

**WOMEN RIGHTS AND LAND REFORM IN SOUTH AFRICA: A CASE STUDY OF  
KWAZULU- NATAL PROVINCE**

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Social Sciences in Political Science at the School of Social Sciences, University of KwaZulu-  
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## CERTIFICATION

I certify this work was carried out by AKINOLA, Modupe Adenike at School of Social Science, University of KwaZulu-Natal, Pietermaritzburg, South Africa under my supervision.

.....

**SUPERVISOR**

Dr Khondlo Mtshali

**March 19, 2020**

**DATE**

## **DEDICATION**

This work is dedicated to the Most High God, the Alpha and the Omega for His unquantifiable mercy over me. Thank you Jesus for whom you are to me.

## DECLARATION

I, MODUPE ADENIKE AKINOLA, declare  
that:

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

2. This thesis has not been submitted for any degree or examination at any other university.

3. This thesis does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.

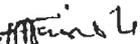
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## **LIST OF ACRONYMS**

AFRA: Association for Rural Advancement

ANC: African National Congress

CEDAW: Convention on the Elimination of All Forms of discrimination Against Women

COE: Council of Europe

CONTRALESA: Congress of Traditional Leaders of South Africa

COSATU: Congress of South African Trade Unions

CSW: Commission on the Status of Women

ECHR: The European Convention on Human Rights

ECOSOC: Economic and Social Council

EFF: The Economic Freedom Fighters

ICCPR: International Covenant on Civil and Political Rights ICCPR

ICESCR: International Covenant on Economic, Social and Cultural Rights

LPM: Landless People's Movement

LRPDD: Land Reform Policy Discussion Document 2012

NGO: Non-Governmental Organizations have supported the formation

RDP: Reconstruction and Development Programme

SACP: South African Communist Party (SACP).

SADC: The Southern African Development Community

SAHRC: South African Human Rights Charter

SLAG: Settlement/Land Acquisition Grants

UDHR: Universal Declaration of Human Rights

UN: United Nations.

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## **ABSTRACT**

Post-Apartheid South Africa has been confronted by land conflict and hunger, which are founded on the history of land dispossession during apartheid. Thus, land reform has occupied public discourse in the new South Africa since 1994. Land resource plays significant roles in both agrarian and industrial societies, but the slow pace in South African land reform agenda has created policy gaps and renewed agitations against land inequality in the country. Evidently, lack of effective land management and gender construction in the allocation of land allocations has deepened the land inequality. This has hindered women capacity building, engendered land unproductivity and aggravated poverty in South African households. The study examines the South African land reform and legal framework on women land rights, explores the place of women rights in the land reform scheme, and explores the factors that constitute impediments to women's land ownership and use, and reconciles women's land rights (access and ownership) with the realities of land reform in post-apartheid South Africa, particularly that of KwaZulu-Natal Province. The research utilizes liberal feminist theory and capability approach for locating women land rights in context. Based on unstructured interviews and focus group study, the research found compelling evidence of gender discrimination in the land sector in KwaZulu-Natal Province. Furthermore, gender inequalities, in terms of land ownership and rights, have jeopardized attempts at land and agricultural productivity as well curtailing women's capacity building. Women discrimination is more prevalent in the rural areas due to the sustained patriarchal nature of rural communities in comparison to the cities. In conclusion, despite the legal framework promoting property rights in the country, cases of infringements of the rights continue in rural KwaZulu-Natal. Thus, the government have a responsibility to enforce women's land right and implement effective land reform in the country.

**Key Words:** Women rights, Land reform, Gender inequality, Post-apartheid, KwaZulu-Natal

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the Study

The issue on land and land reform has constituted a thorny discourse in the South African polity during Apartheid. The black indigenous population in South Africa had experienced land dispossession and denials of other rights for decades in the hands of foreign powers that invaded their land and also claimed ownership of their land. Land dispossession dated back to the historic 1913 Land Acts, which laid the legal framework for the denials of the rights belonging to the black race to own, use and access land in the country. In such arrangement, only the meagre fallow of land was apportioned to the black South Africans in the hinterland.

After the enactment of the Land Acts in 1913, the minority government embarked on the relocation of black Africans to unfertile homelands and disoriented townships, characterised by poor service delivery and underdevelopment. The arable portion of the land was occupied by the minority white population. According to White (2018), “a matter of great and outstanding concern is that there is a deep-rooted sense of deprivation and injustice amongst the majority, who daily have to live side by side with the opulent wealth of the few; accompanied by their experience that being Black still means being desperately poor with few options for escaping the poverty trap”.

The land question in South Africa has generated a lot of debates from various stakeholders in the land and land-related sectors. The issue of land was ultimately tied to the history of 20th-century agrarian change, which has also become the subject of theoretical and policy debates in the post-apartheid era. However, it is generally believed that, “at its heart lies the persistent inequality in the distribution and security of land rights between the minority of South Africans classified as white, and the great majority who, despite ethnic differences, can be categorized broadly as black” (Walker 2017).

The Land dispossession from the black group during this regime necessitated the reason behind the implementation of land reform by successive governments in the post – apartheid dispensation. Thus, Akinola & Wissink (2019: 1) hold that the post-Apartheid dispensation also continues to be defined by land policy.

Recently, the South African polity has experienced an explosion of the land issues culminating in the proposed ‘land expropriation without compensation’, which was borne out of the contradictions inherent in the country’s land reform programs. A major weakness of the land reform is the unresolved question about the place of women in the land reform scheme. Thus, this research focuses on the convergence between women rights and land reform in South Africa, with particular emphasis on KwaZulu-Natal Province. This chapter comprises the entire background to the dissertation. Research objectives and key questions in the research are also highlighted in the chapter. The chapter also presents the rationale, significance of the study, the limitations of the study, as well as structure of the dissertation.

There are 3 historical stages of development to South African land reform. The stages are:

**Segregation Era:** This began in the colonial era in South Africa from 19<sup>th</sup> to the 20<sup>th</sup> centuries. When the systematic exploitation and oppression of the non-Europeans was deliberate and highly organized in every sphere (Van Schoor 1950). By 1910, the two Boer republics in the South African war had already been conquered. South African people were thereby put under the authority of the white minority. South Africans were brought under the sovereignty of the British crown, as the conquered Kingdoms were allowed to stay but became subjects to the white after all their lands were taken from them.

The discovery of minerals in the latter half of the century brought about South Africa’s incorporation into a global capitalist order. Hence the white government needed more blacks for cheap labour (Walker 2017). Consequently, anti-apartheid organizations turned South Africa into a potent narrative of a large and prosperous black peasant class abruptly snuffed out by the Land Act. Walker (2017) further maintains that this period represented the origin of social and economic problems that confronts South Africa as a country today, such as people not having land, poverty and inequality.

According to Beinart and Delius (2017: 19), “land alienation was neither the major intention nor the outcome of the Act”; rather, it was “an interim measure ... to change the terms on which Africans could occupy white-owned land and to extend the areas reserved for Africans.” What the act did was demarcate some 9 million hectares (approximately 7.3% of the total area of the country) as ‘scheduled rural areas’ and prohibit “a native person” from buying or renting land

outside these areas, except with the permission of the governor general. Whereas White (2008) maintains that, in some respects the 1913 land policy signified the bedrock of segregation in the land, agricultural and housing sectors. It clearly separated the white group from the black population in a relationship of unequal access to land. Butler therefore posits that:

*Effectively, the colonial resolution included enabling white farmers to take what land they could (which varied in different areas) and sharply differentiating this land from the 'reserves' where Africans would access land. Locating Africans in 'locations' or 'reserves' signalled their marginalisation politically, economically and in all aspects (Butler 2002: 12).*

**The Apartheid Era:** Apartheid literally means apartness. It was a racial institution established between 1948 and 1990 by the government of the National Party, which came to an end in 1994. The system introduced by the government separated the white group from other non-white groups (Indians, Asians and Africans), and specifically discriminated against black Africans. According to Walker (2017), “it reflected a violently repressive policy designed to ensure that whites, who comprised 13% of the nation's population, would continue to dominate the country.” Basically, Apartheid is best described as an era of discrimination. Thus, Findley & Ogbu (2011) maintained that, “during the Apartheid Era, from 1948 to 1994, the ruling Nationalist Party, dominated by white Afrikaners’, passed miscegenation laws, institutionalized legal segregation, formalized racial categories and restrictions on movement, and embedded apartheid physically in the landscape” (Findley & Ogbu 2011).

Apartheid thereby became a system that emphasized racial identification in South Africa that apportioned 87% of the land for ownership and occupation by whites, whose percentage was very small compared to the majority blacks. The whites comprised approximately 13% of the population. While the remaining 87% majority was the blacks. The blacks have experienced evictions because of the implementation of the property laws enacted by apartheid government. Findley and Ogbu (2011) maintains that during this period, the Nationalist Party, which was the ruling party were mostly comprised of the Afrikaners’, passed discriminatory laws, legally entrenched segregation policies, legitimized racial divisions of the society and restricted the movements of all groups, and reinforced apartheid in the country.

The system became an instrument to rationalize the vicious acts of segregation based on race. Thus, the indigenous population resisted the entrenchment of discrimination in a territory that rightly belongs to their heritage (Butler 2002). During this time, the government began to repeal the apartheid laws by undertaking constitutional reforms. For instance, white-controlled provincial Councils were abolished and replaced with provincial leaderships that comprised different races and specifically responsible to the South African President. Some fundamental rights were given to all according to the document proposed. For example, rights to privacy, right to free movement within the country, property rights were attained and the attainment of the rights for compensation as a result of expropriation of private property in the interest of the public.

In anticipation of the abolishment of minority rule in 1991, the government released a White Paper on Land Reform, which became the foundation and first inclusive efforts to resolve the issues associated with land use and ownership. On March 12, 1991, the government implemented the National Party's model to land policy in the country (Hall 2010). This included "specific policies and legislation to implement them. As a starting point, the White Paper acknowledged access to land as a basic human right" (Hall 2010: 726)

**The Transition to Democracy and the Post-Apartheid Era:** This period was the third and the most recent development after the end of apartheid in 1990s. Nelson Mandela emerged as the President with the main objective to correct the past injustice and redress the wide inequality in South African land ownership which allocated only 13 percent of the entire land to the black majority. Whereas, the larger part of the land in secure freehold type regimes. There are three elements through which the land injustice will be addressed. These are: Redistribution, Restitution and Tenure system.

Evidently, South Africa through her Constitution, which is the highest law of the land is making efforts to end injustice by making provision for equal rights to all citizens in the Constitution. Despite the efforts of the government in eradicating apartheid structures, particularly that of the Constitutional Court in promoting jurisprudence through the values of democracy, the country continues to experience challenges of gender inequalities especially in the area of accessibility to land. Women, most especially rural women are still being deprived of their right to own and have access to land.

The United Nations has adopted women rights as a fundamental human rights applicable to every female, irrespective of race, ethnicity and religious affiliations. The rights are institutionalized and supported by the constitutions, other laws, and in many instances, local customs. However, women's rights have been ignored and suppressed. This is more prevalent in the land sector. Hall (2004) conceive land reform programmes as a mechanism of post-apartheid South to redress apartheid's injustices, through the redistributing of land to the black group, which was aimed at the transforming of the structural motivations of racial disparity (Hall 2004). The South African country suffered from colonial power, tagged "the whites", for decades until they attained majority rule in 1994 (Hall 2004). But this injustice cannot be fully addressed and corrected without considering equal access to land and more importantly, expansion of women's access to land.

Land reform is therefore considered perfect to correct this injustice because of its propensity in becoming the anchor for the restructuring programme of the rural area. Indeed, 'land reform has the capacity to change social and economic relations' and a vital instrument for enhancing the structural basis for inclusive pro-poor developmental programmes (Hall 2004). Akinola (2018) maintains that land is a controversial subject in the country's policy and political discourses. Hence, land conflict and the agitation for land are the major challenges to the country. Land conflict in South Africa started long before the apartheid era, and the Native Land Act of 1913 which was discriminatory, made by the whites against the black race, to deny them b land access and use.

Therefore, one of the goals of land reform e was to redress this discrimination to land using the Native Land Act of 1913 which prohibited the blacks from owning land (Hall 2004; Cousins and Walker 2015). Despite these and the written law, implementation of the rights of women as espoused by South African constitution, has experienced many bottlenecks (Chantelle 2014). Thus, there is the need to assess the connections between land reform and women rights in the Rainbow nation of South Africa, where cases of denials of women's land rights still abound. On the continent, land is very important (Akinola 2018). In the case of South Africa, land has been categorised as a veritable economic asset, and has historical and spiritual importance (Moosa 2018).

Land defines the livelihood of the rural populations and constitutes an essential capital in the rural areas. People in the rural areas make their living from land and land-related endeavours. Land is therefore a central resource for the development and socio-economic prosperity of the rural area. Kimani (2014) explains that land constitutes an important element of production, and “a means of livelihood and source of security against impoverishment in Africa”. Land is also described as an ingredient for development and a platform for agricultural production (Zarin & Bujang 1994).

Land reform occupies a center stage in socio-political discourse and policy agenda of successive post-Apartheid South Africa (Kariuki 2009). At the global level, there has been a resurgence of the attainment of women rights. Women rights, as enshrined by the UN for every person includes: right to live from being discriminated against and rights to own property (Kanyoro 2018). this brought about the popular saying among women rights organizations that, ‘women’s rights are rights to be enjoyed by all human beings’.

The feminists and women’s rights movements, globally and in South Africa, took advantage of this era to expand political and civil freedom for women. This becomes important because across the world, South Africa inclusive, females continue to experience denials of their human rights. This indicates that there are still issues facing the implementation of women rights as espoused by the South African constitution (Chantelle 2014). In its simplest interpretation, denials of human rights translate to denials of women property rights, which includes the rights to own and use land.

The cases of denials of women land rights that abound in the nation are the core reason for the need to review the connection between land reform and women’s rights. It is believed that the land question and the persistent poverty in the rural areas of Africa areas a result of the abandonment of issues on social fairness and equity, these are reflected in the unequal land ownership (Akinola & Wissink 2019). Kanyoro (2018) posits that, “winning rights for women is about more than giving opportunities to any individual woman or girl; it is also about changing laws and policies, winning hearts and minds, and investing in strong women’s organizations and movements”.

Furthermore, the special position of land necessitated the urgent calls for an amendment to the present land pattern in the quest to achieve justice and equality in terms of land use, access and

ownership in the post-Apartheid dispensation (Akinola 2016). The South African State soon embarked on land reform, which was founded under the three elements: restitution, redistribution and tenure system (Hall 2014).

In 1994, the African National Congress led- government implemented land reform, to rectify past injustices, redress discriminations of Natives Land Act of 1913 to correct the skewed land ownership patterns on ground which favored only a small percentage of people over the majority (Hall 2000; Cousins & Walker 2015). The government subsequently returned a substantial percentage of land to new black owners. The reform exercise soon engendered challenges because of the parochial character of the community, which denies the female group access to land resource. Hence, any form of gender-based discrimination in the post-Apartheid era negates intent of the policy, because land reform was instituted due to the country's experience of foreign domination as well as racially-based land dispossession.

Unfortunately, women still experience persistent denial of their rights to use, access and own land, especially in the rural areas of KwaZulu-Natal. Women's exclusion from land utility and use has diverse effects on agriculture, rural livelihood and development in general (Eniola & Akinola 2018). According to a report, women account for about 70% of Africa's agricultural produce, contributed significantly to all farm labour, and 80-90% of agricultural handling, and other farm-related menial works weeding (Kimani, 2014). This was well supported by the words of Malema, the leader of the opposition party, (EFF) in 2019 during his campaign in KwaZulu-Natal province, which coincided with the year's Women's Day celebration. He asserted, "When we give women land we're guaranteed that the children will be fed. Let's give South African women the land, the most oppressed people. We must make sure that women benefit from this land. This land must not benefit politicians" (Bongani 2018). He called for women to be given land and further said that, if land was given back to black people, women must get a good percentage of land each (Bongani 2018).

This calls for the necessity to explore the position of gender inequality in relation to land ownership and the efforts to transform the rural population and improve their access to the basic needs of life. But there is still a problem of inequality in the distribution. Since the environment made it easy for men to dominate.

Land reform was initiated because of the colonization history, racial domination, land dispossession and discrimination. The government carried out land reform to rectify past injustices and amend the skewed land ownership systems and most importantly, to alleviate poverty and not for women to be faced with another form of gender discrimination and inequality in land distribution. Women should not be prohibited in any way to own and have access to land. In 1994, restitution was one of the main agenda of the government contrary to the Native Lands Act of 1913 which adopted racial discrimination in respect to land use and ownership.

The 1913 land act that allocated sparse arable land to the local population, while the white group owned large expanse of land (South Africa History Online 2015). This legal framework promoted territorial segregation, which was the starting point of legal separation in the century (South Africa History Online 2015). The act provided for allocation of the black group to reserves and prohibited the allocation or sale of land in white designated part to the black Africans and vice versa (South Africa History Online 2015).

ANC promised to reverse the deprivation caused by Apartheid. According to Igra & Lumet (2012), these promises were outlined in the Reconstruction and Development Programme (RDP), a development between these 3 parties: ANC, COSATU and SACP. Government policy, land reform guidelines were all mentioned in the programme for agricultural purposes (Igra & Lumet 2012).

The norms and traditions of African society place limitations on the attainment of property rights of women (Eniola & Akinola 2019). Thus, gender discrimination in relation to land ownership and rights have limited various attempts to achieve improvement in Africa (Akinola 2018). Because men dominate, women have regularly faced denials of property rights. Land is a property and since women could not enjoy property rights, they could not enjoy land rights as well. Women, especially rural women and the uneducated ones could not exercise this right especially based on the following factors which are: religion, culture, illiteracy, ignorance among other things. Indeed, many rural women, on the other hand, are not knowledgeable on or informed about their rights.

## **Women's land rights cases studies globally**

Denial of rights of women to land rights is prevalent globally, it is not peculiar to South Africa. This is evident from international level to some African countries. Most especially the countries that were previously colonized by the whites. According to Boyce, Rosset & Stanton (2005) Brazil was noted as an example of a country that has high unequal patterns of land ownership in the world, and this prompted the need for a vibrant land reform agenda. In Brazil, land redistribution from the rich to the poor was driven by such social movements as the Landless Workers' Movement (Boyce, Rosset & Stanton 2005). The government legalized women's land rights in the country. Specifically, according to Bell & Field (2013) the 1988 constitution provides for the land rights of women and supports their ability to be a direct beneficiary of the country's reform exercise (Bell & Field 2013). That is, women have an inheritance rights both from their families and husbands. Despite the high optimism of the legal framework, Brazilian women represent a small percentage of land reform beneficiaries, and they receive less remuneration than men (Bell & Field 2013).

The land Reform law of 1950 in China was a failure until late 1970s when respective households could till the land, but were refrained from its sales (Tilley 2007). The government has erected gender equality rights on the pillars of equity and justice, which ensured women land rights. Yet, China is confronted with emerging realities that impedes on its efforts towards the attainment of gender parity. Indeed, the country is confronted with a challenging task of significantly achieving gender equity (Gender Equality and Women's Development in China nd).

Zimbabwe Fast-Track Programme, has within a limited period, resulted into an extensive transfer of productive land from the white commercial farmers to mainly small-scale black farmers (Tilley 2007). Land in Ghana could be categorised into public or private. It was governed through a combination of customs, market and state regulations which was as far back as the period of colonial rule between 1874 and 1877. The complexity and inadequacy of land tenure in the country generated some legal battles in the judicial arm of government (Obeng-Odoom 2012). Ghanaian government has had to commence the transformation of land administration and accelerate the pace of title registration across the country (Obeng-Odoom 2012).

In order to actualize equitable land distribution, the government implemented land reforms in 2003. However, the reforms have failed to guarantee gender-free land distribution. This is due to the preservation of customary system of land ownership and use, that is biased against women. In Ghana, there are varying degree of partial, conditional or secondary control over land, which is dependent on the status of women.

