

**Exploring The Efficacy of Customary Tenure as A Tool for Rural Development
and Food Security in Vhembe District of South Africa: An Indigenous
Knowledge System Perspective**

by

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Declaration

I, **MAWERE JOSHUA**, hereby declare that this research thesis is my original work and has not been submitted for any degree at any other University institution and that it is my own work in design and execution, and that all reference material contained therein has been duly acknowledged.

Signed (student): **Date:**

Dedication

This work is dedicated to my wife Nyasha Terry (Dolly) Mawere, for her help and commitment towards my doctoral degree

For my mother, Patricia Mawere for her help during my whole schooling

For my daughter Tameeka Kunaishe Mawere, for being my source of motivation.

For my siblings Rangarirai Kamukwedze, Blessing Mawere, and my sister Ratidzai Kamukwedze for their contribution towards my schooling vocation.

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Abstract

In South Africa, numerous interested parties have expansively debated the relevance and place of customary tenure as a mechanism of land reform and a tool for rural development and food security. At the core of the debate is the notion predicated on the supposition that customary tenure is insufficient a tool to realise any meaningful rural development, thus a threat to food security. Therefore, the aim of the study was to examine the effectiveness of the South African customary tenure as a tool for rural development and food security. The study thus challenged the inherited colonial legacies which continue to militate against African Indigenous Knowledge Systems. The key concepts grounding the study were deeply entrenched on modernisation, adaptation and renaissance framework. These frameworks underpinned the reasoning of the thesis in a bid to address the thorny issue of customary tenure in Vhembe district of South Africa. An exploratory qualitative design and a doctrinal approach was adopted. Semi-structured interviews, case, overt observation, and focus groups were used to obtain the data. The information was gathered from traditional leaders, municipal managers, and other knowledge holders using a non-probability sampling method. Thematic data analysis was used to analyse the data. The data collected envisaged that customary tenure can be formerly developed to promote rural development and food security for rural communities.

Key terms

Customary land tenure, rural development, food security, traditional leaders, indigenous knowledge, Common Law.

List of Abbreviations

AFDB: African Development Bank

ANC: African National Congress

AUC: African Union Commission

BERCD: Bureau for Economic Research, Co-operation and Development (South Africa)

CPA: Communal Property Association

CONTRALESA: Congress of Traditional Leaders in South Africa

CRPD: Comprehensive Rural Development Programme

DA: Democratic Alliance

DLA: Department of Land Affairs

ECA: Economic Commission for Africa

EFF: Economic Freedom Fighters

FAO: United Nations Food and Agriculture Organisation

FGD: Focus Group Discussion

IK: Indigenous Knowledge

IKS: Indigenous Knowledge Systems

IPILRA: Interim Protection of Informal Land Rights Act

ITLIGS: Indigenous and Traditional Leaders Indaba with Government and Stakeholders

NP: National Party

PLAAS: Institute for Poverty, Land and Agrarian Studies

LARC: Land and Accountability Research Centre

PPE: Protective Clothing

SADT: South African Development Trust

SAHO: South African History Online

SARS: South African Revenue Services

UN: United Nations

USAID: United States Agency for International Development

VDC: Venda Development Corporation

TLGFA Traditional Leadership and Governance Framework Act

EPWP Expanded Public Works Programme

Published Articles/Book Chapters

The following publications are based on, or include aspects of, this research:

1. **Mawere, J.**, Matshidze, P.E., Kugara, S.L., Madzivhandila, T.S., 2021. Harmful Development Projects vis-à-vis Conservation of Sacred Sites: Makwarela, Tate Vondo and Phiphidi Case. *African Journal of Sociological and Psychological Studies*, 1 (1), 7-30.
2. **Mawere, J.**, Matshidze, P.E., Kugara, S.L. and Madzivhandila, T.S., 2021. The Efficacy of Preserving Communal Tenure in South Africa. *The Oriental Anthropologist*, pp.1-18. DOI: 10.1177/0972558X211033369.
3. **Mawere, J.**, Matshidze, P.E., Kugara, S.L. and Madzivhandila, T.S., 2021. "Much Ado About Nothing": A Review of Communal Land Laws in South Africa. *Journal of Public Administration*, 56 (2), 233-249.
4. **Mawere, J.**, Matshidze, P.E., Kugara, S.L. and Madzivhandila, T., 2022. Causal linkages between communal tenure and food security: A case of Vhembe District, South Africa. *African Renaissance Journal*, 19 (1), 307-327.
5. **Mawere, J.**, Hungwe, N.A., Kugara, S.L., Matshidze, P.E., Mdhuli, T.D. and Vuma, L., 2021. The Legality of Expropriating Land without Compensation in South Africa: A Regional and International Law Perspective. *African Journal of Development Studies (formerly AFFRIKA Journal of Politics, Economics and Society)*, 2021(si1), pp.243-264.

Book Chapter

1. **Mawere, J.**, Matshidze, P.E., Kugara, S.L. and Madzivhandila, T., 2022. The Role and Significance of Traditional Leadership in South African Local Governance. In *Handbook of Research on Protecting and Managing Global Indigenous Knowledge Systems* (pp. 249-273). IGI Global. <http://doi:10.4018/978-1-7998-7492-8.ch014>

Chapter One

Study Overview

“Prior to the European’s arrival on South Africa’s shores, land tenure systems amongst indigenous societies accorded to all members of the community rights of access to a reasonable share of the land, and to those natural resources available to and claimed by that community.”

- Rugadya (2020: 41).

1. INTRODUCTION AND BACKGROUND

In South Africa, numerous interested parties have expansively debated the relevance and place of customary tenure as a mechanism of land reform and a tool for rural development and food security in a democracy. Food and Agriculture Organisation Land Tenure Studies (Food and Agriculture Organisation (FAO) (2002) argues that “at the core of the debate is the notion predicated on the supposition that customary tenure is insufficient a tool to realise any meaningful rural development, thus a threat to food security”. Therefore, the aim of the study was to examine the effectiveness of South African customary tenure as a tool for rural development and food security. The key concepts grounding the study were deeply entrenched on modernisation, adaptation and renaissance framework. These frameworks underpinned the reasoning of the thesis in a bid to address the thorny issue of customary tenure in Vhembe district of South Africa. The chapter gave an outline of the background, significance of the study, aims and objectives, problem statement, gap that the study is going to cover, definition of concepts and lastly the chapter outline. Therefore, the chapter served to introduce the study by giving an overview of customary law land tenure in South Africa.

The relevance and place of customary tenure as a tool for rural development and food security remains a contested issue. The World Bank (2007:2) states that “some in the past have seen customary tenure as unregulated capital holding back the ability of the

poor people to succeed and prosper”. Arko-Adjei (2011: 31), argues “some have also argued that the flexibility and fluidity of customary tenure arrangements are tantamount to tenure insecurity, thus leads to market inefficiencies”. The idea that customary tenure is an inadequate vehicle for realizing any significant rural development and, thus, a threat to food security was at the center of the dispute (FAO Land Tenure Studies 3, 2002). This argument is based on the idea that rural people's ability to be food secure is largely dependent on their opportunities to improve access to resources like land, markets, and other economic activities. (FAO Land Tenure Studies 3, 2002). Customary tenure being insecure as alleged, threatens the chances of rural people accessing land. South Africa, just like most countries geographically located in the African continent, has scars and bruises subsequent to decades of slavery, colonisation and apartheid. South Africa, as a fragment of the greater African continent, used to rely on its own Indigenous Knowledge Systems (IKS), during the precolonial epoch (Kugara, 2017). IKS served as a crucial instrument in South Africa for governing peace, order, and harmony among the population and their spiritual and physical well-being. Lai (2014:2), defines Indigenous Knowledge as “traditional, cultural, local and community knowledge”. However, with the genesis of colonisation, Indigenous Knowledge Systems were demonised and rendered inferior to the European theories, rules and laws leaving their potentials unexploited (Kugara, 2017).

Europeans condemned Indigenous Knowledge Systems and labelled Africa, South Africa included a “dark continent” which required civilisation (Kugara, 2017). They undermined its norms, customs, beliefs and traditions. Colonialists believed that Africans were uncivilised and primitive and as superior human beings, they had the mandate to civilise the uncivilised people of Africa (Ngcukaitobi, 2018). Customary land tenure, as a product of IKS suffered the same fate. Customary tenure was vulnerable to outside intervention, because of the fact that it was established on religious, social, cultural, and political precedents and was imbued with uncodified value systems. Europeans held inaccurate and biased insights of communal land tenure systems. Beinart and Delius (2014) argues that these alleged misrepresentations were a result of the Europeans' deliberate attempts to create a definition of “communal tenure” that would serve their interests.

Europeans wrongly argued that customary tenure was wholly collective and was devoid of notions of individual ownership (Cross 1991; Bennet 2004). Sikor, et al, (2013: 522) contends:

“Many forms of property encountered in Africa are significantly less exclusive than what is normally associated with ownership. This is not to argue that African land tenure is essentially communal, but often several layers of interest in property are recognised as legitimate.”

This argument showed that Europeans misunderstood the concept of customary tenure, thus condemned it as exclusive of individual property ownership. Europeans pervasively interpreted customary tenure through their common law lens (Du Plessis, 2011). The common law lens masked the Europeans reasoning and they perceived customary law as lacking the notion of ownership. As a result, the Europeans declared the notion of ownership as alien to customary land tenure. Chanock 1985: 232) argues that Europeans assumed that "land must always have an owner even where rights have never been defined". Europeans relied on these legal arguments to claim the apparently “unowned land of indigenous communities” (Bennet, 2004). Customary tenure did not identify itself to notions of exclusive ownership, and it is on this basis that Europeans attempted to characterize these systems as a warped version of “trust law” that empowered the chief to hold land on behalf of his tribe (Bennet 2004; Pienaar, 2011). Deeply ingrained, long-standing cultural prejudices that favoured individual or private ownership over communal land tenure influenced their way of thinking.

Europeans critiqued customary tenure and argued that customary tenure entails a domination of group rights and an absence of individual rights or private ownership. Since security of tenure is essential for accumulating production and efficiency, which is the foundation for social advancement and agricultural development, the absence of individual property rights poses a serious threat to that security. Bassett (1993:11) reinforces this issue when he states “land policies in Africa during the ‘land reform decades’ since 1960, were all predicated on the supposition that customary tenure did not offer the necessary security to guarantee agricultural investment as well as productive land use”. Absence of clearly established and enforceable property rights and the absence of sufficient policy direction were cited as reasons why customary

tenure lacked security. According to Eurocentric theories, ideologies and reasoning, individual, private property rights were necessary and of paramount importance (Bassett, 1993; Mamdani, 2018)

The criticisms and legal manipulations of customary tenure worked in favour of the European government's system of indirect rule. The European government subsequently improved and distorted the powers of traditional leaders. They granted traditional chiefs extensive and detailed land-related powers. However, only traditional leaders who would work with the Crown to promote its colonial ambitions and goals received political support from the European government (Bekker 2014). The colonial authority replaced traditional leaders who refused to collaborate with more persuasive ones in order to emphasize its point. (Bekker 2014). The defining of customary tenure as a form of "trust" was extensively welcomed by the European officials and was in future successfully and proficiently used by the apartheid government to further marginalise indigenous Black people in the homelands by creating the South African Development Trust (SADT). The concept of customary tenure practices in South Africa was thus influenced by these Eurocentric warped ideas and attitudes, and tragically they still have an impact on many people's perceptions of customary tenure today.

However, several scholars have vigorously disputed these interpretations of customary tenure in recent years, arguing that customary tenure traditionally included a variety of distinguishing characteristics that have continued to define them. (Claassens and Gilfillan, 2008, cited in Claassens and Cousins, 2008). These authors put across views that disregard the reasoning by the European colonialists in concluding that customary tenure was communal and exclusive of individual rights. Gluckman (1965:101) states that:

"in so-called communal ownership ... every member of a certain social group can claim the right to be given a garden ... and to make certain use of public lands or water... The working of the land and the appropriation of its products in this system of land tenure are highly individualistic"

He also objected to the term "usufruct" being used to characterize the African system of land tenure. This is because, in his view, the term "usufruct" in Roman law refers to

“a person granted the right to utilize the fruits of property owned by another person, whereas the African system of land tenure consisted of a layering of owners” (Gluckman, 1965). The claims made by Bruce and Migot-Adholla (1994) and Aliber & Popoola (2018) support the claim that individual rights are not denied by customary land tenure.

