbie (2010) alludes that quantitative methods emphasize objective measurements and the statistical, mathematical, or numerical analysis of data collected through polls, questionnaires, and surveys, or by manipulating pre-existing

statistical data using computational techniques. Quantitative research focuses on gathering numerical data and generalizing it across groups of people or to explain a particular phenomenon (Babbie, 2010). The proposed study however relied more on the qualitative approach. The study methodology consists of a combination of collection and synthesis of existing country level literature on land policies, land laws as well as interviews, observations, photographic techniques, videotaping and voice recording. The different types of interviews included face-to-face interviews and focus groups. The study used both secondary data and primary data.

### **4.3 Data collection**

Data was collected from both secondary sources and primary sources, which will be explained below.

#### *4.3.1 Secondary data sources:*

Secondary data refers to data that specifies a second-hand account about people, events, topics, or places that is based on what some other writer has experienced (Wood, 1991). At this stage of the research, whereby primary data was not yet attainable, and could not be used as a foundation to inform the content of the study, secondary information on how others have interpreted situations and occurrences regarding land reform issues was assessed. The focus was on gender sensitivity in past and present land tenure reforms, the current level of awareness on the importance of women's equal rights to land rights, women and land internationally and in South Africa and other secondary information, which the study wanted to attain to provide inputs to the study's objectives and questions. This information was used as the starting point of the research and assisted in understanding what is going on with regards to the matter at hand based on other writer's perspectives. With the subject of land reform, being a matter of great international interest, there was quite a lot of literature and multiple pieces of legislation

about land reform approached from a gender perspective. Documents such as books, journals, publications and papers on this topic were readily available and were reviewed as secondary sources of data. They were sourced from libraries, the internet and some state institutions. Such information complemented what was obtained from the interviews. Secondary sources also included, inter alia, the South African Constitution, legislation, and policy documents. The data was assessed authentically and credibly and overall validity of the data was considered. Essentially, this data also contributed towards the literature review, conceptual and theoretical framework of the study.

#### *4.3.2 Primary Data sources:*

Kumar, (2008) refers to the term primary data as data that is collected for a specific research goal. The proposed study utilised this approach as the collection of first hand data assisted in clearly understanding the situation on the ground with regards to agricultural activity and the perception of tenure security amongst women in rural Kwa-Zulu Natal. The study undertook four techniques to collect data primarily, however, before mentioning the techniques used to collect data primarily; the sampling method was first taken into consideration.

#### **4.4 Sampling Method**

Sampling refers to an act, process, or technique of selecting a suitable sample, or a representative part of a population for the purpose of determining parameters or characteristics of the whole population (Webster, 1985). In the context of this study, initially, a sample size of approximately 50 respondents was to be used to ensure coverage of a variety of types of rural households and individuals (women). However due to certain key officials not being easily accessible because of unanticipated circumstances despite appointments being made, the study consisted of a total of 43 respondents and not the expected 50. Key informants within relevant government departments were also a part of the targeted respondents. The study

adopted a non-probability purposive sampling method to collect relevant information from respondents. Inhabitants of the case study were purposively selected according to criteria of ethnicity, class, age and gender (specifically black, middle aged to elderly aged, poor, rural females).

The purpose of this was to get a variation of information on personal experiences with regards to critical issues concerning land ownership as well as obstacles that women face in this regard. These women were from both female-headed households as well as male-headed households. Additionally, the parameters of how respondents were selected looked at how many respondents own land and how many are just renting. Selection parameters depended on factors most convenient to the study until the required sample size was reached.

#### **4.5 Data collection tools**

The proposed study undertook the following techniques to collect primary data;

##### *4.5.1 Observation*

Kitchin and Tate, (2000) refer to observation as an inductive method of data collection done by watching events as they unfold while interpreting what is happening, reasons for the happenings and noting and recording or taking pictures in a social setting. The study made use of overt observations, which according to Bandura, (1961); Kitchin and Tate, (2000) refer to the researcher being open about their intentions in the field and making sure that all participants of the community are aware of what is happening. This type of observation was utilized as it allowed the researcher to be honest with the participants, hence avoiding problematic ethical issues such as deception or lack of informed consent. The study area was visited in order to observe activities undertaken by women, particularly agricultural activities as well as women's plot sizes. The community members were interacted with and interviewed and observation of overall aspects of the area affecting the matter at hand took place.

#### *4.5.2 Key Informant Interviews*

In the proposed study, selected individuals were consulted and interviewed to gain in-depth information on related issues. A maximum of 8 key Informants of the 43 respondents sample size such as rights activists, traditional authorities, legal experts and different government officials were a part of the selected individuals. Information was collected from key informants and such information focused on the provisions and constraining factors for rural women in gaining land ownership. Interviews were designed to provide information on government provisions in addressing gender-based inequalities for women and the related bureaucratic and administrative challenges. The interviews were also centred on understanding the existing legal provisions and weaknesses in the legal system concerning opportunities for women to claim land rights comparing them with past legal practices. Likewise, views of political and rights activists on the aspects of empowerment through land and property rights was also collected through the interviews. The key informants together with community members were also further interviewed to understand the societal perceptions on women's land ownership.

#### *4.5.3 Focus group discussions*

Butler, (2002), defines a focus group as a group of individuals who interact by having a common interest or characteristics which can be brought together by a mediator/ researcher that will use the group and its interaction as a strategy to gain information about a specific or focused issue. The advantages of conducting interviews in this manner is that while some of the respondents may speak about some issue others can remember something related to the matter being discussed and add more value to the discussion (Butler, 2002; Oppenheim, 1992). The study made use of two focus group discussions, the first session held with uMnini residents, included approximately 14 female respondents and the second group interaction, was done with a group of uMnini residents and representatives through a Women and Land Rights

Discrimination Conference. The conference was hosted by the Legal Resources Centre held at the Diakonia Conference Centre in Durban central and it consisted of 21 respondents. Of the latter group, 16 were female, thus altogether 30 women were interviewed.

These women were from both female-headed households as well as male-headed household's, they were of different marital statuses to get a variation of information on personal experiences with regards to critical issues concerning land ownership as well as obstacles that women face in this regard. It thus therefore means that approximately 70% of the total 43 respondents of the study who contributed in the achievement of objectives through field observations and focus group discussions using a questionnaire as an interview tool were women. Five men were also interviewed as part of the second group to gauge their views on gender-based land tenure reforms. The focus group discussions were semi-structured in nature, with a checklist prepared ahead of the discussion as to attain any more information missed during questionnaires.

#### *4.5.4 Questionnaires*

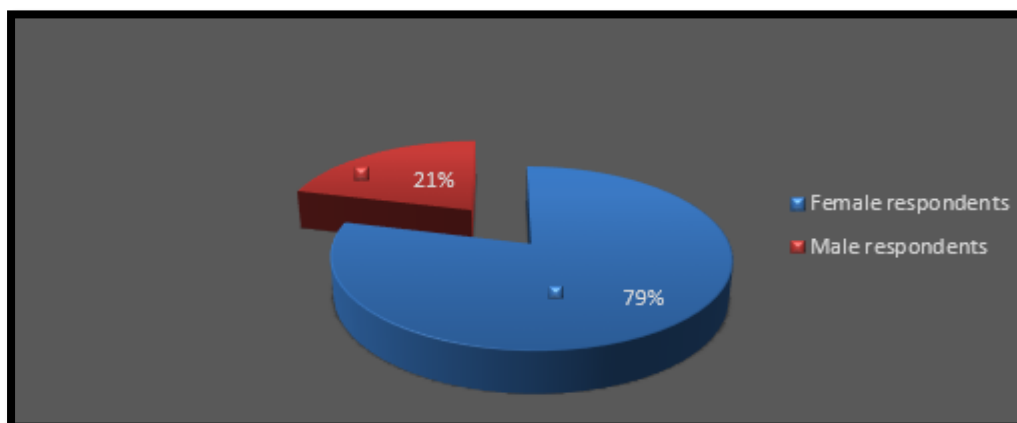
In the context of this study, questionnaires were used as an interview tool during the focus group discussions. The researcher handed them out to both 14 participants in group one and 21 participants in group two. Participants were from varying households in uMnini and the questionnaire was designed in a manner which would help obtain information on the level of access and ownership of land amongst rural women. The questionnaire used to interview individuals in the study was both structured and semi-structured consisting of both closed-ended and open-ended questions. This provided an opportunity, to assist in understanding the perceptions and experiences of the respondents. The questionnaires had three sections. The first section was aimed at collecting the individual and familial details of the interviewees; the second section was designed to recognize the general patterns of land ownership, food security and livelihood options. The third section was specially designed to gain information on

women's status within the context of land ownership, their knowledge about different legal provisions, their rights to land and the existing challenges.

#### **4.6 Response rate (Total surveyed population disaggregated by gender)**

Considering the above mentioned fewer numbers attained than initially anticipated, the researcher can therefore determine that out of the 43 respondents in total 21% were male and 79% were female, which includes both key informants and community respondents. The purpose was to incorporate as many women as possible as the study mainly focuses on them and their struggles, hence their opinions mattered the most. Although the perspectives of men were also equally important regarding the topic, however, the focus here is on women, thus requiring more women to be part of the process (See figure 4.1). To optimise the quality of data the respondents interviewed were from varied backgrounds i.e. males, females, differing age groups and employment backgrounds.

*Figure 4. 1: Total surveyed population disaggregated by gender*



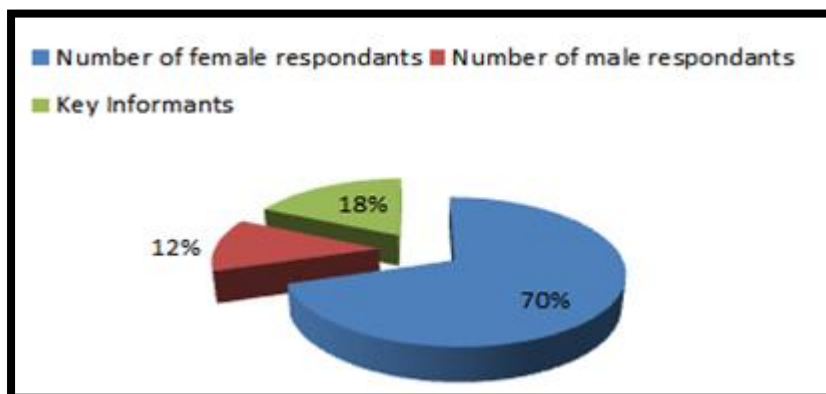
*Source: Researcher (March 2018).*

The first focus group interview session held with UMnini residents, included approximately 14 female respondents. The second group interaction, which was done with a group of uMnini residents and representatives through a Women and Land Rights Discrimination Conference

hosted by the Legal Resources Centre held at the Diakonia Conference Centre in Durban central, consisted of 21 respondents. Of the latter group, 16 were female. Thus altogether 30 women were interviewed, meaning that approximately 70% of the total 43 respondents of the study contributed to the study. Five men were also interviewed as part of the second group to gauge their views on gender-based land tenure reforms.

The above-mentioned numbers, however, do not include key informants as they were not part of focus groups and were rather interviewed separately, forming 18% which consists of 5 females and 3 males of the remainder of the total 43 respondents in total. However, key-informants did share their views, opinions and experiences if they were present at the conference (See figure 4.2).

*Figure 4. 2: Total number of both focus group and key informant respondents*



*Source: Researcher's Compilation (March 2018).*

#### **4.7 Data Rigour, Validity, Reliability, Presentation and Analysis**

In assessing the rigour of the study, the data was evaluated before analysing the findings. Data was assessed for its authenticity, credibility as well as validity. To enhance the validity of the information a variety of data collection methods were utilised by the researcher, including triangulation as a method to compare data after its collection. In sorting as well as to show integrity the data collected was then further assessed with the respondents after completion and

the researcher also considered amongst other things the knowledge, values, feelings, attitudes, understanding, and experiences of the respondents. With regards to reliability, adequate and specific questions were asked on each objective and research question thus ensuring consistency of the study.

The collected data for the study was then analysed through transcription of recordings and audiotapes from interviews with key informants, focus groups and other relevant participants. Furthermore, data was assembled and categorised to pinpoint common areas of focus, as well as patterns that come out of each category. The researcher mainly used the scissor-and-sort technique which was a very useful and efficient approach to analysis. Segments of the transcripts that are important thus developing a categorization system for the topics discussed by groups were determined and statements by representatives regarding topics from the transcripts were selected thus developing an interpretation of what it all means. There is obviously much opportunity for subjectivity and potential bias in this approach, however it shares many of the characteristics of more sophisticated and time-consuming approaches.