The case in Uganda is different. Land reform in Uganda could be assessed through five different dispensations (Obeng- Odoom 2012). Before the start of colonisation, land was customarily owned and not subjected to formal documentation. Under British colonial rule, systematic erosion of this form of tenure was implemented through the institution of pilot projects on each person's land tenure system since the colonialists think that communal land ownership impeded individual enterprise and economic development. The project ended after independence. According to Obeng-Odoom (2012), the President of the country, Idi Amin of Uganda, stopped various forms of communal ownership and confer land ownership in the state. A gender perspective is not included in the recent reforms in Uganda. Under customary land tenure, which was the main tenure system, gender inequality is evident. The constitution maintains that customary rules only applies when it does not show prejudice against individual. Meanwhile, in the local communities, women are seen as 'property' rather than 'persons' (Eniola & Akinola 2018). Because women are prevented from property ownership, "women tend to be discriminated against in land ownership" (Obeng-Odoom 2012)

A chieftain land tenure system was predominant in Egypt before 1952. The Egyptian tenure type was different from the kind of customary land tenure practised in other countries because it is being controlled by the King. According to Obeng Odoom (2012), they practice five different types of land tenure systems with the state having a strong 'presence' in the management of all types of land, but the monarchy had strong control overall. Limited number of people benefitted from this system with a few elites having land as property. The 1952 social revolution was aimed at correcting the inclusive inequalities in the society. Thus, the state embarked on land redistribution and sets restrictions on the extent to which individuals could own and use through the leasing system. Landholdings that exceeded the ceilings were subsequently "redistributed. The landholdings of a majority of the middle class, whose landholdings ranged from 15 to 20 fedans were not redistributed" (Obeng-Odoom 2012).

In many African states, women are legally empowered to own land and the rights to inheritance are specifically stated in many national constitutions, but lack of the implementation of land policies and, particularly, adherence to customs and traditional beliefs are limitations to the actualization of the rights of women. This has limited women land use and ownership. Furthermore, the guidelines on states' distribution of newly restituted or reclaimed land are found to be discriminatory against women. Therefore, across Africa, gender inequality clearly exists in the land and agricultural sectors. This fact was emphasized by the report of USAID (2010), which maintains that the relations of men and women to land are unequal in Africa. Despite diverse legal supports for the rights of women, in many areas of the country, particularly in KwaZulu-Natal, women land rights remain unattained.

The persistent food shortages and scarcity is seen as the result of this denials of women's use and access to land. Therefore, for South African survival and sustainable development, promotion of gender equality in all sectors is required for full access to land by the women group. Yeboah (2012) maintains that "in Africa, the denial of women's property right has been a major impediment to gender equality and development" It is believed that land rights are integral to poverty reduction in rural communities. This is because land is very important to rural women. It is the most valuable asset among rural households, as land is the foundation of rural households. Land rights are integral to poverty reduction among rural communities (Meinzein-Dick 2017).

Moosa (2017) also maintains that "aside from the potential economic benefit, accelerated land reform can help address centuries of dispossessions and foster a sense of belonging". Marcus & Wildschut on the other hand posited that,

*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 (Marcus & Wildschut 1996).*

Therefore, restrictions of the rights of women to use land definitely exacerbates unemployment and ultimately aggravate poverty across the country most especially in the villages (Meinzein-Dick 2017).

## **1.2 RESEARCH PROBLEM**

The unresolved land question continues to dominate policymaking and public conversations in post-Apartheid South Africa. While post-Apartheid governments have tried to implement land reform programmes to address the historical land dispossession during apartheid since 1994, there are still various cases of land-related conflict, and unequal access to land are common occurrences in the country. There are studies that reveals that the government and other stakeholders have tried to redistribute land and address the racial inequality in the land sector; however, there are few studies that focuses on the continued denials of women, especially those in the rural areas, in land ownership and access. The limited studies mostly focused on the land issues at the national level, but this studies particularly addresses a case of KwaZulu-Natal and pays more attention to the impact of denials of land to rural women. It is important to examine the factors responsible for the continued denials of women's access to land and explores how the denials has impacted on poverty and land unproductivity in South Africa, especially in KwaZulu-Natal Province.

## **1.3 RESEARCH QUESTIONS**

This research was guided by this following questions:

1. What are the historical factors that necessitated land reform in the Country?
2. How can one understand the place of women rights in the land reform agenda of the South African government?
3. How effective is the implementation of the rights of women in relation to land in South Africa?
4. How has land reform benefited the womenfolk especially in poverty alleviation?
5. What are the factors responsible for denials of the rights of women in South Africa as a country?
6. What are the best approaches to resolving land conflict and marginalization of rural women in relation to their land rights?

#### **1.4 RESEARCH OBJECTIVES:**

The objectives of the study are to:

1. Asses the historical factors that necessitated land reform in South Africa.
2. Explore the convergence between the attainment of women land rights and land reform in the country.
3. Assess the effectiveness of the legal frameworks supporting women's property rights in the country
4. Examine the factors that explain the gender inequality in the land sector.
5. Explore how women discrimination in the land reform agenda aggravates poverty in the rural areas of KwaZulu-Natal.

#### **1.5 SIGNIFICANCE OF THE STUDY**

This work became relevant due to the debates generated by land and gender in the 21st century. In South Africa, land has become a thorny issue in the polity and the place of women in the land reform scheme has attracted wide attention in the country, particularly in KwaZulu-Natal rural areas. The place of women in the attainment of land rights has also become important as agitations for land continue, especially in South Africa rural areas. Deprivation of women their land rights have led to deep impoverishment and limited the impact of women to the socio-economic growth of South Africa. The study will provide understanding on the status of women in respect of land rights and suggest sound policies to redress the gender inequality in the land sector. Researchers, think-tank, civil society groups, policy-makers and students involved in the land reform and women empowerment programs of the South African government may find the study very useful. It will also contribute to knowledge expansion in the discipline.

#### **1.6 LIMITATION OF THE STUDY**

Land is a very sensitive issue in South Africa. This is because South Africa's past experience of historical dispossession of land during apartheid and the efforts of the present South African government to redress the injustice. Thus, South Africans are very passionate about land, while many are very emotional about land-related matter. Some of the responses of the respondents

may be emotionally-driven, but this will be put in consideration and effectively managed towards presenting a well-balanced and rich discussion and data analysis.

## **1.7 STRUCTURE OF DISSERTATION**

This study comprised six (6) chapters, which will be outlined here:

### **Chapter One: Introduction**

The chapter contained the general background to the study, the problems of the research, research questions, its objectives, significance of study, limitations of the research, as well as structure of dissertation.

### **Chapter Two: Literature review**

This chapter looked at the relevant studies on land reform with the main focus on women's position in the land reform scheme. It also focused on reviewing of the following terms: Land, Land Reform, Women Rights and Women Rights in South Africa.

### **Chapter Three: Conceptual and Theoretical Frameworks**

The chapter presented Human rights and capability approach as its conceptual frameworks while liberal feminism was used as the theoretical approach.

### **Chapter Four: Research Methodology and Methods**

This chapter presented the research methodology and research methods adopted for the study and their justification. Also, it provided the population size and mode of data collection.

**Chapter Five: Data Presentation and Analysis.** Here, the data collected through secondary and primary data was presented. The reality of land reform and the rights of women to land in South Africa, especially in the Province KwaZulu-Natal was discussed. It drew from the conceptual and theoretical frameworks and data generated from field study to present robust analysis of women's place in the South Africa land reform scheme. The chapter presented a systematic analysis of the research findings.

### **Chapter six: Conclusions and Recommendations**

The concluding chapter comprised the summary of the entire study. It will also contain the recommendations for the study

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 INTRODUCTION**

In the chapter, the relevant studies on human rights and land reform with specific concentration on the place of women in the land reform schemes will be reviewed. This chapter conceptualizes land and takes a broad look at land reform in the country, and further engages the land reform versus women rights question. The chapter adopts a case study approach to put scholarly debates on land, land reform and women land rights in context globally as well as in African literature.

#### **2.2 HUMAN RIGHT**

The resolution of the World War II with the establishment of the United Nations (UN) marked the beginning of the modern movements on human rights. The Bill of Rights was drafted internationally, in which the International Covenant on Economic, Social and Cultural Rights, (ICESCR) along with some organizations forbid discrimination on the grounds of gender and equal protection before the law was provided. (ICESCR) is ratified by 48 out of 53 African States while ICESCR was ratified by 45 African states (Banda 2006).

Human Rights therefore are conceived as the undeniable fundamental rights an individual person is naturally entitled as a human being (Akinola 2016 &McCann 1982). Human Rights are rights that are enjoyable by every human being irrespective of gender, race, ethnic affiliation, social status or any other consideration (NELFT 1948-2018). It is those essential freedom and rights and that every individual in the world enjoys. These rights apply no matter where one is from, ones believes or the way one chooses to have one's life. They can never be withdrawn, but sometimes they may be restricted on rare and peculiar occasions. For instance, the rights of an individual or groups can be withdrawn if a person is guilty of the law, or in cases where the interests of national security is as stake.

According to NELFT (1948-2018) "The basic rights are based on shared values like dignity, fairness, equality, respect and independence" (NELFT 1948-2018). The values are thereby defined and guided by the law. The human rights in Britain for example are under the protection

of the Human Rights Act 1998 (NELFT 1948-2018). While in South Africa, the human rights of the citizens and inhabitants are contained in the Constitution.

Human rights has achieved universal acceptance. It has gained a global recognition and acceptability. Though, some scholars like Banda opine that the ratification of human rights international instruments to some are more of a matter of expediency than commitment. So many groups acknowledge the importance of human rights. They thereby ensure that women's rights are respected across the globe (Banda 2006).

### **2.3 INTERNATIONAL AND REGIONAL AGREEMENTS ON HUMAN RIGHTS**

There are agreements between the International bodies and the Regional bodies on the rights of human. The Universal Declaration of Human Rights (UDHR) was the number one in history to use the term, Human Rights and it is generally recognized and accepted as the underlying basis of international human rights law (UNA 1994). The UDHR is a document put together by the people representing all regions of the world. In 1948, the General Assembly of the United Nations located in Paris made the pronouncement on the rights of human. This paved way for the universal protection of fundamental human rights for the first time in history (UN 2003). UDHR constitutes the universal identification that the fundamental freedoms of citizens and basic rights are very essential to all human beings. Fundamental freedoms and basic rights are also applicable to everyone irrespective of gender and this denotes that every person is born free and born equally in dignity and rights.

The UDHR has encouraged a lot of international human rights treaties and it has given rise to a huge number of regional human rights conventions across the globe. The core principles of human rights are indivisibility, equality and non-discrimination, universality. Presently, all UN members have ratified part of the core international human right treaties (UN 2003).

The United Nations General Assembly after World War 11, accepted various agreements on human rights, parts of which stated clearly that every individual is entitled to same rights without discrimination (CEDAW 2011). The Convention on the Elimination of All Forms of Discrimination Against Women has an international convention was accepted in 1979 by the United Nations General Assembly. This body came into full action in the year 1981 CEDAW has a body stands against all forms of discrimination as a result of sex or gender which nullify the

enjoyment exercised by women on basis of marriage, or inequality of both men and women on any ground. It basically aims at ending discrimination based on gender from every angle. The adoption of CEDAW made the International Covenant on Economic, Social, and Cultural Rights, as well as the International Covenant on Civil and Political Rights generate a detailed frameworks of human rights. These comprised what was unofficially referred to the International Bill of Human Rights.

The International Bill on the Rights of Human was comprised of core five United Nations human rights treaties. The functions of this bill among others are: the advancement of the fundamental freedoms and the protection of the human basics rights of all individual irrespective of gender. This Bill affects the decisions and actions of both the Government, the State and that of the non-government organisations as well (CEDAW 2011). This it does according to CEDAW (2011) “to make economic, social and cultural rights a top-priority in the formation and implementation of national, regional and international policy and law” (CEDAW 2011). The sole motive of Bill of Human Rights internationally therefore is the recognition of equity.

The United Nations agreed on individual nations rights also the regional bodies are put under obligation which they must fulfil. The State is therefore obliged to lay hold on a positive action so that people could be able to enjoy the basic human rights as stipulated by the United Nations.

The (ECHR) European Convention on Human Rights was proposed in 1940s during the 11 World War in Europe, was rectified in 1950 and came into full force in 1953. It is an international human rights treaty between 47 members these are all members of Council of Europe (CoE). It is a legal commitment made to secure the basic rights and freedom of common people. Its aim is to place responsibility on all its member states to protect the rights of individuals and prohibit of discrimination according to article 14 of 18 articles of ECHR (McCann 1982).

Thus McCann (1982) opines; “The European convention on Human rights was drafted by the council of Europe with the general purpose of establishing a regional system for the protection of human rights in Europe” (McCann 1982: 614)

There is therefore a continuation of the way to follow in order to expand regional standards alongside the acceptance of the American Convention on Human Rights in 1969. The sole aim of

this convention as stipulated by McCann (1982) is to establish a system that guarantees personal liberty, respect and rights for all persons irrespective of gender. It lays down standards on human rights that must be observed in all American states. McCann (1982) further opines that, “the American Convention on Human Rights is also known as Pact of San Jose” (McCann 1982).

This was followed by the acceptance of African Charter on Human and People’s Rights, in 1981. According to UN, “The adoption of the African Charter on Human and People’s Rights in 1981 was the beginning of a new era in the field of human rights in Africa. It entered into force on 21 October 1986, and as of 29 April 2002, it had 53 states parties” (UN 2003: 72).

According to UN (2003), the acquisition of the African Charter on Human and People’s Rights was inspired by these bodies:

- i. The two international Covenants on human rights, and
- ii. The regional human rights conventions.

The Africa Human and People’s Rights Charter specificity concentrates on African conception of this word “rights” and its place in respect to human beings.

The international and regional bodies have some solid agreements on the rights of human beings. The South Africa Human Rights Commission (SAHRC) was clearly written in the Constitution of the Country, chapter 9. According to SAHRC (2018), The SAHRC has a responsibility stipulated in the constitution thus the SAHRC has to:

1. Promote respect and culture for human rights
2. Promoting the protection, development and attainment of human rights, and lastly
3. Monitor and assess the observance of human rights in the Country (SAHRC 2016). Power is given to this regional body in the constitution thus “Section 184(2) of the constitution provides further context to the core mandate of the SAHRC and states that the institution has the power to, investigate and to report on the observance of human rights; take steps to secure appropriate redress where human rights have been violated; and to carry out research and educate” (SAHRC 2016:17).

This body as a body that deals with human rights is guided by the rules as adopted by this international body. The South African human rights are based on the Charter on Human and Peoples' Rights in Africa. The African court on both the human rights and people's rights were also established along with these two organisations.

Accepting human rights instrument, the commitment to promote, protect and defend human rights has been accepted as well by the states (SAHRC 2016).

## **2.4 WOMEN'S RIGHTS**

The rights of women mean different things to different people. According to Ilumoka (2012), "Women's rights are defined as the basic entitlements and rights claimed for female: girls and women. Women's rights are the fight for the idea that women should have equal rights with men" (Ilumoka 2012:423). While Kanyoro (2018) defines it thus "It is the fundamental human rights that were enshrined by the United Nations for every human being on the planet nearly seventy years ago" (Kanyoro 2018).

The following are considered as the rights of women: right to live freely from violence, rights from slavery, rights from discrimination, education, voting, earns a fair and equal wage and to own property. Despite the above rights, women and girls are still being declined all these basic rights, as a result of their gender.

The agitation to attain same rights with men and enjoy same benefits as men do could also be seen as Women's rights. Over history, this has taken the form of gaining property rights, the women's suffrage, or women's right to vote, reproductive rights, including the right to work for equal pay. Women's rights are the rights and entitlements claimed for women and girls worldwide, and formed the basis for the women's rights movement in the nineteenth century and feminist movement during the 20th century.

Women's rights mean human rights to the majority. It is basically the freedom to be who, where, and what one wants to be without any constraint or limitations whatsoever. It means same opportunities for all. It also means equality and respect.

As noted by Shah:

*Women's equal rights and influence in the key decisions that shape their lives and those of children must be enhanced in three distinct arenas: the household, the workplace and the political sphere. A change for the better in any one of these realms influences women's equality in the others, and has a profound and positive impact on child's well-being and development. Thus, Gender equality is not only morally right, it is pivotal to human progress and sustainable development (Shah 2018).*

Therefore, to achieve Millennium Development Goal Number 3, gender equality must be promoted and it is therefore important to empower women. These two will contribute immensely to the achievement of all other goals. The main focus of women's rights is gender equality. This is seen in the work of Shah. The scholar believes that gender equality goes hand in hand with the wellbeing of children. It also helps in the reduction of the poor people as well as poverty. Shah (2018) opines that gender equality also help in reducing hunger to even saving the lives of children, "as well as improving maternal health, ensuring education for all, combating HIV/AIDS, malaria and other diseases, and ensuring environmental sustainability" (Shah 2018). It is believed that both men and women benefit from it as it produces double dividend. More also, it is being discovered that empowered women raise confident and educated children (Shah 2018).

Therefore, since women's rights include all the rights stipulated by the two bodies ICCPR and CEDAW. A major part of women's rights includes the property right since land is a property, women denial of land right is against their fundamental human rights. Illumoka maintains that equal rights should be given to both men and women (Illumoka 2012). So, land as a property right should be shared equally between men and women.

Yeboah (2014) maintains that "Africa's survival and sustainable development is urgently needed to promote gender equality in the resource sector" (Yeboah 2014) This is because women have always been denied property rights and rights to land. This has greatly limited women's development in all areas most especially in rural areas

## **2.5 HISTORY OF WOMEN'S RIGHTS**

Women rights did not just start in a day, there are historical background behind the term women's rights which has now gained popularity and wider acceptance.

Therefore, according to the United Nations Publication (2014),

*In 1948, the Universal Declaration of Human Rights was adopted. This declaration proclaimed the equal entitlements of women and men to all the rights contained in it, “without distinction of any kind, such as ... sex.” In drafting the Declaration, there was considerable discussion about the use of the term “all men” rather than a gender-neutral term. The Declaration was corrected and eventually adopted using the terms “all human beings” and “everyone” in order to leave no doubt that the Universal Declaration was intended for everyone, men and women alike (United Nations Publication 2014: 4 &5).*

The mandate of this declaration mainly was the establishment of the principle of gender equality it planned to develop the proposals to regulate and correct the widen gap between the rights of men and that of women. According to the United Nations Publications (2014), “Between 1949 and 1959, several narrowly-focused women's rights conventions specific to political participation, national identity, and protection from abuses of marriage were adopted by the General Assembly” (United Nations Publication 2014).

It is apparently clear that much is needed to be done to have gender equity protected and to have it maintained at all levels like human rights. Therefore, in 1963, CSW was invited through ECOSOC by their General Assembly mainly to “prepare a draft declaration and articulating the equal rights of men and women. The resulting Declaration on the Elimination of Discrimination against Women was adopted” (United Nations Publication 2014).

More also according to UN Publications (2014),

*In 1967, United Nations Member States adopted the Declaration on the Elimination of Discrimination against Women, which states that discrimination against women is an offence against human dignity and calls on States to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women. Less than a year later, a proposal for a legally binding treaty on women’s rights was made. The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979. Its preamble explains that, despite the existence of other instruments, women still do not enjoy equal rights with men (UN Publication 2014: 6).*

Therefore,

*When women are free to earn a living and start small businesses, the data is clear: they become key drivers of economic growth across regions and sectors. When women are given the opportunity of education and access to health care, their families and communities prosper. And when women have equal rights, nations are more stable, peaceful, and secure (CSW 2010).*

These rights of women rights have been a major concern that has being discussed at various international conferences. According to Global Fund for Women (2014), this had actually “produced significant political commitments to equality and women’s human rights. “Starting in 1975, which was also International Women’s Year, Mexico City hosted the World Conference on the International Women’s Year” (Global Fund for Women 2014). He maintained further that: “this Conference resulted in the World Plan of Action which led to the designation of 1975–1985 as the United Nations Decade for Women” (Global Fund for Women 2014).

Furthermore, in Copenhagen, another international conference on women alongside with the Convention on the Elimination of All Forms of Discrimination against Women was also opened for signature in the year 1980. “The Third World Conference on Women was held in Nairobi, with the Committee on the Elimination of Discrimination against Women having begun its work in 1982” (Global fund for women 2014: 12)

After all the conferences in the year 1995, the whole world unanimously reached an agreement and thereby declared human rights simply as women’s rights. Many right away put the word women’s rights into practise while some others still seem women’s rights as just a long time aspiration. The sole motive of this conference is to promote and protect women’s human rights.

United Nations Publications (2014) opines that: “The African (Banjul) Charter on Human and Peoples’ Rights was adopted in 1981 by the Organization of African Unity”. It stands against prejudicial and unjust treatment on the grounds of gender, in the enjoyment of everyone on the rights guaranteed by the Charter. It thereby becomes the duty of the African States to make sure it eliminates every form of unjust treatment against women, and it must also ensure that the rights of women and girls are protected as stipulated in both the international declarations and conventions.

Shah (2010) maintains that: "*Equality of rights for women is a basic principle of the United Nations. Gender equality is not only morally right, it is pivotal to human progress and sustainable development. Besides gender equality furthers the cause of children survival and development for all in the society*" (Shah 2010).

For these and other reasons, the significant of women's right and gender equality cannot be underrated.