Okoth-Ogendo (2008) defines customary tenure in a different perspective than the descriptions above. He disputes the notion that customary tenure is inherently communal. He also disputes the idea that under customary law, decisions are taken by the society as a whole and “collective ownership” is transferred to a group. He claims, however, that “social relations create reciprocal rights and obligations that bind together, and vest power in community members over land” (Okoth-Ogendo 2008). The rights and obligations resulting from relationships between persons must be considered before determining who has access to or control over land (Du Plessis, 2011). This approach to customary tenure is predicated on the supposition that land dealings under indigenous law are relational. Therefore, rather than focusing on people's entitlement to property, land relations are all about the interaction between people as it relates to a particular piece of land. Cousins (2008) and Mallik (2019) reinforces the argument by Okoth-Ogendo (2008) when he states that customary tenure is “inclusive and socially embedded”.

Their argument is that, land tenure was [and is] both communal and individual. According to Berry (2015), a system of complementary interests is maintained concurrently by various individuals. This concept suggests that each person involved in the system has a unique set of interests that complement those of others, resulting in a mutually beneficial arrangement. This serves to imply that the foundation of customary tenure is the idea that both individuals and families have relative rights to the same property, whether it be for residential or agricultural use. It is possible that these relative rights may occasionally overlap (Okoth-Ogendo 2008). Customary tenure may at times require these individuals or families to negotiate access to communal resources like land for grazing, rivers or forests. In other words, customary tenure is “layered”, with many groups or individuals possessing a range of land rights and interests. (Clark & Luwaya, 2017).

Due to its uniqueness, customary tenure practices require that decisions regarding land be made at different levels and with various people or groups. These comprise individuals, households, kinship networks, and entire communities. In order to place emphasis on this notion, Cousins (2008) attempts to describe the process wherein a man might try to acquire land through customary tenure. He states that the man would first seek permission from his father to use family land, if such land is not obtainable or accessible he would ask his neighbour, and if he remains unable to obtain land in this way he is still at liberty to approach the headman to obtain land in the locality (Cousins 2008). Following these arguments, customary tenure practices are in stark contrast to Eurocentric efforts to give traditional leaders the sole authority to make decisions on land. (Engle, 2011). It seems decision-making under customary law is more inclusive and nuanced. This does not imply, however, that traditional leaders do not have a part to play in decisions about land.

Kerr (2009:39) contends “the rights and interests that individuals or families hold over residential and arable land are much more individualised than traditionally believed with people exercising strong rights of occupation, use and access to the exclusion of others”. This argument is in contrast to the Eurocentric notion that customary tenure excludes individual ownership. Hence the colonial and apartheid governments, according to Yaro (2010) ignored and undermined indigenous knowledge systems that emphasised exclusive use by individuals or families. In order to buttress this argument Kerr (2009) gave evidence of these exclusive rights. He used the possibility of a household returning to a residential area after leaving as one of his examples. In addition, Kerr (2009) refers to court precedence where judges during the apartheid epoch “referred to these land rights as titles”. According to Udry (2011: 11) “this demonstrates that, in certain circumstances, customary tenure created strong rights for families and individuals to land”. Therefore, notwithstanding their differences in nature, these rights are equivalent to ownership legally (Kerr 2009).

Significantly, despite the misinterpretation, criticism and cultural onslaught on IKS and African thought, particularly customary tenure, indigenous South Africans, by no means absolutely abandoned their traditional values and beliefs (Hull, Babalola & Whittal, 2019). In the present day, section 211 (3) of the Constitution (Act 108 of 1996) recognises customary law as a legal system. The provision states that “courts must

apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law". It can be inferred from this constitutional provision that the use of the words "must apply customary law" equalise customary law and common law. However, the conundrum to the extent of the researcher's knowledge, is that the democratic government for the past twenty-five years has been impotent when it comes to developing policies and laws that adequately capture the nuanced ways in which people regulate affairs of customary tenure in their everyday lives. This is despite the fact that a third of South Africa's population live in the former homelands, popularly termed 'communal areas' by the post-apartheid government (Cousins & Hall, 2015). As a result, customary tenure is criticised for its alleged inability to guarantee tenure security, food security and development (Giovarelli, 2013; Machiya, 2015).

Tenure security denotes to "the legal and practical ability to defend one's ownership, occupation, use of and access to land from interference by others" (Mutangadura, 2007: 176). Robinson, Masuda, Kelly, Holland, Bedford, Childress, Fletschner, Game, Ginsburg, Hilhorst & Lawry (2018:12383) states that a "critical element of tenure security is the right not to be unlawfully or arbitrarily evicted from one's home". Mutangadura (2007) reinforces this notion when she opines that in the absence of tenure security, people are incapable of exercising their rights over land and they are normally faced with the risk of totally losing these rights. Generally, security of tenure comes in two distinct forms, that is social dimensions which focus mainly on the relationships of people in relation to land and legal dimensions, which relates to the legal recognition given to those relationships in terms of the law. Therefore, people in rural or communal areas who conform to customary tenure are allegedly faced with a critical challenge of legal insecurity, thus their rights to food and development is continuously threatened.

People in the Vhembe district who have continuously lived on the same plot of property for generations may discover that they have inadequate legal rights or claims to the land they inhabit as a result of the supposed insecurity (Bikam & Chakwizira, 2014). Some claim that the vulnerabilities surrounding customary tenure continue to make these historically marginalized communities' susceptibility even more vulnerable. (Cousins & Hall, 2015). They continue to be at risk of being exploited and

dispossessed. According to FAO (2012: V) “insecure tenure increase[s] vulnerability, hunger and poverty”. Leibbrandt, Woola, Finn & Argent (2010) argue that in most communal areas like Vhembe, poverty remains deep and widespread. According to Noble (2013) geographical areas situated in former homelands in South Africa have insistently been fraught with the utmost levels of poverty and deprivation. This in part can be blamed on the colonial and apartheid systems that were designed to prohibit Black people from legally owning land as discussed above. Having discussed the above, it is indispensable to note that the issue of customary tenure has been having direct and/or indirect effects on development and food security in Vhembe district as will be discussed in the study area below.

1.2 Problem Statement

The study’s problem was identified in the constant clash of African culture and traditions with Eurocentric theories, policies and legislations which continue to militate against the adequate protection and development of South African rural indigenous communities which ultimately impacts food (in)security. The clash was given breath by the fact that in Vhembe district there are unshakeable, unfathomable and profound cultural land beliefs and practices of Africans find no expression in written law (Kugara, Mdhluli & Matshidze, 2019). For example, some customary ways of inheriting customary land are not legislated and are seemingly inferior to common law. This was depicted by the statistical data by Stats SA, 2007, the only available stats so far to the extent of the researcher’s knowledge, which reported that:

“Vhembe district covers 21 407 square km of land with total population of 1.240 035 million people ...of which only 1.1% of the district is urban area. Large part of the land falls under the tribal authorities. This makes it difficult for development to take place, as the land tenure system is not favourable to commercial development.”

For that reason, there was a discrepancy between the law as it was practiced by the population and the law as it was written down in legislation. Mubangizi & Kaya (2015: 125-142) argues “re-establishing a true and genuine ‘Indigenous Knowledge Systems’

to Africa creates a legal conundrum in relation to the role customary law and beliefs should play in law”.

The undermining of indigenous knowledge systems condemned customary tenure as an insecure system of tenure. In the present day, customary tenure is presumed inferior to property rights emanating from common law or statute law. This has been intensified by poor and/or unclear rural development policies and strategies as there is no clear-cut laws on the collaboration of traditional governance and municipalities (local governance) (Zamisa & Mutereko, 2019). People who have lived or used the same piece of land continuously for generations may discover that they have minimal legal rights or claims to the property they occupy as a result of the supposed insecurity of customary tenure. Investors who also come in rural communities to develop the area are left in jeopardy as they do not know who holds the remote to allow legitimate access to such land. Consequently, rural communities' right to food, shelter and basics of life is threatened. It is therefore argued that customary tenure insecurities continue to exacerbate the vulnerability and poverty of people geographically situated in the communal lands.

Numerous authors have written about customary tenure in areas of anthropology, conflict resolutions and chieftaincy (Peters, 2009; Chimhowu, 2019; Antonio & Griffith-Charles (2019). Equally enough, rural development and food security has been researched by economists and dieticians (Du Toit, 2018 & Torre & Wallet, 2016). However, this study was unique from all these as it penetrated a niche area that brings public management (customary tenure vis-à-vis rural development and food security) through public administration, IKS and the law. Preliminary investigations in Phiphidi, Thathe and Vondo in Vhembe district by the researcher unveiled that some indigenous communities and investors criticised customary tenure of being anti-development and a threat to food security (Economic Commission for Africa, 2004; Toulmin & Quan, 2010; FAO, 2002). The study argued that land rights under customary tenure are insecure and impossible to use as security to obtain mortgages or loans (Toulmin & Quan, 2010). In the same vein, land rights derived from customary tenure were said to be 'outdated', therefore they must be developed to become secure, which make the poor 'bankable' and can thus promote investment, development and food security (Adams, Cousins & Manona, 1999).

In line with the above shown gap, the study unveiled that customary tenure rights were precarious, thus made it impossible for holders to invest long-term in such land. The general view was that common law or statutory law rights to property are more secure and convenient to realise food (in)security and development (Giovarelli, 2013). These rights protect individual property rights and are acceptable as collateral security in the economics, accounting and banking environment (Giovarelli, 2013). The blind spot in all previous researches was to unearth the potential that lies in customary tenure with regards to rural development and food security. This current study filled the said gap by showing that customary tenure, if properly managed, can be easily traded at market value whenever the need arises. Further, the study crafted a feasible model to enable customary tenure management to be secure and protect rights of indigenous communities in a bid to improve the welfare of the poor by enhancing the asset base of those people in communal areas whose land rights are often ignored (Stern, 2003). As such, secure tenure creates the necessary incentives required for investment, which is a strategic fundamental element underlying sustainable rural development and food (in)security (Stern, 2003).

1.3 Research Questions

The study's broad research question was how effective is the South African land tenure as a tool for rural development and food security? Specific research questions were formulated as follows:

- 1) Are traditional leaders a sector of local governance and what is their role towards rural development and food security?
- 2) Is there any legislation and/or policy that address customary tenure to facilitate food security and rural development?
- 3) What are the implications of customary land tenure?
- 4) Would rural landholders invest in land over which they have no official guarantee of continuous use rights?
- 5) What model can incorporate customary tenure and freehold for rural development and food security?

1.4 Research Aim and Objectives

The study's aim and objectives were as follows:

1.4.1 Aim

The aim of the study was to examine the effectiveness of South African customary tenure as a tool for rural development and food security.

1.4.2 Objectives

From the aim, the following several objectives were drawn as follows:

- 1) To critically review the sector of traditional leaders as a sector of local governance and its role towards rural development and food security.
- 2) To assess legislation and/or policy that address customary tenure to facilitate food security and rural development.
- 3) To examine the implications of customary tenure.
- 4) To examine the likelihood and efficacy of rural landholders investing in land over which they have no official assurance of persistent use rights.
- 5) To propose a rural development model that incorporates customary tenure and freehold.

1.5 Definition of Key Concepts

The following section defined the key concepts of the study.

1.5.1 Land Reform

Land reform is defined as “a change in the legal or customary institution of property rights and duties, which define the rights of those who own or use agricultural land” (Moyo, 1995). It is a speedy process transferring land rights to previously dispossessed people (Prosterman, 1990). Ruhiiga (2011: 29-38) asserts that in South Africa, “land reform is focused on restitution, land tenure and land redistribution.” According to the United Nations land reform includes an “incorporated program of procedures intended to eradicate economic and societal development hindrances

rising out of imperfections in the agricultural edifice, considering that masses of indigenous African agriculturalists were involuntarily compelled to horde onto trifling tracts of land not conducive even for subsistence farming” (Manning et al, 2008). Jacoby (1971: 2) defines land reform “as a word repeatedly used to mean any programme whose objective is to reorganise the conventional background of agriculture to enable social and socio-economic progress for the community concerned”. In this study, land reform is the key to redress rural poverty and food insecurity through strengthening communal insecure customary tenure rights.