In terms of data presentation, the findings were linked to the study's primary objectives and main research questions and were also primarily based on responses from key informant interviews. Such comprising of, representatives of women (Rural Women's Movement), Non-Governmental Organisations (Nonkasa Senior Citizens and Disabled Community Project in UMnini) Department of Rural Development and Land reform officials, Land and Accountability Research Centre officials, Legal Resources Centre Officials, The Department of Co-operative Governance and Traditional Affairs and the Traditional Council which consists of the local chief/ iNkosi and Headmen/ iziNduna. Further data collected from a synthesis of existing country level literature on land policies and land laws was analysed and presented through coding data capturing which highlighted the general response.

## **4.8 Limitations**

In terms of limitations with regards to the study, the researcher found the collection of data to be quite time consuming and frustrating as certain key officials were not easily accessible due to unanticipated circumstances despite appointments being made as per mentioned on the response rate. The reliance on some informants who did not have the key information readily available also proved to be quite a challenge. Another issue was that the interviews were time consuming due to resistance from relevant respondents (rural women) who are under the authority of their husbands and traditional authorities, thus placing themselves in an inferior position to participate in the study and unwilling to fully participate in interviews of which led to the attainment of limited information. This was highly prevalent in the case study area as strong patriarchal structures still predominantly prevail. Women are not seen as fully worthy citizens and represented in society by their husbands or male relatives. This led to complications in establishing the correct sample size for data collection.

Discussions that did take place with women that were willing to participate ranged in length from half an hour to two hours, however interview time for these women was often affected by the fact that most of the time they had to rush back home for other domestic responsibilities. Additionally, the translation of the interviews from English to isiZulu was also a time-consuming exercise and had to be carefully undertaken to ensure that the essence of the interviews was accurately captured. Furthermore, issues of ethical clearance also posed as a limitation as such took some time to be approved thus affecting time management in the sense that fieldwork and acquiring data did not take place in the time anticipated.

## **4.9 Chapter summary**

This chapter simply outlined the methods of research that the researcher undertook, as well as data collection and data analysis processes. The researcher made every effort to include all key

participants that are of relevance to the study with the intention of collecting as much data as possible, regardless of the above-mentioned challenges.

## **CHAPTER FIVE**

### **DATA PRESENTATION AND ANALYSIS**

#### **5.1 Introduction**

Chapter five mainly seeks to present the findings and analysis of the data obtained using the methodology described in the previous chapter. The chapter then provides answers to the questions raised in the introductory section of this thesis. In terms of the presentation of findings, overall, this chapter seeks to critically analyse the extent to which current land reform policies addresses gender disparities with regards to providing women with equal access and secure land rights in UMnini traditional area. The first part of this chapter explores the modern-day rural women's experience in terms of their eligibility for land ownership. The second part examines the level of awareness on the importance of women's rights, equal gender rights in terms of the right to access to land. The third part assesses, current land tenure reforms in terms of being any more gender sensitive than those of the past as well as the extent to which on-going land tenure reforms and government provisions are addressing gender-based inequalities. Lastly, part four draws lessons based on best practices as well as failures of on-going and past policies and their implementation.

#### **5.2 Location and Background of the Case Study Area**

This research makes use of the case study of UMnini Traditional Authority Area, which is located some 40 kilometres south-west of the Durban CBD within Ward 98 under Councillor Magubane and Ward 99 under Councillor Bayeni (refer to Figure 5.1). The area is neighboured by the Indian Ocean in the east, with Mfume Mission and privately-owned land in the west, the Umsimbazi River in the north, and the Umkomasi River in the south (UMnini LADP, 2006).

Figure 5. 2: Depiction of the Locality of the UMnini Trust Traditional Area.



Produced by researcher, source: Google Earth, (2017).

Furthermore, the area consists of sufficient infrastructural services running in north-south direction such as a railway line, and electricity power transmission lines, a national road (N2) and provincial roads (P197 and P578). Falling under the UMnini Traditional Council, the UMnini traditional area is led by *iNkosi* Luthuli. It comprises of four traditional local regions, namely, iDanganya under *iNduna* (Headman) Mthembu, iHlanze under *iNduna* Ndlovu, aMagcina under *iNduna* Nala, Emgobhozini under *iNduna* Ngidi and emaGabheni under *iNduna* Khomo ( *UMnini (LADP) (2006)*). The case study area was chosen due to it representing one of the communities in eThekweni Municipality where land ownership is skewed towards men.

### *5.2.1 Demographics relating to the study as per StatsSA /Census 2011.*

The 2011 Census stipulates that the overall population of people residing in UMnini is a total of 84 083, with 210 persons/ha and a total of area of 400ha density wise. In the case of gender, UMnini is primarily dominated by females who account for approximately 52% of population.

#### *Dwelling Types*

Available statistics indicate that an average household size of 4.8 people is acknowledged and about 75% of the population resides in formal dwelling types, 12% resides in traditional dwellings and the remaining 11% live in informal dwellings.

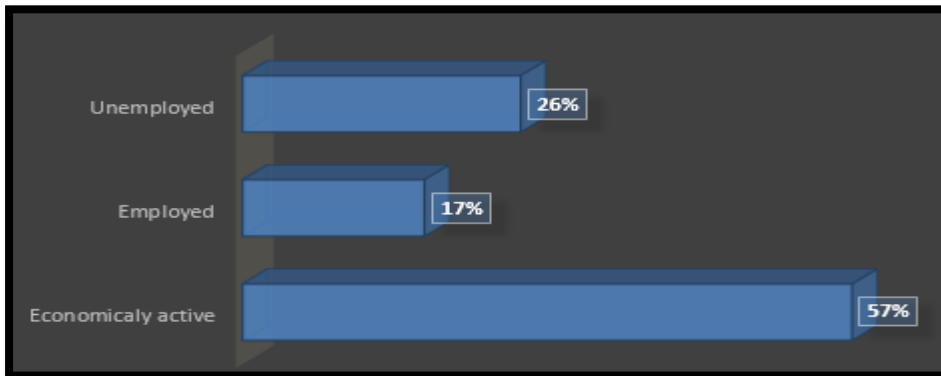
#### *Education Levels*

Literacy rates in UMnini population are approximately 60%, with individuals having completed grades ranging from 5 to 7 and above. This is much lower than the provincial average of 92.4% for KwaZulu-Natal, and the national average of 93%. Literacy rates are a key indicator of social development.

#### *Socio-economic Characteristics*

With regard to employment status, approximately 57% of population in the case study area was not economically active, with 17% being unemployed and 26% employed, as shown in graph 5. 1.

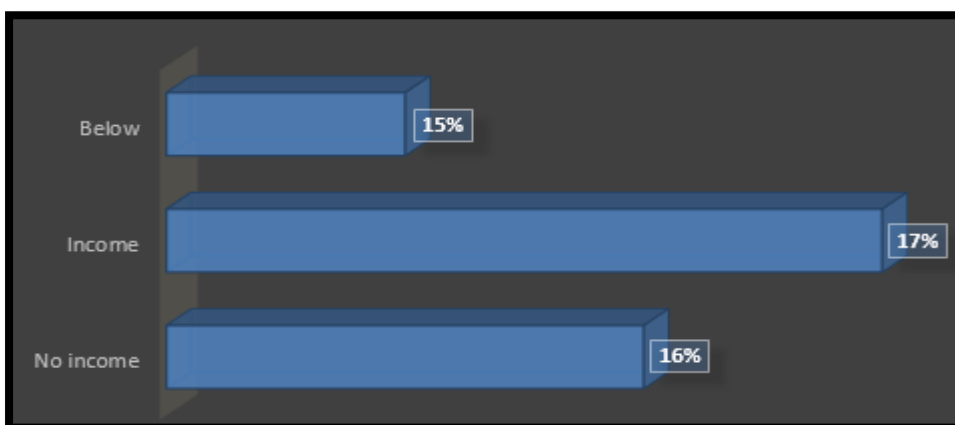
*Graph 5. 1: Is the representation of UMnini’’s employment status as per mentioned above with respective percentages.*



*Produced by the Researcher (Data Source: Stats SA, 2011).*

In the case of income levels, according to stats SA 2011, 16% of the UMnini population with children and housewives considered under the category do not earn an income. Additionally, an estimated 17% of the employed receive an income ranging from R9 601 and R19 600 per annum with 15% earning under R1 600 (see graph 5. 2).

*Graph 5. 2: A representation of UMnini’’s Income Levels as per Stats SA, 2011.*



*Produced by the Researcher (Data Source: Stats SA, 2011).*

### **5.3 The modern-day rural women's experience in terms of land ownership eligibility**

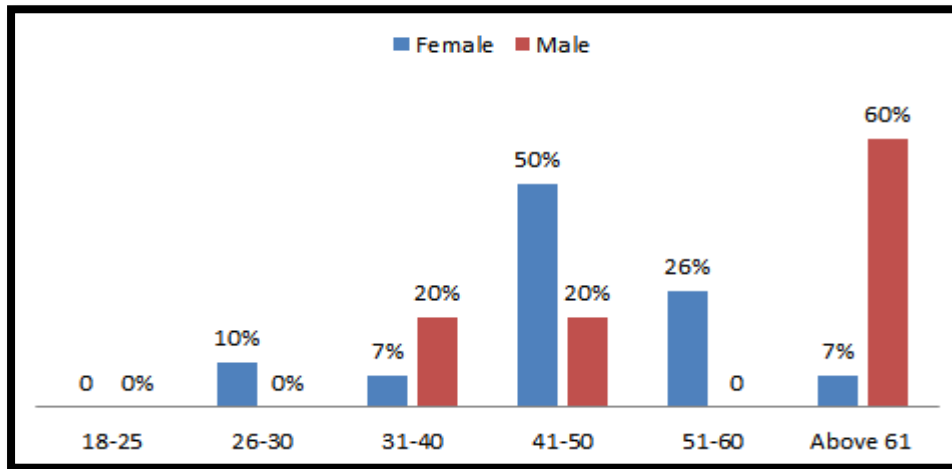
The researcher first started with a general introduction in terms of exchanging names and ice breaking friendly questions, and then noted the respondent's basic demographic details relating to age, their level of education, employment levels, and family relations. This was done through brief discussion as well as questionnaires, which were also handed out. It turned out that the groups were extremely homogeneous in terms of such categories. This information gleaned was useful in the sense that it helped in shedding light on the respondents' details and thus informing some of the research objectives. Under this section, firstly, the basic demographic representation of focus group respondents obtained from the field will be discussed in variances at micro level with the demographic profile which was provided by secondary data in the case study section in the previous chapter at macro level. However, this was done on statistics whereby secondary data was available relating to that specific household profile component.

#### *5.3.1 Basic household profile of focus group respondents*

The responses of the surveyed population from the field revealed the following household profile in firstly, the case of age groups, marital status and head of house hold;

In the case of age groups, as mentioned in chapter four, which deals with sampling methodology, the respondents in the case study were purposively selected according to criteria of ethnicity, class, age and gender. The main target was black, poor, *middle aged to elderly aged* rural females, who usually constitute the most vulnerable age group. A representation of this is depicted in Figure 5. 2. Note that the horizontal axis indicates ages of respondents from ages 18 to 61+ and vertical axis indicates percentage of age groups between male and female respondents.

Figure 5.2: Respondents age groups



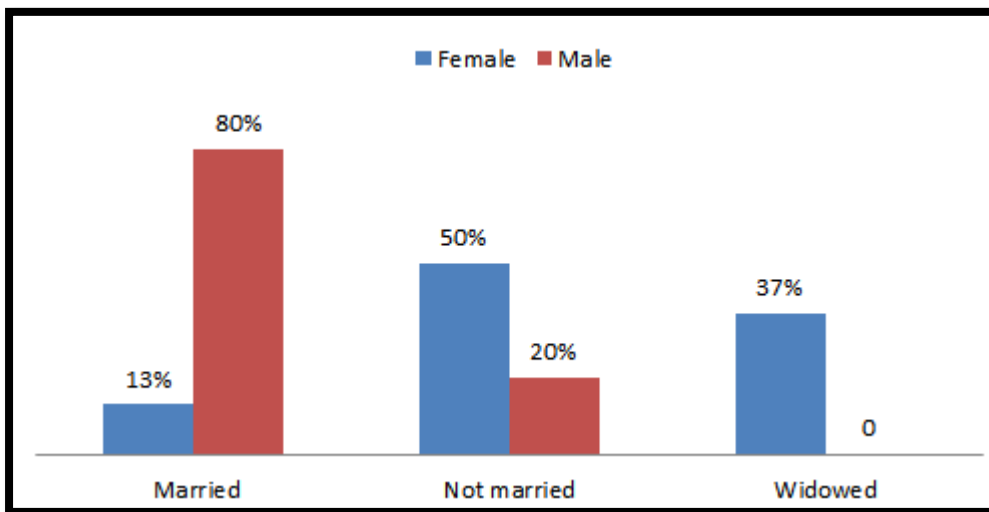
Source: Researcher (March 2018).