## **2.6 WOMEN'S RIGHTS IN SOUTH AFRICA**

Women in the rainbow country fought against the policies of the European settler coupled with the colonial rule under both British and Boer authority. Azikiwe (2010) opines that: "As early as 1908, African women had fought against racist laws that prohibited the brewing and distribution of traditional beverages so that their men could be lured into beer halls and drained of their wage earnings" (Azikiwe 2010). He maintained further that, during this period woman stopped going to the beer halls which actually forced many of the shops to be closed. On the other hand, these women went ahead to demand that interest gotten from the establishments be used to develop housing and provide basic needs for the black which was made to live in townships by their colonial masters.

Discrimination against women could be traced from the pre-colonial period to this period. Whereas women have been at the centre of every major activity that goes on in their domain. "*In pre-colonial South Africa, women actually had status and authority because they were the main agricultural producers*" (Hutson 2007: 83). Women played an indispensable role in the campaigns for national liberation and till present, they are still making efforts all over Africa and in the world at large. Unfortunately, not much attention is placed on their magnificent role across the world.

Precisely, according to Azikiwe (2010) "*August 9, 1956, some 20,000 women in South Africa marched from various regions of the country to the apartheid capital of Pretoria. They represented a cross-section of women, most of whom were African, who resided and worked in both urban and rural areas of the country*" (Azikiwe 2010).

The South African women were to have their cards whenever they wanted to move from one town to the other. This was strongly opposed by a majority of the women questioning why the whites should make them carry cards 'pass' within their own land.

Azikiwe posits that

*However, it was the struggle against the pass laws that was initiated by women that served to spark a broad-based mass movement during the 1950s. The women's march on Pretoria advanced as a major demand the abolition of passes that controlled the movement of Africans inside their own country (Azikiwe 2010).*

Throughout history, women have been subjected to unequal treatment within various societies and cultures (Shasta 2003). South Africa as a country is not an exception to this unequal treatment of women in the African continent. However, most of the conflict in the African continent revolves around the discrimination and oppression of women (Hutson 2007: 83). Little wonder, they were among the African countries that embraced and joined CEDAW in order to ensure equal rights to their citizens.

The racism regime in the Country was terminated in 1994. Thereafter, there was the emergence of gender equity as written in the constitution after the rule of apartheid. This is due to the reality that both male and female fought for the liberation from the beginning and since the role played by women cannot be undermined, the drafter of the South Africa Constitution of 1996 therefore apportioned to women's right the recognition it deserves. According to South Africa History Online (2011), "the success of South Africa women against apartheid, political oppression and gender equality has earned them a place in the new South Africa" (South Africa History Online 2011).

Furthermore, it is believed that, the Country is established on the following three (3) values. Constitution of the Republic of South Africa (1996) opines that: "These values are: the dignity of human beings, equality achievement and the advancement of human rights and their freedoms" (Constitution of the Republic of South Africa 1996). Thus, post-apartheid government in South Africa generally gave due respect to its citizens human rights.

However, despite the vivid improvements in some areas, numerous problems remained in several other areas. According to Gender Statistics in South Africa (2011): "South Africa ranks fourth

out of 87 countries covered by the 2012 Social Institutions and Gender Index of the Organization for Economic Cooperation and Development” (Gender statistics in South Africa 2011). The high ranking is as a result of the efforts made by the country to have gender equality and to enhance the rights of females. This is because gender inequality is still prevalent in South Africa. Individuals are still being treated along gender lines in many areas. According to United Nations 2014 “Millennium Development Goals, which focuses largely on gender equality and the delegation of women. Women currently make up 45 % of the representatives in the Parliament of South Africa” (United Nations 2014).

Some social norms coupled with prevalent stereotype roles of females and the discriminatory acts have suppressed the nations unrelenting attempt to build social bond and thus affected its route towards gender equality and its efforts made to minimize gender disparity.

The Constitution of South Africa (1996) opines that:

*Constitutional dispensation has provided the mechanism for legislative and judicial intervention to deal with the prevailing violence increasingly perpetrated against women and for the progressive empowerment of women. This has also enabled women’s groups to lobby around issues for the advancement of their rights* (The Constitution of South Africa 1996).

The nation’s constitution requires the state to set out a program that could promote individuals’ rights. It preaches absolute equality and non-discrimination. The constitution has a close link with the deliberation on the termination of Apartheid and the inception of a democratic South Africa. It was a creative and widely deliberation process that involved the earlier unheard voices.

South African Constitution did a great work in its section 25 to make the state committed to the issue of land questions. According to the constitution of South Africa (1996), “Section 25 has sub clauses mandating important land reforms that include the state taking reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis” (Constitution of South Africa 1996). However, this has not been realized in respect of eradicating obstructions to gender parity in the land sector.

The security of tenure has not been given to women. Women, most importantly the women that lives in the rural areas still lack security of tenure. Some laws are made only to protect some

categories of women and not women generally. In some areas, provision is made only for married women neglecting widowed and the unmarried.

African Women's Land Rights Conference (2011) maintains that: *“the legal systems which are inaccessible to women or a system that privileges customary law over statutory law; titling systems which grant title to or which require payment for land which women cannot afford; and discriminatory lending or credit policies”* (African Women's Land Rights Conference 2011).

Women's land right is critically important for women and also to the development of South Africa country as well as other countries in Africa continent. (African Women's Land Rights Conference 2011).

Thus African Women's Land Rights Conference opines that:

*In countries where legislation that protect women's rights exists, there is the issue of ineffective implementation of the laws by government agencies entrusted with that responsibility. Gender-neutral programmatic interventions and initiatives often serve to compound discriminatory practices that women face in relation to their land rights. Action Aid and Oxfam with support from other partners convened the African Women's Land Rights Conference, from the 30th May to the 2nd June 2011 in Nairobi, Kenya to discuss the right to land and justice for African women, share experiences and strategies in addressing violations that women suffer from in their everyday lives* (African Women's Land Rights Conference 2011).

The conference brought into attendance activists alongside the various organizations, women that are farmers, land rights activists along with some organization's which includes farmer associations to engage on liberating women from impediments to accessing land.

Another distinct unique function of land is that it connects every individual to his territory. It therefore seen as the basis for citizenship. An access to land is automatically an access to other factors found on the land rights. Yet women still did not have access and control over land. Land remains limited for t agricultural, commercial and for pastoral usage “Land reform, the process of restructuring and redesigning land tenure systems, is a critical interventional point to achieving gender equity with regards to land rights” (Cliffe 2000). There is still a gender variable

in all aspects of land ownership and access to land use, which affects the rights of women to use and own land.

## **2.7 LAND**

The word ‘land’ means different things to different people, just as its usage varies from one person to another. Many definitions have been given to land by different scholars. In South Africa, Gumede (2014) maintains: “land remains the most contested issue in contemporary era as it was in most post-colonial and post-apartheid societies” (Gumede 2014). This is so because of the importance of land to every society. Land is indispensable; thus, it should not be any human being.

According to Araffian & Zarins (1994) “land is seen as one of the most valuable and inexhaustible natural resource of a country” (Araffian & Zarins 1994). They further said, land “represents the principal form of wealth and the main source of economic and political power” It plays host to all natural resources and constitutes the foundation upon which all structures and constructions are erected. For instance, according to Araffian & Zarins (1994), “particular geographical locations, mineral resources, forests, fish stocks, atmospheric quality, geostationary orbits, and portions of the electromagnetic spectrum. The supply of land as a resources is fixed” (Araffian & Zarins 1994).

Land according to Lahiff (2008) “is also regarded as an important source of livelihood to the black population and of natural capital in agrarian and industrial economies where the indigenous population requires land for subsistence and commercial farming” (Lahiff 2008). In South Africa Akinola and Wissink opines, “land is a key asset for the development of the rural poor as it serves as their major means of livelihood, a capital for rural development and rural survival” (Akinola and Wissink 2019). Both local and foreign investors need land for industrial purposes. The denial of land for this purpose will definitely exacerbate unemployment and ultimate poverty for the general masses.

Jacoby and Jacoby 1971; Warriner 1969 opines thus:

*In developing countries, land is the primary means for generating a livelihood and the main vehicle for investing, accumulating wealth, and transferring it between generations. It is a key element of household wealth. In the early history of development, it was*

*generally recognized that access to land is crucial to poor people's capacity to construct viable livelihoods and overcome rural poverty (Jacoby and Jacoby 1971; Warriner 1969).*

In South Africa, land has a high percentage of the resources and funding of the poorest households. Deininger (2003) therefore maintains:

*Because land comprises a large share of the asset portfolio of the poor in many developing countries, giving secured property rights to land they already possess can greatly increase the net wealth of poor people. By allowing them to make productive use of their labour, land ownership makes them less reliant on wage labour, thereby reducing their vulnerability to shocks (Deininger 2003).*

Land, in economics according to Woodruff (2018) "is used broadly to refer to all natural resources or gifts of nature that help members of the society produce useful goods and services" (Woodruff 2018). It includes commodities such as gold, timber, copper, and water, and other renewable resources like forest, Animals and food. Sunset (nd) on the other hand sees land as the resource that encompasses the natural resources used in production, which includes: farming or agricultural land, building land, mineral resources, mineral deposits, rivers, fisheries etc. These resources yield income (Economics Concepts 2015).

Akinola (2018) & Economics concepts 2015 opines: "Land is also seen as a property resource and economic capital" (Economics Concepts 2015 and Akinola 2018). Land has many functions out of which are as follows: Land is a factor of production, it is a store of value and wealth, a status symbol, a long term asset or a source of social and political influence. Land value reflects its relative scarcity, which in a market economy usually depends on the ratio between the area of usable land and the size of that area's population. As the per capita land area declines, the relative value of land rises, and land becomes increasingly a source of conflict among economic and social groups within the community.

Land is a fixed economic asset that is indispensable to individuals as well as to the community at large (Abuzarin & Arrifian1994). Most especially, it is a necessity to the rural people; women especially, as it plays a major part and adds to the economic productivity and enhance the livelihood of women generally. The period of land usage should be minimum of a year because of its long term factor.

Considering the importance of the products of agricultural commodities, the employment agriculture generates, how it has helped the economic growth of developing countries, and considering highlighted importance of land, it is valid to conclude that land has been an important matter in the development debates as well as theories. Due to its importance, land has become a domain of rural, social and political movements and agrarian conflict in developing countries, particularly in South Africa.

In conclusion, the understanding of the term “land”, its indispensability to individuals, groups or societies cannot be downplayed. The denial of access to land is weighty (Ntsebeza & Hall 2007). Gender should not restrict anyone from enjoying this economic, natural and undeniable asset. Women’s access to land is indeed very vital to boost the economy of any society that craves for growth (Ntsebeza and Hall 2007). Women’s access to land will definitely reduce poverty rate in the Country. According to Ntsebeza &Hall (2007 “The fundamental issue facing policy makers in contemporary South Africa is the role of land in poverty eradication or alleviation. Indeed, land has assumed a new significance in the struggle against poverty and rural-urban movement” (Ntsebeza & Hall 2007).

### **2.7.1 LAND REFORM DEFINED**

Land reform has come to be a term with many meanings given to it by different scholars (Barlowe 1953). Barlowe therefore opines that:

*Some viewed land reform as mild reforms that account for improvement of landlord-tenant relations or the provision of better agricultural credit facilities. Others belief that land reform means the breaking-up of large land holdings with expropriation of ownership rights. While some sees it as land redistribution and an opportunity for landless people to acquire ownership of land (Barlowe 1953, Jacob 2010 &Akinola, A. O. & Wissink, H. 2018))*

From a purely technical standpoint, Boyce, Rosset, & Stanton (2005) opines: “land reform is the reallocation of rights to establish a more equitable distribution of farmland – and a powerful strategy for promoting both economic development and environmental quality”. While Barlowe (1953) sees “land reform as any program that leads to a better change in the usage and ownership of land” (Barlowe 1953)

Sometimes, “land reform and agrarian reform are used interchangeably” (Akinola 2017, Elias 2013 & Adams 1995). It is the redistribution of landed property for the benefits of the landless, the redistribution of land rights to beneficiaries. It is also a change in prevailing tenure system or extension of land right (Warriner 1969 & Akinola 2018 & Akinola 2017). According to Elias (2013) “historically, land reform is the reform of the tenure system or redistribution of the land ownership rights” (Elias 2013 & Abuzarin & Arrifian 1994). While Hasmah (1994) opines that, “It is the redistribution of property rights in land for the benefit of the landless peasants” (Hasmah 1994).

Elias defines land reform thus “Land reform also means a purposive change in the way in which agricultural land is held or owned, the methods of cultivation that are employed, or the relation of agriculture to the rest of the economy”

Adams on the other hand defines it thus “Land reform pertains to the remodelling of tenure rights and the redistribution of land, in directions consistent with the political imperatives underlying the reform” (Adams 1995:1).

Akinola (2018) maintains that: Land reform is a burning issue across the world at present. Many countries, especially the developing countries have had to embark on land reform to make land available and assessable for the generality of people.

### **2.7.2 MOTIVATIONS FOR LAND REFORM**

Akinola opines that “Land has occupied a strategic importance in the African developmental initiatives, and this is enhanced by the revelation that about 60 percent of the population draws its livelihood and earnings mainly from Agricultural production, and related activities” (Akinola 2018:169).

Thus, there are different motivations for every country to have adopted land reform and this has produced enormous changes across the globe. Thus, Akinola (2018) maintains that “many factors reinforced the need for land reform in Africa” (Akinola 2018:169)

There are some motives as well as objectives supporting land reform. These according to Tilley (2007) include: “improvement in sustainable livelihoods, poverty reduction, local economic development and growth in line with macroeconomic policy, wealth creation, social justice and

righting the wrongs of the past, placating or suppressing mass mobilisation, and or de-racializing landownership” (Tilley 2007).

According to Horowitz (1999) “As an action program, land reform is new to many. But land problem itself is not new because more than three-quarters of the global population live in countries that have undergone major land reforms since World War II” (Horowitz 1999). Land reform have existed since the dawn of civilization; the only change is the various recent techniques of reform.

Tilley (2017) maintains that many recent land reform programs (more specifically, those under the market-based approach which came to the fore internationally during the 1990s) focussed more on land acquisition and less on the requisite settlement support of the acquisition of land. In many instances, land acquisition is a highly-charged political process, with the emphasis on changing land ownership patterns and less on what occurs thereafter. (Tilley 2007).

Elias opines:

*In recent decades, the concept has been broadened in recognition of the strategic role of land and agriculture in development. Land reform has therefore become synonymous with agrarian reform or a rapid improvement of the agrarian structure, which comprises the land tenure system, the pattern of cultivation and farm organization, the scale of farm operation, the terms of tenancy, and the institutions of rural credit, marketing, and education. It also deals with the state of technology, or with any combination of these factors, as shown by modern reform movements, regardless of the political or ideological orientation of the reformers (Elias 2013).*

Land Reform is the condition of political, economic and social stabilization (Jacob 2010). According to Hub pages (2012) land reform is an integrated programme of measures designed to eliminate hindrances to both economic and social development arising out of the short comings in the agrarian structure.

Hub pages (2012) maintains that:

*This view of land reform projects service delivery as a key site at which the assumptions and stigmas associated with vulnerability in the society may be challenged and the*

*appropriate resources for developing the capacity for autonomy provided. Service delivery through land reform is expected to play an important role in clearing the way for previously marginalized individuals to exercise their capacity to act autonomously, to be full economic and social participants in the South African Project (Hub pages 2012).*

Furthermore, Jacob (2010) maintains that many are of the opinion that the major cause and motivation for land reform is to weaken the power possessed by the landlords. It is to boost economic growth (Abuzarin & Arrifian 1994).

Most especially in the areas where agriculture is of great economic importance. Some governments see land reform as a way to empowering the rural people and transforming them into smallholders with stake in society. This is why Land reform is very vital for the human rights bodies and the agriculturalist “Possession of a parcel of land, even a small one, can give some basis to resist the demands and encroachments of landlords” (Jacob 2010). For example, breaking the power of landowners by giving land to the landless women in KwaZulu-Natal Province and in South Africa generally will enable the landowners to exercise economic powers. From this, it is certain that personal autonomy may therefore become the gains of agrarian reform. “Increasing the individual rights of peasants and the rural poor has thereby become one of the aims of land reform movements” (Jacob 2010).

Land reform also aims at empowering the poor peasants in the rural communities. Some argue that “agrarian reform is therefore a revolutionary political concept rather than a reformist one” (Jacob 2010). He further maintains that some other reforms do happen due to external influences. An example of this are the substantial reforms that took place in countries like Japan, Taiwan and South Korea which is as a result of the intervention from the USA. More equitable landholdings are supposed to anticipate socialist mobilization by giving smallholders more visible support in the system. It was believed that if there are more equitable landholdings, it would provide a good foundation for a democratic society. According to Jacob (2010) Similarly, “in Latin America the US-backed Alliance for Progress carried out land reforms with a similar intention. The US government believes land reform with individual tenure is a perfect solution to increase rural income and boost industrialisation” (Jacob 2010).

White, Borras & Hall (2013) and Tilley (2007) made cases why land reform was informed by different factors, among which were the historical distortions across different societies. Indeed, “more than three-quarters of the global population live in countries that have undergone major land reforms since World War II” (Horowitz 1999). One advantage of land reform is that it has helped to pave way for rapid economic growth in countries like China, Japan, Korea, and Taiwan, East Asia and Brazil (Boyce, Rosset & Stanton 2005). Brazil system of land distribution can be said to be operating one of the unequal patterns in the universe. Its land redistribution, from the rich to the poor, was driven by social movements (Boyce, Rosset& Stanton 2005). China’s Agrarian Reform Law was a failure until individuals were granted rights to till the land, but not to transfer it by selling or buying.

In the work of Boyce, Rosset & Stanton (2005) land reform offers a promising means for improvement. Land reform became a popular and powerful tool because of the mass appeal and its general effectiveness in redistributing the basis for wealth. The benefit is to enhance programs of economic development. However previous experience on it globally suggests that the economic development has not been achieved and they often have little effect in promoting their specific goal. For example, the land redistribution programs which was done in some Eastern European countries after World War I, helped to gratify the land hunger of the peasants but resulted in less Agricultural production instead of more agricultural production (Boyce, Rosset & Stanton 2005).

According to Boyce, Rosset& Stanton (2005):

*Land reforms also vary in their treatment of those whose land rights are redistributed to others. In Guatemala’s 1954 land reform that was aborted quickly by a CIA-backed coup, large landowners were compensated at a fraction of the market value of the land. China, Japan, South Korea, and Taiwan – had one thing in common; all implemented highly egalitarian land reforms after World War II. Land reforms not only helped to reduce rural poverty and unleash agricultural growth, but also helped to lay the social foundation for rapid industrialization (Boyce, Rosset& Stanton 2005).*

These scholars further maintained that the Agrarian Reform Law of 1950 in China was what regularized the land-to-the-tiller redistributive reforms that started in areas that were under the control of the communist regions when Chinese was going through their own revolution. The

“Land owners (landlords), whom the Chinese tagged as the rural ‘gentry’ who did not work in the fields, were expropriated, and sometimes killed, and their properties were transferred to landless and poor peasants” (Boyce, Rosset & Stanton 2005).

Thus “Under the ‘household responsibility system, individual families in China now have the right to till the land, but not to buy or sell it” (Boyce, Rosset & Stanton 2005: 4) China radicalized its land reform scheme, which was similar to the Zimbabwean experience. Presently, the South African government is contemplating the idea of redressing past land injustices through the ‘expropriation without compensation’ approach to land reform.

Meanwhile, Tilley (2007) maintains that “in the Soviet-bloc countries of Central and Eastern Europe, land was nationalized and production was over time”, collectivized Poland system was different, because their land is still in the hand of minor farmers who are families. Distribution of farm inputs and outputs and was controlled by centralized bureaucracies. He opines further that, other examples of countries where there is high level of centralization and state involvement are Mexico, Cuba and Nicaragua where communal or collective institutions played a prominent, but not exclusive role in land redistribution. Thus according to Tilley (2007), “Land reforms in these countries and their resultant support mechanisms are thereby centred on state, collective and co-operative institutional arrangements” (Tilley 2007).

Land reform in Uganda is assessed through five different time lines. Before the colonization, land was customarily owned. During British colonial rule, there was a systematic erosion of tenure. After independence, the systematic erosion project was halted. Idi Amin of Uganda abolished all forms of communal ownership and vested land in the State. This caused widespread conflicts between individual or communal land tenure. Majority of the land is under the grip of customary law, without formal documentation. Reform in Uganda upholds gender inequality (Obeng-Odoom 2012).

Egypt operates a chieftaincy land system before 1952. Its tenure was different because it is being controlled by kings. It has the strongest state intervention on land issue (Obeng-Odoom 2012). Egypt operates five land tenure system but all is still under the state They had a revolution to also correct inequalities. Land redistribution is carried out on how much land could be leased or owned by individuals Egypt’s urban land is under the central government, governorates and local government.