1.5.2 Customary Land Tenure

Tenure means landholding, therefore customary tenure refers to a system that Africans use to operate to declare or confirm ownership, possession, and access, and also to govern use and transfer of land (Wily 2011). Wily (2011) argues that “customary tenure is as much a social system as a legal code and from the former obtains its enormous resilience, continuity, and flexibility”. In this study, all Africans were considered indigenous, thus the words customary and indigenous tenure were used interchangeably. Therefore, for the purposes of this study ‘customary land tenure’ was defined as traditional rights to land.

1.5.3 Freehold

In its most fundamental sense, land tenure refers to the rules and regulations that govern how land is used, retained, and transacted. Two diverse property regimes exist in South Africa alongside one another. These are individualised common law (Roman-Dutch) land ownership and the system of communal or customary tenure, discussed above (Pienaar, 2013). The individualised common law land ownership system is also known as ‘freehold system’. Freehold may be defined as:

“The assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees. Other members of the community can be excluded from using these

resources without the consent of those who hold the rights” (FAO, 2002).

The study adopted and used the definition by FAO (2000) above.

1.5.4 Indigenous Knowledge Systems

Ajibade and Shokemi (2003: 7-44) states that “Indigenous Knowledge Systems” refers to “knowledge systems developed by a community as opposed to ‘modern knowledge’, generally known as scientific knowledge”. Sillitoe (2016: 129-163) define Indigenous Knowledge as “traditional, cultural, local and community knowledge”. In this study, the definition provided by Sillitoe (2016) was used. This is because it specifies the kind of information the researcher will gather from local knowledge holders.

1.5.5 Western Knowledge Systems

Western Knowledge Systems is a word which encompasses ethical values, traditional customs and beliefs, social norms and technologies as shared within the Western domain of influence (Hammersmith, 2007). In other words, Western Knowledge Systems refers to “the content and context of knowledge systems driven by the values and cultures of Western civilisations” (Kugara, 2017). In this study western knowledge refers to all information, ideologies and/or theories that were developed outside the African continent and knowledge systems.

1.5.6 Rural Development

According to Singh (2009) “rural development is a subset of the broader term development ... It connotes the overall development of rural areas with a view to improving the quality of life or rural people”. Torre and Wallet (2016: 10) contend that rural development:

“is a strategy to enable a specific group of people, poor rural women and men, to gain for themselves and their children more of what they want and need.”

Similarly, Singh (1999) argues that it is “a process leading to sustainable development in the quality of life of rural people, especially the poor”. Agreeing the World Bank (1997: 35) argued:

“Sustainable Rural Development can make a powerful contribution to four critical goals of poverty reduction, wider shared growth, household, national, and global food security and sustainable natural resource management.”

The Comprehensive Rural Development Programme (CRPD) defines ‘rural development’ as “the actions and initiatives taken to improve the standard of living of communities in non-urban areas”. At the end of the day, the central point of rural development is to capacitate rural people to assume responsibility for their fate, in this manner admirably managing rural poverty through the ideal use and the management of resources (CRPD).

Be that as it may, the acknowledged meaning of rural development stays challenged and unclear (Torre and Wallet, 2016). Berriet-Sollic and Trouvé (2013:7-19) contends:

“It is not possible to construct any comprehensive and generally accepted definition of rural development. The notion of rural development (emerges) through socio-political struggle and debate”.

For the reason of its ambiguity, the term “rural development” can signify whatever the user wants it to mean (Torre and Wallet, 2014). For the purposes of this study, the term “rural development” was used to describe a coordinated, all-encompassing, broad-based agrarian transformation as well as purposeful investment in the pertinent social and economic structure of the rural communities to ensure that they become self-sustaining and dynamic.

1.6 Rationale of The Study

The study of the concept of customary tenure as a component of IKS, development and food security in South Africa still held the ‘medallion’ of those distinctive problems that have been extensively researched. The subject of customary tenure as a component of IKS was still misunderstood as some people regarded it as insecure, redundant, underdeveloped, incompetent and anti-development, while some people saw it as feasible and an alternative to ‘titling’. Many studies on tenure reform peculiarly focused on issues related to how those “whose tenure of land is legally

insecure as a result of past racially discriminatory laws or practices” may have their tenure legally secured, encouraging investment and improving productivity of land.

To add, some studies have focused mainly on the differences between customary tenure and common law land tenure, particularly on the extent to which customary law was insufficient, inferior and unpalatable to common law and statutory law. However, not much from these studies maybe said to have given the practical knowledge to address poverty reduction, food security and how customary tenure can operate equivalent to common law and statutory law as required by section 211 of the Constitution. Of significant interest was how some studies on customary tenure were cloaked in ignorance, distortion and misrepresentation. Most writings were based on Eurocentric ideologies, theories and laws, that were approached to undermine, belittle and despise African value systems.

According to the researchers’ view, little had been done to protect African value systems regarding native conjectural epistemology. Okoth-Ogendo (2008) states that literature that define customary tenure from a common law perspective is based on an ‘intellectual error’. In other words, Africans must be at the centre of any inquiry of African phenomena. Efforts to disregard the epistemologies of this phenomena and labelling it as primitive, archaic, and unsuitable for investment, development and safeguarding property rights have been the substance of some authors, rendering customary tenure unfavourable and unacceptable to many.

In addition, in spite of the continuous onslaught on customary tenure or ‘Indigenous Knowledge Systems’, a significant number of South Africans, particularly those located in the communal areas still remain exposed to indigenous knowledge systems. Customary law practices still played a significant role in the lives of these people. This is true despite the fact that little had been done by the government to develop laws and policies that develop customary laws and practices in the same vein as Eurocentric laws. It is correct that some African value systems are arguably ultra-vires the Constitution, however, this surely cannot stand as a licence to throw away all value systems as trash. According to Pieterse (2000), “African value systems versus the law bring into question the development of customary law to be consistent with democratic principles”. This would be able to cure the deficiencies of customary tenure and guarantee security of tenure, food security and rural development.

Further, discussions on land policies were mostly branded by preconceived socio-political views, rather than by vigilant exploration of the potential contribution of land policies, particularly customary tenure to broader development (Deininger, 2003). As a result, the ability to use land policies (customary tenure) as a catalyst for social and economic growth was never completely realized. The study was motivated by the above-mentioned factors. The study had to be of educational value for it to be of any significant value. Against this background, the depiction of the problem and the proposed recommendations ought to contribute to the theory, philosophy and practice of indigenous value systems both in the present and future (Mthembu, 2020). In that regard, the study was important in the following:

1.6.1 Theoretical Benefit

The study was of educational value as it contributed to the theory, philosophy and practice of developing customary tenure for rural development and sustainable food (in)security both in the present and future (Venter, 1999). Furthermore, new body of literature that will integrate customary tenure and freehold was injected in the body of knowledge. This was mainly because most studies had focused mainly on the differences between customary tenure and common law land tenure, particularly on the extent to which customary law was insufficient, inferior and unpalatable to common law and statutory law.

1.6.2 Pragmatic Benefit

On a practical level, the study responded to the thorny issue of tenure insecurity and rural development by recommending a model that incorporated customary tenure and freehold so as to improve development and food security through;

- Firstly, by inspiring and educating multi-stakeholders to public management tenets and principles to take active steps in developing customary tenure in particular and Indigenous Knowledge Systems in general.
- Secondly, enhancing the government's vision to address rural poverty and food insecurities through enabling transparent and progressive mechanisms to enable rural people to interact with their respective authorities to protect, use

and manage their land as enshrined in the Comprehensive Rural Development Programme (CRPD) for rural development and attainment of food security.

1.8 Chapter Outline

The Chapters of the study are as follows:

Chapter 1: Introduction

Chapter one provides an outline of the entire study as well as the approach that was used in writing the study. This chapter also gave a background on significant areas the study was to centre on. The chapter also gave an address on the importance of the research and the limitations thereof. To sum, chapter one gave a summary of what is contained in the entire study.

Chapter 2: Literature Review and Theoretical Framework

The study was theoretically anchored in Chapter 2. The chapter looked at the corpus of knowledge that already existed on the topic. The chapter examined theories of development based on the available literature. This chapter's aim was to pinpoint the knowledge gap between what had been researched and the current phenomenon. Literature review was also essential to assist the researcher to make recommendations on future research areas, following the identification of the knowledge gap identified. Further, the chapter was relevant to recommending policy and law reform, if need be. The chapter was also relevant to making a determination if customary tenure was able to stand and operate as a system of property law.

Chapter 3: The Role of Traditional Leaders in South African Local Governance Towards Sustainable Rural Development and Food Security

Chapter three gave an appraisal of role of Traditional leaders as a sector of Local Governance towards sustainable rural development in South Africa. Customary tenure was anchored on Traditional leaders; thus it was important to examine their involvement towards attaining rural development.

Chapter 4: Rural Development and Food [In]security

The purpose of this chapter was to give an in-depth review of what constitutes rural development and its implications on food [in]security. The chapter also gave a comprehensive analysis of the notion of food security. These two concepts formed an integral part of the study; thus they required an in-depth understanding. They guided the researcher on the pertinent data to be gathered.

Chapter 5: Research Approach and Methodology

This chapter centred on the research strategy that was employed in the study as well as the research approach that was used. In summary, the chapter gave a summary of how the researcher collected, analysed, synthesised and validated data. The chapter also explained on the processes that was followed. Further, the chapter also gave an exposition why certain processes and methods were preferred over others. To sum, the chapter directed how the research questions were to be responded to.

Chapter 6: Data Presentation and Analysis

The purpose of this chapter was to present data based on the interviews conducted in the Thohoyandou area as well as all information that was gathered as secondary data. The information was mainly concerned on the efficacy of customary tenure as a tool for rural development. The information reflected a report that included answers and questions that were asked during interviews. Themes that emerged from the interviews determined and informed the contents of this chapter. The chapter proceeded to analyse the findings. The chapter outlined areas of success, challenges, cause for challenges and people's views on the concept of customary tenure.

Chapter 7: Conclusion and Recommendations

Chapter six gave an account of the findings. Thereafter, recommendations were made regarding corrective measures to be taken. Recommendations depended on the outcome of the data collected from the interviews and all existing literature. The recommendations where need was, recommended policy and law reform. The recommendations were not limited to corrective action only but also extended to making proposals for future research.

In the next chapter, the researcher examined the existing body of knowledge concerning the subject under investigation. The chapter examined theories on development, based on the obtainable literature. This chapter's aim was to pinpoint the knowledge gap between what had been researched and the current phenomenon.

Chapter Two

Literature Review and Theoretical Framework

“It takes more than a horrifying transatlantic voyage chained in the filthy hold of a slave ship to erase someone's culture”

~ (Maya, 2008)

2. INTRODUCTION

The chapter expands on from chapter one and outlines the literature regarding the subject of customary tenure, rural development and food security. This chapter introduces an exhaustive review of the literature in this study area and the underlying theoretical framework. As of late there is a developing interest and expanded academic exploration and yield in the area of Indigenous Knowledge Systems in social, rural, ecological, legal and anthropological studies. In the past, numerous researchers have expounded on the phenomenon of customary land tenure, rural development and food security. Many of these researchers come from anthropology and history backgrounds. Attributable to this, the literature review in this study fixates on tracing the fundamental lines for building up African value systems and Indigenous Knowledge Systems while discussing about the efficacy of customary tenure to achieve rural development and food security. Firstly, this chapter censoriously reviews antiquated and contemporary literature so as to depict the exploration topic and develop research questions. It is through reviewing a colossal amount of literature in the subject area that this study makes new and distinctive commitments to dynamic improvement in this study. Moreover, the literature review unveils gaps that this study intends to explore and fortify. Secondly, this chapter critically elucidates the historical backdrop of South Africa's customary law and its effect on customary tenure.

Thirdly, in a similar vein, the chapter likewise examines literature on customary law land tenure practices in Botswana, Ghana and Zambia to give a cross-national correlation of how other African nations' legal systems decipher and apply customary

law land tenure systems. Fourthly, the chapter clarifies that customary tenure is a system of cultural significance and social action woven into everyday life. Fifthly, the chapter reviews and explains the theoretical frameworks that were applied to this study. Lastly, the chapter explores literature on the current laws that govern land to facilitate rural development and food security. In this regard, the chapter focuses on a survey of the relevant literature from both primary and secondary sources, thus examining the study's historical, contemporary, and prospective paradigms.