Figure 5.2 depicts ages of both male and female respondents participating in the study, however greater focus is on the females. It is evident that most of the female respondents are of middle age and slightly above, with approximately 50% of the females ranging between the ages of 41-50. The next highest range in the women's ages is 26% with ages from 51-60. Ages of elderly women ranging from 61+ constituted 7%. Women in the 26-30 years age cohort account for 10% of the respondents, while those in the 31-40 years age group constituted 7%. In the case of the males, 60% were in the 61 year and above age cohort, while 20% were in 41-50-year age cohort, while another 20% was in 31-40 years age cohort.

The next component discussed under household profile is the respondent's marital status. Marital status assisted in determinants of land acquisition and to a certain degree in determining the status of head of households amongst respondents. Identifying the household head assisted in informing components such as decision-making powers within households, dependents as well as household roles and responsibilities between males and females. In terms of marital status, fieldwork revealed that 50% of the female respondents are not married, while 37% are widowed and 13% of the total are married. Most of the women have children as dependents,

especially elderly women, who claimed to be guardians of their grandkids, due to the children’s parents often migrating from the rural area in search of a better life in the city. In the case of male respondents, the majority, which is 80% are married and only 20% are not married (See figure 5.3 for illustration). Note that vertical axis indicates percentage of marital status between male and female and horizontal axis indicates marital status between male and female.

*Figure 5.3: Marital status*



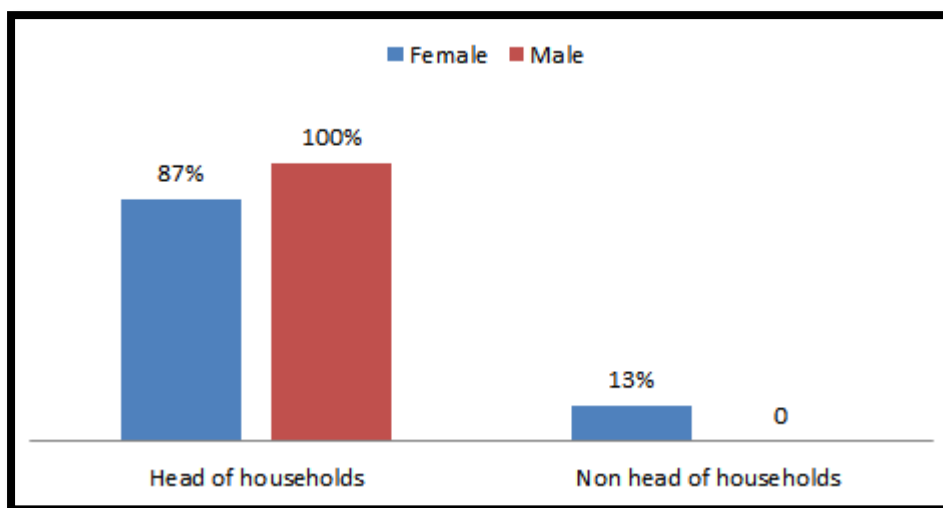
*Source: Researcher (March 2018).*

Regarding head of household, approximately 87% of the female respondents surveyed are household heads. This includes both non-married and widowed females. The remaining 13%, who are married are titular headship of their households. As such, married women taking up the role of being a household head did not necessarily mean that they had decision-making power. This luxury only seemed to be the exception of single women living alone or with children and were not married in UMinini. The married women consulted their husbands working outside the area for important decisions. Also noted is the fact that, in all the cases, women managed the household and major responsibilities usually when any adult male member of the house, husband or son, was absent for an extended period of time. Moreover,

women did not just shoulder the responsibilities of the household but also agricultural production, which is seemingly a major component in sustaining livelihoods in the area.

All the men surveyed were household heads which constitutes 100%. This suggests that in Umnini, family dynamics follow the traditional model in that whether present or absent, men are automatically considered heads of households with decision-making powers. (See figure 5.4.) Note that vertical axis indicates percentage of head of households between male and female and horizontal axis head of households between male and female.

Figure 5. 4: Head of households



Source: Researcher (March 2018).

Further components discussed under household profile, however this time at macro and micro level due to available secondary data in the form of statistics making it possible for variation purposes between statistics are literacy rates, employment/occupation status and income levels.

According to 2011 census statistics, at a macro scale, secondary data points out that literacy rates in Umnini population were approximately 60% out of a total population of 84 083, with individuals having completed grades ranging from 5 to 7 and above. A percentage much lower than the provincial average of 92.4% for KwaZulu-Natal, and the national average of 93%. At

a micro level, as per field work data the literacy rates were found to be low among the studied population, especially among women. Of the 30 female respondents, about 30% of the total claimed to have finished only matric and never went beyond that, while 53% had only been educated up to primary school level, with grades ranging from 1 and 3. The few remaining interviewed female respondents which constituted 17% had never been to school. The general trend indicates that people tend to drop out or leave studies after the lower secondary level. In terms of the levels of education of the surveyed men, 20% of them had reached tertiary level, 60% had reached matric, and 20% had never been to school. Evidently, it appears that the rate of educated men is more than that of women (see Table 5.1).

*Table 5. 1: Depicting education levels*

<b>Gender</b>	<b>Tertiary</b>		<b>Matric</b>		<b>Primary school</b>		<b>Never been to school</b>		<b>Total</b>	
<b>Female</b>	0	0%	9	30%	16	53%	5	17%	30	<b>100%</b>
<b>Male</b>	1	20%	3	60%	0	0	1	20%	5	<b>100%</b>
<b>Total Number Interviewed</b>	1	2.9%	12	34,3%	16	45.7%	6	17.1%	35	<b>100%</b>

*Source: Researcher (March 2018).*

With regards to employment/occupation status according to secondary data, at macro level approximately 57% of the population in the case study area was not economically active, with 17% being unemployed and 26% employed (2011, StatsSA). At micro level, fieldwork revealed that from the 30 female respondents surveyed, 13% were employed as domestic workers and 43% were unemployed. Agriculture was the primary occupation for the population surveyed, especially amongst women, with 17% of the total, reporting that agriculture was their main source of earning an income and selling agricultural produce full time and getting a daily wage. An estimated 27% in the groups, earned an income through pension, this was, however,

too small to sustain their livelihoods. As such, they supplemented this income through farming (agriculture) in their homestead gardens and sold produce for money so as to sustain themselves. In the case of men surveyed, majority of them had jobs outside of the rural areas such as office jobs etc. and very few were unemployed. Field results also show that most women's lower education levels were what seemed to hinder them from competing for office jobs or other better jobs outside the rural settlement. Their applications to do general labour were in most cases rejected and only men were mostly given preference and employed (see Table 5.2).

*Table 5. 2: Population disaggregation by occupation*

<b>Gender</b>	<b>Agriculture/Daily wage labour</b>		<b>Office Job</b>		<b>Domestic work</b>		<b>Unemployed</b>		<b>Pension</b>		<b>Total</b>	
<b>Female</b>	5	17%	0	0%	4	13%	13	43%	8	27%	30	<b>100%</b>
<b>Male</b>	1	20%	2	40%	0	0%	0	0%	2	40%	5	<b>100%</b>
<b>Total Number Interviewed</b>	6	17.1%	2	5.7%	4	11.4%	13	37.1%	10	28,6%	35	<b>100%</b>

*Source: Researcher, (March 2018).*

The final component of household profile discussed is that of income levels /earnings per month. According to stats SA 2011, at macro level 16% of the Umnini population with children and housewives considered under the category do not earn an income. Additionally, an estimated 17% of the employed receive an income ranging from R9 601 and R19 600 per annum with 15% earning under R1 600. Information from the questionnaires from fieldwork depicted that, women barely make it past R1000 per month. As already shown above on table 5.2, most of them are unemployed or are pensioners or daily wage labourers through agriculture, meaning their incomes were quite below poverty level. Even those employed as domestic workers made R1000 or less. Male respondents on the other hand earned incomes

beyond R1000, mostly through jobs outside of the rural areas. They were mostly employed in the city. This is depicted Table 5. 3.

Table 5. 3: Income levels /Earnings per month

<b>Gender</b>	0- R1000		R1001-R2500		R2501- R5000		<b>Total</b>
<b>Female</b>	23	77%	7	23%	0	0%	<b>100%</b>
<b>Male</b>	1	20%	2	40%	2	40%	<b>100%</b>
<b>Total Number interviewed</b>	24	68,6%	9	25,7%	2	5,7%	<b>100%</b>

*Source: Researcher, (March 2018).*

Although the number of men surveyed in this section is relatively low compared to that of women, and data comes across as being biased, it should be noted, as already mentioned above that the main focus and intent of the study was on women and mainly understanding their perspectives with land tenure reforms in South Africa. However, regardless of the small number of males included in the sample, in terms of the socio-demographic themes analysed above, their status in this regard is still far superior to that of women and they are at a more favourable position than women in society generally.

### *5.3.2 Perceptions on women's land ownership*

In the first group, initially, very few women were able to speak up about the topic, inferiority was inculcated and evident through the way in which women were so complacent with their lifestyles and their ability to care for their families regardless of lack of resources, in this case land. These few women did not really seem to care much with regards to the need of owning land, noting that they were not concerned whether they had land in their own full right or not. Those with spouses felt that if their counterpart's names were registered or were under their names then it meant they somewhat had equal rights to land as their menfolk.

Furthermore, they felt that having land did not make much of a difference as most decisions regarding the land were made by the local chief and males, whether it be spouses or male relatives. They further reported that they felt privileged and fortunate that they had men supporting them and that they felt they were not at any loss if menfolk owned land and took care of them.

87% of those who were confident to voice their full opinions, which mostly consisted of widows or those living independently, as shown on graph 5.2, stated that they did not share the same sentiments as the 13% from the first group stated above. This group (87%) of women felt that land rights are very important in their lives and believed that if they were able to own land, in terms of full access and control and not just use rights, it would greatly assist in improving their livelihoods. They reported that to them, land is an economic tool and that if they owned land they would be able to take decisions on their own without depending on any male counterparts and that they would be self-reliant and would not need a man taking care of them and pushing them around just for the sake of only having use rights to land.

The few male respondents from the second group, saw giving women full ownership of land as a threat to their status as men. During the focus group session, some men claimed that their ownership of land is a birth right and that the long-term presence of a woman in a family was not guaranteed as she can marry into a different family thus not being able to protect family land. They thus felt that women should be excluded in any form of land acquisition or any significant land related matters, unless if it had to do with growing crops and harvesting for their families. To them, the land on which these crops are grown is considered to have long-term economic potential, and it can only be owned by men.

From a key informant point of view, two female representatives from Non-Governmental Organisations, one from Rural Women's Movement and one from Nonkasa Senior Citizens

and Disabled Community Project in uMnini who attended the Women and Land Rights Discrimination Conference hosted by the Legal Resources Centre which was the second group interaction, reported that land rights are very critical and are a hot topic that should not be taken lightly especially in the case of women. They stated that in rural areas, issues of land are still a major concern, with women only having use rights and not control rights thus prone to vulnerability to cases of domestic violence, diseases and poverty in the case of men passing and leaving them destitute. They further recounted that if women's land rights in the rural areas were fought for and it was pushed for women to have full control over land, it would be a way to fight poverty and diseases and many other issues thereon.

As in the case of UMnini, according to fieldwork, women faced issues of gender-based violence from the chief and other male counter parts. This is however discussed in more detail under challenges and constraining factors that women face with regards to land ownership in UMnini, section 5.7.4. Furthermore, also noted from the fieldwork issues of poverty caused by lack of land rights have led to some of the female respondents engaging in behaviour that exposed them to the risk of HIV infection as they engaged in transactional sex as their last resort to cope with resulting poverty.

A representative from Rural Women's Movement, who is also a key informant, further reported that, in terms of land, she felt that the focus should primarily be on women residing in rural areas as women in the urban areas usually often need land to build houses. In rural areas, women do not need land only to build houses but need it for numerous other purposes such as grazing, gardening, farming so as to achieve food security and tackle poverty. Moreover, she stated that women need land to establish income generating projects through agricultural activities so as to make a living and that the allocation of land really needs to be addressed if the topic of rural women and economic empowerment is being addressed.