USAID (2010) maintains:

*Women have the legal ability to own and inherit land, but government allocation of newly reclaimed land discriminate against women. Gender equality is not practically applicable in all of these countries. Men and women are not given the same treatment when it comes to land rights (USAID 2010).*

Ghana is an African country with a different land reform. Dating back to colonial era, its land has been managed by market and state. Its land reform could be classified as public and private. Public land is the land which belongs to the government, while private land belongs to the individuals, communities and families. Obeng-Odoom (2012) opines “Public land equals 78% of all land in Ghana and it is managed by traditional authority”. In all, about 2% is managed by state and private bodies while the remaining small percentage is managed by the state (Obeng-Odoom 2012).

Ghana’s land reform has experienced some challenges. These experiences have led to several contestations in the law court. The Ghanaian government has therefore implemented some changes in land reform to end these problems. Part of its vision is to individualize land rights and make its interest easy. Land reform was undertaken in 2003. The reform is yet to address the gender inequality that characterised land arrangement in the country.

In South Africa, the government is constitutionally responsible to carry out land reform. This is in order to operationalize what is written in the Constitution, “the Department of Land affairs developed a white paper on Land Reform in 1997, which begins by acknowledging that land reform in South Africa had long been a source of conflict and the history of conquest and dispossession and of forced removals” (Gumede 2004 :58).

Presently, the South African ruling party, ANC is trying to use Section 25 of the Constitution to test the argument that it is currently legal to expropriate land. The resistance this generated propelled the government to throw the debate into the public sphere and embark on the process of amending the constitution to clearly highlight the processes of expropriation without compensation.

There is presently a process by the ANC-led administration to bring the Expropriation Bill into law, and continue with the parliamentary process to review Section 25. It is the belief that if the

current legal formulation slows down effective land redistribution, then it will be amended to allow land expropriation without compensation.

While few see land reform as purely an economic policy, the reality in South Africa points out rightly to the contrary. The land issue has presently generated immense political and public momentum, and it seems more likely a political matter that it tends towards changing the actual Constitution. Meanwhile Kinsey (2004) believes that land reform can never be a purely economic policy, given the inherent and distributional aspect” (Kinsey 2004). He believes that, “land reform is essentially naturally political”.

Some oppose land reform in South Africa by drawing from the experiences of Zimbabwe and other places where there have been radical changes to land ownership patterns over a short period of time, without yielding the desired outcomes. But the opposition seems to have missed the real point; the demand for land reform in the face of existing land policy failure is therefore considered entirely legitimate.

The majority of South Africans believe that the land reform will yield results different from what happened in other countries. It is legitimate to give land to those who have no land, and who desperately want some portions of land to live and work on. For instance, a cross section of women in KwaZulu-Natal, who have consistently complained about denials of access to land, led a rally to demand the implementation versus enforcement of women’s land rights in KwaZulu-Natal Province (news24 2010). It is legitimate because those who have no access to land are automatically locked out of the economy of not only the South African country but in every other country of the world. It is widely argued that if land ownership was open to more people, the economy would benefit in the long run (Shange 2018).

Apart from the land expropriation without compensation debate, there are other complexities with the whole land issue. Land issue and questions are the most complex and difficult situation the South Africa country faces right now. Thus the slogan ‘land expropriation without compensation’. But as Shange explained, “there is no one single solution to the land question” (Shange 2018). This has provided the avenue to create a political consensus of some sort about land redistribution, there is likely to be much contestation over land process, timing and the identity of the beneficiaries (Shange 2018).

This is why Hall (2004) says land reforms may be announced by a government, like the South Africa government is doing presently) by interested groups that are interested, or by those inspired by revolution.

Land reform concept has varied over time. “It always meant the redistribution of property of rights in land for the benefit of the landless peasants, small farmers and tenants” (Akinola 2018). Hall (2014) opines that: “Land reform performs an important and symbolic function in the 'new' South Africa as tangible evidence of a nation addressing historical injustice as part of a wider process of nation-building”.

According to Hall (2014),

*It also has the capacity to form the centrepiece of rural restructuring; it can transform social and economic relations and provide a structural basis for broad-based and pro-poor development. Land reform is a means by which the South African state would make up for the past injustices and promote development (Hall 2014).*

Silunge (2016) affirms the importance of land reform “A land reform that meaningfully confronts a land question in a country must not put law ahead of everything else; rather it must locate law in the political economy. Law reform is important. But law reform without anything else is vain.”

The redistribution of land titles from one person to another, from individuals to a group or even to a community at large, or from a group to individuals is the most practiced type of reform. A landlord portion of land may be redistributed to many individuals, as the case is in Egypt, Iran, and Ireland. Or individuals' lands may be reallocated for larger community to get rid of private ownership, as the case is in Cuba. Or, like Latin America where public land is being distributed to individuals.

As earlier mentioned, Zimbabwe and some of the countries mentioned above have also suffered from past injustices like South Africa. Zimbabwe was a settler colony for 90 years. (Kinsey 2004). The discriminatory agricultural policies, the alienation of fertile and watered land to European settlers that was adopted resulted in the control, oppression, and impoverishment of the indigenous rural people. There was racial land division when the country's land was divided between the African majority and the few numbers of European settlers. This was similar to

South Africa's discriminatory Native Land Acts of 1913 where large percentage of South Africans land was owned and controlled by whites who were the minority against the black majority.

Thus, the government of Zimbabwe introduced some major agrarian reform measures to redress inequities in the sharing of their land just as land reform was introduced in South Africa to redress past land inequities. According to Hall (2004), in 2000, a constitutional amendment and a modified land acquisition were made to effect land designation and compulsory acquisition without compensation. Though it is believed that there is slow pace in Zimbabwe's land reform. Land expropriation without compensation is the present dominant discourse in the new South Africa. Thus, Hall (2004) maintains: "Land reform is one way in which the 'new' South Africa sets out to redress the injustices of apartheid and, by redistributing land to black South Africans, transform the structural basis of racial inequality" (Hall 2004).

### **2. 7. 3 APPROACHES OF LAND REFORM**

Land reform has three (3) branches which will be discussed here. The 3 branches are discussed below respectively. They are: State-Led approach, community based and Market assisted approach.

**State - Led Approach:** According to Tarisayi (2014) "State- led approach is a type of approach in which the state takes a deliberate approach to redistribute land. The state introduces and guides the entire process of land reform at the same time" (Tarisayi 2014).

This approach is practiced by the countries who were once under colonial rule. "State led land reform programs were instigated after the independence from colonisation of various countries in 1950s to 1980s around the globe". (Tarisayi 2014). In South Africa, the state through the government takes charge of land reform by redistributing land for the landless we can therefore say it practices state led approach. Section 25 of South Africa constitution has sub clauses mandating important land reforms that include the state taking reasonable legislative and other measures, within its available resources, to foster conditions that allows citizens to have access to land on an equal basis.

Uganda also practices this type of approach. Idi Amin, of Uganda removed "all forms of communal ownership and placed land in the state" (Obeng-Odoom 2012, Kandel 2018). Land in

the Soviet-bloc countries of Central and Eastern Europe is state led and generally nationalised but this was not the case in Poland where land is in the hands of small family farmers (Tilley 2007). Other examples of Countries where there is high level of centralization and state involvement are: Mexico, Cuba and Nicaragua. In these Countries, “communal or collective institutions played a prominent, but not exclusive role. Land reforms in these countries, and their resultant support mechanisms, centred on state, collective and co-operative institutional arrangements” (Tilley 2007: 6)

**Community Based:** This is an alternative approach to state led approach. It is expected to be reactive to political demand originating from the grassroots because it is believed to represent the interest of the rural people. Tarisayi (2014) Believe that it is sometimes being hijacked by the state to prevent the aggrieved landless people from taking law into their hands. For instance, during Chinese revolution, land was confiscated without compensation. The common type of reform is when land is the redistributed from one individual to another, from individuals to a group or community at large, or from a group to individuals. The land of one landlord may be redistributed to many individuals, as in Egypt, Iran, or Ireland. Or the land of individuals may be reallocated in favour of the community at large by abolishing private ownership, as in Cuba. Or, again, public land may be distributed to individuals, as the case is in various parts of Latin America.

**Market Assisted Approach:** Market-led reforms are led by the sacred principle of efficiency (Ramesh & Praveen 2016). It is a type of approach, where land ownership is transferred from farm owners through the buying and selling of land. In the market, the landless or small holders are financed to buy land from large farm owners. Financial constraints on the part of the government to finance land transferred when the land is bought or sold made this approach difficult. This is because its basic idea is for the state to give qualified landless people a grant or a subsidized loan with which to buy land (Banerjee 2000).

Some largescale farmers are often not willing to sell their lands; hence they set exorbitant prices on their lands. An example of this is Zimbabwe when prior to 1997 no meaningful transfer was achieved through the willing Buyer and the Willing Seller approach. Namibia and South Africa are also part of the countries that have adopted market assisted Land Rights.

Meanwhile, (Banerjee 2000) maintains that the “most important drawback of the market-assisted approach is the one that it shares with traditional land reform programs that pay generous compensations” (Banerjee 2000). It is therefore believed to be expensive. “The high cost of market assisted reform means that it cannot be expected it to achieve very substantial redistribution in the near future” (Banerjee 2000 :15)

After world war 11, “China, Japan, South Korea, and Taiwan all implemented the Market-Led Approach as their land reform not only helped to reduce rural poverty and unleash agricultural growth, but also helped to lay the social foundation for rapid industrialization” (Boyce, Rosset& Stanton 2005). Though land reforms in the immediate post-colonial period were state led, it all changed to market led at the pushing and interference of the World Bank (Ramesh & Praveen 2016).

## **2.8 TYPES OF LAND REFORM**

Land reform has been implemented around the world for decades. It has always been a contested and sensitive issue (Tarisayi 2014). As earlier noted, land reform is not a new concept at all. So many countries are undergoing land reform but this study will look at some African Countries that have undergone or are undergoing land reform.

Tarisayi S T (2014) divides land reforms into different kinds. They are discussed below according to him:

1. Redistributive land reform
2. Tenurial reform
3. Restitution
4. Land consolidation

### **2.8.1 THE REDISTRIBUTIVE LAND REFORM**

Redistributive land reform seeks to taken land from the rich owners of land, and give to those that do not have land at all (landless peasants and wage labourers) or to the ones with small holdings, (poor peasants) and along the line, large portions of land are divided into smaller farms (Byres 2004).

This kind of reform simply refers to the redistribution of the rights on land from one particular person to another. This is done purposely to alleviate poverty and inequality in land ownership and to appease the possibility of political threats or revolts among the rural poor and peasantry as well.

This transfer could be by privatising state land or taking large landholders and giving it to the landless majority. It is the changing of land rights and it is the most common type.

This type is practised in many African countries like Egypt, where the land may be redistributed to many individuals. This has worked in various countries across the globe but has proved difficult to implement in the Country.

Whereas, Moyo (2007) believes there is inequality in the distribution of land in Africa. He posits thus: “Land distribution inequalities in Africa vary in their broad character depending on the degree of colonial history, foreign ownership and internal class and ethno-regional differential. Settler land expropriation varied in Africa”.

Land redistribution was extensively done in countries like: Kenya, South Africa, Zimbabwe and Namibia. On the other hand, land redistribution was carried out in a lesser way in the following countries: Mozambique, Swaziland, Botswana, Tanzania and Zambia. Out of all these countries South Africa has the largest scale of white settler. Land expropriation occurred in South Africa, where 87% of the land was alienated. It is therefore expected that the number of white settler in these countries will decrease. Yet, this was not the case as the land owned by whites’ minorities had not decreased. The Colonial injustices and the current policies on land had caused increased in the control of and access to land. This is the case in Zimbabwe and it is practised in South Africa through willing buyer and willing seller (Hall 2010).

### **2.8.2 TENURIAL REFORMS OR LAND TENURE SYSTEM**

Tarisayi (2014) describes tenurial reform as the kind of reform that aims to improve the land A ownership from people who lack proper and secure property rights. According to him, tenurial reforms address the issue of title ownership of the land.

Land tenure system can enhance the farm scale operations by reducing the farm. It is described as the most “complex aspect of land reform in the Country land tenure reform” (Hanekom 2010).

It aims primarily at bringing all land occupant under a unitary, legally validated system of landholding. It addresses the administration of the state land state that are in the communities and rural areas and thereby strengthens the security of the tenure of farm dwellers that lives on commercial farms (Land reform policy discussion document 2012)

The purpose of land tenure reform according to land reform policy discussion document therefore is “to develop tenure reform and land rights policies, procedures and product. Land tenure reforms have redefined the status of rights to land among owners and non-owners, and introduced new systems of land administrations” (Land reform policy discussion document 2012).

### **2.8.3 RESTITUTION LAND REFORM**

This is the most difficult to implement. It is rarely implemented in most countries of the world. Restitution land reform has to do with returning land to the original owners whose land were taken from them.

It is always not fast in implementing. This is because record is needed to show as evidence for the people disposed of their land. Example of this is the South Africans whose lands were taken during the apartheid era. It is difficult to give the land back to the actual owners because of the difficulty and lack of documentation of the original land owners.

### **2.8.4 LAND CONSOLIDATIONS**

This is a form of reform where all land owners within an area surrender their land and are allocated new parcels of similar value but in a way to encourage them to make better use of the land. It is simply the re-allocation of a farm land to make a bigger farm. It is regarded as an instrument to develop rural areas. The major motive of land consolidations is to reduce fragmentation of land (Tarisayi 2014).

## **2.9 CONCLUSION**

This chapter reviewed literature that deals with land reform with a very keen focus on the impact on women. It discussed scholarly works on land reform and women rights in general. It also examined earlier works that had been done on the research topic and then discussed the key terms in the research.

It provided broad understanding of land, land reform, human rights which covers women's rights. As emphasized in the chapter, land is an important factor of production that encompasses so many things. Its economic value is inestimable. Land, a basic source of livelihood acts as source of employment for women. It is the key agricultural input and a major determinant of women farmers access to other productive resources and services. Therefore, for land to play its principal role both in national and regional development in South Africa, there is a need to focus more attention on the state of land administration systems. Particularly the state of land rights delivery and the efficiency of the laws, the structures and institutions for land governance. Hence, the land reform process on ground.

Women's rights and access to land is of major importance in South Africa for economic growth. Land reforms in South Africa are introduced to correct the past colonial injustice and since this injustice was not to men alone but also towards women who felt the injustice even more and based on their struggle to be liberated, they should also enjoy the same rights as men does. Gender inequality should not be in place at all.

It is a fact that the different international and regional instruments such as the CEDAW 1979 Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol in 2000, the 1995 Beijing Declaration and Platform for Action (BDPA), the Protocol to the African Charter on Human and People's Rights in 2003, and the Solemn Declaration on Gender Equality in 2004, have provided for the protection, respect and promotion of women's property rights in Africa, including land rights. Yet, in the rural areas of South Africa, KwaZulu - Natal province precisely, women are still being denied this basic right to own land, which is a property right clearly written in the country's constitution. Some of the rural women still depend on men to cultivate land.

This in greater way has a negative impact on the economics of this country and these women are being denied their citizenship rights as well. Because the rights of women to land is a critical factor in economic well-being and empowerment as well as in social status, it is also a social asset, crucial for cultural identity, political power. Giving women access to land will enable them become self-dependent, productive and raise good children as well. It will also give them a sense of belonging as that will enable them effectively participate in the local decision-making process of their community.

There have been many works on land rights and land reform in South Africa but this study looked succinctly at why women in KwaZulu-Natal still do not enjoy their property rights as stipulated in the south African Constitution. It looked at why despite all the women's rights organisations, majority of the women in KwaZulu-Natal still do not have the rights to own land. The few Women in the Province that have access to land use the land as mere tenants and not as land owners. It explored what could be responsible for inequality in the distribution of land in KwaZulu-Natal Province.

## CHAPTER THREE

### CONCEPTUAL AND THEORETICAL FRAMEWORKS

#### 3.1 INTRODUCTION

This chapter discusses the conceptual and theoretical frameworks that were employed in this research. A theoretical framework is one of the most important aspects of the research process. According to Grant and Osanloo (2014), theoretical framework is the foundation from which all knowledge is constructed for a research study. *“It presents the selected theory, or theories, that undergird the thinking and shapes the perspectives of the researcher with regards to how to understand the subject under study”*. Thus Jabareen defined “conceptual framework as “a network, or “a plane,” of interlinked concepts that together provide a comprehensive understanding of a phenomenon” (Jabareen 2009: 51). It presents the reality and the nature of the reality concerning the phenomenon, in the case of this study, “land and land reform”. As its conceptual and theoretical frameworks, this study will apply the liberal feminist theory, human rights and capability approach.

#### 3.2 LIBERALISM DEFINED

Liberalism can be traced back to John Locke who is the father of liberalism. Liberalism is the school of thought where liberal feminist evolved. It is anchored on the preservation of individual liberty and maximization of freedom of choice (Tong 2009). Liberal theory generally holds that “individual sovereignty is a fundamental value, and that the just state ensures freedom for citizens” (Akinola & Tella 2013: 105). Tong (2009) stresses further that all individuals should be equal before the law.

According to Chau (2009), “liberalism is a political and moral philosophy which centres on the two main principles: individualism and liberty”. whereas Chau (2009) maintains that “the purpose of the society is to allow each individual reach their potential” (Chau 2009). This is best achieved when individuals are given liberty and rights to do what they like. These rights include: the right to own private property and freedom of expression, among others. Liberalism is also characterized by tolerance, freedom of thought, freedom of speech as the basic civil liberties and

rights. He maintains further that, classical Liberalism focuses on collective equalities and rights, association, and individual liberty. It is simply the political ideology of liberty and equality.

Liberal ideology is basically all about protecting the liberty of every individual. However, liberalism distinguishes between positive liberty and negative liberty. With regard to negative liberty, Isaiah Berlin opines that a person is said to be free when no one interferes with an individuals' activities. This is when an individual can act unobstructed by others. It is basically an absence of coercion by others and freedom from external force. When a person is allowed to do whatever a person pleases without any restriction from the outside force. (Gaus, Courtland & Schmidtz, 2018). These authors further clarify that:

*For Berlin and those who follow him, then, the heart of liberty is the absence of coercion by others; consequently, the liberal state's commitment to protecting liberty is, essentially, the job of ensuring that citizens do not coerce each other without compelling justification (Gaus, Courtland, Shane. & Schmidtz 2018).*

These writers also posit that: Positive liberty is seen as the kind of liberty in which an individual is seen as being able and free to act based on one's true general will. It is when an individual's action is typically his own. This type of ideology is attainable only when a person is autonomous or self-directed. Positive liberty basically, is the absence of internal limits (Gaus, Courtland, Shane. & Schmidtz, 2018 & Carter 2019)

An enabling environment is therefore needed by every individual in the community to have the control of their lives by exercising their rights. For this to be done, women should be granted rights to land. A property right is a fundamental right of every South African irrespective of gender. Thus Carter (2009) posits: "Positive liberty is the possibility of acting — or the fact of acting — in such a way as to take control of one's life and realize one's fundamental purposes"

He further posits that government should create an enabling condition for individual to be self-sufficient. This can only be done when every individual is free or given opportunity for self-realization. If farming is the best way for self-actualization to women, and the resources needed for this actualization is land. It is therefore important for women to gain ownership to land for whatever purpose that will satisfy them. This will help them achieve their fundamental purposes (Carter 2009).

### 3.3 LIBERAL FEMINIST THEORY

Liberal feminism originated from the middle nineteenth century in 1850s but became popular in 1990s till date. Cheran (2011) posits thereby that “feminist theory is a theory on women’s rights and gender equality”. It basically has to do with the study of the roles, rights, privileges, interests and the concerns of women in the society. It is an extension of feminism which talks about the rightful place for women in the society. This research relied on a liberal feminist framework. This is because the main concentration of liberal feminist theory is on gender equity and equal opportunity for men and women. The liberal feminists believe that a just society will not stop individuals from exercising their autonomy without depriving others of their rights. Liberal feminists believe that each person is unique.

Furthermore, according to Serve (2013 - 2018), “liberals also see freedom as a fundamental value” (Serve 2013- 2018). Thus, it is expected from every just state to ensure freedom for individuals. Liberal feminists therefore insist on freedom for women. *“Liberal feminism conceives of freedom as personal autonomy—living a life of one's own choosing—and political autonomy—being co-author of the conditions under which one lives”* (Baehr 2007).

Furthermore, Baehr (2007) maintains that women's movement should make efforts to identify as well as promote autonomy-enabling conditions. It is their view that in identifying these autonomy enabling conditions, the State has a major role to play in promoting the conditions after they had been identified.

*Liberal feminism is a particular approach to achieving equality between men and women that emphasizes the power of an individual person to alter discriminatory practices against women. It believes that all people are created equal; women are essentially the same as men. Liberal feminism aims for individuals to use their own abilities and the democratic process to help women and men become more equal in the eyes of the law, in society and in the workplace* (Serve 2013 -2018).