2.1 Theoretical Framework

Qualitative studies require the presence of theories since it is preposterous to approach a study without certain inquiries being posed. Subsequently, a theoretical framework is significant in the research process. A theoretical framework shapes the framework of the study (Varpio, Paradis, Uijtdehaage & Young, 2020). A theoretical framework frames the basic structure of the study. The conceptualisation of the literature review, selection of a study's subject, and development of its research questions emphasize the noteworthiness of a theory-driven reasoning. The knowledge to be acquired from the framework is significant in bringing indigenous knowledge systems to the cutting edge as one of the core knowledge areas. The study uses the Adaptation theory, Afrocentricity theory, African Renaissance theory, Sankofa theory and the Modernisation theory in exploring customary tenure and its effect towards rural development and (in)food security. This study is a multidisciplinary, transdisciplinary and interdisciplinary study that deals with IKS, legal matters, African studies, rural development and food security thus underpinned on different theories in a bid to meticulously capture the diverse viewpoints of all disciplines. These theories are discussed underneath;

2.1.1 Modernisation Theory

Modernisation alludes to a model of a dynamic evolution from a “pre-modern or traditional” to a “modern” society (Preyer, 2013: 187-225). The theory is moored on assumption that with help, “traditional” societies can be developed in a similar way developed nations have been (Wolfgang, 2003). The theory is installed in the thought that “traditional societies” will develop as they embrace present day practices. Huber (2008) and Lowenthal (2015) contend that modernised countries are more extravagant

and prevailing and that their residents enjoy a better quality of living. As indicated by the theory, social and cultural characteristics and conventional convictions, become less significant as modernisation grabs hold (Götz,2015). Modernisation is generally connected to the procedure of urbanisation and industrialisation and the spread of education by historians. As Kendali (2007) notes, “Urbanization accompanied modernization and the rapid process of industrialization.”

The study used the theory due to its contribution to the space of knowledge that clarifies why nations established in tradition and culture are less developed as opposed to first world nations that are modernised. South Africa, specifically its communal areas are intensely underdeveloped (Götz,2015). Further, these communal areas depend on indigenous knowledge systems and for the purposes of this study customary land tenure, to be specific when dealing with land issues. Urban areas in South Africa are more developed than communal areas. Urban areas depend for the most part on legal or precedent-based law in their everyday life. The theory is subsequently used to analyse whether customary tenure as a segment of tradition and culture is to be sure a block to development and a danger to food security. Modernisation theorists considered traditions to be impediments to development or economic growth (Melkote,2003; Thomaß, 2014). In line to the latter, Inglehart (2020:10) contended that “economic conditions are heavily determined by the cultural, social values present in that given society”.

Advocates of the theory contend that the net impact of modernisation for certain social orders was the substitution of traditional poverty by progressively present day types of misery which merit the price (Zahari, Tumin, Hanafiah, & Majid, 2019). These incorporate among others improved expectations for everyday comforts, infrastructure and improved economic opportunities. The study hence asks whether communal setups have potential to develop under customary law practices or they ought to be modernised so as to develop. Modernisation in this idea would suggest getting rid of indigenous knowledge systems for the modernised legal freehold/freehold system.

Further the study used the theory on account of its criticisms. A few researchers (Chew, 2010; Skocpol, 1977) scrutinise the modernisation theory and contend that the theory obliterates indigenous culture and replaces it by a more Westernised one. The theory is additionally reproved as a result of its view that Western culture is truly

modern and every single other society are crude and primitive. Antagonists contend that development is sovereign of culture and can be adjusted to any society (Haacke, 2013). This angle is pertinent to this study. The general view as clarified before in the literature review respects the precedent-based law land tenure framework as sufficient and secure instead of customary tenure which is seen as underdeveloped, insecure and obsolete. In this manner, the study endeavours to examine whether South Africa should ignore customary law traditions and culture for Eurocentric laws and belief systems. To the contrary, is it conceivable to depend on indigenous knowledge systems to accomplish the development objective. The theory likewise summons significant inquiries like what are the impacts of modernisation? Will such a methodology not make a reliance condition? Are African laws crude and outdated?

Further, the theory is valuable in settling the question between the dispute between traditional leaders and municipalities on the land issue. The two players have a huge role to carry out in realising food security and rural development. Municipalities represent modernisation while traditional leaders represent African traditions and culture. The inquiry in this manner, attempts to establish whether the two frameworks can work side by side to realise development or whether the government must adopt modernisation and disregard tradition and culture.

2.1.2 Sankofa Theory

The study was prefaced on the Sankofa theory. The theory generally accentuates on “the Need to Turn Back to Move Forward” (Slater, 2019). The expression “Sankofa” is an African articulation that begins from the Adrinkra clan of the Akan individuals in Ghana. It is a word communicated in the Twi language. Slater (2019) expresses that “san” signifies to return; “ko” signifies to go and “fa” signifies to seek. The whole word is therefore translated to mean “Go back and take it.” or “Return and take it”. The allegorical type of “Sankofa” is a legendary mythical bird. Figure 1 beneath shows the image of the Sankofa flying creature.

Figure 2.1: Sankofa Bird



Source: (Kwarteng 2016:60-69)

The egg on the bird's back as illustrated in the picture shows that we extract what is valuable from the past, and export it into the present in order to make positive and munificent use of historical knowledge.

The image in figure 1 above, along with the word when interpreted together actually signify "it is not taboo to fetch what is at risk of being left behind" (Kwarteng ,2016:60-69) The Sankofa theory implies a verifiable past that is solely African which should be recollected when building a better future. The theory urges looking to the past with the thought that the current circumstance is shaped by both the great and the bad in the past. Consequently, the Ghanaian proverb opines that it is expedient to return for that which has been forgotten (Temple, 2010). According to the researcher's view, the egg on the bird's back as shown in figure 1 shows that Africans extricate what is important from an earlier time, and fare it into the present so as to make positive and munificent use of historical knowledge. The exact learning of past insight ensures a solid future. In other words, the knowledge on the past gives mankind interminable insight.

This study uses the Sankofa theory in determining the advantages of returning to African roots so as to move forward. That is, to reach back and meet up on the sources and presence of indigenous knowledge systems and customary law in South Africa and amass the best of what the past brings to them, so African people can accomplish the maximum capacity of the land tenure system as they move forward. The aim is to resuscitate, recover, preserve and perpetuate what was lost, overlooked, sacrificed or

deprived of. Thinking back in history will furnish the study with a full valuation for customary tenure in depth. Both the good and the bad is crucial in measuring the efficacy of customary tenure and in deciding the fundamental measures to be used in developing the system if conceivable and need be. Consequently, the study uncovers shrewdness that derives from the African creeds, behaviour, religious belief systems, rituals and tradition that speak to the land issue today.

2.1.3 Afrocentricity Theory

The study also makes use of the Afrocentricity theory. The theory emphasis on African centeredness. The main theme is established on the notion that African culture, history and existence must be observed through African lens and not through European lens. It is on this basis that the study aims to interrogate the efficacy of customary tenure as a tool for guaranteeing food security and rural development through an African perspective. In doing so, the study enables the African rural community to explain, interpret and narrate their opinion and understanding of customary tenure from an undiluted African perspective. The approach helps the researcher to understand and adopt the views of the African rural community in South Africa. This guides the researcher in making conclusions regarding the effectiveness of customary tenure in realising rural development and recommendations if any, on how customary tenure may be developed to operate at par with statutory or common law land tenure. The Afrocentricity concept has been characterised diversely by different researchers. Asante (2001:71) defined the Afrocentricity theory as “a manner of thought and action in which the centrality of African interests, values, and perspectives predominate”. He further expressed that “Afrocentricity is an exercise in knowledge and a new historical perspective” (Asante, 2001).

Afrocentricity is a historical evolution, an intellectual movement and/or a political outlook that stresses the achievements and culture of Africans. Reed, Lawson and Gibbs (1997: 73) define Afrocentricity as “a transformation of attitudes, views, ethics and behaviour results”. This definition suggests that Afrocentricity is the solitary reality for African people – a basic rediscovery (Reed, et al 1997). Another definition defines Afrocentricity to mean “African centeredness, according to which Africans ought to be given their intellectual egotism as the inventors of civilisation” (Chukwuokolo, 2009: 39). The common denominator with all these definitions is that there is requirement for

an adjustment in the manner that the world has been seen. All aspects of human existence must be included in the transition, with a focus on how important African experiences are.

Afrocentricity in the academic world is intended as a response to the scholarly expansionism that serves to approve political and economic imperialism (Usry & Keener, 2009; Defoe, 2019). In the researcher's view, intellectual colonialism preyed on the African mind and 'bedevilled' everything African. According to the researcher's knowledge, the general notion of life rest on the mind. Whoever plants on your mind, harvest on the mind. Hence, the need to view the world and explain ideologies in an African way. places Africans at the centre of any inquiry of African phenomena regarding activity and conduct. According to Stickers (2014: 1-17), Afrocentricity is defined "as a devotion to the idea that what is in the best interest of African consciousness is at the heart of ethical behaviour and seeks to cherish the idea that Africanness itself is an ensemble of ethics". Chawane (2016: 78) contends that "as an ideology it represents the continued longing among Africans for some set of ideas that would bind them together as a community and offer some alternative to an assimilation that is either excluded by Europeans or seen by Africans as an admission of inferiority and defeat". Chawane (2016: 78) also contends that "As an academic phenomenon, Afrocentricity serves the purpose of binding together the various elements of African studies, transforming them from an interdisciplinary assortment into a unified discipline, with ideological and intellectual goals, political purpose, and a set of commonly understood methods and theories".

By grounding the study under the Afrocentricity theory, the researcher argued that South Africa must adopt the theory in dealing with cultural, political and economic issues. The researcher believes that the library of a white man is in the books while the library of a Black person is in the spiritual world (indigenous knowledge). The researcher further contends that the existing history is mainly explained through the European lens, thus teaches Africans everything else but nothing about themselves. In order to understand issues affecting the African continent, Africans need to collect all the oral traditions and put them into space. The study therefore, in using the theory, aims at examining the effectiveness of customary tenure in realising rural development and food security through African lens. The study endeavours to inquire into the origins

and existence of the land tenure system by dating back into history. Oral traditions, customs and practices will shape the backbone of the study.

2.1.4 African Renaissance Theory

African Renaissance is “the idea that African people will conquer the difficulties confronting the African continent and will accomplish social, scientific, and financial restoration” (Diop, 1946-1960). Diop (1946) was the primary researcher to articulate this theory in a progression of expositions starting in 1946. The former President of South Africa Thabo Mbeki further advocated this idea during his term of office. The concept keeps on being a pivotal piece of the post-apartheid intellectual agenda. The researcher used this theory as a result of its objective to guarantee that African people develop and accomplish cultural and economic renewal. The aim of the study is to examine the effectiveness of customary tenure as a tool for rural development and food security. In this way, the study is moored on cultural and economic renewal. Subsequently, the theory is pertinent in that it clarifies how Africans may realise this goal, henceforth, the study uses the concept as a measuring stick.

The then President Thabo Mbeki clarified this concept in his famous “I am an African speech, 1998” when he said:

“I am born of a people who are heroes and heroines [...] Patient because history is on their side, these masses do not despair because today the weather is bad. Nor do they turn triumphalist when, tomorrow, the sun shines. [...] Whatever the circumstances they have lived through and because of that experience, they are determined to define for themselves who they are and who they should be.”

The speech indicates that the African Renaissance concept evolves around the coming into existence of a new African personality, another determination by Africa to take the future into their own hands and a resolve to determine their own destiny. Further, it is evident that the African Renaissance theory is not simply a political way of thinking or a movement yet a call of activity. It is a recuperation program — Former President Mbeki says “for the renewal of the continent, (which) also recognises the need for the reconstruction of our identity and the regaining of self-confidence of the

African people” (I am an African speech, 1998). The African Renaissance concept is concerned with economic rebuilding and growth as one of its objectives.

To achieve this Mbeki proposes, “placing thought leadership at the centre of social reform, and by reversing the brain drain of African intellectuals” (Mqolomba, no date). Mbeki also suggests that inherited institutions ought to be placed under democratisation. He says:

“Thus to this dream of an African renaissance, of the sustained development of our country and of our continent, requires the renewal of the institution of traditional leadership ... for this democracy to continue strengthening and to have in place systems and institutions that will help bring about a better life for all our people, no matter where they reside, each one of us would have to be guided by the best interests of these very people ... the cohesive efforts of our entire society is needed to enable Africa to face the legacy of the colonial and neo-colonial past and to face the challenges posed by the new millennium.”