A female representative from the Department of rural development and land reform who was present at the conference stated that women are just mere users when it comes to land and they are not even commercial farmers. The representative recounted that women, however, just produce for subsistence and any surplus that they may produce is sold at very low prices. As such they remain subsistence farmers for a very long time due to lack of land rights. She further alluded that subsistence farming should not be perpetuated amongst women and at some point, women need to plan a transition strategy towards commercial farming. She further noted that there was money in land and that women who own land generate much higher rural non-farm earnings from self-employment than those without land. As such, women's discrimination with regards to land rights is a constraint in women empowering themselves economically.

### *5.3.3 Sources of landownership for women, types of land rights (control, access or use) and size of plots*

Aspects on land details such as the acquisition of land, plot sizes and types of ownership rights were also discussed and assessed through questionnaires. Information on plot sizes was further confirmed to be true through straight observation by the researcher. The focus group interactions provided an opportunity to assess common characteristics amongst women in the study area, one of them being that of land acquisition and types of land rights. The discussion yielded several outcomes which the researcher discusses next.

There are different forms of land acquisition practiced. First, as already mentioned above, uMnini Traditional Council is administered by the Ingonyama Trust Board (ITB). The board administers the Ingonyama Trust established by post-apartheid government in 1994 to be the custodian of the land previously administered by the KwaZulu-Natal government (2018, July 13, Retrieved from <http://www.ingonyamatrust.org.za/>). The trust has 9 board members, which are as follows; His majesty the King or a nominee who is the boards chairperson, four members

who are appointed by the Minister after consulting His Majesty the King, the Premier as well as the chairperson of the House of Traditional Leaders of KwaZulu –Natal. The other four members of the Board are appointed with due regard to regional interests in consultation with the Premier, His Majesty the King and the chairperson of the House of Traditional Leaders(2018, July 13, Retrieved from <http://www.ingonyamatrust.org.za/>). The powers of the trust as far as land is concerned are that it basically provides leadership and policy direction in matters pertaining to communal land under the leadership of Amakhosi in the province.

With UMnini, the traditional area is led by *iNkosi* Luthuli, who administers and allocates plots of land transferred by the ITB to most of the residents, with Permission to Occupy Certificates, primarily males as one of the forms of acquisition. However, these certificates are less formal tenure rights and merely evidence user rights but are simply personal rights. This basically means rights to land are derived from the state. Other forms of acquisition derive from a range of customary and religious laws, such as through inheritance. In customary practices it is recognized that single women can also inherit land through maternal or paternal kin and widows inherit from their husbands who are late. However, such rights of inheritance are most often conditional upon women maintaining their single/widow status. Marriage is also in many rural areas, the primary means in which women obtain access to land, through their husband's family or clan, such is also the case in UMnini. Such access may however be lost upon divorce or the death of the husband.

In UMnini's rural setting, customary norms are more important in determining women's rights than statutory laws. According to the questionnaires handed out during the focus group as a data collection tool, 13% of the women stated that they had acquired land or rather had use rights to land owned by their spouses or male relatives who have acquired land through the allocation of the chief or inheritance, however not full ownership. Thus, meaning that in terms of bundle of rights, women only have privileges to access, but not control and ownership of

land. Women in UMnini are mostly subject to *use rights*; of which in this case is the right to use the land for farming, growing subsistence crops and obtaining at least some of the produce.

The majority of the women, which is about 40%, reported having had inherited land from their deceased spouse or male relatives, in cases whereby there were no males in the household. They, however stated that this way of land acquisition was quite a struggle, and a never-ending battle as they were bullied at all times to hand over land to extended family relatives who were males in the absence of a male figure within the female households or back to the community leader /chief who had originally allocated the land to menfolk as head of households.

About 20% of the surveyed female population claimed to have tried escaping cultural hindrances by purchasing land from the community leader/chief with cash as a way of acquiring land. However, this type of allocation by the chief to women was only allowed if they paid for the land as opposed to being allocated freely in their own right. Moreover, this form of acquisition also seemed to be difficult at times as the chiefs were generally reluctant to sell land to women, especially married women without their husband's approval. In this case, it is evident according to Ribot & Peluso, 2003, that the ability to derive benefits from resources is contingent on social relationships enabling or constraining women's realization, which also thus makes it evident that men determine women's rights of access to land.

In terms of plot sizes women generally had small plots to build a small house and a little space to grow some agricultural food produce, especially in the case of those who had purchased the land. Plot sizes given depended on the size of land the chief had available and no specific standards or measurements were taken into consideration. Those with spouses shared land with their counterparts and were allocated small gardens to grow food produce. However, those who had inherited land had fairly medium to big plot sizes, which they used for building their houses, gardening as well as well as being able to bury a deceased loved ones in the back of

their houses. Some women, which is 27%, reported to only having access to land through paying rent to males who owned big plot sizes and were able to accommodate them.

From the questionnaires handed out in both focus groups, the researcher was able to discover the following numerically:

*Table 5. 4: Sources of land ownership for both male and female surveyed population.*

Gender	Inheritance		Allocated by chief		Marriage/Spouse		Rent		Purchased		Total	
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage
<b>Female</b>	12	40%	0	0%	4	13%	8	27%	6	20%	30	<b>100%</b>
<b>Male</b>	2	40%	3	60%	0	0%	0	0%	0	0%	5	<b>100%</b>
<b>Total number interviewed</b>	14	40%	3	8.6%	4	11.4%	8	22.9%	6	17.1%	35	<b>100</b>

*Source: Researcher, (March 2018).*

Table 5.4 shows that that out of the 30 women from both focus groups, 12, which is 40% inherited land, had informal ownership rights from their loved ones who had passed on. These women claim that they only inherited land due to there being no male siblings in their family. However, they have been having disputes with extended family male relatives demanding that they hand over the land. Four (4) out of the 30 women, acquired land through marriage or relationship with their spouse, though they only had access and use rights. Eight (8) women in Umnini, which is 27% of the surveyed population, reported that they rented land from males who owned fairly big plot sizes and were able to accommodate them. These women only had access and use rights to land. The remaining 6 out of the 30 respondents reported that they had purchased the land and had access and user rights as well as ownership rights. In this case permission to occupy is granted and in rare cases documents pertaining land transaction details were issued out as proof of purchase. However, even for these women, such ownership was

capricious as it depended on the indulgence of the chief who could change his mind at any time. This in turn further reflects lack of transparency, fraudulent behavior which thus perpetuates women's vulnerability to the issue of land. As the case of Anele illustrates below;

*“I purchased the land, but the chief harasses me every time, telling me he has sold it to a higher bidder and I must vacate” – Anele Zwane, 2018.*

In the case of men, 40% inherited land and have full ownership rights and access, use, control and making all the major decisions pertaining to land related matters. They also have relatively larger plot sizes. Most of the men in UMnini have been allocated land by the chief and have full ownership rights. Although this is the case for men, some of them still suffer from the land grabbing by the chiefs who sell their land to developers or the ITB forcing them to swap Permission to Occupy' certificates to 40-year lease agreements.

#### *5.3.4 Challenges and constraining factors that women face with regards to land ownership in UMnini.*

Although there are a variety of ways in which land can be acquired for some women whether it be through property inheritance, transfers and purchase, there are numerous issues that have hindered the women of UMnini in attaining full ownership of land. First, based on culture and tradition, customary laws are highly predominant in the area and second residents are being pressured into converting their permissions to occupy (PTO's) land to leases thus meaning that they would be stripped of their land rights by effectively making them tenants and the chief selling the land of the UMnini people to prospective developers. Women most prone to these circumstances, and as such face more obstacles than men in this instance. This is also due to male preference when it comes to inheritance practices, male privilege in marriage and inherent gender inequality in the community. Both the focus group and the Women's Land

Discrimination Conference led to several observations regarding the challenges and constraints faced by women with regard to land ownership.

UMnini is currently undergoing major disputes in terms of land ownership, affecting both women and men in the area, however the women are disproportionately affected. The Ingonyama Trust Board (ITB) is being challenged by residents of UMnini for forcing them to sign leases for their ancestral land of which for several years they have been holding rights over. Moreover, residents are complaining about the local chief working hand in hand with the ITB and illegally leasing and selling plots of land to wealthier developers and businesses as the main issue they are faced with. The residents of UMnini are also being put under great pressure to convert their permissions to occupy land to leases, which will in turn mean that they would be stripped of their land rights thus effectively making them tenants. The ITB has sent out notices to those residing on its land, asking them to surrender their existing land rights into 40-year leases. Women in this case are the most vulnerable with numerous incidences having been reported individually in the focus groups and as a collective whole at the conference. The most common characteristics/ issues reported amongst the women consisted of the following;

- If ever a woman wishes to acquire land, she is only allowed to do that through the assistance of a man. She does not have and is not entitled to a voice of her own and is not allowed to solely represent herself especially if she does not have a spouse.
- Women get land taken away when their husbands die regardless of late husband having brought it and registered.
- Women in the area are forced by the chief to demolish the houses on their plots and move so as make way for the highest bidder, to whom the chief has sold the land. They are victimized due to the fact that they are women and told that under laws of customary they are not entitled to land nor have any say in such matters. Force is used to a point of violence so as to threaten them and their children, thus leaving them destitute and

having nowhere to go with their children. Women are thus subject to harsh punishment at the whim of their chief if they ever contested against him, to a point whereby they are arrested if they do not obey the chief's orders.

- They also stated that although the chiefs are given land to administer and allocate, increasingly they are selling it and pocketing the money. The respondents argued that land should not be for sale as it is for the people and should not be taken away from them.
- Female respondents also recounted that only selected people, which is men in most cases are invited to attend meetings within the UMnini community regarding the issue of land grabbing currently taking place in the area, although this affects both men and women in terms of rights of ownership and use. Furthermore, this is regardless of the women potentially being the main losers in this scenario.
- In desperation of assistance, some of the women have gone to courts to seek protection against such violations of their rights or get some form of documentation to protect themselves. However, due to low incomes in the area, few have been able to approach the courts or lawyers.
- The women of UMnini also recounted that the people that they put in power (i.e. the chiefs) that are supposed to protect them are the very same people that victimize them and sell them out.

Both men and women concurred during the focus group interviews that every community member is exposed to the negative impacts of the land grabbing incident, however women bear the greater burden. This is because the land which is most likely sold by the chief is utilized to harvest and grow food crops by women in UMnini while men tend to produce cash crops that are more perennial. The land on which cash crops that are grown by men is considered to have

long-term economic potential, thus tends to be excluded from land grab deals, regardless of whether or not the men have land certificates. This suggests that more than just the gender perspectives derived from customary beliefs in rural areas, also the nature of crops grown by giving them an advantage in terms of land security and a lower the threat of eviction.

Women on the other hand are seen as only growing specific annual crops, which leave the land empty or vacant for part of the year, which make it easy for chiefs and developers to target this land. The focus group discussions also revealed that women feel as though, the government is not helping them much which thus makes them feel as if the government is undermining social and cultural dimensions of women's land use despite its significance with regards to their livelihoods. Women in UMnini are highly reliant on land and its related resources and as such, the land grabbing issue poses a greater challenge to their livelihoods, especially considering the already existing cultural and customary constraints in the community. The continuation of such practices has contributed to a reproduction of gender inequalities by alienating women from productive resources.

It is therefore evident in this case that key differentiating factor between women and men in UMnini is that men are at a greater advantage as they have greater tenure security than women, although the community as a whole is vulnerable to the impact of the chiefs' actions and any land loss as such net effect on household food security.

#### *Key cases revealed during conference*

The Women and Land Discrimination Conference attended by the researcher also revealed the following cases currently being faced by the women of UMnini. In this instance key informants also shared their perspective and insight.

**Case 1:** One of many cases that stood out was that of a single woman who lives independently with her children, on land inherited from her parents as she had no male siblings. She was never

married though she has children. She had been residing on the land for close to 10 years and claims to have tried to register the land at the land registration offices but has faced major challenges. She was threatened to move off the land by the chief who is said to have already sold the land to a prospective developer and pocketed the money. The woman was unfortunately eventually chased away from her plot through various acts of assault and violence to her and even her children.

She recounted that sometimes she would come home from work only to find her house having been vandalized, and her children lamenting due to the assaults from the chief's agents. She further reported at one time a group of close to 30 men, all sent by the chief, had come to intimidate her into moving off the plot. Having faced all this mistreatment and fearing for the safety of her children and herself, she had gone to the police who had, however, done nothing to help, as they were friends or had connections with the chief. As a way of teaching her a lesson she had been thrown in jail for a night for reporting the chief. She is now said to be staying with a friend temporarily as she was left destitute with no place to go as she had no more relatives who were still alive. She has currently also reported her case to the Legal Resources Centre and the case is still pending.