The contemporary liberal feminist thought is “committed to major economic re-organization and considerable distribution of wealth, since one of the modern political goals most closely associated with liberal feminism is equality of opportunity, which will undoubtedly lead to both” (Tong 2009:13) The major wish of Liberal feminists therefore according to Tong (2009), is for

women to be freed from oppressive gender roles that they have been using as an excuse just in order to deny women their basic rights. Example is the denial of women property rights as the case in KwaZulu- Natal Province of South Africa. Liberal feminism insists on freedom for women (Baehr 2007).

There are basically two types of liberal feminists, namely, welfare liberal feminists and classical liberal feminists. The Classical liberal feminists believe that it is right for the State to defend civil liberties, but individuals should also be given the chance to determine their own wealth within the market. Welfare liberal feminism relies on legal remedy to reverse discrimination. “Social and economic rights are the condition of possibility for the exercise of both the political and legal rights” (Tong 2009). This type of feminists believe that the government should supply underprivileged individuals with housing, education and social security among other things. Welfare liberal feminists solely believe that the state should focus on economic justice rather than on civil liberties like the belief of the classical feminists. However, “both classical and welfare liberals, believe that the government’s intervention within their personal lives is unnecessary and obtrusive” (Baehr 2007).

The major goal of Liberal feminists according to Tong (2007) & Tong & Botts (2017) “is to free women from oppressive and patriarchal gender roles” (Tong 2007; Tong & Botts 2017). Classical liberal feminists have a major goal, which is to overcome these obstacles of oppression and discrimination by removing all policies and laws that are gender discriminatory, thereby helping the women to be able to compete equally with men. Welfare liberal feminists, on the other hand “want society to believe that women should be compensated for past injustices, as well as eliminating socioeconomic and legal barriers” (Tong 2007; Tong & Botts 2017).

### **3.4 HUMAN RIGHTS, LIBERALISM AND CAPABILITY APPROACH**

This section will examine the following Concepts which are:

- i. Human rights
- ii. Liberalism
- iii. Capability approach

### **3.4.1 HUMAN RIGHTS**

Human rights are conceived as the undeniable fundamental rights to which an individual is naturally entitled because she or he is a human being (Akinola 2016). Human rights are set out in national documents, and many are located in international customs. As Bhargava and Acharya (cited in Akinola 2016: 55) note, “these rights exist in morality and in law at the national and international levels. They are addressed primarily to governments, requiring compliance and enforcement”.

The rights of women are the entitlements claimed for female worldwide. These rights are the basis for the women rights movements in the 19th century and feminist movement in the 20th century. In 1967, “member states of the United Nations approved the declaration on the elimination of all forms of discrimination against women, which was categorized as offence against human dignity” (UNHR 2014). The UN subsequently appealed to all states to destroy all the laws, customs and regulations on ground, as well as traditional practices that are very hostile against the women (UNHR 2014). “The 1945 charter of the United Nations upholds the equal rights of men and women” (UNHR 2014).

Human rights could be enjoyable by individuals or groups. That is, it could be the right of a minority or vulnerable group in the society (Jones 1999). Group right are those rights held by a group as a body rather than the individual members on separate ground. Groups have the power to demand rights on behalf of their members. This gives them certain advantages over individuals seeking redress for rights violations.

Individual rights are equality rights fought for on a personal basis. Even if the rights at stake are violated in terms of discrimination for belonging to a specific group or based on sex. Individuals take collective actions to effectively fight against discrimination of any sort. Individual rights and group rights are both related because they defend and fight for human rights. Groups support and defend their members against discrimination and uphold the rights of their members. The individual is part of a group with fixed characteristics not unique to individual but to collective people. Individuals function as members of various groups. They complement each other. Although some critics of group rights assume that group rights restrict individual rights and therefore threaten the liberal democratic principles. This is not so, as group rights typically

complement individual rights (Amagor 2018). This characteristic prohibits discrimination in every sense of it. Thus Douglas maintains “equality is an individual right” (Douglas 1991:369).

Moreover, the individual is at the centre of all social, political, and economic concerns, while in some cases; the rights of the group (like women in general) have benefited individuals within the same society. Therefore, human rights help the individual to realize his or her goals and seek protection from groups’ dominance; however, since individuals constitute the group, the main aim of human right is the protection of individual rights - directly or indirectly which makes a group (Jones 1999). Women are categorized as the vulnerable gender; thus, the need for the protection of their land rights, which is necessary for their empowerment. This is the main argument of liberal feminist theory.

### **3.4.2 Liberalism**

In Garrett (2002) Martha Nussbaum affirms a "liberal" view that is compatible with the feminist affirmation of the value of women as persons “That all, just by being human are all of equal dignity and worth, no matter where they are situated in society nor their sex, and that the primary source of this worth is a power of moral choice within them.” He explained further that, this power consists in the ability to plan a life in accordance with ones’ evaluation of needs. The moral equality of an individual gives him a fair claim to how they should be treated by the community and promotes their liberty and equality as persons (Garrett 2002).

### **3.4.3 Capability Approach**

Capability approach is best described as a broad normative framework for the evaluation of individual well-being together with their social arrangements. It deals with the policies and the proposals about social change in society. Thus, Robeyns (2003) opines: “Capability Approach is used in a wide range of fields, most prominently in development thinking, welfare economics, social policy and political philosophy” (Robeyns 2003).

Capability Approach is similar to positive liberty. This is because the main focus of it is what people are able to do and be. It is all about what people can achieve if given opportunities. Granting land ownership to women whose only ability and satisfaction is farming, will go a long way to increase opportunities for them and their families than to grant land rights and ownership to a man whose main interest is just to claim ownership and not to use it for Agricultural process.

If a woman is able to farm by becoming a farmer, she should not be denied the opportunity. Giving more land to a man who already has plots of land just because he is a man does not increase opportunities like giving land to a landless woman. Capability approach is used to evaluate the well-being of people, such as individual well-being, inequality and poverty. The core characteristic of the capability approach is on what people are effectively able to do and to be, that is, on their capabilities.

The concept of functioning in Capability Approach simply means the “beings and doings” of a person, whereas a person’s capability is “the various combinations of functioning that a person can achieve” Robeyns (2003:11) Capability is a set of vectors of functioning, showed in an individual, sex irrespective, freedom to live his own type of life or the other according to his desire. A person’s functioning and his/her capabilities are closely related but distinct. Robeyns further maintains that functioning, which means doing is an achievement, whereas on the other hand capability is the ability to achieve individuals targets without structural and institutional restriction. Functioning means the things people value doing or being. It is in a sense, more directly related to living conditions, since they are different aspects of living conditions. Everyone should be allowed to be what they value and like to be. Giving land ownership to women will definitely increase their living conditions and wellbeing. Capability on the other hand is all about freedom, in the positive sense: everyone must be allowed to live as she chooses and should not be restricted from using any opportunities (Sabina 2015).

Therefore, “Sen’s proposes that social arrangements should be primarily evaluated according to the extent of freedom that people have to promote or achieve functioning they value” (Sabina 2015 :4) He further questioned the adequacy of measuring equality in the space of marginal primary goods. Land is a primary good; inequality should not restrict its distribution (Deneulin & Shahani 2009). For a farmer, farming is functioning, it is doing. For a student, studying is functioning. So, material things such as land which is vital has to contribute to individual’s being or doing.

Capabilities are related to activities or functioning. Therefore, Garrett maintained that certain functioning cannot be public policy goal if it continues in the liberal democratic way. This is because a society that operates on the principle of equal basic liberties would allow whatever is endorsed by different reasonable detailed doctrines (Garrett 2002). The doctrine may sometimes

be contradictory but for the common commitment to these two basic principle: The principles of justice and basic structure.

Functioning simply means what humans are and what they do. Enquiry should therefore be made into the needs individual persons have and how best the resources could be converted into functioning. The core focus of the capability approach is on what individuals are able to do i.e. what every human is capable of doing or carrying out. That is, freedom to achieve wellbeing is of primary moral importance. So individuals should be allowed to live the kind of lives they wish to and be whatever they wish to be without any constraints.

For the capability approach material things on their own are not important unless they contribute to doing something with them. The concept of conversion factor connects material things with functioning. Education and money, for example, are conversion factors because they enable a farmer to effectively use the land. Institutions and culture are also conversion factors since they can either enable or disable an individual's being or doing.

The capability approach can be seen as a set of functions that reflect the individual's freedom to lead a chosen mode of life or make a choice from possible livings. It can be used to measure poverty or inequality or can be an alternative for traditional utilitarian cost-benefit analysis. Thus, capability approach can be applied to efficiency evaluations (Robeyns 2003; Deneulins and McGregor 2010). This approach will assist the research to evaluate the effectiveness of the Human rights practices in alleviating poverty and expanding freedom and well-being of women, most especially the rural women in the Province of KwaZulu-Natal.

### 3.5 ALIGNMENT OF CONCEPTUAL AND THEORETICAL FRAMEWORKS WITH RESEARCH QUESTIONS

The table below shows the alignment of conceptual and theoretical framework with research questions.

<b>Research Questions</b>	<b>Theory/concepts</b>
What is the historical factor that necessitates land reform in South Africa?	Human rights / Women rights
How can one understand the place of women rights in the land reform agenda of the South African government?	Human rights / Women rights, Liberal feminism
How effective are the implementation of women's land rights in South Africa?	Capability approach, Liberal feminism
How has land reform benefited the womenfolk, especially in poverty alleviation?	Capability approach, poverty
What are the factors responsible for the denials of women's land rights in the country?	Liberal feminism
What are the best approaches to resolving land conflict and marginalization of rural women in relation to their land rights?	Capability approach, poverty alleviation

### 3.6 CONCLUSION

This chapter discussed the conceptual and theoretical frameworks used by this research. As its conceptual and theoretical tools, this research uses liberal feminism, human rights and capability approach. Feminist theory is used as its theoretical framework because the research is looking at

women's land rights. Feminist theory is a theory on women's rights and gender equality. Human rights are those undeniable fundamental rights to which every human being is naturally entitled to. This is relevant because the focus of the research is on women's land rights in the KwaZulu-Natal province of South Africa. The capability approach is relevant because of its relation to positive rights. This approach will assist the researcher to evaluate the extent to which the formal rights provided by the Constitution are actualized. The research methodology adopted by this research will be discussed in the subsequent chapter.

## CHAPTER FOUR

### RESEARCH METHODOLOGY AND METHODS

#### 4.1 Introduction

Research methodology and research methods are important pillars that support any research. They are vital aspects of the research endeavor. Research methodology and research methods reveal how data were gathered, and the motivating factors behind the choices and research approaches employed by researchers. Therefore, this chapter presents the research methodology and research methods used for the study and their justification.

#### 4.2 Conducting Research: An Understanding

The word “Research” is a general term for all activity which involves identifying a problem and addressing it. It is therefore pertinent to understand what the word “research’ really means. In the general view, research refers to a search for knowledge. It includes scientific and systematic search for pertinent information on a specific topic.

Thus, Kothari (2004) define research,

*as an art of scientific investigation consisting of enunciating the problem, formulating a hypothesis, collecting the facts or data, analysing the facts and reaching certain conclusions either in the form of solutions(s) towards the concerned problem or in certain generalisations for some theoretical formulation (Kothari 2004).*

In academics, research involves new discoveries. “It is about advancing the frontiers of knowledge” (Walliman 2011). Research is often conducted to gain more knowledge about a specific phenomenon or phenomena. It is undertaken to increase the stock of creative and systematic work undertaken, which will automatically increase knowledge expansion. According to Kowalczyks (2018), “research can be defined as a careful and detailed study into a specific problem, concern, or issue using the scientific method”. He posits that” research begins with an issue that comes from an observation”. While Walliman (2011) on the other hand sees research as a term used liberally for any kind of investigation with the main aim to reveal interesting and new facts (Walliman 2011).

Research can be conducted on any field and in any area of human endeavor. Research “also means a systematic investigation or activity to gain new knowledge of an already existing fact” (Prabhat & Menu 2015). Walliman (2011) maintains that “Research is about acquiring knowledge and developing understanding, collecting facts and interpreting them to build-up a picture of the world around us, and even within us”.

### **4.3 Research Methodology and Research Methods**

Research methodology is a systematic plan for conducting research and a tool for doing research (Walliman 2011). Research methodology is described as a science of studying how research is scientifically conducted. This makes it necessary for all researchers not to only know the research methods, but they also need to understand the research methodology (Bricks & Green 2018). On this note, Walliman (2011)” therefore further posits that research methods are like a range of tools that are used for various and multiple types of enquiry” (Walliman 2011).

### **4.4 Types of Research methods**

There are two main types of research methods: qualitative and quantitative research.

#### **4.4.1 Quantitative Research**

Walliman (2011) posits that,

*Quantitative data can be measured, more or less accurately because it contains some form of magnitude, usually expressed in numbers. It involves the use of mathematical procedures to analyze the numerical data. These can be extremely simple, such as counts or percentages, or more sophisticated, such as statistical tests or mathematical models* (Walliman 2011: 87).

Furthermore, McLeod (2008) maintains that: “It is applicable to phenomena that can be expressed in terms of quantity. Quantitative research gathers data in a numerical form which can be put into categories, or in rank order, or measured in units of measurement” (McLeod 2008). It basically has to do with the collection and the conversion of data into numerical form so that statistical calculations can be made and conclusions be drawn.

#### 4.4.2 Qualitative Research

A research is qualitative when information is in the form of qualitative data. Leibscher (1998:669) holds that, “qualitative methods are admissible, when the phenomena under study are humans, social in nature, and not subjected to quantification and statistical presentation” (Leibscher 1998:669). “Qualitative research majors on the qualitative phenomenon, the phenomena relating to or that involves quality or kind” (Kothari 2004).

Qualitative research method indicates any research that produces descriptive data, which is drawn from people’s written or spoken words as well as observable behaviour. It is concerned with the meaning people attach to things in their lives, and deals with a presentation of current information and primary information from respondents.

Qualitative researchers place more emphasis on and identify with the people they study in order to understand how they see things (Berg 2001). The Qualitative research method allows a researcher to study individuals and groups in their natural settings. “It seeks to explain ‘how’ and ‘why’ a particular phenomenon, or behaviour operates as it does in a particular context” (McLeod 2008).

Bricki & Green (2018) maintain that “qualitative research is characterised by its aims, which relate to understanding some aspect of social life, and its methods which (in general) generate words, rather than numbers, as data for analysis” (Bricki & Green 2018: 2). Under the qualitative research method, individual and groups, are examined in their natural settings and through focus groups (Greenbaum 1998). It seeks to explain the question ‘how’ and ‘why’.

Qualitative research is the most appropriate method which provides deeper understanding of the dynamic issues under investigation. This is due to the complex social phenomenon under study, which relates to human beings. Using statistical method which is quantitative research will not perfectly capture the argument in this study.

Thus, this study adopts the qualitative research method. This is because qualitative method allows a researcher to study individuals and groups in their natural settings. “It seeks to explain ‘how’ and ‘why’ a particular phenomenon, or behaviour, operates as it does in a particular context” (McLeod 2008). It is important to adopt quite different analytical techniques that record qualities rather than quantities; as a result, the qualitative method of research is more appropriate

than quantitative research. The choice of this research method is also due to the fact that a lot of useful information cannot be reduced to numbers.

#### **4.5 Importance of Research**

There are so many importance of research depending on the reason why the research is being carried out in the first place. The aims and importance of research are to:

1. Seek answers or solutions to problems through the application of scientific methodology
2. Push back the boundaries of comprehension and seek beyond the horizons of knowledge, truth and realities.
3. Discover the hidden truth.

#### **4.6 Sources of Data Collection and Population Size**

The sources of data are through direct contact with relevant actors in the South African land reform scheme, Women Rights groups and Non-Governmental Organizations (NGOs). This research relies on both primary and secondary data. Walliman (2011) posits primary data as the most immediate recording of a situation without which it will not be easy to interpret the facts properly to other people. Primary data are data collected directly by those who observed an event. It is therefore first-hand information, whereas, Secondary data according to him are data that have been recorded. They are therefore seen as second or third-hand information.

Primary data for this research project includes data generated through individual face-to-face and focus group interviews conducted with preselected respondents (Greenbaum 1998). Government documents and bulletins were also another source of primary data. The sources of secondary data included books, journal articles, unpublished theses, dissertations and internet resources. The secondary sources provided extensive information which enriched the study and also provided extensive information helpful to the primary source.

The sources of data collection are through direct contact with people experienced in the phenomenon under study. Those who are experts in the field of study and they were chosen based on their expertise and involvement in the research and positions in the community of Pietermaritzburg and its rural environment. These samples are selected in order to represent the larger population.

The study purposively selected respondents based on their active participation in the land reform programs and women's Rights Organizations. Purposive sampling was utilized in the study based on the availability of identifiable experts and actors in land reform-women rights convergence. The participants were selected because they were likely going to generate useful data and information for the research (Bricki & Green 2018). Furthermore, "participants selected to meet sampling criteria seeks broad range of ideas on open-ended topic formal, controlled pre-arranged time and place usually audio-taped and transcribed for analysis" (Bricki & Green 2018: 16).

This study used focus group interviews as one of its tools for data collection. Twenty respondents were drawn from the following categories: five members of Civil Society (CSO) involved in land reform, women empowerment and rural development; four academics who are experts in land reform, women rights and economic development; two land entrepreneurs, two community leaders; two males and two female farmers; and three landless women. The focus group discussion took place in Pietermaritzburg. In respect of individual interviews, eight actors were interviewed, out of these three were also part of the focus group study

The breakdown of the interviewees are as follows: two academic staff from University of KwaZulu-Natal and University of Zululand, three officials of NGOs that deal with land, women rights and rural development, a female farm laborer and an official of the government agency on land reform. The interview schedule (highlights of the research questions) provided a guide during the interview and focus group discussions, while other questions were generated during the data gathering process. The questions were based on respondents' area of contributions to the broad purpose of study.

#### **4.7 Data analysis**

The research adopted content analysis due to the phenomenon under study. Context analysis is a research method that permits the required data to be analysed systematically and reliably in the quest to make generalizations on the phenomenon under study. It constitutes a research instrument employed to determine the presence, relationship and use of certain words or concepts within the text. It can be used in political science or gender issues and can be applied to examine recorded communication (UMSL 2004). The content of data generated, through the

Focus Group Study and interview was synthesized for a robust analysis and weaving together of the various issues under investigation.

#### **4.8 Ethical Consideration**

The University of KwaZulu-Natal approved the ethical application for the conduct of this study. The study was guided by the principle of anonymity, which became necessary for protecting the respondents and granting them the opportunity to offer their perspectives without fear. Informed consent was also obtained from all the participants, which enumerated the purpose of the research and their rights as respondents.

#### **4.9 Conclusion**

This chapter is very important to this work as it explained the methods and the methodology used in this work. This study adopted/employed the qualitative research method as its data gathering and data analysis tool. The discussion in this chapter leads to the data analysis and data interpretations in the following chapters.

## CHAPTER FIVE

### DATA PRESENTATION AND DATA ANALYSIS

#### 5.1 Introduction

This Chapter draws from the conceptual and theoretical frameworks and data generated from the field study to present a robust analysis of the place of women in the South African land reform scheme. The primary and secondary data were interpreted and analysed extensively in this chapter. The chapter presents a systematic analysis of the findings of the research, which is extracted through both interviews and focus group discussions.

#### 5.2 Conceptualization of Land

Land is viewed differently by people. Land is an indispensable natural gift and the most important factor of production. To others, land is a source of identity. Land can also be seen as a means of livelihood to the rural women. A respondent from a rural community in KwaZulu-Natal affirmed the above definition of land when she said “My land is my life. My farm is there and everything that made up of me is on my land. If you want to kill me, the fastest way you can do that is to take my land from me. That will kill me faster than any deadly thing you can think of. I love my farm so much and I have built my life around it. That is where I have been in all my life. It is my greatest treasure”.

When asked what land is, another respondent supports this by saying, for the rural women land is their life. Their whole being has been built around it. They see land beyond just economic resources. They have attached themselves so much to the land that whatever happens on their land has a way of directly affecting them. It is so evident that some of the women in the rural areas perceive land more than just a possession or inheritance. They see it as part of the household. They cater so much for land just the same way they cater for their children and this will greatly engender productivity and enhance economic growth in the community.

Thus, land deprivation is connected to diminishing livelihood and increasing food insecurity in the continent. From Southern to Eastern, and Western Africa, poverty reigns everywhere. According to a respondent, “One of the reasons for the impoverishment of a large percentage of the African population is related to land inequality”. Also, denial of women land rights is the

major reason the escalating prices of foodstuff as well as food shortages in every part of the world most especially in Southern Africa. The above assertion by a respondent is corroborated by Akinola (2018) who is also of the opinion that food shortage in Africa is due to land inequality as well as the denial of women access to land.