The study as clarified before is focused on Africanism. The primary concern of the study is to obtain from indigenous knowledge, solutions to solve African problems in an African way. The aim is to research the effectiveness of customary tenure as a tool for rural development and food security through African lens. Is it viable, if not why, and what should be done to redress that. In this manner, the African Renaissance idea frames a model that helps the study in executing its expected mandate. How does Africa become economically and culturally independent? In what capacity would Africa be able to be mentally free, and in what manner would Africa be able to contribute to scholarship. The theory invokes such a significant number of inquiries that are applicable to this study and furthermore shapes the backbone of the study, henceforth it was used. To add, the study additionally addresses the institution of traditional leadership — an institution that plays a significant role on the successes or failures of customary tenure. This further, makes the theory applicable to this study. The theory, is helpful in that it summons questions and furthermore proposes reform to customary traditions and culture so as to develop Africa.

2.1.5 Adaptation Theory

Diener, Lucas & Scollon (2009: 103) define the adaptation theory as “the process of change by which an organism or species becomes better suited to its environment”. In this study, the theory is used to mean the fusing of unregistered legitimate and legal African customary law land tenures with superseding legal system of property rights. The aim is to ensure that customary tenure become better suited to promote socio-economic development and tenure security in the contemporary democratic dispensation. This theory is important in that it consolidates all the previously mentioned theories. The previously mentioned theories fall within two typologies of theories, that is replacement theorist or conservative theorist. Replacement theorist backs the supplanting of customary land rights with titles to guarantee tenure security (Hull & Whittal, 2019). Hull et al (2019) contend that “conservative theorists maintain that customary tenure provides adequate tenure security and that titling reduces tenure security”. They advocate to safeguard a great part of the customary status-quo. Nevertheless, the adaptation theory is in favour of combining customary tenure with freehold systems.

The adaptation theory emphasizes how present customary tenure may express little connection to pre-colonial rituals, attitudes, and norms as inferred from the overlap of colonial and apartheid impact (Hull et al, 2019). Contemporary customary law practices may be undemocratic and unconstitutional (Claassens, 2008: 262-292). The adaptation theory is touchy to the need for democratisation, equity (dominatingly around sexual orientation fairness), and accountability (Hull et al, 2019). Concerning the colonially-inspired customary tenure with corresponding misuses of power, the objective is to explain present land tenure relationships through:

- Acknowledging and regarding authentic African customary law land rights that are existing;
- Removing ambiguity by making it apparent what these existing rights are, insofar as they are understood by African customary law (the “arrangement” as opposed to the “form” of tenure).; and
- In situations where customary tenure is unstable, ensuring the security of land tenure (Claassens, 2008, Nkwae, 2006 & Horny et al, 2017: 1-43).

The theory underscores this might be accomplished by perceiving social and unregistered legitimate and legal African customary law land tenures that as of now exist “in the shadow of” the superseding legal system of property rights (Kingwill, 2017: 388-430). Subsequently, the theory underlines on the need to expand on the distinguished qualities of existing customary tenure so as to have the option to perceive and intertwine in non-clashing components of formal tenure concepts (Arko-Adjei, 2011: 43).

Hull *et al* (2019: 172) contends:

“By focusing attention on anti-eviction measures, democratic land administration and governance, gender equity in land allocation, and locally accepted evidence, land rights-holders may be protected from human rights abuses at the hands of traditional leaders acting under the authority of the State”.

This involves:

“Working in the shadow of the edifice, using the spaces and opportunities that exist within current institutions and policies to focus attention on improving the tenure security of ... [those] ... who live in extra-legal situations” (Kingwill, 2017: 390).

So as to recognise the current customary tenure, the theory permits communities to choose “which rights are important and should be recorded” (Arko-Adjei, 2011: 36). This methodology creates a sagacity of ownership of the formalisation process within the community, in spite of the top-down methodology of the replacement theory (Hull *et al*, 2019). It additionally allows cross breed tenure plans that reflect “what happens frequently in practice; that tenure is often established through a combination of statutory law, custom or informal arrangements, rather than a single one” (Lee & de Vries, 2018; Royston, 2015). In short, the theory denotes a move away from a 'substitution worldview' for an 'adjustment or adaptation worldview' so as to adapt customary standards and practices and formal laws and arrangements to accomplish a superior fit and more noteworthy tenure security (Hornby *et al.*, 2017).

In using the adaptation theory, the study is engaged to acquire from the communities' astuteness in choosing which rights are significant and ought to be recorded. In keeping with this, the study unearths knowledge from African creeds, behaviour, religious belief systems, rituals, and tradition that pertains to the current land situation. The intelligence uncovered will be absorbed along with non-clashing components of formal tenure concepts to build a tenure system that guarantees rural tenure security, in this manner promoting investment, access to formal credit and therefore food security. The theory is not planned for disparaging everything European, except is fixated on building a framework that promotes land rights, rural development and food security.

2.2 Literature Review

Literature review helps in detecting the gaps in preceding studies and the study being undertaken. It is essential for providing a framework that establishes the importance of the study. To add, it provides a yardstick for comparing results of the study with other results (Goldblatt, Karnieli-Miller, & Neumann, 2011). The most critical step in doing a study is to first review the existing body of knowledge on the research questions. The purpose of literature review in this study is to establish a theory base that exists in the role of land tenure in achieving food security, sustainable rural development, communal poverty emancipation and to, "seek tentative solutions to the research problem" (Hart, 2018). The preliminary literature covers the following:

2.2.1 Customary Tenure and Rural Land Holders

Customary tenure falls under the scope of IKS. It is regulated by indigenous law also known as customary law. Legislation characterises indigenous law as "the customs and usages traditionally observed among the indigenous African peoples of South Africa which form part of the culture of those people" (Recognition of Customary Marriages Act 120 of 1998). This definition suggests that indigenous law narrates to a law that governs day-to-day legal matters of people who are subject to a specified system of indigenous law. Culture is dynamic, hence the stating of the term 'culture' in the definition is evocative of the dynamic nature of indigenous law. Hund (1998: 420-429) states that indigenous law, "represents the practices or customs observed and invested with binding authority by the people whose customary law is under

consideration”. The beneficial thing about indigenous law is that, its development and progression is moulded inside changing African political, social and monetary settings. It is orally passed down from age to age. The unwritten nature of indigenous law, makes it effectively acclimated to meet the various needs of equity in a decolonised setting (Justice, 2018).

Conversely, it is on this same basis that some have criticised indigenous law. The criticism is grounded on the reasoning that indigenous law is unsystematic, fragile and inconsistent. Bennet (2004: 375-377) contends:

“Rules of an oral regime are porous and malleable. Because they have no clear definition, it is difficult to differentiate one rule from another, and, in consequence, to classify rules according to type. If rules cannot be classified, they cannot be arranged into a system, and without the discipline of a system, rules may overlap and contradict one another. In fact, strictly speaking, the oral versions of customary law should not be called systems at all. They are probably better described as repertoires, from which the discerning judge may select whichever rule best suits the needs of the case”.

The argument by Bennet (2004) establishes that indigenous law does not place emphasis on systemisation. The indigenous law methodology does not embody a rigid framework unlike common law or other Eurocentric laws. Scholars as illustrated share different views in this regard. Others view the lack of systemisation in a positive manner, while others like Bennet (2004) criticise the concept. In the researcher’s view my view, the flexibility and adaptability of indigenous law is a positive factor. The distinctive nature, originality and uniqueness of indigenous law as an evolving source of law is a positive development, as it makes it easily attuned to meet the diverse needs of people in a decolonised context.

During the precolonial epoch indigenous people in South Africa used to rely on indigenous knowledge systems to regulate their affairs. This brings into question who are indigenous people and what constitutes indigenous knowledge. Smith (2013) defines ‘indigenous people’ as “socially particular ethnic gatherings with an alternate personality from the national society, drawing presence from nearby assets and are

politically non-dominant". The World Bank (1991) posits that indigenous people are "social gatherings with a social personality unmistakable from the predominant society.". According to Cobo (1987: 38) these are:

"Indigenous networks, people groups and countries are those which, having a chronicled congruity with pre-intrusion and pre-colonial social orders that created on their domains, see themselves as particular from different divisions of the social orders currently winning in those regions, or parts of them".

There are some normal grounds from the above-mentioned definitions. Indigenous people groups are persons residing in an area inside a country state, prior the organisation of a country state, yet may relate to it; and have managed to preserve an extraordinary piece of their distinctive phonetic, authoritative and social attributes. However, present-day discourses on who is an indigene have impelled the argument of "autochthones" that are indigenous occupants and "non-indigenes", or transient pilgrims. All the same, this differentiation is civically and politically loaded and has its own polemics and controversies.

Indigenous knowledge is defined as "the information and awareness that has been used and passed from one generation to another in African societies before the advent of both slavery and colonialism" (Parrotta & Troster, 2012). Ebijuwá (2015: 77) contends:

"Indigenous knowledge on its part alludes to what indigenous individuals know and do, and what they have known and accomplished for ages – rehearses that developed through experimentation and demonstrated adaptations to change".

From the definition, indigenous knowledge is a restraining groundwork of mistake and preliminaries whereas western knowledge is basically science described by experimentation. The former is presumed to be nonconcrete and mistaken, whereas the latter is daubed as insightful and characterised by rational thinking. Ebijuwá (2015: 77) argues that IKS were likewise "created by analysis which were however not archived and the knowledge systems were legitimised and sustained under reasonable institutional structures, cultural norms and practices". They have been

continually passed from generation to generation and have endowed indigenous people to endure and preserve their cultural heritages. Unpardonably, these systems are quickly putrefying because of the breakdown of the customary family structure, globalisation, expansionism, commercialisation, modernisation, instigated human relocations and absence of organisations that aides in socialisation of unsaid knowledge (Ebijuwa,2015)

Indigenous knowledge is mocked as lacking methodological rigour (Vinyeta, 2012). Reiss (2012) further states that indigenous knowledge is not evidence-based and that most of its propositions have no useful significance for policy makers. Indigenous knowledge is mostly contrasted with Western knowledge wherein the latter boasts higher levels of rationality, objectivity and systematisation. According to Reiss (2012) indigenous knowledge is beheld as a remnant of obsolescent and archaic practices which have no nexus with current modern sophistication. Crawl and Paleczny (2018) argues that indigenous knowledge holds greater prominence particularly in underprivileged communities. Even though indigenous knowledge is not brewed in a research laboratory or verified in test tubes, it is matter-of-factly applied for purposes of survival. Its assimilation in people's daily existence speaks to indigenous people's innovativeness in responding and adapting to vigorous changes within their contextual environments. The rigours of daily life in poor rural communities necessitates an organic system of knowing which allows people to make sense and interpret phenomena in their natural settings.

Indigenous knowledge is called by various names. These include *inter alia* indigenous knowledge of knowing, rural knowledge, traditional knowledge and ethno-science (Crawl & Paleczny, 2018). Indigenous knowledge is communally fashioned by given societies in specific geographical contexts to give practical solutions to problems. However, Western systems and missionary education imposed Eurocentric belief systems which weakened the significance and usage of IKS. In the present day, IKS is usually regarded as backward, evil and primitive. According to Altieri (2015), this attack against indigenous knowledge has persuaded the majority of people to accept the idea that it is bad and irrelevant. Crawl & Paleczny (2018: 45) contends that:

“The advent of colonialism resulted in a cultural imperialism that has resulted in IKS suffering for decades from heavy propaganda which

elevates Western cultural systems at the expense of local ones, thereby tearing into the social, economic and cultural fabric of local communities.”

As previously stated, customary tenure governed land matters during the precolonial era (IKS). Cousins (2008: 111) explains that the “customary tenure system was a system of complimentary interest held together simultaneously”. He further argues that “the system of tenure was both communal and individual” (Cousins, 2008). The concept of ‘ownership’ was limited. The obligations that people have to one another in relation to property were the focus of customary law more so than the rights that people have in relation to it. The system valued the connections between individuals in excess of a distinct individual's entitlement to attest his interest for property against the world. Property during this period was “embedded” in social connections as opposed to a person's exclusive claim over it as private property (Cousins, 2008). Okoth-Ogendo (2008) argues that African indigenous studies on land tenure are in most cases descriptive, thus do not give attention to the theories that underlie the systems. He further argues that this approach influenced an interpretation of customary tenure within the theoretical framework of Roman law. The Roman law focuses more on the doctrine of ownership, instead of the property itself turning into the point of convergence.