**Case 2:** Another similar case is that of an 81-year-old female land activist of UMnini who has also experienced intimidation in her fight for land in her own right. This octogenarian is a representative of a non-governmental organisation named Nonkasa Senior Citizens and Disabled Community Project. The octogenarian, is fighting to get what she believes rightfully belongs to her and recounted that the local chief bequeathed her a piece of land and some dilapidated buildings of which she had the dream of building a home for the elderly as well as the disabled. However, in subsequently investing a huge amount of money from donations so as to do renovations, the chief had now given the land to a pastor to build a church. She reported that she discovered that the chief had sold the land and the pastor who also got preference as

he was a male. She then turned to the Ingonyama Trust in a bid to enter into a lease agreement for the land, which was approved after a deposit amount had been paid. However, after some time in trying to get the full lease agreement, she was advised that the lease agreement should have not been approved in the first place as the land was assumed to belong to an electricity company. Subsequently, the lease was cancelled yet she did not receive her money back. She stated, emotionally, that she feels as though the chief has greatly let her down and she is so bitter regarding the issue so much that she cries sometimes. The respondent recounted that she has handed over her case to the Legal Resources Centre to assist her in the matter.

**Case 3:** Another reported case is that of a representative from Rural Women's Movement, who is also a land rights activist, who stated her personal experiences in the land matter. The representative reported that her mother had been kicked off her own land by her brothers-in-law and went to a traditional leader to request land but was denied because she did not have sons. In realisation that in rural areas many women were being treated "as subordinates" to men, she took it upon herself to be part of the solution. However, she claimed to have faced numerous challenges as a representative for women in addressing gender-based inequalities in the UMnini area.

She recounted that she had been defamed, arrested, high jacked and even been beaten up by men who, broke into Rural Women's Movement office (RWM). Furthermore, she has also been attacked in her home, at night while she was alone by a group of men who had big guns who left her in pool of blood, thinking she was dead. She reported to have experienced life-threatening challenges in fighting for women's rights in not only UMnini but KZN as a whole. In terms of action being taken regarding what the respondent has mentioned, she reported that even thou she had gone to the police, in most cases she found that they were also against her, as they had been bribed.

### *5.3.5 Recent rulings in the community about women's petitions for land ownership and access to justice for women when it comes to land.*

With all the challenges mentioned above, it is important to find out whether anything had been done within the community to assist women in getting justice when it comes to land ownership. For example, are there any platforms given to women in the area by the traditional leadership, which provide them an opportunity to voice their concerns about land ownership; how the traditional leaders proceed with requests from women regarding land ownership; and, whether there are any provisions made by the traditional leadership in terms of addressing gender-based inequalities. The following came to light through the focus group interview and an interview with traditional leadership;

Respondents from the focus group recounted that their community is predominantly under customary law when it comes to land rights and that; generally, women are seen as inferior when compared to men in UMnini. Most women stated that there were no platforms that allow them to voice out their concerns independently. They claimed that even in traditional councils and courts, women always had to be represented by males as the area maintains patriarchal practices that restrict women from representing themselves. As the case of Ngubane illustrates below;

*"I asked these chiefs why we have to be represented. Because according to the constitution we are human beings and we have full potential of speaking for ourselves. Why do we have to be represented?"- S. Ngubane, 2018*

The traditional leader, however, stated that platforms are given but women do not say anything or bring up any issues, they usually end up settling with the status quo. The traditional leader further mentioned that he has never come across complaints from women unless if they come as cooperatives for their own development (business) and in such instances women are given

land. In the case of provisions made by traditional leadership in terms of addressing gender-based inequalities, the leader recounted that such provisions do not exist due to the fact that traditional leaders lack and are not properly attuned to new democratic frameworks and legislations within the constitution.

#### **5.4 The level of awareness on the importance of women's rights, equal gender rights in terms of the right to access to land.**

Women are protected by a full range of rights, however in most cases they may not even be aware of such rights, and this issue is highly prevalent in rural communities. Women are continuously treated as minors in land issues and do not even know the value of human rights or are truly even aware of them.

The focus group revealed that culturally, according to most women in UMnini, land ownership and rights have always been associated with men, and enquiries regarding land were subsequently made by men. This was said to be a norm that is nowhere near transforming. Most women in UMnini have limited knowledge of their rights under the legal system and this is caused by poor literacy levels. It was observed that women with better education levels were more aware of their rights and were better able to interpret policies than those who were less educated.

To access land rights, it is vital to have access to information. In the case of UMnini, the focus group exercise revealed and identified that the knowledge level in terms of administrative and legal policies regarding land and understanding the awareness in women regarding their rights under state and customary systems was very low. Most women in UMnini lack the understanding of legal provisions affecting their rights to own land. Lack of knowledge acts as a huge barrier in terms of women's land rights, without the relevant information, women are therefore not in the position to exercise or demand their rights.

A women's land rights activist from Rural Women's Movement, during an interview, stated that she has been working for decades so as to inform women living in primarily poor, agrarian communities and who live hours away from major cities of their rights under the 1996 South African Constitution. She recounted that however, many are unaware of the legal protection to which they are entitled and rarely question their traditional chiefs who are the ones that impose customary laws. Thus, greater efforts to encourage women to read and learn about matters of empowerment are highly necessary.

The researcher also observed that these low levels of awareness in terms of women's land rights further worsened women's position and representation in land related matters. It was evident that some women seemed to allow men to take the lead in dominating the UMnini communities' appeals and responses to the state regarding the non-consensual land leases and land grabbing happening in the area. Women believed that, with men being more educated when it comes to issues concerning land, men should thus have a greater say, play leading roles in land matters therefore representing women as well. However, the extent to which women's voices and interests are captured is in question. Ms Ngubane registered her concern by saying that;

*“One of my biggest concerns in men representing women in court is that they may not look after women's best interests, because they are looking at things through their patriarchal lenses. I fear that when men go to court it is something completely different from what a woman says are her own needs and aspirations.” S. Ngubane, 2018.*

Furthermore, the issue of lack of awareness negatively impacted perceptions about ownership rights as it was evident that in UMnini women generally worry less about ownership rights, due to them not knowing what such fully entails and because cultural prescriptions accord them

only usufruct. Women were rather only anxious about losing land that they perceive to be an economic resource more than anything else.

### **5.5 The extent to which current land tenure reforms are any more gender sensitive than those of the past.**

The key question and objective examined here is the extent to which women's interests are reflected in the new generation of reforms compared to those in the past and whether any change is taking place in terms of transitioning from the past. The focus of the section is to make an informed enquiry into the past against the currently existing policies and legislative provisions regulating land tenure as they apply to women.

#### *5.5.1 Current government provisions in addressing gender-based inequalities for women regarding land.*

In the case of current government provisions in addressing gender based inequalities, officials from Land Accountability and Research Centre and the Department of Rural Development and Land Reform highlighted the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) on the international level, which was ratified by South Africa in December 1995 and recognises rural women as a group with special problems who should be empowered to participate in, and benefit from, rural development (Weideman, 2004). There was also mention of the Maputo Protocol which became effective as of the 25<sup>th</sup> of November 2005 at a regional level, the National Gender Equality and Women Empowerment Policy adopted in 2002 at a national level and the Gender Land Reform Policy which was developed in 1997 at a Department level. Respondents stated that there are numerous other policies put in place that deal with gender in terms of empowerment of women and their land rights. The problem was, however, that these policies are only good on paper and not on implementation. The 1996 South African Constitution is also a Supreme Law on which other policies in the

country hang, and it guides and supports women's rights. The Constitution of South Africa is referred to be the best in the world, on paper but again implementation is a problem.

Furthermore, a respondent from Rural Women's Movement (RWM) recounted that, the government has not done badly in terms of gender equality in South Africa, in terms of current policies. She maintained that in 1995, in the return from the fourth world United Nations women's conference in Beijing, the government redefined the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was a good thing. She stated further that, in countries such as the United States of America, which have been largely portrayed as setting the standard when it comes to policies on women's rights, nevertheless, the USA government has not signed nor ratified the CEDAW. South Africa on the other hand signed CEDAW in 1993 and ratified it in 1995 on return from Beijing. Furthermore, it was ratified without reservations, even though according to the UN, who formulated the treaty, countries can ratify or can with or without reservation. An example of ratifying with reservation is that of India, which signed and ratified but they left out the section of violence against women. Thus, meaning that they signed with reservation, while South Africa signed without reservations.

Furthermore, according to the RWM respondent, South African policies are not so bad compared to policies from other countries, especially when you talk about gender equality, but the main problem is implementation. South Africa has a Constitution that is applauded throughout the world, and at international round tables and conferences, women in South Africa are always used as an example in leading the whole world in terms of its constitution. The issue is lack of implementation. The respondent further stated that if you go to rural areas specifically and ask women if they can feel the difference in terms of gender equality in land, in terms of their own human rights, the answer is negative, due to lack of implementation of these so called good policies.

*“It’s as if they do not even exist” - S. Ngubane, 2018, she concluded.*

In terms of the case study, one of the biggest constraints that affect the UMnini community is the prevalence of past policies such as the Traditional Courts Bill, first introduced in 2008 and currently under review in South Africa, which made practices within customary law legal and a part of the constitution. The bill is said to give traditional leaders extensive, unchecked power, which significantly undermine women’s rights. Although the Bill is said to have died in 2014, it is, however, still very dominant in many rural areas. According to a RWM representative, the Rural Women’s Movement opposes the bill on the basis that it appears to invoke apartheid-era systems by creating traditional court jurisdictions based on the lines that once defined this same area in terms of the former homelands.

The women of RWM representing UMnini also note that because traditional leaders are appointed, not elected, they are undermining democracy. Furthermore, they recounted that the power given to traditional leaders to impose harsh punishment at their whim is detrimental to the community, especially women.

The KwaZulu Amakhosi and Iziphakanyiswa Act of (No. 9 of 1990) is another law which allows customary or indigenous law to be recognized in the South African Constitution. This law has formal recognition in the KwaZulu-Natal province and is also a perpetuating driver of gender inequality in UMnini. As noted by Ndebele, (2015), this act provides for the establishment of tribal authorities and communal authorities, and sets out the powers, functions, and duties of these Traditional Authorities in the allocation, settlement and development of land within their jurisdiction. In the case of UMnini, women are inferior to owning land until they die, with inheritance being passed to the male gender only. According to a key informant from Land Accountability and Research Centre (LARC), although the act was said to have

been repealed however its practice is still prevalent in many rural areas in the KZN province including UMnini.

Another issue is that Permission to Occupy certificates (PTO's) did not have names of women in the past, this having only started recently, whereby women are said to be given full title. However, in the case of UMnini, only males are still given PTO's while women are still sidelined.

An official from the Department of Co-Operative Governance and Traditional Affairs also recounted that, patriarchy and customary law is still very much prevalent in UMnini. The difficult in addressing patriarchy and customary law is exacerbated by the fractious relationship between traditional leadership and government. Traditional authorities see the post 1995 democratic government as having eroded their power base. As such, government has found any interventions or attempts to meet with traditional leadership to resolve issues of land tenure a challenge.

#### *5.5.2 Gender sensitivity in past and present land laws and the extent to which inequalities are addressed.*

In the case of the aforesaid subsection, according to interviews conducted with departments ranging from the Land Accountability and Research Centre, Rural Women's Movement and Department of Rural Development and Land Reform the following came to light.

An official from the Department of Rural Development and Land Reform who is a senior gender specialist stated that some current land tenure reforms under the land reform program have been reviewed have been improved, though some of them still need more scrutiny from a gender lens point of view. For example, customary law was amended in 1994 so as to try and include a clause of equality across all sexes especially when it comes to the inheritance of land and property. The amended law states that a woman upon the death of their spouse, can inherit

land or property. In the past, if the husband had passed on, the woman was expected to marry a close relative of the husband as to protect the inheritance or have a son. However, if the son is still young, the woman would be acting as a guardian but even then, the woman did not have control, but only had access rights and user rights of the land. She recounted that, when the son grows up they take over completely and eventually get married and the inheritance falls under his household, leaving the woman destitute as a widow.