Many others see land as an economic resource to better their lives. By this they can sell it to better their lives. Access to land is access to wealth and the denials of women's access to land should thereby be considered as a denial of women access to wealth as well. The question of whether a woman needs land should not arise". These generated a lot of arguments among the respondents as majority belief women should be able and not be restricted to use or sell their lands based on their discretion. Others maintained that, "If you say you do not have land and they gave you one. You cannot sell it". Land is not just a resource; it is a social resource (Akinola and Wissink 2019). The point was captured by Akinola and Wissink thus,

*Land is not just a resource, it is not just an economic commodity, it is a social resource that binds societies to universal heritage and also acts as instruments of social stability and security. It is also a source of livelihood for rural dwellers who rely on agriculture and engage in diverse land-related activities (Akinola and Wissink 2019: 170).*

The question of sale of land is already an issue that has attracted diverse interests. While the government is opposed to the sale of land by beneficiaries, the claimants, who have been long impoverished, opt to sell their lands. The government's argument is premised on the notion that the land was given, in many cases to boost agriculture and not to be sold for other purposes. In line with government's argument, women are not supposed to sell their lands. According to a respondent, "Why do you ask for land if the purpose is to sell it? You should have asked for money instead". Another respondent is of the opinion that whatever happens to any land government had already apportioned to any individual should be the concern of the person and so the government is supposed to steer clear of whatever the land is used for since it is no longer theirs but belongs to the new owner. The decision on the land should entirely be by the new owner and should therefore be free to use the land at his/her discretion. If selling the land is to the owner's advantage, he/she should be allowed and not be prevented from doing so

Another respondent maintains that they should be able to sell it since it is their property and nothing should stop them from using it in whatever way suits their purposes. Perhaps, if the

government may want to prevent such sales for ridiculous amount, then they should be guided to sell, if at all, at market prices. Telling them not to sell is an infringement on their rights to buy and sell and an invasion of their privacy. In South Africa, the constitution makes provisions for the property rights of all the citizens irrespective of race and gender.

A respondent supported this thus:

*Why do people keep saying that people, who are beneficiaries, cannot sell the land to whoever they want? Selling it is still to enhancing their socio-economic. It is their property, so if selling it is what gives them fulfilment and satisfaction and provide them with financial compensation, they should be allowed to do so.*

This is in line with the capability approach which presents that every human being should be allowed to do whatever makes them happy. And they should have the right to be who they want to be without any interference by the outside world.

Another respondent cuts in that “women are better managers than men; if they want to sell the land it is probably to make more profit and invest the money in productive endeavour for the benefit of the family. Men cannot keep money like women”. Experience has shown that women are good farm managers like the cases in Cameron and Namibia where majority of the farm owners are women. Their decisions to sell land might also be to raise money for the development of the remaining land. That is freedom to achieve wellbeing according to Capability Approach. For instance,

*Money is needed to buy tractors, fertilizers and a lot of things needed on the land to yield better result. The major problem is that many of these women unlike men do not have access to loan. They do not have what it takes to even apply for loan. Because of lack of resources they cannot even develop their land. The norms of the community are not helping here at all.*

A respondent from Zambia comments thus, “women own land in my country. In Zambia under customary law we have chieftaincy. Woman as a Village Chief is in charge of the village so you buy from chieftaincy. Feminism theory advocates giving equal right to male and female. Though, the majority of the lands are owned by men”.

While women in Zambia have enjoyed land rights; however, there are limitations associated with this. Women's access to land is only for specific purposes. Women only have land to build estates in some areas, but are denied land ownership in other areas like the southern part of the country, where land in the area belongs to the chief. This is similar to the case of South Africa, where the attainment of women's land rights depends on the realities of different communities. No general law is maintained when it comes to the reality of land rights. What is attainable in one country might not be attainable in another country. Most decisions on land rights are dependent on the Chief or traditional head of a community.

### **5.3 The Reality of Land Reform and Women Land Rights in KwaZulu-Natal**

Women in South Africa constitute 43% of the agricultural labour force, and make up about 69% of small scale farmers (Andrews 2018). Many of the women farmers work the land under the lease system, while some gain access through a male member of family. Indeed, land has multiple values for the rural sector, most especially for rural women. Women complement local markets food production in the local areas. The law of the land is clearly against gender discrimination in relation to property rights, but this has not been realized in the practical sense. This is the case in KwaZulu-Natal Province, where rural women are mostly uninformed of their land rights and thus explains the prevalence of denials of women's access to land.

According to Walker (2005: 310), "although land redistribution has dominated the policy debate on land reform since 1994, it is in the communal areas, where the majority of rural women live, that challenges the principle of gender equality in land reform loom largest".

Women under different social relations work on the land as labourers and some as farm managers among others (Jackson 2003). This is causing a major setback to the efficiency of these women as they have little or no control over the land they cultivate. They are subject to working on land without rights to it, which could make them vulnerable to poverty. She therefore maintains further that, land ownership decreases the risk of rural poverty, and provides direct and indirect benefits.

South African women were active in advocating for policy change, and their position was evidently accommodated in the internationally lauded constitution. Therefore, they made sure their rights were included in the country's legal framework. In general, the number of women in

politics has increased significantly since the end of the apartheid regime Cotula (2002) maintains that:

*South African land law is characterized by the Roman-Dutch common law tradition, by the legacy of apartheid and by the post-apartheid land reform efforts” Sections 6 and 8(e) of the Promotion of Equality and Prevention of Discrimination Act of 2000 prohibit “any policy or conduct that unfairly limits access of women to land rights”. Section 25 of the 1996 Constitution commits the government to a land reform to “enable citizens to gain access to land on an equitable basis.*

The government has launched a comprehensive land reform programme based on the redistribution component to allow male and female to purchase land through a “Settlement and Land Acquisition Grant” of R16 000. Because of their limited access to capital (credit and formal employment), women have faced difficulties in purchasing land in the market-assisted land redistribution programme, which was driven by the ‘willing seller, willing buyer’ approach. Communal Property Associations, established under the Communal Property Associations Act of 1996, can provide a useful legal tool for group purchase by women. While anecdotal evidence suggests that women are less informed about the land reform programme.

Cotula, (2002) maintains that:

*Rights to natural resources are extremely important for rural women. First, women’s livelihoods crucially depend upon them, especially in developing countries. Secondly, the nature and extent of these rights affect women’s bargaining power within the household (Cotula, 2002: 22).*

As revealed previously, women rarely own the lands they work on (Mercia Andrews 2018). This has impeded their capacity to offer financial support to their children in school. This is more common among single women. Cases of child labour is even reported in some areas of KwaZulu-Natal community where the mother a farm worker, is unable to send her children to school. The farm owners used this as an opportunity and aske the children to work at odd hours on the farm, under harsh labour conditions or be faced with eviction. They are therefore being denied of the opportunity to go to school and have been exploited by farmers for expanding their

wealth. These women are dying in silence because they feel nothing could be done for their voices to be heard (Ngoetjana & Philippe 2015).

In 1998, there was a workshop in KwaZulu-Natal on tribal courts and 250 women attended. The major talking point during the meeting was the concern about women's denial of their land rights, an issue they said needed to be fully resolved. All levels of authority are always in favour of men. For instance, many women complained that elderly male councillors supported men on personal issues. They were quoted saying women who raised land issue were seen as troublesome, unruly, and capable of causing social instability. So their complaints are treated as trivial. It was also reported by the women in attendance that some traditional rulers failed to allocate land residential sites to women, except in few instances when they got it through their male sons (Classens & Ngubane 2008). The question here is what happens if one does not have a son but girls? He said further that even in the pre-colonial age, there is no time in South Africa when women and men share same right. Classens & Ngumane maintain that,

*Women are treated as secondary holders whose rights are dependent on, and subservient to, those of men. even where law and policy provides for joint vesting of rights in men and women, administrative and conveyance tend to favour rights being registered in the name of one male as householder (Classens & Ngumane 2015: 168).*

The following factors are responsible for women denials of land rights in KwaZulu-Natal Province are: Culture, marriage, customary law, illiteracy, and traditional belief among others that will be discussed below.

Land is still held in terms of 'communal tenure' in the rural KwaZulu-Natal (Cousins 2011).

Discrimination and exclusion of women is a still a fundamental problem in this area, and this has constrained infrastructures and service provisions in the rural areas of KwaZulu-Natal.

Commenting on Msinga, Cousins (2011) posits:

*Single people cannot be allocated land, and must reside with either their parents or other family members. Land is allocated to a household, under the authority of the household head, rather than to individuals, and the household head is understood to be a senior male (umnumzane). If fields are not being used, they can be re-allocated to a*

*household in need. There is thus a strong association between land holding and the necessity of supporting a family from land-based livelihoods (Cousin 2011:18).*

Other communities in the Province are experiencing similar concerns. Nkawalini is a populated area located in UThungulu District Municipality, KwaZulu- natal. A cross section of women in this community are experiencing land dispossession. These women lived in a settlement under the authority of a traditional leader. They were threatened of being evicted by their neighbouring farmers at any time. This farm owner demolished about 17 homes. Their children were said to have suffered sexual abuse while many of these women have no home to sleep or to call theirs (Ngoetjana & Philippe 2015) These women are exposed to danger and their children subject to eternal damage. This was said to have been reported but not much happened after it (Ngoetjana & Philippe 2015) Ngoetjana therefore maintains that “at the present there is violation of human rights on Land especially in rural areas. People are subjected to the reduction of their livestock. Cattle is impounded and locked up in camp without food. People are not allowed to bury their loved ones in the land of their forefathers and ancestors” (Ngoetjana & Philippe 2015: 100).

There was also the case of women from Gongolo area near Escort, in KwaZulu-Natal. The women faced opposition just to access a piece of land the white farmers wanted to expropriate and turn into a game farm and a golf course. According to these women, the premier of KZN had let them down. Another community in the Province, Edendale, located around Pietermaritzburg have been having issues related to denials of women’s land rights. A respondent from the area maintained that land is not made available to women as it is made available for men. She said further that, even though many women in their area would have love to be farmers but this they could not be because they have no access to land as land owners.

During the women’s Day in August 2018, Julius Malema, during a campaign trip, used the opportunity to express his disdain over how women in the area were being denied access to land while canvassing for their votes. Malema called for women to be given land and said that if land was given back to black people, women must get at least one hectare of land each (Mthethwa 2018).

In Mahlabathini community, women were not well represented in the land reform committee set up in the area to advance women’s interests. Two women selected to represent females’ / women folk. One of the two was chosen only because her son was part of the committee while the

second one was an elderly person who dropped off shortly because of her old age and was not replaced, while the only one left hardly contributed at meetings. Hence making it difficult to have a proper grasp of the concerns of these women and equally difficult to satisfy their hunger for land where they have no mouth piece.

In Ntabeni, a community in KwaZulu-Natal Province, women were active in the project on women land rights, although also deferring to the authority of men in the households and project affairs. Their land is easily accessible and at an early stage in the project, the Association for Rural Advancement (AFRA) project, a land rights NGO, was influential in encouraging women's participation in farming. AFRA advocated for the government to have equal representation of men and women. A woman related the experience of two ladies from Durban who maintained that they have rights to land too as women, and must therefore not be shut out but must be allowed also contribute to the struggle of equal land rights for all in various meetings held in their community. As they are always denied to make their contributions on land rights in their area. When they were asked if government officials were involved, they recalled the intervention of one, who had 'asked whether men call them for meetings and they gave negative response.

It is strongly believed that women's access to land is the solution to the poverty in the land. According to Malema in Mthethwa (2018), "when we give women land we are guaranteed that the children will be fed. Let's give South African women the land, the most oppressed people. We must make sure that women benefit from this land. This land must not benefit politicians." (It was affirmed that the control of land by traditional leadership in KwaZulu-Natal province does not in any way help the woman to gain access to land as some of the traditional rulers were said to be taking land from the Blacks and giving them to the White. This supports the belief that Traditional belief is part of the reasons for the denial of women land rights.

#### **5.4 Discussion: Emerging Issues on Women's Land Rights**

This section presents both the primary and secondary data received from the field during the process of this research. For clarity and a systemic analysis of results, the section is categorized into many sub-sections

#### **5.4.1 Legal Instrument for Women Land Rights**

The constitution is the legal instrument used in South Africa. South Africa's constitution clearly presents the foundation upon which property rights of all is erected. The legal instrument highlights equal rights for all irrespective of race, ethnic affiliation, class and gender. This is also the case in many countries of the world. Specifically, the right to property, which captures land rights, is enshrined under Section 25 of the Constitution of the Republic of South Africa, 1996 (South Africa constitution 1996). It was emphatically stated in the constitution that nobody may be deprived of any property except in terms of law of general application. This aligns with human rights, which talks on rights every person is entitled to being human being. Furthermore, no law in the country should operate contrary to the provision and intent of the constitutional removal of gender restrictions to land rights. The supremacy of the constitution is not in doubt, but lack of effective monitoring and implementation has created avenues for the abuse of women's right.

Despite the provision for women's rights in the constitution, the respondents agreed to the fact that men still dominate women in both rural and urban. They particularly emphasized the enormous control that men have over women in the rural areas in every respect, citing women's restrictive access to land as an example. They reiterated the weakness of women pertaining to power relations in the community. They are still onlookers in the business of the community as they are still not given rights to participate or make contributions in the community.

A respondent queried the usefulness of the constitution, when women are even afraid of taking their husbands to court in cases of conflict over access to family resource like Land. Women in these areas believe they can never defeat men on any matter. Reporting them even to community leaders is seen as an affront to customary practice. Therefore, whoever tries to report her husband is discriminated against by the community head.

Section 25 of the 1996 Constitution commits the government to a land reform that provides for land distribution on equitable basis and creates access to all the historically dispossessed. This prompted a respondent to wonder if women were not part of the historically dispossessed. With all the legal instruments (both local and international) made for the attainment of women's land rights in South Africa, enjoying these rights remains only dream in many parts of KwaZulu-Natal. In communities visited around Pietermaritzburg, women are largely restricted in the

exercise of their land rights, while those around the KwaDlangezwa area showed evident improvement in terms of women's land rights.

In Durban, respondents testified to women's land rights without the assistance of males, but in Durban suburb, a respondent claimed to have gotten access to land through a male member of the family. This still buttresses the fact that land ownership in KwaZulu-Natal is not fixed but rather the decision of a community leader. This out rightly contradicts the perspective of feminist theory, which advocates the attainment of women rights in all spheres of endeavours. This is in line with the work of Kapama (2017) where he also maintains that out of "all the rights given to women globally, the right to land and property is one of the most significant of all, particularly on the African continent. This is because a large proportion of women live in rural areas and their livelihood is closely tied to land" (Kapama 2017). In Africa this is no different from other countries of the world.

On this, one of the respondents, from KwaDlangezwa area, opined that the problem she has with the reality of land reform is the failure caused by the government to enforce women land rights. She said, "the constitution says one thing on one hand and people are allowed to do what they like and not what the constitution says. In the constitution, there is equality of all gender and all are given the rights to societal properties as guaranteed by property rights". She said further:

*You cannot have a system that says men benefit more in the society than women do in the property right. It is inconsistent with the constitution that talks about equal right for all. Based on this research, it is vivid that the patrilineage system is still very strong in the local communities. The system is an old one, which predates the constitution; so, many are still attached to the traditional system where men are far more superior to women. And women are not allowed to own properties, except when such ownership is in the name of the husband. Men determine when their daughters can even get marry, in some cases, they determine who they can marry or not. Sometimes, they allow women to own land as long as they remain single, and once married, the property is retrieved.*

Another respondent was quick to interrupt thus:

*Why is it wrong for a woman to own a land and has all the title deed without any link to the husband? Since we already made provision for gender equality in our constitution. It*

*is like the constitution is saying something differently entirely from what we practice in most villages in KwaZulu- Natal area. This equality right and property rights in the constitution is not applicable in many of the suburbs in the province. That is the fact.” This contradicts the perspective of feminist theory, which advocates equal rights for all irrespective of gender.*

Another respondent added that in some areas in KwaZulu-Natal province, women do not own land. According to him:

*They only allocate some portions for women and you are not the owner you are just to use it for specific years because the land belongs to the chief. It is like a loan. If you know that something is not your own, because land is an asset, you won't invest in it because you are not sure for how long you will be allowed to use the land. So people prefer to find better option in urban area and leave the rural area because of the issue of security as well the number doesn't matter since it is not yours. It has caused urban rural immigration in so many communities. People need land for more than subsistence farming that is why government should help the underprivileged by making sure the Constitution is strictly followed in all the communities in the Province of KwaZulu- Natal and across South Africa generally.*

Another respondent maintains that despite the written law that made it appear as if everybody enjoys the same freedom in South Africa and that ‘our land belongs to all’. He maintains:

*In the village, nobody has land to do large-scale farming. You only have a small piece of land to build your house and a place to have your garden. No big land to use as far as I know. That's why men continue to hold unto the limited land that is available. So what is the important or outcome result of the legal framework backing women land rights. In situation where a family got land through the redistribution, if the land given to the family is small, the man tends to take it all. Women are thereby constantly denied their rights to own any part of the land.*

A respondent commented on the legal framework that supports women land rights in Zimbabwe. She opined that the constitution of Zimbabwe is similar to that of South Africa as it also contains a declaration of women rights. These sets out the fundamental rights of Zimbabweans (male and

female) that they are free to own properties. But in the same constitution, women land rights are discriminated against on some basis like there are some custom and marriage which only affects women. This contradicts the perspective of human rights which advocates protection of women's interests.

The work of Sithole presents similar arguments. Sithole (2002) observed that, Section 23 of Zimbabwe's constitution covers discrimination in relation to land rights. He maintains that, this same constitution made discrimination possible through adoption, marriage and divorce because women are the one affected in these issues. This is contrary to what is written in the Constitution, where it explicitly states that both men and women, regardless of their marital status, can be allocated property rights or concessions under the agrarian reform programme, either collectively as couples or as individuals. Gender equality within the land reform programme is therefore limited and not total. This is because in practice, land reform programme is based on land registration through men or the husbands.

Another respondent commented on constitutional framework that guides women land rights in Nigeria. She maintained that women in Nigeria have access to land. According to her, "I am from Nigeria and there, women are allowed to own land. I have land that I bought by myself". They can own land and use land as they want either for housing or agriculture as she also has land she bought on her name from the government". However, she also maintained that though no written law forbids women from owning land, under customary law, women still face restrictions. One of the respondents, a lawyer by profession revealed that "from the legal point of view, any customary law that discriminates or go against the written law is void. There are so many amendments to the customary law". In the western part of Nigeria, if you are buying land as a woman, you might not be treated favourably as men.

Denials of rights in relation to property run across African countries. A respondent spoke about her village in KwaZulu-Natal Province where the chief takes control of the entire land meant for the community and distributes it at his own discretion. This discretion was guided by traditions where family land is allocated to men and put in the custody of family heads who are men. Even in cases where the family head is a woman, the eldest male in the family takes possession of the land. Women are not emboldened to challenge men in traditional African societies. Whoever dares to question this is termed as rude. As revealed by a respondent, "because they said we are

only to follow our husband to farm and we not permitted to make any demand on land. For the singles and widows, no one supports their right to land ownership in my community. When even the married only get access to land because of their husband”.

The gross abuse of the constitution persists in those communities because of the government’s failure to monitor compliance to the country’s constitution, particularly in remote areas where the tendency to dismiss laid down rules is very high. The government is not only required to enact laws and present a constitution to the public, must also have the capacity to enforce compliance. Land that has actually been given back through redistribution is not properly monitored to see if it is in compliance with gender equality. This is important because women are part of the larger community and they are also citizens and thus need to enjoy their land rights just as men does. The importance of land in the society has made its access of a sensitive nature.

Another respondent maintained that in Africa, the issue of whether to give women land should not be an issue again. Because it is quite evident that women need land as much as men do if not more. This is why women land rights are now included in the constitution of almost all African countries, Asia and other countries of the world.

This corresponds with Kapanamu (2007) who made the assertion below,

*number of instruments integrated with the African human rights system. These contain provisions that guarantee or are relevant for the protection and realisation of women’s rights. In recent years there have been concerted efforts to put in place frameworks for the protection of women’s land and property rights both at the international and domestic levels (Kapama 2017).*

Meanwhile, the issue now is with the legal framework on ground, are women enjoying land as stipulated in various constitutions? It appears that land rights for women are much more popular on paper than in reality. The implementation of property right is slow in most communities especially in the rural areas as is the case in KwaZulu-Natal Province of South Africa.