A thorough examination of colonial rule reveals that it denigrated native knowledge systems and the application of customary law. The arguments raised are similar to the criticism highlighted earlier. Colonial rule changed the system of customary tenure and introduced Roman-Dutch law which was embedded on the concept of ownership (Cousins, 2008). The development of IKS based on its own principles was hampered by the introduction of Roman-Dutch Law, often known as common law. Its effect was to replace indigenous law by common law (Bennet, 2004: 373). The vocabulary that common law introduced made it challenging, if not impossible, to understand customary law tenure (Bennet, 2004: 374). The ‘ownership’ theory is problematic, just like the notion that before ‘ownership’ all things were held in a similar manner as each individual having equivalent rights to the same thing (Bennet, 2004: 374). Bennet (2004: 374) contends that “[i]t is more likely that, before the concept of individual ownership emerged, only rights of use were protected”. The contention proposes while

a resource was being used, others could be estopped from using the resource, and protection was required for that short-term period of use only. It was through the extinction of a nomadic lifestyle and the subsequent adoption of a more settled lifestyle, that long-term protection of resources arose (Bennet, 2004: 375). Resources became scarce as the settlement of people on land compelled people to secure land for cultivation and the herding of cattle. This called for the need to protect rights and regulate access to resources (Bennet, 2004). Consequently, the competition to control land grew and such control became a monetary advantage (Chanock, 1985). The monetary aspect compelled an exchange value to be attached to the land, hence the ownership context provided the answer to securing the property (Bennet, 2004). Ownership brought with it the idea of “absoluteness”, which implied that one individual could hold all of the right in a property and dispose of it at free will (Allot, 1961; Pope, 2011). This was a departure from the precolonial epoch where various interests in a similar property could vest in various holders (Bennet, 2004).

As discussed earlier, Europeans assumed that the ownership concept was common and further that it was applicable only to ‘civilised’ societies. They wrongly “assumed that land must have an owner, even where rights had never been defined” (Chanock, 1985). The fact that the ‘ownership’ concept was foreign to indigenous Black people, consequently empowered the Europeans to appropriate the allegedly ‘unowned’ land (Bennet, 2004). Common law would be used to resolve any arising dispute between indigenous Blacks instead of the courts developing customary law to fill such gaps (Bennet, 2004). Some authors contend that the use of common law in defining customary tenure is “more than just an intellectual error” (Okoth-Ogendo, 2008). Okoth-Ogendo (2008) further argues that the use of common law in defining customary tenure was an approach of the European government to justify land expropriations. This conundrum remains evident in this present day. Customary tenure rights remain subdued. Consequently, tenure insecurity is the actuality in many precincts of land held under customary law, particularly rural South Africa (Okoth-Ogendo, 2008). The cause of the insecurity is not because customary law property frameworks are inalienably insecure. Rather it is a result of “the dislocation of these systems from the social and institutional context that defines and sustains them” just as the use of customary law in the colonial legal system (Okoth-Ogendo, 2008: 98).

It is based on this misconception or intellectual error raised by Okoth-Ogendo (2008) that customary tenure is judged. In the researcher's view, indigenous Black people must endeavour to define African concepts or theories in a way of thought wherein the centrality of African qualities and points of view prevail. This is consistent with the Afrocentricity theory. Asante (2001: 72) defines Afrocentricity as a "manner of thought and action in which the centrality of African interests, values, and perspectives predominate". Early et al (1994: 44-54) defines Afrocentricity as "an intellectual movement, a political view, and/or a historical evolution that stresses the culture and achievements of Africans". Afrocentrism in general, calls for a transformation in the way the world has been viewed, with prominence on the importance of African experiences. Afrocentricity is viewed as a riposte to intellectual colonialism that aids to authenticate and endorse political and economic colonialism. It endeavours to place Africans at the centre of any inquiry of African phenomena. The concept of Afrocentricity aims to break away from a position where African history and culture is presented from a Eurocentric point of view. The Eurocentric angle aimed to justify and glorify colonisation, distort and neglect African contributions towards world development and to distort and manipulate African opinions.

Reverting to the issue of insecure tenure in rural/communal areas, the majority of native Black South Africans still live in their former homelands and Bantustans, which are now referred to as communal areas. Sibanda in Roth et al (2004: 156) states that "about 2,4 million rural households representing about 12,7 million Black people or rather thirty-two percent of the total population reside in communal South Africa". As a result of the above-mentioned historical past experiences, these people continue to hold insecure tenure rights either individually or communally and these rights are in most cases informal and unregistered. These land rights, as is typical, have a paternalistically vested state and a subordinate legal and economic position. Additionally, the majority of these people still endure appalling poverty. Their living conditions have gotten worse, and they are still fighting for survival due to poor access to food, sanitation, healthcare, and education. Some argue that insecure tenure carries with it both psycho-social and economic dimensions (Mullan, Grosjean & Kontoleon, 2011; Udry, 2011). In other words, insecure tenure heightens the vulnerability of rural people. It discourages the productive investment that has capacity to help poor people to improve materially.

As democracy took hold, the government launched a comprehensive land reform initiative. The program included a land redistribution program to increase access to land for indigenous Black people, a land compensation program to restore land or pay compensation to those who had been evicted due to oppressive laws since 1913, and finally a tenure reform program to safeguard the rights of people living in precarious situations (Constitution, 1996). For example, state-owned communal land residents or farm labourers or occupants. Section 25 (6) of the Constitution of the Republic of South Africa, 1996 provides:

“A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.”

The government is then required by Section 25 (9) to enact legislation to guarantee this tenure security. It provides that “Parliament must enact the legislation referred to in subsection (6)”. During the colonial and apartheid era as discussed earlier, land was held in trust by the European government that dispensed permits to non-Whites in those homelands (Department of Land Affairs, The White Paper on South African Land Policy 1997). As was already said, communal people experienced unstable tenancy, which had a detrimental effect on their development. The goal of the government was, and still is, to protect Black South Africans' formerly precarious land rights in both law and practice. The government also works to provide liveable tenancy options to people living on restored and redistributed land. However, little to no progress has been made in this area. Rural residents continue to endure unstable tenure even today.

However, others contend that tenure security is not necessary for encouraging investment (Asaaga, Hirons & Malhi, 2020; Twerefou, Osei-Assibey & Agyire-Tetteh, 2011). This is because despite the generalised assumption, establishing the connect between tenure security and efficiency is combative. To support this assertion, the following points are of significant importance as discussed below. Firstly, customary tenure is not really less secure than formal tenure as opposed to the general assumption held by most people. Secondly, in most instances, endeavours to improve tenure security are not generally conceptualised. Lastly, tenure security is not always essential or necessary for encouraging investment. Obeng-Odoom (2012: 161) argues

that land tenure refers to “a set of guidelines for use and treatment of land”. In other words, land tenure refers to an ‘institution’ representing rules accepted by societies to govern conduct regarding land. As a result, these rules may exist by virtue of tradition or law. The misunderstanding surrounding the notion of ‘land tenure’ is the misinformed inclination to conflate it with ‘proprietorship’ (Larson, 2003). De Souza (1993:17) argues that tenure security is all about an individual’s confidence of the right. He states that:

“In every human society, challenges or disputes are bound to occur over landownership, but with security, these rights should be protected and enforced. Security is thus about the exercise of one’s rights without the fear of unnecessary interference or fear of forceful eviction” .

Put differently, tenure security/insecurity are all about land administration. The defence of legitimate tenure rights and the resolution of conflicts are the main responsibilities of land administration. Therefore, a land administration system that either fails to carry out these duties impartially or does so inadequately is likely to be a cause of insecure tenure (Aliber et al, 2004). This is true regardless of whether the administration system is traditional or modern, or if the tenure system is statutory or customary. To add, others contend that customary tenure can on occasion be increasingly dynamic as opposed to statutory tenure. For example, the ‘transactions costs’ connected with changing customary rules are way less than those of amending legislation. Brokensha (1971: 3) opines that taking a gander at the effect of Kenya’s colossal titling project, buttresses on this view when he states that “land adjudication inevitably introduces finiteness and rigidity and thus harshly disrupts the old flexible system”.

This brings us to two critical questions: if tenure security/insecurity is not sufficient for encouraging investment? Why is South Africa’s communal poverty blamed on customary tenure? Considering that land tenure is a component of land reform, a program approached to reverse the legacies of colonisation and apartheid through developing the previously underdeveloped and marginalised Black South Africans (Chang, 2007 & Mazo, 2015), what should South Africa do to ensure that customary tenure realises this goal of alleviating poverty and food insecurities through rural

development? This is the gap the research covers in answering to these burning questions.

2.2.2 Legislations and Policies Addressing Customary Law Land Tenure

This section gives an appraisal of the available legislative frameworks that deals with land in South Africa, dating back to the colonial epoch as it lays the foundation of the study on how history affected tenure security in communal land. The purpose of this section is to inquire whether there is any legislation and/or policy that address customary tenure to facilitate food security and rural development. Section 25 of the Constitution incorporates “land tenure” as a component of land reform. Section 25 (4) of the Constitution provides:

“For the purposes of this section — the public interest includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources”

Section 25 (6) provides:

“A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.”

Due to this, the section gives an appraisal of literature on historical laws that undermined African land tenure systems. This is because these historical laws are accused of weakening customary tenure to the benefit of the European settlers. It is argued that through these laws African land rights became insecure, thus the basis of section 25 (6) of the Constitution. Further, the section proceeds to examine literature on post-apartheid land laws to inquire as stated above, whether there is any legislation and/or policy that address customary tenure to facilitate food security and rural development. This analysis is made in terms of Section 25 (5) of the said Constitution, which reads:

“The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.”

The history of land dispossessions is discussed in chapter one. The background of the study in summary portrays that history concludes that colonisation and apartheid rendered anything African insufficient, evil and demonic. As a result, Eurocentric ideologies were imposed on Africans, and this led to Africans being impoverished. To achieve this, a series of laws were enacted by the colonial governments. At the present day a majority of Black South Africans especially those in the homelands remain poor (Labadarios, Steyn & Nel, 2011:33). The property clause (section 25 discussed above) was enacted to redress these historical wrongs. Therefore, the section analyses both the colonial, apartheid and post-apartheid laws on land to determine whether indeed the existing laws were sufficient to realise rural development and food security which was threatened and undermined by colonial and apartheid systems and laws.

2.2.2.1 Colonial Land Laws

This section examines the laws that were ordered by the colonial and apartheid governments on land ownership.

a) Article 13 of The Pretoria Convention 1881

Under this Convention, natives were allowed to acquire land, regardless the award or transfer of the acquired land, in all cases, was to be made and registered in the name of the Native Commissioner in trust for such exercises. In fact, according to the researcher's view, the Convention affirms that colonial laws intended to confine Black Africans control, access and proprietorship to land. Henceforth, the convention to the extent of the researcher's analysis was approached to effectively control Africans, as they would be liable to white conventional laws, which subverted indigenous land tenure laws. Subsequently, indigenous laws were rendered substandard compared to European laws, consequently, dispossessions turned out to be simple and justifiable at law.

The *Richtersveld Community and Others v Alexkor Ltd and Another* 2000 (2) SA 124 (LCC) case clearly demonstrates that European laws and policies were approached to subvert indigenous land tenure laws. The case proves beyond doubt that colonial laws were approached to override indigenous land tenure laws. For this case, it was not in debate that the Richtersveld community possessed Richtersveld earlier its extension by the British Crown in 1847. Be that as it may, in spite of them possessing and controlling the land, the British colonial government, in the year 1920, disregarded their land rights and deprived the Black indigenous community of these rights. The administration at that point accordingly granted these proprietorship rights in full to Alexkor.

b) Natives Land Act 27 of 1913

The Black Land Act 27 of 1956 which was otherwise called the Native Trust Land Act (presently the Development Trust and Land Act) was the essential Act that decided where Black South Africans could live (*Tsewu v Registrar of Deeds* 1905 TS 130 at 135). The Act shorn of Black South Africans of the inclination to claim land (Davenport & Saunders, 2000: 279-331). The Act smoothened the route for segregation and no doubt diminished South Africa to a white man's nation. Basically, the Act was instituted to subdue any endeavour to obtain land by Black Africans. By 1913 Blacks had developed up a feeling of the market and its systems, along these lines had started to acquire farms (Davenport, 2000: 24). Additionally, a gathering of small-scale Black farmers had secured freehold and quitrent title to property consistently (Davenport, 2000: 97-119). Accordingly, the Europeans started to see this as a danger. To check the danger, the Natives Land Act was authorised.