To strengthen the position of women, she noted that customary laws have tried to move away from the past in the sense that customary marriages can now be registered and recognised, and inheritance is possible whereas in the past they were not. However, there are laws that are very silent, while some policies, when reading through them, do not disaggregate according to sex. For example, she recounted that, even land policies of the department (Department of Rural Development and Land Reform) are not very clear and specific as to what amount of land when bought is targeted for women and the types of women it is targeted for as women are not homogenous as some are married and some are single, some are divorced and have different needs. Ms. Owusu registered that;

*“I think that once we have a policy that will be able to incorporate the needs of all those different groups, we (DRDLR) would have made an impact.” - B. Owusu, 2018.*

Furthermore, the official (DRDLR) maintained that the Government's Mandate Paper which ensures focused implementation of Government's plans on all 3 spheres and government entities, does not say anything about women, though surprisingly enough, it comes from the department of monitoring, planning and evaluation in the presidency where there is a minister who is responsible for women empowerment. However, when one reads the mandate paper it talks about youth development, job creation and nothing on disability or women whether it be land related or not. The respondent further stipulated that women are still very much

marginalised because South Africa is still a very patriarchal society, whether in government or outside government. This for example includes the presidency, or the government departments which is mostly headed by males, or the private sector, where the CEOs are dominantly male. As such, any planning in terms of policies of transforming the country with regards to land they, in most cases women are not really accommodated Traditional councils are also usually male dominated so women are not represented well so therefore marginalised.

According to a senior official from the Rural Women's Movement, with regards to gender sensitivity in past and present land laws, passed laws in terms of land tenure reform and gender were not as gender sensitive as current ones. However, again, the official reported that, they are of no use if they are not going to be implemented.

An official from the Land Accountability and Research Centre contested that customary or indigenous laws from the past which have been carried out till present, have been silent on the context of gender sensitivity and land. These laws consist of The KwaZulu Amakhosi and Iziphakanyiswa Act of (No. 9 of 1990), which provides for the establishment of tribal authorities and communal authorities, and sets out powers, functions, and duties of Traditional Authorities in the allocation, settlement and development of land within their jurisdiction (Ndebele, 2015).

The Ingonyama Trust Amendment Act (No. 9 of 1997) is also an indigenous law which has been carried out till present however still silent in terms of gender sensitivity and land. The Ingonyama Trust Amendment Act allowed for the establishment of the Ingonyama Trust Board, which deals with the transfer of land under the former KwaZulu-Natal homeland and the administration of such land (Ndebele, 2015). The Traditional Courts Bill of 2017 which is said to have improved from the one introduced in 2012, is still flawed as it still acts as a powerful hindrance on women's chances to own land in rural societies. It gives traditional

leaders too much power and women not enough. All these laws mentioned here are still very much prevalent in Umnini.

In terms of the extent to which on-going land tenure and government provisions are addressing gender based inequalities, in Kwa-Zulu Natal, an interview with an official from the Department of Rural Development and land Reform revealed that there exists gender machineries whereby gender specialists or practitioners from all government departments are co-ordinated by the office to sit and discuss all the problems that exist to address gender inequalities. The respondent stated that the challenge, however, lies in factors such as culture (customary laws and traditional practices that are in most cases so inhumane and victimise women) when they go try and implement such in rural communities. She recounted that even if they come as gender specialists, wanting to assist, it is either they are accepted, or they are rejected. She further reported that in most cases such depends on an individual's upbringing as well as their social beliefs when it comes to gender roles and who is believed to be more or less superior in those roles.

*“If you come as a government official it's as if you want people to turn away from their social beliefs and culture, customs and traditions. They don't want to be associated with you or your views of 50/50 rights and also feel like you are imposing your own beliefs upon them by force and want to change their general way of living. They don't understand on what context is this 50/50 you are talking about.” – B Owusu, 2018.*

The respondent further recounted that when government officials go to rural communities and preach gender equality they are trying to make them aware of opportunities that exist and that they must benefit equally irrespective of sex, which is also what is stated within the constitution, which is the supreme law of any legislation and policy in the country. Furthermore, she reported that the Bill of Rights Chapter 2 states that everyone is equal before

the law, the supreme law, the constitution, however in most cases it seems as though traditional/customary laws override the supreme law.

*“These laws (Customary) must be abolished, but it will take a long time to change the mind set and stereotype of people.”- B Owusu, 2018.*

The respondent concluded by stating that, eventually meeting this gap will come to light and that the government will get there though it will take a while.

Below is a numerical representation of the extent to which land reforms are addressing gender-based inequalities according to the Department of Rural Development and Land Reform from the past (time of land reform inception) and the present (since 2015 to date).

*Table 5. 5: Statistical representation of Land reform beneficiaries*

	<b>Total number of women</b>	<b>Total number of males</b>	<b>Total number of beneficiaries</b>
<b>Inception of the Land Reform programme:</b>	21,733	52,741	74,474
<b>2015 to date:</b>	505	709	1,214

*Produced by Researcher, (Data source: Department of Rural Development and Land Reform key informant), 2018.*

From the above discussion and responses from officials it is clear that policies and legislation as to trying to meet the gap from a gender perspective in terms of land are existent however only on paper, in reality the statistics on table 5.5 from the Department of Rural Development and Land reform clearly indicate a huge unequal balance between men and women it terms of benefiting from land reform.

### *5.5.3 Bureaucratic challenges in addressing gender-based inequalities in land.*

According to interviews with officials from LARC, Legal Resources Centre, the Department of Co-operative Governance and Traditional Affairs (COGTA), the government continues to face challenges and serious constraints in terms of implementation of policy and legislation, which deems as the greatest issue, as mentioned in the above discussion. Other foreseeable challenges that pose serious challenges in the acquisition of land for women and them benefiting from land tenure that were reported were lack of co-ordination across sectors, because each department has its own ministry, and subsequently different mandates and priority areas. The respondents also recounted that other issues consist of capacity constraints due to insufficient personnel and inappropriate skills as well as weakness of service agencies that are sometimes poorly funded. Furthermore, fiscal constraints were also reported as a constraint in the sense that firstly, there is a series of needs and the resources for these are limited which thus ultimately, results in competing needs for those insufficient resources as far as their allocation is concerned. Ms Owusu registered that;

*“If you look within the government and with it pushing for gender equality (on all aspects including land), you find that gender programs are not prioritized and not budgeted for, no funds are set aside for such programs. Specialists have to work and execute these programs with no funds which is also an issue on top of implementation.” B- Owusu, 2018.*

In the specific case of the UMnini, officials from both RWM and LARC argued that under president Zuma administration, traditional leaders appeared to be the top of their agenda, in the sense that, there are numerous legislations and laws concerning traditional authorities, like the Traditional Leadership and Governance Framework Act, which was a framework trying to address inequalities of Black Administrative Acts of 1951. However, this act supports inequalities as such structures of traditional authorities are only being made up of men. The

respondents recounted that, such structures disregard the youth and women as they are not represented.

*“I really don’t understand how the government is tackling rural development without women and about us as women.” S Ngubane, 2018.*

The respondent from RWM reported that government tends to give traditional leaders positions of being presiding officers in traditional courts, and further power of the ability to appoint 60% of the traditional council, that of which often if not all the time caters for men with the community only being given the power to elect 40% and 30% being women. She recounted that the balance is clearly uneven and biased as 70% of this whole equation is men only. Which thus also only perpetuates inequality and marginalisation of women, rather than empower them and only serves to disempower them. She further stipulated that this is another main reason why women then tend not to participate that they are not visible nor fully acknowledged.

The respondent from LARC made an example of the Sisonke district where women were not allowed to sit with males at all but were only allowed to sit on grass mats near the door. However, they had been told and appointed as members of the traditional council, and yet were treated differently.

*“This is not empowering women, it was pointless. Even when you raise points to the presiding officer you are not acknowledged if you are a woman.”- S Gumbi, 2018.*

The LARC respondent further reported that even when women have issues and want to report them, they are told this should be done through male representatives. Even if those representatives live far away and cannot come occasionally to represent them. In this case women are thus turned away. Traditional courts are places for men and not women.

He further recounted that, widows are not even allowed on the premises of traditional courts. They are instructed to stand outside while their issues are being tackled. They wait at the gate, and a man will take their story and represents them in any manner as he pleases and then returns with a response. He also mentioned that women are not supposed to look at men in the eye especially if they are widows as widows are assumed to have bad luck in traditional courts. He claims that some women have tried to fight this, and some have given up due to frustration.

*“So, if you talk policies, the gaps, the traditional leadership and governance framework act, it doesn’t translate to gender equality. It promotes senior traditional leaders, which is a male.” - S Gumbi, 2018.*

The RWM respondent further recounted that it is the same situation as the traditional courts bill, however it has not been passed and it has been fought against since 1998, with RWM being a part of the fight.

*“There is no space for traditional leadership in the new democratic South Africa. However, counsellors are still to be appointed. Both IFP and ANC women fought for this yet government disregarded women and still formulated laws in line with traditional leaders.” – S Ngubane, 2018.*

#### *5.5.4 Platforms provided by the municipality to engage with women in the uMnini community regarding land ownership*

In the case of platforms provided by the municipality to engage with women in the uMnini community regarding land tenure, a respondent from DRDRL reported that the Municipality has some committees and forums, like disability and gender forums where vulnerable group issues are discussed, though gender and land ownership specifically were not really their core focus. She reported that when it comes to rural areas and land ownership and gender, the focus was rather more on commercial farmers, although at a very small scale, the department deals

with land. However, the custodian is the Ingonyama Trust Board, therefore this might and should be more of a priority/focus in rural areas/tribal communities, whereby the Ingonyama trust is in charge of the land mostly and should in turn provide such platforms regarding land ownership and women. She further stated that in certain meetings of Land Reform held by government, it seems as though women are just window dressers of the meetings as they do not have a say, it then ends up just, so the government could say there were women involved, however only men are taken seriously and get a word in.

### **5.6 Lessons based on best practices as well as failures of on-going and past policies and their implementation.**

Even though there has been some significant improvement in the past approach, processes have not changed drastically from the original ideas of land tenure reform, especially in terms of implementation. This section, aims to reveal lessons based on best practices as well as failures of on-going and past policies and their implementation.

According to a key informant from COGTA, Land Reform Programmes have made a difference in people's lives but there is work that is still necessary in terms of ensuring cooperation, coordination and strategies that indicate the extent to which government can support women. Prevailing land ownership trends and aspects from other countries which have undergone programs like land reform can be adopted in South Africa in terms of lessons that can be learnt in the case of best case scenarios.

The informant further recounted that for women to gain effective rights in land, it will require not only removing existing gender inequalities in law but also ensuring that the laws are actually implemented. Such should involve contestation and struggle at every level, the community, the household and the state on both economic and non-economic fronts.

Additionally, policy reforms and any other interventions must be tailored to the physical, social, and economic contexts.

An informant from Legal Resources Centre stated that, in many societies, improving access and security for women will require changes in policy and legislation, for example specifically recognizing the rights of a woman to hold land, and allowing a legal title to be issued in her name, either individually or jointly with her spouse. More importantly, it may require changes in cultural norms and practices. The informant further recounted that policies and laws have been alleys of hope and windows of opportunity as they introduce norms that promote women's access to and control over resources. If comprehensive, and applied coherently, they can change land rights holdings and ensure that women have access to the land they need.

According to an informant from RWM, there are already so many policies in place that are very good, yet the issues remain being that of implementation. Adding on more frameworks will not make much sense as the government is still trying to achieve the existing stagnant ones that are hindered by budgets thus implementation. She added that, the government must try to implement the ones that are already existent and achieve those ones first before anymore proposals.

A gender specialist from DRDRL stated that capacity constraints should also be sorted out as mentioned before that quite a low number of gender specialists exist and few that focus on gender programs and women empowerment as a priority. She reported that their focus in most cases may be disability, and other youth related programs which have their own frameworks that they also have in their hands to implement, thus then shifting the focus from women and gender. If capacity is strengthened, so will the frameworks regarding women.

An informant from LARC stated that there was nothing wrong South African policies, they just need to be reviewed and polished up and implemented. He reported that land reform fails and

minimally benefits women due to women's particular position being influenced by of factors. These include unequal division of labour, institutionalised violence, lack of legal protection, poor social services, education and training, patriarchal patterns of land allocation and inheritance, traditional authorities and culture, restrictions on their movement and, the omission of women's voices from the processes of policy formulation and implementation. He also added that this needs to change if women's positions are to improve in society in terms of benefiting from land reform and that plans to make things better should not just remain ideas. He further added that strong monitoring and evaluation of the implementation of existing frameworks is required and more user-friendly laws and legislations regarding women should be formulated. Furthermore, he reported that as a country, in our South African models we need to move towards the inclusiveness of women in land related initiatives.