Women are as productive as men are and the major occupation of rural women is farming. So to increase production, they must be allocated land. This is in line with capability approach which advocates that each individual should be allowed to do what makes him/her happy. This

corroborates Akinola (2018)'s presentation that "there is compelling evidence that shows that, women seem to have higher land productivity than men". Indeed, how do we reconcile this and ensure land productivity? Certainly, Akinola (2018: 2) further establishes the fact that:

*Africa has gone past the question, 'Do women need independent land rights?' And many states have also modified their legal framework to accommodate women's land rights; however, the actualization of rights has become disputed, especially among rural dwellers.*

Another respondent from South Africa said she does not understand the land rights given to women in some parts of the country. In those communities that believe they are obeying the law by giving women land; however, these women cannot transfer this land or sell it. Women in possession of land should be "able to do anything you like to whatever it is yours. It means the land is still not theirs if they cannot use, sell and exploit whatever it is on the land". She narrated her experience that when her mother died and their land was taken from them by the community people with the assistance of her brother and they were asked to go and get land from their father's clan. They were told they could not inherit their mother's land. They were therefore left landless despite all efforts made to reclaim their mother's land. This means female children still have no right like owe land.

The South African constitution supports women's land rights. But based on field study, it is an unattained provision. As shown by respondents' accounts, many women still cannot get hold of land in KwaZulu-Natal Province, the few that have land only use it as tenants while only a very small number really has ownership of land. This could be the major reason for inequality in the country, though the practise differs from one community to the other. Every community operates what is best to them and not what the constitution says regarding women land rights. Government seems not to understand that making a law without implementing it is meaningless as people tend to still follow old traditions while neglecting the law. Thus securing land right can boost the economy of any nation especially when there are no legal barriers underpinning the productivity of women and their contribution to the economy of their country through access to land and eventually land ownership. This is in line with what capability theory advocates, the wellbeing of everyone.

There is still ignorance among rural women. During the course of this research, it was gathered that some women are not aware of any of legal instruments (international and national) for the promotion of women's rights. few are aware, they lack an understanding of how it works, and therefore, very easy to manipulate these sets of women and deny them their land rights. Or how do they defend what they are completely ignorant of. How do they fight for the rights if they are not even aware exist? Thus, women rights have not been effectively implemented in South Africa, especially in rural areas because the State's institutions are not really involved in the implementation of women rights as it is contained or stipulated in the constitution.

A respondent who claims to be aware of a legal framework supporting women's land rights in the country maintains that implementation has always been the major setback in the rural areas. She queried, "Or what is the essence of promise made without fulfilment?" Another respondent maintains that she got to know about women's land rights through an NGO (AFRA) that came to the community to enlighten them on the rights as supported by the Constitution. Another respondent said:

*So there is a law made to allow we women to have our own land. I did know about the law at all because even up till now our fight for land is for our men and not directly for us. They on the other hand will give us some portions to use for faming(sic) for the immediate family. Even if we are the one that did the farming, they still see us as being subordinate. So they still control whatever its being made from the farm. It seems the community leaders, who are men, knew about the law that women can also own land but its being kept away from women's knowledge.*

Another respondent from Pietermaritzburg suburb said:

*I am aware and I think everyone is aware in our community, because we have access to land as women. There is even land for the widows in their late husband land just that the portion they do give them is small which is because the land redistributed to us is small not enough for all". This seems a new information to many of the participant of the focus group study that are from the Province. One of them was quick to say, "This is new to me. I do not know of any rights that permit us to own land in any way. All I hear is that women should go to their husbands to claim land and I also know that land belong to men and we gain access to it through them.*

This contradicts the perspective of human right theory which advocates equal property right between men and female.

It is established that different societies approach gender issues in different ways. Within the Zulu clan, there are communities where women are allocated land as owners, while many others completely deny women of land rights.

## **5.4.2 Factors Impeding Women Land Rights**

In KwaZulu-Natal province, it was discovered that so many factors are responsible for the denials of women's land rights. These factors will be analysed in this section with the theoretical and conceptual frameworks adopted in this work.

### **5.4.2.1 Religion and Cultural Norms**

Culture is best understood as a specific way of life of a defined group. It encompasses the values that each member holds and the norms they follow. While religion has to do with the spiritual belief of a person, or that of a group of people. These two play significant role on the women land rights in the area of study. Culture and religion are interwoven and shape the life of all beings. The effect of the two on people's lifestyle dates back decades. The South Africa Constitution protects freedom of religion because South Africa is a culturally diverse country made up of people with different spiritual practices.

Culture and religion play major roles in the denial of women's land rights within the rural communities of KwaZulu -Natal Province of South Africa. One of the respondents who resides in one of the rural communities maintains that the major religious practises in her area are Christianity, traditional religion and very few practise Islamic religion. She further said that Islamic religion is not recognised in the constitution. An incident ensued when a man died and the wife wanted to lay claim to his land, but was denied access to the land by the family. So the woman reported the case to the customary law. Her case was dismissed because there was no provision for her case in the constitution. This is because she claimed she had married her husband under the Islamic religion. She was therefore asked to vacate the house and the husband's land along with her children since her evidence of marriage was invalid and unacceptable to the community.

Another respondent maintains that Christianity gives men upper hand over women and that religion does not recognize the place of property rights for women. She said what makes the case worse is the fact that men are mostly the heads in all Churches and places of worship for Christians. They make use of the single place in the bible where women are said to keep quiet and not to teach in churches and allow men to talk while women are not. These men are said to place rules on women. 1 Timothy 2: 11-12, *“let the woman learn in silence with all subjection. But I suffer not a woman to teach, nor usurp authority over the man, but to be in silence”* (Holy Bible 2004). This is why many churches will not have females as their spiritual heads because they believe women’s place is just to obey men in all matters without questioning their authority. Men arrogate absolute authority to themselves and put women under obligation to be subjected always in all matters. Any woman that does otherwise is considered arrogant and ignorant of the scripture, while others believe that Jesus allocated more responsibilities to women in a better way when He was in the world and the early churches even gave them roles to play in the ministry.

Thus, the perspective of Christians’ version of equality was affirmed by Apostle Paul. According to him, there is no difference based on gender, birth or status. All had the same privileges and blessings as God’s children.

Galatians (3: 27-29) opines:

*For as many of you as have been baptized into Christ have put on Christ. There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for ye are all one in Christ Jesus. And if ye be Christ’s, then are ye Abraham’s seed, and heirs according to the promise* (King James Version 2010).

Another respondent cuts in that “knowing and protecting your rights as women does not make you less submissive”. The same scripture that said women should “keep quiet” also talked about the exploit of women among Gods special people, the Israelites. She recalled the story in the Holy Bible, where the Israelites were being tortured by the enemy on all sides it was a woman named Deborah that rose up to lead men to the war to conquer their enemies. She was not an ordinary citizen but a judge according to Judges 4 (The Holy Bible, (2004) “and Deborah a prophetess, the wife of Laphidoth, she judged Israel at that time” Judges 4:4. Men only see and say things that benefit their ego sometimes in the Bible.

A respondent opposed gender equality and opined this, “Even Islamic religion forbids women equality with men and the traditional belief upholds the custom of the ancestors and hold(sic) on to how things have always been in the society in decades past”. That is, the role of a woman is in her husband’s house. She affirmed that, in practical terms none of these religions support gender equality among their worshippers. Thus, religion and culture restrict the freedom of women’s fundamental rights and choices because these rules are not placed on men. This contradicts the theory of Liberal Feminism, as an individualistic form of feminist theory whose focus is on women's ability to maintain their equality through their own actions and choices.

Meanwhile, a respondent confirmed that the Quran, the holy book of the Muslims, did not discriminate against women in any verse in the whole book. It was gathered by a respondent that the Quran makes it clear that there should not be any superiority between genders. In fact, women are more favoured in the Quran than men. For instance, women are not to spend any of their earnings during her marital life, by way of property or work. She is not even allowed to spend it on the household.

Women still face discrimination in for men and women are the same. Meanwhile, when women have certain concessions because of their feminine nature, their health or the health of the babies, “women are still discriminated against in Islam”. Also, the Islamic inheritance law give men a higher share than women. As a respondent queried, if the baby is a product of both men and women so why should women be the only one to be singled out here? Also, in the Muslim culture, a woman is not permitted to lead prayers in the mosque, in some extreme situations, women are not permitted to work or relate freely with men.

It is believed that the distinctive feature of a community is its culture; each community shares the same cultural norms. But, women land rights are perceived differently in KwaZulu-Natal which is predominantly occupied by Zulu descendants. There is the tendency to see African culture as homogenous and universal, but each community has some unique belief systems, despite the universality of some aspects of African culture. The assumption is that the Zulu community is governed by one traditional system. This is true to a very large extent, but the dilution of African culture with the advent of modernization has led to changes in the perceptions of some communities in the province. Two communities from KwaZulu-Natal, one community in uThungulu District Municipality allows women to farm and inherit land from their husbands,

while another community in Msunduzi Municipality consistently engages in denial of women's land rights and their rights of inheritance (Classens & Ngubane 2008)

A respondent said she is aware of the differences in the communities but has no valid answer to the causes of the differences in their dispositions towards women's land rights. She also wondered why the Traditional Councils in the communities operate on different principles when it comes to land rights for women. The Mchunu Traditional Council, allocates land to single women in the community, while the case was not the same in Msinga, a neighbouring community. The Traditional Council of Msinga does not allocate land to single women, the council resists the demands of single women for land in their own rights

A respondent made her contribution thus: "I think those in authority in the communities react to this issue differently". But in general, declining rate of marriage, increase in divorce and separation in marriages undermines the system. This complicates the issue of land rights for women. For instance,

*A woman's marriage collapsed(sic), and then she goes back to her neighborhood, with her brother in charge of family properties, supported by his wife. This poses a glaring conflict. Can the land she possessed when she was single or widowed be returned back to her? What will be the inheritance rights of the woman's children, knowing full well that they are bearing another man's name? Will the children not have 'double' inheritance status if they inherit land in their mother's family and have land inheritance in their father's household?*

Despite the evidence of divergent approaches to some issues in rural KwaZulu-Natal, a respondent insists that there is a unifying law and traditional belief system in the province, but each community acts based on the stance of its traditional ruler or chiefs. This has in turn affected women's land rights.

Aggregates of responses during the focus group study revealed that in Pietermaritzburg area more women are denied of property rights than those around Richards Bay where women enjoy land rights. Thus, the denial of women's land rights is not a universal occurrence, but is dependent on many factors, which could be the level of literacy, the composition of that community, the disposition of the men to women, and the religious beliefs of the predominant

members of the community. Denial of women's land rights on any ground goes against Capability Approach which talks about wellness and equality. Customarily a woman is not to report her husband and if she does it will be to the male chiefs. A respondent asked, "Of what use would it be? Men will always support women's subjugation". This possibly explains why women refrain from reporting their husbands to the elders, knowing full well that they would not be granted fair hearing.

#### **5.4.2.2 High Level of Illiteracy**

It was discovered during the course of the interview that, some women in the rural communities of KwaZulu-Natal are not even aware there exist land rights for women because they are not educated or enlightened. It takes knowledge and understanding to know one's rights and demand for its actualization. Despite the efforts of organizations like AFRA and KwaZulu-Natal Christian Council to educate the rural women on their land rights through many programmes, most women in the rural areas are still ignorant of their land rights.

According to a respondent

*Levels of illiteracy in the rural areas are by far higher than those in the city. A huge number of women living in the rural communities can neither read nor write. This is a major factor impeding their access to land. Some attended school in the village, staying in the village all their lives and have no inkling about women's access to land in the cities and provisions made for the eradication of gender discrimination in the country.*

This aligns with the human rights theory which believes women should no longer be discriminated against.

Some level of enlightenment is necessary to successfully manage commercial farming in the nationally and globally competitive markets. Since majority of these women are adults, there is a need for the government to set up a compulsory adult education centres in the rural areas, and materials for studying should also be provided to encourage and enhance their quests for education. A respondent says she does not go to school because she does not have the opportunity to do so. She was the only girl-child in the family. She was always busy with house work and she accompanied her parents to the farm but now she is old and ready to go to school so that she could learn to read as that has really affected her relationship with her customers who

buy things in the farm. She also believes being educated will help her attain higher farm productivity. Some people come to the village sometimes to educate them on agriculture and they always give them study materials but she has not benefitted from this because she cannot read it.

Another respondent said she knows some women were allocated land in a neighbouring community but not in theirs, but she was never aware of the existence of any law that supports women unrestricted access to land. The land she is working on belongs to her husband and she has no right to the farm's output. However, majority of the work on the farm falls on her shoulders, while her husband gets all the money made from the sales of the farm produce. In most cases, women receive only a paltry amount of money from sale of the produce which is not commensurate with their labour. Another respondent says she has heard about the Rights but does not know how it works or who to consult in relation to land issues. The respondent was wary of the possibility that her husband and community chief could know if she consulted others. Indeed,

*The community will interpret such acts differently. It will look as if their husband does not have control over us and that can make us lose our marriage. We will be termed rebellious. So many rural women are even afraid to ask for their rights because they believe it could have an aftermath they might not be able to handle. Government intervention is needed here to ensure that our land rights are protected.*

Formal education might not necessarily be a roadmap to productive agriculture; however, there is the need to acquire the required knowledge for agricultural improvements.

#### **5.4.2.3 Patriarchy**

Patriarchy refers to male domination. But the extent may differ. In African Countries and in other parts of the world, men dominate in the society. Africa operates a patriarchal society where men dominate in all areas of endeavour: church, politics, economy, family and labour (Albertyn 2009). This typically against the theory of liberal feminism which emphasized equality between man and woman.

The African culture and norms even support male's dominance and female's subordination and has become a normal phenomenon to many. Some of the stakeholders of land reform

programmes hold that the expansion of women's rights translates to the usurpation of men's authority. The word 'women's subordination' refers to the inferiority position of women coupled with their lack of access to resources and decision-making. This is contrary to the view of Capability Approach which believes everybody should have the right to be whatever he/she wants to be and it goes against the patriarchal domination that women are subjected to by men.

Thus, Sultana (2010) maintains that, "*women's subordination is a situation, where a power relationship exists and men dominate women. The subordination of women is a central feature of all structures of interpersonal domination, but feminists choose different locations and causes of subordination*" (Sultana 2010: 7).

Contemporary feminists argued that because men see women as being basically different from them, women are therefore seen as subordinate to their male counterparts.

A respondent said the case of Patriarchy is worst because since the society in which we find ourselves believe women are of lower value than men, so many women have conditioned themselves to this and they feel inferior to men and even go against their contemporary women who are willing to fight for their rights.

A Respondent commented on some who see women's rights advocacy as an attempt to destabilize the existing social order and stability. There is the belief that women should take care of the home and leave the land and its productivity to men. This is gender discrimination and inequality which Feminism stands against. A respondent during the focus group staunchly opposed this assumption and argued that women have proved to be good managers of respective homes and can transfer their management skills to enhance farm productivity and effective land management. He explained further, "Africa women and women all over the world had proved that they can even do what most men cannot do if given(sic) chance".

Patriarchy is seen as the prime obstacle to both the advancement and development of women (Sultana 2010). Therefore, women can be possessed but cannot own land. According to another respondent, relating to women as a property is more common in Southern Africa, a drastic change from such a perspective. Customary law in some African countries like South Africa reinforces patriarchy. While the constitution is supreme, lack of knowledge of the constitutional provisions of women's land rights results in the continued popularity of customary laws in

relation to gender discrimination. Based on the report of a respondent, “society is changing and customary laws also undergoing changes since 1994, which permits women to own land in my community (this is close to Richards Bay). I actually have a land that I bought by myself”. This aligns with the capability approach which postulates that individuals should be allowed to live the kind of life they wish to and be whatever they wish to be without any constraints.

Another respondent said she has a land but it was bought under her husband’s name “because in our culture everything you have belong to your husband even including you”. This still describes the patriarchal culture in the communities which does not permit women to buy land in their own community. Since the land is in the husband’s name, the husband is still the owner of the land. In support of the patriarchal nature of African society, Classens & Ngubane maintains that:

*Women are treated as secondary holders whose rights are dependent on, and subservient to, those of men. even where law and policy provides for joint vesting of rights in men and women, administrative and conveyance tend to favour rights being registered in the name of one male as householder (Classens & Ngubane 2015: 168).*

A respondent also posits that; women should have land rights in order to be empowered. This corresponds with the liberal feminism theory, which advocates for women property rights.

Another male respondent said his wife has her own separate land in her own name and he has his and there is no conflict about that. A respondent maintained that, the cultural practice in each community determines the extent of the freedom of women in upholding land property. Some women may go to the extent of hiding property from their husbands just to put it in their name and not in the husbands’ name. This might be because they think if the husband knows it will become a problem and these women want their freedom in any way. It is important to view marriage through the lens of Christianity, which holds that whatever belongs to the wife belongs to the husband and whatever belongs to the husband should be for the use of the wife. The name on the title deeds ought to be seen as just an instrument for registration of property and not necessarily in terms of real ownership. In this situation, both husband and wife have equal access to the land.

#### 5.4.2.4 Women and Land Utilization

Women are seen as the vulnerable gender in the society. Many men see them as the ‘weaker vessels’ and do not see any need to give them land. Yet, they ignore the assertion that women are great managers as demonstrated in their homes, based on women’s multi-tasking nature. They have the capacity to multi-function as shown in their roles as daughters, sisters, wives and mothers, which gave them the opportunity to handle various important family issues, all at the same time. If empowered financially, women could bring their management prowess to drive the land productivity schemes of the government.

To utilize land effectively and productively, a large amount of funds is required. A respondent, who is a small-scale farmer posits,

*Money is required to expand your land. You need money to buy modern tools and seeds. You need money to hire labourers. You cannot do a lot in the farm if there is no enough money. Even money is needed for labour purposes. But in this community, women cannot go to bank to obtain loan because we do not have properties that can be used as collateral. Many women cannot even belong to corporative societies.*

In some communities in KwaZulu-Natal, the consent or signature of a man is requested before land is allocated to women. In cases where a woman gets land, this must be registered in a man’s name. This is the same practise for obtaining a loan from financial institutions. Property is what is requested to seek financial assistance. The woman respondent reveals that. ‘Women are therefore made ineffective in agriculture because the resources are lacking and not that women are neither incapable nor unwilling to work as some men made people to believe’. She further ascertained that if women were given the financial assistance men enjoys in relation to land, women will definitely do more and achieve greater Agricultural productivity than men.

This out rightly contradicts the condition of Property Rights. Property Right enables an individual to take whatever decision he/she likes about her property, without jeopardising the interest of others. A respondent, who is a lawyer, further maintains, “property rights provide individuals with protection from property expropriation without compensation, the right to buy and sell their properties as they wish (an asset that can be used to secure loans), and the rights to enjoy and enhance the benefits of a possession”. As evident in South Africa, the few that are land

beneficiaries through land reform do not have the resources to make the land productive. A respondent, a woman who owns land, maintains that women were given land in her community. The only challenge they have is money and other necessary support. She says women, if empowered, could bail South Africa from land unproductivity and farm dilapidation. She concludes, “But as it is, we do not know where to go for financial help. Government is not forthcoming in helping us”

Another respondent maintains that men seem to be more productively involved with farm than women, but they lack farming skills, capacity or strength, they are just favoured by societal norms which elevates them in terms of access to resources, more than women. Customary laws support their superiority, while legal frameworks that tend to abolish gender discrimination, have been very ineffective. Because men dominate every sensitive institution, like land agencies, they allocate the greater part of societal resources to men, while women are left to grapple with the remaining meagre resources.

#### **5.4.2.5 Land Redistribution and the Roles of Traditional Leaders**

Traditional leaders and chiefs are not well-disposed towards promoting women’s rights in the rural areas of KwaZulu - Natal. Instead of assisting the government to implement the existing laws that favour gender equality, majority of them are taking steps that further impede women’s rights in their communities. So many of them still hold onto history and they do not see any reason why woman should be placed on the same level with men. At the same time many traditional rulers are of the belief that women should never be granted autonomy in any aspect except to always follow the rules given them by their husbands.

Thus, there are many cases of traditional leaders denying women of land rights despite the fact that they are aware that they have no legal rights to do so since the law of the land forbids gender discrimination. The traditional rulers are actually in a privileged position. They are the closest to the people than the government and they ought to be promoting the government’s agenda. Albertyn (2009) maintains that:

*Although traditional leaders and their organisations, the Congress of Traditional Leaders of South Africa (CONTRALESA), have been the major advocates for enhancing*

*the status and power of traditional Leaders and for limiting women's rights in the name of traditional power and culture in policy and law reform processes (Albertyn 2009:167).*

Thus, it was discovered that land is still held in terms of 'communal tenure' in rural KwaZulu - Natal. It is clearly shown that land distribution in the Province is not general as seen in the case of the two communities below: Msinga and Mchunu. Msinga is a local municipality that is located in the Midlands region of KwaZulu-Natal, within UMzinyathi District in the KwaZulu-Natal Midlands and comprises communal land i.e. state land occupied by Africans and administered by traditional leadership structures.