Section 2 of the Act prohibited exchange in land between European pilgrims and Blacks outside the scheduled areas (Natives land Act). The Act regulated people dependent on the racial group to which they were doled out (Waldo, 1991: 18). In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others* (2010) ZACC 10 CCT 100/09, the court held that “the effect of the legislation was to preclude African people from purchasing land in most of South Africa”. Subsequently, to the extent of the researcher’s assessment, the impact of the Act was that it made rights in property for the non-natives, protected them against encroachment yet on the opposite the Africans were perceived shameful and unsophisticated to have any right in

property. Black land rights were intruded and rendered second class compared to Eurocentric laws.

The impact of the Act is likewise apparent in the *Baphalane Ba Ramakoka Community v Mphela Family and Others in re Mphela family and others v Haakdoombult Boodery and Others* [2011] ZACC 15 CCT 75/10 case. For this case, the Mphela family bought Haakdoombult farm in August 1918. They occupied the farm and performed agricultural activities on the farm until they were forced to abandon the farm. The administration at that point, depended on the Black Land Act 27 of 1913 and the Development Trust and Land Act 18 of 1936; to infer that the farm was situated at an unsuitable 'Black spot'. Under coercion, the family at long last consented to sell the farm in 1959. In any case, the family regardless of the forced sale, would not vacate the farm. The administration at that point, through the police resorted to raiding them during the night so as to oust them.

Waldo (1991: 18) contends that the "Native Land Act of 1913 and the Native Trust and Land Act of 1936 approached only thirteen point seven percent (13, 7%) of the land to the Black South Africans". This is regardless of the fact that Blacks established most of the populace as opposed of the white minority. Accordingly, Blacks were restricted into packed unfertile reserves (prevalently known as communal areas in the current day South Africa). The Act succeeded with regards to stripping of each and every option to possess land. The National Party in its mastery of politically-sanctioned racial segregation strengthened these laws and approaches decades later and the impacts stay noticeable today. The Act was powerful in denying Blacks the possibility to succeeded a 'self-food status'. Without land, thusly the African land tenure system was abrogated by disuse.

c) Native Administration Act, 38 of 1927

Under this Act, which is presently alluded to as the Black Administration Act, Blacks were just permitted to obtain land subject to the express President's assent. Be that as it may, they could not enlist title to the land in their names. It was the Minister of Native affairs that held the land in trust in the interest of Black people. The impact of the Act was that without the President's assent; Blacks could not buy land. In like manner, significantly in the wake of purchasing the land, full proprietorship rights could

not go to a Black purchaser. This implied that Blacks held a similar status at law with that of minors. Thusly, Blacks had no lawful capacity to claim land.

d) The Development Trust and Land Act, 1936

Thwala (2003: 2) posits that “the Development Trust and Land Act condemned Africans to unfertile overcrowded reserves.” To add, he states that “the Act endorsed a framework for South Africa’s crooked and segregating pattern of land ownership.” Blacks in South Africa got destitute in their own land of birthplace. As per Davenport (2000: 336-337), Blacks were removed to Trust lands and in this manner homelands were produced using these Trust lands. All land held for Native occupation and all land inside the Native reserves vested in the Trust (Section 6 of the Act). Along these lines, the Act validated the colonial target to deny Blacks capacity to hold land rights.

As though this was not enough, the Act continued to curb the amount of land the Trust could obtain, accordingly, successfully constrained the measure of land that Blacks could possess. Blacks could only acquire a limit of seven and one-quarter million mergen in degree (section 14 (1) of the Act). Following this, the majority Black South Africans who made up the population only occupied 13% of South Africa, while the minority European settlers took up 87% of the country's remaining land. Bundy (1979: 276) contends that “these dispossessions compromised the existence, interconnection and structure of African communities by removing them from their homes or land to reserves”. The expulsions devastated Black people's nostalgic connection to the land.

To add, the Act additionally presented the idea of “released areas” (Development Trust and Land Act 18 of 1936, sec 2). The idea essentially inferred that Blacks were released from the constraints of the Black Land Act, concerning the selling and purchasing of properties. These implied Black people were possibly permitted to offer properties to non-Blacks just if the purchaser was the Trust. Consequently, the Trust could re-sell the acquired land to worthy purchasers (non-Blacks) (Development Trust and Land Act 18 of 1936, sec (2) (a)). The Trust, would in the wake of purchasing the land from Blacks, relocate the seller on comparable land. As a result, a basic level of parity was maintained between the amount of Trust lands that were accessible to Black procurements and the areas that were freed.

The Act barred Black employees, squatters or tenants from living on properties owned by European settlers, except if the stay was all around characterised in the legal arrangement (Development Trust and Land Act 18 of 1936, sec 26). Hence, the law in such manner focused on Blacks who lived outside urban areas and not inside reserves. In this context, it suffices to conclude that the Act emphasised on segregation, unfair discrimination and creation of reserves as promoted by the 1913 Act above-mentioned.

It is judicious to indicate that Black people in certain instances unreservedly and intentionally offered their land to the Trust. Consequently, remuneration was paid to seller upon annexation of the land. Notwithstanding, to the researcher's view, the wording of the law, as derived from its impact, presumably planned for dispossessing Blacks of land situated in the purported white territories. This clarifies why just acceptable purchasers (Whites only) could purchase the appropriated land from the Trust.

e) The Black (Urban Areas) Consolidation Act

The Act correctly set apart unmistakable domiciliary territories for every particular group race inside the domain of one another (Davenport, 2000: 339). The aim of the Act was inserted on the need to control the colossal number of Black individuals moving to the boundaries of urban white areas (Van Der Host, 1981). The Act decided property rights held by Blacks in both urban and non-urban regions. The statute precluded non-Blacks from transacting in land, except when doing so with the government in urban areas (Van Der Host, 1981). To add, the leasehold property rights – only rights open to Blacks at that point, were exceedingly limited (Urban Areas Act, 25 of 1923 sec 6 A).

The amended Act in 1937 precluded Black people from staying inside urban territories without work, for any time in excess of seventy-two hours. Whoever was found wanting and rebellious was either fined, detained, or sent to Homelands (Davenport, 2000: 340-343). The objective of the Urban Areas Act and the resulting amendment of 1937, was to move Black people from motley neighbourhoods to townships or Homelands (Davenport, 2000). Section 6 (A) of the Act allowed a 99-year lease to a qualified person. In any case, a qualified person entailed “a person who had continuously

resided in an urban area since birth, or had continuously worked for one employer for 10 years or the person should have continuously resided in an urban area for 15 years” (Urban Areas Act 25 of 1923 sec 10 (1)(a)). Subsequently, Blacks were denied the chance to own property in urban areas. This clarifies the lessened number of leasehold property privileges of urban Blacks in South Africa today.

It is ostensive that Blacks somewhat were uninformed. They did not comprehend the Europeans formal registration framework presented by the Europeans. To the degree of the researcher’s information, it is not clear if Blacks appreciated individual property ownership, considering that they practiced communal land tenure before the imposition of the European tenure system. On certain occasions, Blacks willingly transacted in land with Europeans. They would give up their title to land, paying little heed to the route that there exists a probability that they did not value the consequences of the said exchanges due to their foreign nature. It stays indistinct and easily debatable if they were appraised that they were surrendering their proprietorship rights in land or on the other hand they were convinced they were simply giving up use rights and not proprietorship. To the extent of the researcher’s analysis, it is almost certain however begging to be proven wrong that Blacks transacting in land at that point, did not comprehend the unpredictable European laws and language. This inquiry stays pertinent to the current South Africa – do majority of rural people comprehend common law principles of property ownership and are these frameworks satisfactory to take care of African issues?

2.2.2.2 Apartheid Land Laws

Sustein (2001: 123) opines that “the advent of the apartheid era in the year 1948 was aimed at finding a permanent lasting solution to the native predicament”. From the beginning, it is reasonable to demonstrate that the roots of apartheid existed some time before 1948, despite the fact that apartheid was just recognised as an official policy during the period the National Party majority votes in parliament. The drafters of the Transvaal first constitution presented the rule that it was unimaginable for Whites and non-Whites to be equivalent (Drie-en-dertig Artiekelen, 1849). The impact of this principle, a principle which was developed into apartheid requested that no non-white individual would claim individual fixed property rights (Van Reenen, 1962). Also, non-Whites could not live in nearness to Whites (Van Reenen, 1962). Therefore, the

ownership and occupation issue ended up being a crucial area of concern and stayed in existence all through the apartheid period (Van Reenen, 1962).

As discussed before concerning the impacts of colonial laws, the apartheid government in its finesse strengthened these laws and improved them with the plan to auxiliary dispossess Black people of land in favour of the white minority. Politically-sanctioned racial segregation laws empowered segregated use and ownership of land. Archary (2012) contends that “these forced evictions or dispossessions led to severe impoverishment and exploitation of the Black majority South Africans”. DeKieweit (1941: 205-6) likewise contends that Europeans boundlessly contributed in condemning Blacks to poverty, in view of the land dispossessions. Because of these dispossessions, a few Blacks depended on labour tenancy on white owned farms for survival. In any case, the individuals who did as such, were exposed to cruel and debasing treatment. Cook (1982) likens the atrocious living conditions of Blacks on the farms to prison labour. Onselen (1979: 102) states that “violence was an essential part of the European proprietors and African tenants”.

Apartheid was established in racial isolation and it restricted access to land for Black people. Apartheid policies adversely affected on the lives of non-Whites (Thompson, 1990: 163-5). It cleared route for the introduction of reserves and homelands for non-Whites (Thompson, 1990: 163-5). The system of apartheid prohibited and illegalised the buy or rent of land by non-Whites from Europeans outside the reserves (Jones, 1965: 3). After establishing the effect of apartheid, the researcher proceeds to discuss the apartheid laws

a) Group Areas Act, 41 of 1950

The Act, later amalgamated by the Group Areas Act 36 of 1996 massively affected racial segregation in South Africa (Devenish, 1987). The Act, unlike different Acts that concentrated on making a Black South Africa with regards to homelands and Trust lands, all the various racial groups inside white South Africa. The Act, as indicated by the researcher’s conclusion remains at the pinnacle of famous and notorious apartheid laws. The Act is maybe the most known bit of enactment in South Africa, yet the least comprehended (Reenen, 1962). Reenen (1962), the Justice of the Supreme Court of South Africa contends that “the real noteworthiness and impact of the demonstration

isn't notable". He fights that Black individuals were the least influenced by the Act (Reenen, 1962). Reenen (1962), the Justice of the Supreme Court of South Africa contends that "the actual significance and effect of the Act is not well known". He argues that Black people were the least affected by the Act (Reenen, 1962). This conclusion is established on the contention that the Black Land Act of 1956, is the law that regulated non-urban ownership and occupation of land by Blacks. In this manner, all land under the administration of the Black Land Act of 1956 was omitted from the provisions of the Group Areas Act.

The Group Areas Act isolated all land inside South Africa's fringes into assortments, that is non-controlled and controlled zones (Shrand, 1979: 179). Non-controlled areas included Black areas, villages, Black locations and all land consigned to the South African National Trust (Shrand, 1979: 179). As it were, non-controlled areas allude to areas that fell under the administration of the Black Administration Act and the 1913 and 1936 Act. Despite what might be expected, something contrary to the above explains controlled areas. All land allocated to white urban areas and not under the administration of the Black Administration Act, the 1913 and 1936 Act, established the controlled areas.

The Group Areas Act circuitously played a substantial role in land dispossessions through racial discrimination. Subsequently, its discussion is pertinent for this study. The Act categorised all individuals in South Africa into racial groups. Ownership and inhabitation rights in land were then constrained by the status of the racial group. The President was empowered to set up rural and urban zones only for occupation and ownership by people from every particular race, for instance coloured, Indian or white. Strikingly, the Act did not allot any area expressly for Black people in South Africa. To add, Black people were banished from either owning or occupying areas allotted to other racial gatherings (Robertson, 1990). Blacks were restricted from accessing specific urban areas (Chang, 2007: 621-627). Thus, Black people were confined to bucolic areas (Suzman, 2009). They could not possess land in the white South Africa. Having been denied housing opportunities in the white land, the vast majority of them were constrained to drive for significant distances to work.