## **5.7 Analysis**

As the supreme law of the land, section 25 (6) of South Africa's constitution, which deals with the land question, states that 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 (The Republic of South Africa, 1996). Moreover, Section (3) of the Communal Land Rights Act 11 of 2004 further stipulates that a woman is entitled to the same legally secure tenure, rights in or to land and benefits from land as is a man, and no law, community or other rule, practice or usage may discriminate against any person on the ground of the gender of such person. However, with rural women living in areas falling under traditional authorities, with most of them living on communal land, they continue to suffer gender-based discrimination in land access and ownership rights, they remain subordinate within male-centred structures when it comes to them accessing land.

In reflection of the introduction of this thesis and the literature review of this thesis backed by authors such as Doss and Kovarik et al (2015), the above mentioned is regardless of the essential role that is played by agriculture in reducing rural poverty and in facilitating economic growth and women in the rural areas being at forefront of food production and playing a fundamental role in both maintaining and strategically using land and natural resources to sustain their livelihoods. Women are at the forefront of the intersection between the law and traditional practices in terms of access to land rights and nowhere is this intersection played out more apparently than in the way rural women are eligible to access land rights (Dube, 2014).

It can be observed that the gender-based discrimination happening in the case study regarding land has led to serious fragility in livelihoods among women. These poor and most often illiterate rural women, who are constrained by customary and traditional norms from owning land are less able to benefit from the communities' rural resources and cannot properly sustain livelihoods. The strongest barrier to women's land ownership in the UMnini community seems to be predominant cultural norms and how traditional cultural prescriptions have combined with contemporary land laws to masculinize power over land to the detriment of women thus also constraining their abilities to effectively contest land grabbing happening in the area.

In the conceptual framework of this thesis, Ribot and Peluso, (2003:153) cited in Makura-Paradza, (2010) define access as 'the ability to derive benefits from things'. How and why groups, individuals and communities enjoy access to land and resources despite lacking legal tenure is what this theory of access conveys. In the context of this study, access is a benefit which is provided by security of tenure, thus leading to the use, management and control of land as a resource. Access can be controlled or denied thus affecting 'access to livelihoods', this is the prime concern for the women of UMnini facing dispossession of land.

Furthermore, as per the conceptual framework of this thesis, in the context of this study, gender has generally been thought to determine women's access to resources/land and livelihood activities as it defines their identity, position, entitlement and status through social-cultural meanings, practices and power. This concept as already mentioned in chapter two, in the conceptual framework, in regard to this study also provides a framework for analysing ways in which gender inequality in relation to access/control of land makes rural women particularly vulnerable to impoverishment. In the case of UMnini, from the data analysed, it is evident that there seems to be great societal discrimination over land-ownership rights and perceived gender differences between men and women appear 'rational', with men following their ascribed roles in overt reactions and women being more covert and much less vocal in land-related contests. According to the Traditional Courts Act, 2017, as contemplated in section 9 of the constitution, Traditional courts must promote and protect the representation and participation of women, as parties and members thereof (The Republic of South Africa, 1996). However, analysis verifies that women in UMnini are underrepresented politically and administratively and their general low level of representation in the political land decision-making process has exacerbated their weaker economic status, given that they have limited voice.

Reflecting on the theoretical framework of this study according to the Neoclassical theory of property rights, giving property titles to the poor can be a powerful anti-poverty instrument. As such, De Soto's extends the neoclassical theory of property rights to argue that under a formal property rights system, investment and efficient exchange of land can take place. He also puts emphasis in the importance of secure property rights (tenure security) for economic growth, development and overall prosperity. Women's access to property or land is at the cornerstone and central to women's economic empowerment as land is said to serve as the basis for income generation and food, credit collateral etc. However, women in UMnini are deprived of such due to lack of secure tenure rights or being acknowledged as land owners at all. Women in

UMnini, suffer greatly from patriarchal norms relating to the ownership of land as well as inheritance. With inheritance being the most prominent mode of land transfer, which also has crucial implications for the economic trajectories of people, excluding women from inheritance of land only exacerbates their social and economic vulnerability (Cooper and Bird 2012).

According to (Weideman, 2004) the 1997 White Paper on Land Reform recognizes that discriminatory customary and social practices are largely responsible for gender inequities in land ownership and access and requires that traditional tenure systems adapt to accommodate the changing position of women. However, this commitment to gender equity in land ownership has not translated into reality in UMnini. It is evident that such is mainly due to the patriarchal attitudes among community members as well as leadership structures ensuring that women do not participate effectively in the land reform process. Furthermore, largely male leadership structures argue against government in prescribing gender relations in UMnini. Moreover, there seems to be tension amid the government's commitment to gender equality as well as its hesitancy to isolate, or effectively limit the powers of, traditional authorities.

Moreover, reflecting on chapter two of the literature review, gender inequality with regards to land access for women is mainly due to the fact that many developing countries especially African countries are under dual tenure systems and multiple legal frameworks, thus making legal coherence challenging, as there are often discrepancies between statutory and customary law (Namubiru-Mwaura, 2014). The issue of legal pluralism is also very prominent in this case, in the context of legal pluralism, the coexisting reality of two or more parallel, distinct legal systems utilizing dissimilar rules and legal paradigms to decide land cases undermines the rule of law. The policies guiding land tenure reform and women's overall human right thus land in their own right exists in the supreme of laws statutorily, yet customary laws seem to be more likely prevalent in rural women's communities, UMnini in this case, and often what is deemed more acceptable than statutory laws.

Statutory laws support women's secure rights to land, however they have limited effect at the community level due to lack of cultural and social norms as well as enforcement that limit women's willingness to exercise their rights under the law. This then often leads to inequity and injustice and fosters land tenure insecurity. The lack of clarity on the jurisdictional boundaries in most African communities in the case of land ownership being governed by different legal systems, whether it be statutory, customary or religious is also one of the main causes of the insecurity of rural women's land rights and marginalisation as well as patriarchal oppression in rural societies.

Furthermore, in instances of conflicts existing between legal laws and traditional norms as is often the case when it comes to the consideration of women's rights, the constitution mandates that the state law prevail. Nevertheless, and considering this, stipulation is often overlooked thus local norms then prevailing as evident in the case of Umnini. It is a difficult task to enforce and instil state laws at the rural community level mainly due to barriers of culture. Women do not have equitable recourse to remedies when the law is not being respected thus violated, simply enacting a law is not sufficient in ensuring such.

Referring to Razavi, (2005), as per the literature review, the new generation of land reforms introduced to address gender inequality are not necessarily more gender equitable than earlier efforts, even though women's ability to gain independent access to land is increasingly on the statutes. With Razavi, (2005) views and from personal observation, in terms of comparison to the past land laws and current land laws in terms of gender sensitivity and in relation to women and land tenure reform, the reality is that current laws that exist are not as harsh as those of the past before democracy. However, at the same time, and in light of the statement made above, seemingly, current government provisions are there in terms of legislation on paper, but they are silent with regards gender aspects in totality and implementation. Statutory laws and regulations of the country are gender neutral and commended all over the world, in practice

they are not. Pieces of legislation do not make any reference to gender aspects in totality, let alone to women as beneficiaries of land. South Africa's laws and policies governing rural women's land rights and access to land are largely adequate, but the lack of political will often hampers implementation.

### **5.8 Chapter summary**

In this chapter, data was presented as well as analysed. Responses from key informant's interviews, data collected from a synthesis of existing country level literature on land policies and land laws were also analysed and presented through coding data capturing which highlighted the general response. Conclusions will now be drawn in the next chapter as data has been interpreted from the findings.

## **CHAPTER SIX**

### **CONCLUSION AND RECOMMENDATIONS**

#### **6.1 Introduction**

Chapter six summarises the main findings of the study and makes policy recommendations on the way forward. As noted in the opening chapter of this dissertation, the main aim of this study was to critically analyse land tenure reform from a gender perspective in South Africa, focusing on women in rural Kwa-Zulu Natal, the women of UMnini Traditional Authority area to be specific. With this in mind, below, the researcher summarised the main findings of the study.

#### **6.2 Summary of Main Research Findings**

The community of UMnini Traditional Authority area has ill feelings towards the issue of the Ingonyama Trust Board (ITB) following non-consensual land leases, and more especially to the chief for trading away their livelihoods without making full provisions for alternatives and doing all this without their consent. Both men and women are exposed to the negative consequences of land grabbing and are aware that the land grabbing happening in the area would affect rights to ownership and use. The impact however is much greater for women, given the higher likelihood that the land they use will be seized because of inherent gender inequality in the area. The community's rights to land were strained; regardless of the law prescribing as per section 25 (6) of the Constitution of the Republic of South Africa, which deals with the land question: that 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 to legally secure or to comparable redress (The Republic of South Africa, 1996).

The study has found that women are in the most vulnerable position in relation to land tenure. From a cultural/traditional perspective, in which customary laws dominate social relations, UMnini, women already face great hardships in attaining full ownership of land. In a situation where chiefs' undermine women more so than men by viewing women as mere property and devaluing their agricultural productive potentials as compared to their male counterpart exacerbates the already detrimental position of women in UMnini as regards land. With women being the most vulnerable targets, whether they had acquired land through inheritance or purchase, access was thus controlled or denied by the chief. This scenario affects women's access to livelihoods through the salient dispossession of land that experience within local communities. This also then confirms Ribot and Peluso's (2003) cited in Makura-Paradza, (2010) argued that access can be controlled or denied to particular individuals or groups. The community and women in specific contend that, should the chief need land for whatever purpose, it ought to at least seek local consent before offering it to wealthier developers. Unfortunately, this was never the case.

Both the Constitution as well as the Interim Protection of Informal Land Rights Act of 1996, a rather crucial post-apartheid legislation confirms that it is not a traditional leader's job to allocate land for development but that of occupants., Crucially, the Interim Protection of Informal Land Rights Act of 1996 was enacted to protect people residing on communal land. This law provided that no one is to be deprived of an informal land right without consent. However, this law seems to be largely abrogated by traditional leaders as is the case of the chief of UMnini, who sells land and sign deals with developers without consulting those affected, women especially targeted.

The idea and belief by the chief of UMnini that he owns land has rather proven to be quite treacherous as it has rendered numerous rural people particularly women vulnerable to the deprivation of land rights and as such their survival and livelihoods hampered. It is evident that

the women of UMnini have found themselves without access to their rightful ancestral land and are being removed forcibly from this land.

The economic value of land is central to the majority of women in UMnini. As such, some of them generally worry less about ownership rights, due to perceived cultural prescriptions and thus focus only on usufruct. With ownership the women are rather concerned about losing land that they perceive to be an economic resource, and hence emphasize upholding land access. However, the advent of land grabbing issue has changed the terms of access, primarily for women regarding security of tenure at the expense of their livelihoods. This act by the chief is of great injustice and a great violation of both cultural as well as human rights. This is however worsened by past indigenous laws that are still prevalent and appear to strengthen the chief's actions. These include the KwaZulu Amakhosi and Iziphakanyiswa Act of (No. 9 of 1990), the Ingonyama Trust Amendment Act (No. 9 of 1997), the Traditional Courts Bill as well as the Traditional Leadership and Governance Framework Act. These laws were said to try address inequalities of Black Administrative Acts of 1951 (Ndebele,2015). However, the acts support inequalities such as structures of traditional authorities only being made up of men. These laws sought to empower traditional leaders in service as in the colonial and apartheid state.

Women's predicament in the land matter is aggravated not only by the weak and insecure land-tenure rights men accord to women and the chiefs blatant disregard of women owning land in the own rights but also due to the conflict of customary laws seemingly overriding statutory laws. Land tenure for women is denied both customarily as participants revealed how cultural politics has rendered women powerless to make effective decisions with respect to land use, ownership and management and statutorily when one speaks of actual practice and implementation. Furthermore, in addition, women's land-ownership rights have been further eroded because women are underrepresented politically and administratively in all strata of

society. Thus, explaining in part, the dissemination of prejudice in decision-making; gender lenses and gender-equitable solutions are rarely applied.

### **6.3 Conclusion**

Overall, the study revealed that previous policies and legislations purposefully neglected and isolated women as beneficiaries of any developmental initiatives. It further showed that women are still regarded as the main provider of support to their families and yet have little say in land matters. Despite over about two decades of intervention, with democratic dispensation, though often fragile, having opened up new possibilities for agrarian reform, placing inequalities in land distribution back on national agendas, it seems as though land tenure reform in South Africa is still failing and land remains an emotive fault line in the country, especially when looking through a gender lens (Branson, 2016). The transition period between the old and new constitution has provided a window of opportunity for women to challenge gender boundaries however the extent to which this has been translated into practice remains a matter of concern (Dada, 2015).