The Mchunu Traditional Council allocates land to single women in his community, while the case is not the same in Msinga, the neighbouring community, where the Traditional Council, does not allocate land to the single women and he even resists the demands of single women for land in their own right. Thus, there is unequal land allocation between males and females in Msinga community. This is against Liberal Feminism which believes in achieving equality between men and women and emphasizes the power of an individual person to alter discriminatory practices against women.

#### **5.4.2.6 Women and Farm Labour**

Women who work as farm labourers are not paid the same wages with their male counterparts, which is an indication of gender inequality in the society. On the farm, they are not treated in the same way as the men. In fact, it is confirmed in all the instances given during interviews and focus group sessions that the remuneration of the women differs from that of men. As reinforced by a respondent, "I do not see any reason why there should be gender discrimination in farm labour. Why are women paid less than men on farms? While there is no gender consideration for labour wages in the government parastatals. This is not the system in government parastatals. Although their jobs may be different and subjected to slightly differential payment, but when both are engaged in the same type of labour, they should be rewarded in the same way. It is important to understand that the markets are not operated along gender divide. Both are subject to the same market control price.

Another respondent maintains that it has not been proven that men can work better on the farm than women. She queries why there are differences in labour wages? She maintained further:

“Indeed, this should constitute civil offence punishable under law” Women should not be the objects of cheap labour; instead they should be well remunerated for their labour.

Aside the payment disparity along gender lines, it was reported that some of the farmers extended the women’s labour hours by allocating more duties to them against the job specification and which are not usually awarded to women. For instance, after daily work, women are kept back to perform cleaning duties before closing. Also, wives and relatives of some farmers have turned some women farm workers to ‘errand boys’ or house-helps. Asides working on the farm, they are required to perform domestic chores work like cooking, and without remuneration. Resistance to such usually resulted in a job loss and eviction from farm.

Some are of the belief that, the discrimination against women on the farms are perpetrated by white farmers, but a respondent maintained that the discrimination against women is not only carried out by white farmers but by some black farmers as well. Also, their husbands have expanded the abuse to denials of household resources. A large percentage of men in the study location have abandoned their family responsibilities to the women, especially when such women are working. For women not working on farms, their experiences of discrimination are not so different. Many of them continue to maintain the farms on behalf of their husbands who have migrated to the cities in search of better livelihood. Such men continue to request money from the wives to maintain them in the city and cater for the children left in the villages. A respondent recounted a woman’s experience in her community;

*The woman was in charge of the farm; the husband only comes around every weekend. He would collect all the money made from sales of farm products, leaving the women with very little for her and the children. They went on for so long until an elderly person intervened.*

The man often threatened the wife that he would proceed to marry another wife, who would not be reluctant to relinquish the proceeds from her farm. The fear of losing her marriage was what kept her under the husband’s captivity for so long.

A respondent who talks about how land reform has benefited the womenfolk, especially in poverty alleviation, said “in our community, land reform has really helped us because now women are given land. This has really helped our economic growth. Gender is not a barrier to

land ownership in our side. Land is apportioned to whoever shows interest in farming. Majority of the women in our area has(sic) land they used for subsistence farming, which made it easy for some to be able to feed her immediate family”. This aligns with the focus of the capability approach which talks about the well-being of all and this has reduced poverty in the community.

The historical factors that necessitated land reform in South Africa are a result of the past injustices experienced by the black South Africans irrespective of their gender. Therefore, the promise of democratization should be made available to all the historically dispossessed without any gender consideration. One of the mobilization instrument used by the black elites to garner support for the anti-apartheid struggle was the quest for the land to be given back to the black population. This is in line with Human Rights which is seen as women’s rights.

## **CHAPTER SIX**

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

#### **6.1 Introduction**

This last chapter is comprised of the summary, the recommendations, as well as the general conclusion of the study. This is based on the findings and identifiable policy gaps in the agenda of land reform of the South African state, this section presents suggestible solutions towards a gender- free land reform programme.

#### **6.2 Summary**

The introductory chapter was comprised of the background to the study, research objectives and key questions, the rationale for the study, significance of study, and limitations of the research. The chapter engaged with the women's rights and land reform agenda of the South African state's agenda. It highlighted the different perspectives on the meaning of land. Land is a natural gift, which is indispensable to the entire human race. It is also a factor of production that is vital to human survival; thus, its denial is of immeasurable consequence to people, in particular, the vulnerable groups in the society. Women constitute a vulnerable group, and in KwaZulu-Natal of South Africa, they have experienced land denials, from the apartheid regime to contemporary South Africa.

The subsequent chapter contained the review of literature, the conceptual and theoretical frameworks. The study reviewed relevant work that deals with land reform at the international, regional and national levels, and draws attention to the reality in KwaZulu-Natal. It adopts conceptual and theoretical frameworks to guide the research. In doing so, it lays emphasis on the highly contested human rights as an idea and ideal. It clearly locates the position of women in the human rights project and land reform agenda of the state. Indeed, land is the most contested issue in South Africa. Land reform, the redistribution of land ownership right or a change in the existing tenure system, holds a special place in South African public discourse due to its failure to redress land inequality.

The study adopted a case study approach for proper grasp of land reform and women's land rights in other countries. Countries like China, Japan, Korea, Taiwan, Brazil, Central and Eastern Europe, Mexico, Cuba and Nicaragua, Zimbabwe, Ghana, Uganda, Egypt are used as points of

reference. Their diverse experiences and the importance attached to the reforms clearly revealed the importance of land to global governance and developmental issues.

The country-specific experiences established the provision of legal frameworks in support of gender-free women's land rights; however, the provisions were not met with effective implementation. Women all across the world are still consistently denied of their rights to own and use land. In the case of South Africa, its history of land dispossession has placed a great responsibility on the government to redress all forms of gender inequality with respect to land and land-related matters.

South Africa's land reform programme involves three key elements: land redistribution, land restoration and land tenure.

Land is required for agrarian development, and women, who constitute the majority in the rural areas, require access to land for farming, housing and other purposes. Granting land rights to women is a potent way of addressing the high poverty rate in South Africa, especially rural KwaZulu-Natal, which is predominantly occupied by the historically disadvantaged Black population.

The study also identified with the perspective that sees women's claim to land as broader human rights. Women's rights are concerted struggles to actualize gender equality in the land sector. These are the rights and entitlements of women and girls worldwide, which formed the basis for the women's rights movement in the nineteenth century and the feminist movement during the 20th century. Such movements exposed discriminations against women and constituted organised resistance to women's denial of productivity. This led to the emergence of many human rights groups and non- governmental organizations in the fight against gender discrimination. One of such organizations was CEDAW established in 1967.

An international institution like the United Nations adopted the Declaration on the Elimination of Discrimination against Women. This clearly states that discrimination against women is an offence against human dignity and calls on member states to abolish existing laws, customs, regulations and practices which are discriminatory towards women, and to establish adequate legal protection for equal rights of both men and women. States later adopted and domesticated

CEDAW's legal documents for the promotion of women's rights. South Africa is one of the countries that domesticated its provisions and remains an active member of CEDAW.

The study utilized human rights and capability approach as its conceptual frameworks, while liberal feminist theory was used as its theoretical framework. This enriched the study by locating women rights and feminist theory in context. The capability approach expands the discourse on the rights of individuals to attain their goals without any form of hindrance, which is also at the core of human rights and liberal feminist theory. Women across the globe and in South Africa have demonstrated the fact that women's access to land is a matter of necessity and a requirement to eradicate household poverty, ensure food security and land productivity. Feminist Theory and Capability Approach therefore are useful in the evaluation of the effectiveness of human rights practices, alleviation of poverty and expansion of the standard of living of women.

The study also presented the historical background on land reform in South Africa and revisited land dispossession during apartheid. The excessive land denials of the Blacks during this period justified the imperativeness of land reform in post-apartheid South Africa. Land plays a significant role in the policy of South Africa. It is also major cause of conflict in the post-apartheid era. Despite the more than twenty years of majority rule, the country is still confronted with the land question. That is, land inequality and other issues on land remain unresolved. For better understanding and systemic presentation of data, the history of land reform was divided into the: segregational, (1910- 1948) and apartheid (1948-1990) and post-apartheid era (present era).

Segregation era dates as far back as a period of deliberate and highly organized systematic exploitation and oppression of the non-European people by the Europeans. This was the period that the South African people were subjugated and brought under the authority of White settlers. The discovery of mineral resources in the country became a strong motivation for the settler form of colonization experienced by South Africa. The Blacks were 'forced' into cheap labour under the oppressive power of the whites.

The apartheid era was characterised by the political policy of racial segregation in South Africa. It was pioneered in 1948 by the South African National Party when it came to power. Not only did apartheid separate whites from non-whites, it also segregated the Blacks (Africans). During this period, there was a violently repressive policy designed to ensure that whites, who were the

minority of the population, dominated the majority blacks. It is best described as a time of racial zoning in South Africa.

Post-apartheid era was the transition from apartheid to democracy and majority rule in 1994. This was the period when the Black South Africa assumed political power and all the institutions and instruments of apartheid and oppression of the majority was transformed and dismantled. It was a period characterised by nation building and concerted efforts at redressing the historical injustices and empowerment of the Blacks. Land reform was part of the major ways to address this injustice. It was specifically emphasized in the study that continuous denials of women's rights are a failure of the state's reform agenda, since for any policy to be meaningful in the land sector, women rights must be at the centre of it.

Across the country, particularly in rural KwaZulu-Natal, the study found cases of women's denials of land access, use and ownership. This is antithetical to the goals of land reform as revealed by early post-apartheid political leadership that integrated women land rights in the post-apartheid constitution. The State is confronted with different factors that impede the implementation of gender-free land policy, among which are cultural and religious norms, patrimony, high level of illiteracy and other factors enumerated in the study. The denials of women's land rights, as experienced in KwaZulu-Natal and other regions of the country explains the persistent household poverty, underdevelopment of the rural areas, food shortages, and land unproductivity, which have become important issues in South Africa. Generally, the study thus affirmed that land reform has failed to redress land inequality in the country.

### **6.3 Recommendations**

Based on the data generated and analysed, the study generates the under-listed recommendations, which if well implemented will fill the identifiable policy-gaps in the land reform-women's rights divide. This will help in the resolution of the current land conflict and the access women has to land in KwaZulu-Natal Province as well as in the country at large.

1. Women should no longer be treated as subsidiaries and inferior class in their communities. They should be accorded due respect which should reflect in their access to

all the societal resources and participation in key decision making processes in their communities.

2. The government should conduct a study on the access women has to land to determine the percentage of land under women's use and ownership. This is useful to determining government's intervention in the denials of women's rights.
3. Women should also be encouraged by government and other stakeholders to become more involved in land use.
4. The government should oversee lands distributions by the traditional leaders. Since land distribution in the rural areas are carried out majorly by traditional rulers, a body should be set up by the government to oversee the transparency, impartiality and free distribution to all their community members irrespective of gender
5. In the land reform panel set up by government, many women complained of not being well represented. Women should be well represented in committees or panels where decisions about issues that affect women are taken. Women have become victims of land reform; thus, they should be effectively represented in every public discussion on resolving land issues and land inequality. It is important for women to benefit from South Africa's democratization and control of societal resources.
6. The government should be open to the needs, demands and expectation of women, especially those in the rural areas. It is vital to dialogue with the traditional rulers towards respecting the rights of women as prescribed by the constitution and as members of the community. Government may have to engage with the women to capture their perspectives without the presence of household and community leaders, which are predominantly men.
7. The government should provide title deeds to women working the land, and make the process of land registration very easy for all. It may be helpful for government to interact and collaborate with the financial institution towards granting loans to omen.
8. The government should provide support systems to women farmers generally, especially for those with no access to bank loans.
9. Land reform should be more directed at agrarian development and empowerment of small-scale farmers who are predominantly women in the rural areas.

10. It is important to organize a workshop for rural women farmers periodically to educate/orientate them on agriculture and other uses of land.

## **6.4 Conclusions**

The analysis presented in this study is based on the outcome of the data collected through both the primary and the secondary sources. This helps in the expansion of knowledge about/regarding the rights of women and land reforms in South Africa, specifically in KwaZulu-Natal. Indeed, post-apartheid governments in their pursuance of land reform have tried to redress the historical injustice of foreign domination, but many policy gaps undermine their efforts. A major contradiction in the land reform scheme is the evident gender discrimination in respect to land access and ownership. Based on field study that engages different actors (both male and female) with differing perspectives on land and women land rights, the women of rural South Africa, particularly the rural community people of KwaZulu-Natal, are found to enjoy more land rights recently than was the case decades ago.

In many parts of South Africa, and location of this study as revealed by this work, women, specifically, unmarried and widows have been allocated land for use unlike previously. This change was made possible by the intervention of the government and the women's rights organizations. Meanwhile, it has also been discovered that majority of these women are still denied equal rights to land as stipulated by the constitution.

It is evident that, most women in the Province of KwaZulu-Natal reside in the rural areas. They still live in the former homelands and are put under the leadership of traditional authorities or councillors. And majority of these women live in abject poverty and lack a sense of belonging as they are denied of important assets in the society. The study has exposed all stakeholders to the limitation of the prevailing land reform and proffered sustainable suggestions towards the removal of all land inequality. Many women in the villages and even urban areas are tenants; provision of land access could transform them from tenants to land owners. This is very vital for agricultural productivity, where land ownership is a motivation for long-term investment in the sector's realization of women's land rights will offer immense contribution towards the economic growth of South Africa, minimize the poverty rate, and increase wealth generation at the household level.

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**ETHICAL CLEARANCE FORM**

UNIVERSITY OF

KWAZULU-NATAL

INYUVESI

YAKWAZUW.NATALI

12 October 2018

Mrs Modupe Adenike Akinola 218083162

School of Social Sciences

Pietermaritzburg Campus

Dear Mrs Akinola

Protocol Reference Number: HSS/1537/018H

Project title: Women's rights and land reform in South Africa: A Case study of KwaZulu-Natal Province

Full Approval — Expedited Application

In response to your application received 4 September 2018, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted FULL APPROVAL.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

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

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

Yours faithfully

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Dr Rosemary Sibanda (Deputy Chair)

Humanities & Social Sciences Research Ethics Committee

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Cc Supervisor: Dr Khondlo Mtshali cc Academic Leader Research: Professor Maheshvari Naidu  
cc School Administrators: Ms Nancy Mudau

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Humanities & Social Sciences Research Ethics Committee

Dr Shenuka Singh (Chair)

Westville Campus, Govan Mbeki Building

Postal Address: Private Bag , Durban 4000

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YEARS OF ACADEMIC EXCELLENCE

Founding Campuses Edgewood

Howard College Medical School, Pietermaritzburg, Westville

## INTERVIEW INSTRUMENT

### Prospective Research Questions

The research will be guided by the following questions:

A. What are the historical factors that necessitates land reform in South Africa?

Other supporting questions:

How important is the need for land reform?

What are your perspectives on the land question, especially based on the realities in KwaZulu-Natal Province (Pietermaritzburg, Durban South, Eden dale, Mbali)?

Can you provide an overview of the reason(s) for land dispossession during Apartheid?

Was the land dispossession influenced by gender considerations?

B. What is the place of woman rights in the land reform agenda of the South African government?

Other supporting questions:

Are you aware of legal instruments (international and national) for the promotion of women rights?

Give an assessment of women rights as enshrined in the South African constitutions?

How has the land reform scheme protected the interest of women?

What are the factors responsible for gender discrimination in the land sector?

C. How effective are the implementation of women land rights in South Africa?

Other supporting questions:

In reality, do you think women rights have been effectively implemented in South Africa, especially in rural areas?

Discuss the implementation of Legal Instrument for Women Land Rights?

Are all women aware of these rights?

D. How has land reform benefited the womenfolk's, especially in poverty alleviation?

Other supporting questions:

How important is land resource to your survival?

How have you benefited from land reform, in terms of human capacity development and improvement in livelihood?

E. What are the factors responsible for the denials of women land rights in the country?

Other questions: Factors like culture, religion, tradition, education, and urbanization etc.?

F. What are the best approaches to resolving land conflict and marginalization of rural women in relation to their land right?

Other supporting questions: What can the government, community leaders, women groups improve on?

## INFORMED CONSENT



University of  
KwaZulu-Natal School of  
Social Sciences

### DECLARATION OF CONSENT

**PROJECT TITLE: Women Rights and Land Reform in South Africa: A Case Study of KwaZulu-Natal Province.**

#### RESEARCHER

Full Name: Akinola, Modupe Adenike  
Mtshali

School: Social Sciences

College: Humanities

Campus: Pietermaritzburg

**Proposed Qualification:** Masters in Social Science

Contact: 0786802910

Email: 218083162@stu.ukzn.co.za

#### SUPERVISOR

Full Name of Supervisor: Dr Khondlo

School: Social Sciences

College: Humanities

Campus: Pietermaritzburg

Email: Mtshalik@ukzn.ac.za

#### HSSREC RESEARCH OFFICE

Mr Prem Mohun,

University of KwaZulu-Natal,

Research Office: Ethics

Westville Campus

Phone number: 0312604557

Email: mohun@ukzn.ac.za

My name is Akinola, Modupe Adenike. I am a Masters candidate studying at the University of KwaZulu-Natal, Pietermaritzburg Campus. The title of my research is: *Women Rights and Land Reform in South Africa: Case Study of KwaZulu-Natal Province*. The aim of the study is to

explore the relationship between land reform and women’s right in South Africa, with a focus on KwaZulu-Natal Province. I am interested in having a focus group discussion/interview with you so as to share your experiences and observations on the subject matter.

Please note that:

- Your confidentiality is guaranteed as your inputs will not be attributed to you in person, but reported only as a population member opinion.
- The interview may last for about 1 hour and may be split depending on your preference.
- Any information given by you cannot be used against you, and the collected data will be used for purposes of this research only.
- Data will be stored in secure storage and destroyed after 5 years.
- You have a choice to participate, not participate or stop participating in the research. You will not be penalized for taking such an action.
- The research aims at knowing the challenges of your community relating to resource scarcity, peoples’ movement, and effects on peace.
- Your involvement is purely for academic purposes only, and there are no financial benefits involved.
- If you are willing to be interviewed, please indicate (by ticking as applicable) whether or not you are willing to allow the interview to be recorded by the following equipment:

	Willing	Not willing
Audio equipment		

**DECLARARTION FOR CONSENT**

I..... (Full Name) hereby confirm that I have read and understand the contents of this letter and the nature of the research project has been clearly defined prior to participating in this research project.

I hereby consent/do not consent to Audio-Recording

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

Participants

Signature.....

Date.....

**GATEKEEPERS LETTERS**



UNIVERSITY OF  
KWAZULU-NATAL

University of **KwaZulu**  
School of Social Sciences  
Discipline of International & Public **Affairs**

Postgraduate Research  
Researcher: Modupe Adenike Akinola  
(Phone: 0786802910; Email: 218083162@stu.uen.ac.za)  
Supervisor: Dr Khondlo Mtshali

Gatekeeper's Consent

I Laurel Oettle.....in my capacity  
as Director.....hereby give

permission to (Modupe Adenike Akinola) to conduct research in my organization or engage with an official of the organization. The research is titled, "Women 's Right and Land Reform in South Africa: A Case Study of KwaZulu-Natal Province".

The student MA ~~MAY NOT~~ mention the name of the Official or that of organization in the research report. Thus, the engagement is guided by the principle of anonymity.

Signature of Manager/Omcia VGatekeeper.....

Date.....07/09/2018.....

ASSOCIATION FOR  
ADVANCEMENT  
123 JABU NDLOU S  
PIETERMARITZBURG  
PHONE: 033 345 7607

The School of Social Sciences  
College of Humanities



UNIVERSITY OF  
KWAZULU-NATAL

University of KwaZulu-Natal  
School of Social Sciences  
Discipline of International & Public Affairs

Postgraduate Research  
Researcher: Modupe Adenike Akinola  
(Phone: 0786802910; Email: 218083162@stu.ukzn.ac.za)  
Supervisor: Dr Khondlo Mtshali

Gate  
keeper'  
s  
Conse  
nt

I, Megashudih Ngqobane in my capacity as Deputy CEO  
permission to (Modupe Adenike Akinola) to conduct research in my organization or end

. . . . .hereby give  
or engage with  
an official of the organization. The research is titled, "Women 's Rights and Land Reform in  
South Africa: A Case Study of KwaZulu-Natal Province".

The student ~~MAY/MAY NOT~~ mention the name of the Official or that of organization in the  
research report. Thus, the engagement is strictly guided by the principle of anonymity.

Signature of Manager/Official/Gatekeeper: ..... *h. g. g. g.* .....

Date: ..... *04 September 2018* .....

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