Gender based initiatives that prohibit gender-based discrimination has been undertaken for the longest time but the results reveal the existence of a substantial gap between the development of laws and their effective implementation. Such long standing differences amongst men and women concerning land ownership can also be viewed as the results of a complex interplay between statutory laws and informal and customary justice systems since the time of colonialism. Land tenure security is still a problem for people living under customary tenure systems in rural areas of the former Bantustans or one could rather say the so called communal areas, with women being the most vulnerable in this case.

The conflicting views on ownership of land experienced in UMnini between the chief and the people of UMnini, however particularly women confirms the much rather frantic need for

intervention from the government, however not much will be addressed if legislations set by government are not entirely gender neutral and actually implemented in practice.

#### **6.4 Some Recommendations Towards a Gender Sensitive Land Tenure Policy**

Sequel to the information provided above and the overall discussion of this dissertation, the following recommendations are made:

- For people in rural areas to best benefit from free land that is typically meant for them, customary land tenure systems should go through the process of revision and re-enforcement. This should take place especially in rural areas whereby customary land tenure systems are not properly functioning.
- There are limited in-depth researches on the benefits of women gaining secure rights to land and the positive results that can come with it. Therefore, at a research level, there needs to be communication and research on the aspects of these benefits and an understanding of the complexity that surrounds women's land rights to ensure the improvement and protection of those rights and thus informing policy formulation.
- In the design as well as implementation of policies, laws and regulations should be user friendly to rural women. Also, women must be meaningfully included in formulation of such laws to better secure their land rights. Their voices, knowledge, and interests in land programs should be included. Moreover, rural women should be first on the list in terms of policy formulation, given first preference and must be high on the government agenda.
- The government should ensure women have equal tenure rights as well as access to land independent of their marital status and support any legislative reforms which build on local tenure systems and practices securing the land rights of women.

- The women interviewed in this study appear to be unaware of their right regarding land tenure. As such there is need to undertake awareness campaigns among, especially rural women with regards to their rights to land in respect of both formal legal systems as well as customary institutions.
- There is a need for a close working relationship between the government and traditional leaderships to ensure better accessibility of customary land to the people meant to benefit from it as well as ensure that such land is not being sold. This act of selling land to highest bidders, reduces people's livelihoods, which affects especially rural women, who are a vulnerable group in this case. Solving this would work towards empowering women.
- There is need for women to mobilise themselves and learn more about all pieces of legislation and make sure that their voices are heard. They need to educate themselves, relate their personal experiences in terms of customary law and formal statutory law, page by page and look at what works for them. This can only happen if women mobilise themselves. Such advocacy could be done through Civil Society and other women's groups.
- Poor implementation, lack of resources and limited government capacity, gender policies and plans remain just good on paper with impact on the ground. There are already so many policies in place that are very good however the issues remain being able to implement them. Adding on to them will not make much sense as we are still trying to achieve the existing stagnant ones that are hindered by budgets thus implementation. Government must try to implement the ones that already exist before making any new proposals. Otherwise making progress on land tenure reforms will continue to present South Africa with great challenges. More scrutiny and effort are required when it comes to implementing gender-based policies.

- There is need to address capacity constraints given that a low number of gender specialists exist and few that focus on gender programs and women empowerment as a priority. Their focus in most cases may be disability, and other youth related programs which has tended to shift the focus from women and gender. If capacity is strengthened, gender frameworks designed to support women would be developed and implemented.
- There needs to be strong monitoring and evaluation of the implementation of existing frameworks that strengthen women's rights.

### **6.5 Chapter summary**

This chapter re-examined the research phenomenon thus presenting a summary of the research findings. Recommendations influenced by the findings were therefore derived.

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**INTERNET SOURCES:**

<http://www.statssa.go.za/>

<http://www.ingonyamatrust.org.za/>

## **LIST OF APPENDIXES**

### **Interview Schedules**

#### **Appendix 1**

##### **Focus group schedule for community members of UMnini.**

*Project title: A critical analysis of land tenure reform from a gender perspective in South Africa: A focus on women in rural Kwa-Zulu Natal, the case of UMnini Trust Traditional Authority Area; eThekweni Metropolitan Municipality.*

**NB: Questions are voluntary and persons reserve the right to not answer questions or end their participation.**

##### **Introductions:**

- (Started with name-general introduction)
- How are you?
- Have you had a good morning?
- How is your family?

##### **Explanation:**

I am a student from the University of KwaZulu Natal I would like to start by telling you a little bit about what I'm doing.

- I am doing a study and I'm interested in how women in this area gain access to land and what views they have on owning land in their own right. I also want to hear the personal stories of what women have done to gain access to land, the difficulties they may have experienced and how this has impacted their life. Furthermore I would like to know how all the above mentioned is different than that of men in the area.

As a person who is not from this area, I know little about the day-to-day life of rural women like you. I'm interested in your story.

- (General thoughts--- including the work that you do, how you provide for your families?)
- Are you able to have access to land and if so through what means?

**Descriptive:**

- How did you or your family come to live on this land?
- Please kindly describe an average day for you- from when you wake up in the morning until you go to bed?
- In terms of day-to-day needs, what are they and what is most important for you?

**Structural:**

- (Ask both genders present) What are your perceptions on women's land ownership?
- Do you own land and what type of ownership rights do you have on land?
- What sort of agreement do you have with the owner of the land if you are not the owner?
- When dealing with what will happen on the family land, such as what will be grown or in the case of it being sold who would make this decision and how are agreements reached?
- Earlier you told me how you came to live in UMnini and a bit of your family history, could you kindly take me through step by step the process of how you acquire land? What methods were used?
- How would owning land be of benefit to you?

*(Focus is on key issues if they express struggle)*

- Would you say you face similar struggles as other women?
- What action have you taken other and other women take in similar situations?
- What are the constraining factors do you face in gaining land ownership as a woman?
- Are you aware and informed about your legal land rights as a woman?
- Do you have access to information about land rights?
- Do you think it is necessary for women to equally own land?

- Do they feel adequately covered by customary laws in terms of land rights?
- Do you think laws that support women to have equally recognized rights in land are important, somewhat important or not at all important for women in UMnini?

**Contrasting:**

- What differences do you see between the overall struggle for land in UMnini between males and females?
- Has it always been like this from times of the past then present times?
- What sort of steps could be taken to address issues?

**Hypothetical Situation:**

- If you were able to create a framework or a law that determined how all the people of UMnini access land, both male and female, what would it be?

**Express Cultural Ignorance**

I have learned quite a lot, this was very informative. Thanks.

**Friendly Questions:**

- Which part of UMnini do you like the most?
- Would you like to tell me a little bit more about your family?

**Appendix 2**

**Questionnaire for community members of UMnini.**

*Project title: A critical analysis of land tenure reform from a gender perspective in South Africa: A focus on women in rural Kwa-Zulu Natal, the case of UMnini Trust Traditional Authority Area; eThekweni Metropolitan Municipality.*

NB: Questions are voluntary and persons reserve the right to not answer questions or end their participation.

1. How long have you been staying in this area?
2. How old are you?

18-25	
26-30	
31-40	
41-50	
51-60	
Above 61	

3. Gender:

Female	
Male	

4. Who is the head of the household?

Male		Female	
------	--	--------	--

5. Are you married?

Yes		No	
-----	--	----	--

6. Do you stay alone or have a family? If yes, how many

a. Males.....

b. Females.....

7. What is your level of education?

Tertiary	
Matric	
Primary school	
Never been to school	

8. Are you earning any income?

9. How are you earning an income?

10. How much do you earn per month?

11. Do you own a piece of land?

a. Yes/No

b. If yes, how did you acquire the land?

i. Inheritance

ii. Purchase

iii. Allocated by community leader/municipality

iv. Other (please specify)

c. Who works on that land?

12. Are you involved in any agricultural activities? Specify.

13. If you do not own a piece of land
  - d. Do you have any other way to access land? E.g. Rent
  - e. Would you like to own a piece of land?
14. Have there been any recent rulings in a community about women's petitions for land ownership or title? Please explain.
15. In your view, do land policies that apply to your community address the needs of women for livelihoods?
16. Do women have access to justice when it comes to land distribution?
17. Do you own, control or just have access to use land? (Explain this to participants)

*GOVERNMENT OFFICIAL INTERVIEW SCHEDULE:*

**Project title:** *A critical analysis of land tenure reform from a gender perspective in South Africa: A focus on women in rural Kwa-Zulu Natal, the case of UMnini Trust Traditional Authority Area; eThekweni Metropolitan Municipality.*

**NB: Questions are voluntary and persons reserve the right to not answer questions or end their participation.**

1. Sex of the Respondent.....(interviewer completes this)
2. What is your position within the Municipality/Organisation?
3. How long have you worked for the Municipality/Organization?
4. What are the current government provisions in addressing gender-based inequalities for women?
5. In your view, to what extent are current government provisions in addressing gender-based inequalities any more gender sensitive than those of the past? Please explain.
6. Describe any related bureaucratic and administrative challenges you have come across in addressing gender based inequalities?
7. What are the weaknesses in the legal system concerning opportunities for women to claim land rights comparing them with past legal practices.
8. What are your views on the aspects of empowerment of women through land rights?
9. To what degree do customary laws affect statutory laws? Please explain.
10. What platforms are provided by the municipality to engage with women in the uMnini community regarding land ownership?
11. (a) Describe the institutional arrangements that are in place to implement a gendered approach to land reform? (b) Are these institutional arrangements adequate?
12. To what extent do land reform policies, systems and procedures take gender seriously? Please explain.

13. What is the attention paid to the performance of the Department of Land Affairs (DLA) in land reform delivery, particularly gender-related land redistribution and land tenure reform in the rural areas?
14. With regard to gender issues, what are the lessons learned based on best practices as well as failures of ongoing and past policies and their implementation?
15. What kind of framework can be introduced to strengthen women's land security?
16. How can rural women's land rights be strengthened in South Africa?

## Appendix 4

### *INTERVIEW SCHEDULE: Traditional Leadership*

**Project title:** *A critical analysis of land tenure reform from a gender perspective in South Africa: A focus on women in rural Kwa-Zulu Natal, the case of uMnini Trust Traditional Authority Area; eThekweni Metropolitan Municipality.*

**NB: Questions are voluntary and persons reserve the right to not answer questions or end their participation.**

1. What is the role of the traditional leadership in uMnini?
2. What do you understand by land ownership rights?
3. What are your perceptions on women's land ownership?
4. What are the existing customary practices/laws in terms of women's land ownership?
5. How does the traditional leadership help contribute to empowering women within the community to alleviate socioeconomic challenges faced by female headed households?
6. What platform are women in the community given by the traditional leadership to voice their concerns in terms of land ownership?
7. How does the traditional leadership proceed with concerns and requests from women in uMnini regarding land ownership?
8. What are your views when it comes to gender-based inequalities?
9. Are there any provisions made by the traditional leadership in terms of addressing gender-based inequalities?
10. How are most female headed households supporting themselves? Is it sustainable?
11. What is the relationship like between the traditional leadership and municipal authorities?
12. What are the implications that centralisation of power in traditional leaders have on women's access to land rights?

13. What is the relationship like between the traditional leadership and municipal authorities in terms of land related matters? Who has the power to allocate land?
14. If it is the traditional/community leaders, do they take gender into account?
15. What are the customary laws and practices regarding inheritance of land by women (spouse, daughters or female relatives)?
16. If women are not allowed to inherit land, are they given “user rights” [i.e. rights to cultivate the land but not own it]?
17. How are the residents supporting themselves? Is it sustainable?
18. What platform is the community given by the traditional leadership to voice their concerns in terms of land ownership?
19. Is everyone represented in these meetings?
20. How does the traditional leadership proceed with concerns and requests from uMnini residents regarding land?

## Appendix 5

### *STRAIGHT OBSERVATION CHECKLIST: UMnini*

**Project title:** *A critical analysis of land tenure reform from a gender perspective in South Africa: A focus on women in rural Kwa-Zulu Natal, the case of UMnini Trust Traditional Authority Area; eThekweni Metropolitan Municipality.*

**NB: Questions are voluntary and persons reserve the right to not answer questions or end their participation.**

QUESTION	YES	NO
1. Are there any activities undertaken out by women, particularly agricultural activities?		
2. Do women own any plots?		
3. Are there any major roles women play in households and overall society?		
4. Are women dependent and vulnerable to male counterparts for livelihood support?		
5. Are women aware of the legal rights to land ownership?		
6. Are women able to sustain livelihoods singlehandedly?		
7. Are there any prevailing causes of land tenure insecurity for women and girls in different settings? If yes, what are they?		