Around the 1980s, apartheid laws geographically succeeded in separating between white and non-white South Africans. Thus, most Blacks were evicted and

dispossessed of land. They were set into homelands. These incorporate the Bophuthatswana, Transkei, Ciskei and Venda (Natives (Urban Areas) Act 21 of 1913; Natives (Urban Areas) Consolidation Act 25 of 1945; Black Communities Development Act 4 of 1984). In urban areas, the Act recommended two sorts of local locations for Blacks. These were the Black townships. comprised of white towns and Black townships outside the homelands. Blacks were obliged to live in these endorsed areas to warranty against offenses on white proprietorship rights in white areas.

To conclude, the Act uprooted Black people from their land, culture and laws. New property frameworks, laws and culture was forced on them by the politically-sanctioned racial segregation government. The discussion above unmistakably exhibits that the dispossessions, expulsions and placements into homelands and townships was non-consensual. The probe that waits is, what had befallen indigenous knowledge systems of Black people during this period? Were these forced European laws and frameworks adequate for Black people's development? Are these systems of laws, despite everything, existing in South Africa today? And if so, Are applicable to African problems?

b) Other Apartheid Laws

The above discussed Group Areas Act was one of the main renowned apartheid laws. As such it was pertinent to discuss it in-depth separately. The rest of the apartheid laws are combined in the discussion. This is because, according to the researcher's knowledge, there is not much literature on them. The Prevention of Illegal Squatting Act, 52 of 1951, the Reservation of Separate Amenities Act 49 of 1953 and the Trespass Act 6 of 1959, in spite of the fact that it was not passed to regulate land dispossessions, enabled the state to expel non-Whites in reserved White zones (Keightley, 1990). The target of apartheid laws was to make separate territories for Black people (Keightley, 1990). The previously mentioned rules, to the extent of the researcher's knowledge, indirectly helped the state to accomplish its goal of advancing racism and segregation. This culminated in unequal distribution of resources. Therefore, back people were sentenced to packed unfertile reserves and homelands. Waldo (1991: 18) expresses that the 1956 Act criminalised Black land occupation on white owned land. By the year 1960, at least six hundred and fourteen thousand (614 000) Blacks were ousted from their land for the elite and sole utilisation of white people

(Waldo, 1991: 18). Between 1960 and 1974, an estimated one and a half million occupants and their families were expelled from white owned farming area to reserves (Thwala, 2003: 2).

As indicated by the Black Homelands Citizenship Act 26 of 1970, every single back person was required to have citizenship in one of the homelands. This commitment included even those back people who had never in the course of their life, dwelled in any homeland, nor had family members nor association with anybody in the homelands (Devenish, 2000: 28-36). A short time later, the Black Homelands Constitution endorsed the administration to give the homelands capacity to self-administer (Devenish, 2000: 37). The aim as previously suggested was to make a white South Africa, without Black trespassing white ownership rights. Subsequently, Black people were confined to homelands, permitted to administer themselves inside the homelands, while the remainder of South Africa was held in reserve for the white minority group. By the year 1980, the apartheid government had prevailed to confiscate and expel an inexact three million five hundred (3,000,000 500) Blacks and moved them to townships and homelands (Human Awareness Program, 1989).

The focal thought of forming states by the National Party (NP) at that point, was to deny Blacks equivalent treatment, as they would not be residents of South Africa (Roycroft, 1987: 209). The method of reasoning being, if homelands become autonomous and sovereign, their separate residents will take homeland citizenship. On the off chance that this occurs, Blacks would consequently lose South African citizenship, despite the fact that a greater part of Blacks despite everything lived and worked within South Africa (South Africa alludes to land claimed by Whites). This entails that South Africa was then a white man's polity (Davenport, 2000: 413-14). The administration in protecting this thought passed the Promotion of Bantu Self Government Act 46 of 1951. The statute allocated Black Africans according to their attachment and clan, rural reserves "independence" and the muscle to self-oversee (Denoon, 1984: 198-199). The statute was fruitful in genuinely isolating people as indicated by race. It verified that people of different race could not be residents of a similar nation. The legislature conceded freedom to the homelands of Transkei in 1976, Bophuthatswana in 1977, Venda in 1976 and Ciskei in 1981 so as to execute the division.

The National States Citizenship Act 26 of 1970, specifically section 2 conveyed a similar impact settled in the Promotion of Bantu Self Government Act referenced previously. It obliged Black people to be residents of one of the homelands or 'Bantustans'. As indicated by the Black Development Act of 1984, an individual person's birth, history, dialectal or association was apposite to allocate citizenship in instances where the person's hereditary genealogy was muddled. In any case, it is pertinent to show that it was the Black Authorities Act 68 of 1951 that set the foundation for the repatriation and denationalisation of Black people. The target of the Act, according to the researcher's view was to ensure that Black people ought to control their own predetermination, inside areas reserved for them, in terms of their traditional ways of administration. Moreover, the Act was embedded on the level-headed that Black people had no lawful option to be in white South Africa, in this way, it was pointless to set up a framework to represent them in Black townships adjoining white urban areas (Black Authorities Act of 1951 sec 12). It was contended in the *Dadoo Ltd v Krugersdorp Municipal Council* A.D 530 1920 case, that Europeans feared allowing non-Whites to possess rights to fixed property. The rationale for the phobia was premised on the *datum* that non-Whites numerically dwarfed Europeans, in this manner, if Blacks held land, they would by virtue of casting a ballot rights therefore control the nation, taking into account that voting rights were connected to property ownership rights (*Dadoo Ltd v Krugersdorp Municipal Council* A.D 530 1920).

Reverting back to the Act, the opinion held by the Minister of Bantu Administration and Development in 1971, identified with the provisions of the Black Authorities Act (Davenport, 1971). The Minister said:

“... Land ownership outside the towns is communal...To abolish the system of communal tenants would drastically affect the Bantu tribal traditions and systems of government... Their tribal system of government is based on the concept of land tenure. It is a very important matter” (Davenport, 1971: 24).

Communal tenure was no doubt very essential to the Black people. However, the land distribution was unequal and unfair. The land set aside for maintaining communal tenure and Black self-governance was insufficient compared to the land set aside for the white minority, despite the fact that Black people made up the

majority. The Act had calamitous effects towards Black people. It encouraged racial prejudice, segregation, and a wildly unfair distribution of land that was detrimental to Blacks (Kimble, 2007:.399-434). The Act in its disguised form of preserving communal land tenure, succeeded in removing Black people from white South Africa to homelands and reserves. The government later introduced the Black Communities Development Act 4 of 1984. The Act regulated Black people situated outside homelands, townships and areas reserved for non-Blacks (Robertson,1990: 131). Through this Act, the government changed the policy towards Black people. The government introduced free residential settlement areas and free trading areas (Davenport 1987: 541). An illustration of the change in policy is the *S v Govender* 1986 (3) SA 969, 971 (T) case. In this case, the prosecution wanted to enforce the Group Areas Act. The court asked the prosecution to give evidence on “the personal hardship which such an order may cause and the availability of alternative accommodation” before it could make a ruling whether non-Whites should be evicted as prayed for in the application. The Act signified good progress but did not eradicate apartheid. Apartheid remained entrenched in the Republic of South Africa Constitution Act, 110 of 1983.

In the early 1990s, pressure by the United Nations was exerted upon South Africa to end apartheid. The government then, made serious efforts to repeal racial laws. The government passed the Abolition of Racially Based Land Measures Act of 1991. The new Act repealed the 1913 and 1936 Land Acts and restored Black people with the right to own land (De Villiers, 2003: 46). With the dawn of independence in 1994, the democratic government and the Interim Constitution of 1993 came into effect. Subsequently, the 1996 Constitution also came into effect. The final Constitution aimed to redress the injustices of the past. Section 25 was introduced to realise land reform as a mechanism to redress the injustices explained above. Section 25 provides for land redistribution, restitution and tenure security. However, despite the attempts by the current government to correct past injustices, the researcher holds the view that the effects of colonisation and apartheid still exist. In the year 1994, approximately thirteen million people out of forty million lived in the homelands and among these people at least eighty percent of the people were deeply impoverished (Turner & Ibsen, 2000). In this present day, as discussed earlier, many Black people still live in these communal areas and they are still poor (Walker & Dubb, 2013)

After establishing the effects of colonial and apartheid laws on communal land tenure, it is prudent to examine the current laws on communal land. In a bid to examine the latter, the following questions are key: Are these laws sufficient to develop and nature customary tenure that was destroyed by the European laws and systems. Are these existing laws sufficient to facilitate rural development and food security that was threatened by colonisation and apartheid? Do we need law reform? Do South African laws recognise customary tenure as a system of property law and if so, is the existing customary law or customary tenure a true reflection of Africanism or it is a shadow of European theories, systems and principles?

2.2.2.3 Post-Apartheid Laws on Rural Land

This subsection outlines literature on post-apartheid laws that have a bearing on customary tenure in South Africa. The South African government has attempted to create a number of regulations to control the tenure security of people living in rural areas, as is demonstrated in this section. Firstly, the subsection intends to investigate whether the government of South Africa, through these laws, has been able to pass and implement a law that satisfactorily captures the nuanced ways in which Blacks experience and regulate relationships of customary tenure in their day to day lives. Secondly, the subsection investigates whether these enacted laws have been sufficient to redress the historical wrongs. Lastly, the subsection examines whether the laws represent indigenous knowledge systems, or they are simply a continuation of Eurocentric ideologies, principles and objectives. The laws related to customary tenure are discussed below. However, the discussion is not put *seriatim*.

a) Constitution of The Republic of South Africa, Act 108 of 1996

With the dawn of democracy and the end of apartheid, South Africa adopted the final Constitution in 1996. The Constitution came into effect after a lengthy process of constitutional negotiations with the other political parties. The Constitution of South Africa is the supreme law of the land (Section 2 of the Constitution). As a result, any law inconsistent with the Constitution is *null* and *void*. The Constitution's Sections 25(6) and (29) serve as the impetus for recognizing the informal or customary land rights of Black people who live in rural areas. Section 25 (6) reads:

“A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or comparable redress.”

Section 25 (9) of the same Constitution obliges the government to enact legislation to give effect to that right. It provides that “Parliament must enact the legislation referred to in subsection (6)”.

These two sections aim to guarantee constitutional protection for all those whose employment is currently legally precarious due to historically racial discriminatory policies. In this case, the Constitution's objective is to guarantee tenure that is legally secure or an equivalent kind of redress. Additionally, these laws compel Parliament to strengthen the rights of people with insecure tenure by law. Therefore, the state has a fundamental duty to protect and strengthen communal people's rights to tenure. If the state fails or neglects to comply with this imperative, it is in direct conflict with the Constitution. The aggrieved party for that reason, holds a constitutional right to approach the courts to enforce this right.

Additionally, the state must “respect, promote, and fulfil” the rights outlined in the Bill of Rights according to Section 7 of the Constitution. The right to tenure security is included in the Bill of Rights for people whose tenure is insecure as a result of previous racial discriminatory measures. It is important to note that, although the above-mentioned obligations are interconnected, they place different duties on the state (Claremont, 2010: 54-55). For example, the duty to “respect” obliges the state to protect a person's right to tenure security. In other words, the state must stop interfering with the tenure security that individuals have established for themselves. Therefore, if the state was to pass legislation that weakens peoples land rights, it would have failed to comply with this obligation.

The state is required to “protect” those living in rural areas by taking measures to stop individuals, groups, and companies from interfering with their right to tenure security. To the extent of the researcher's knowledge, it was in acquiescence with this duty that the South African government passed the Interim Protection of Informal Land Rights Act 31 of 1996 (hereinafter IPILRA). However, it is the researcher's view that

this duty does not end with the passing of protective laws, rather it also imposes an obligation on the state to ensure that such enacted legislation is effectively and adequately implemented in practice. Lastly, the duty to “promote” and “fulfil” the tenure security right requires the state to “adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures toward the full realisation of the right” to tenure security (Clark & Luwaya, 2017).

To conclude, section 25 of the Constitution was enacted in response to the effects of colonisation and apartheid as shown above. It paved way for the strengthening and protection of tenure rights. It places an obligation on the state to enact laws that protect and strengthen communal land tenure rights that were historically and racially undermined. The discussion also shows that the state must take measures to ensure implementation and compliance with these enacted laws. The question that remains is whether the state through the Constitution has been able to redress these historical injustices. Is this provision adequate to preserve the communal land tenure system? Does the state through the Constitution equip customary tenure to facilitate rural development and food security? The researcher proceeds to examine the enacted laws to respond to these questions.

b) Interim Protection of Informal Land Rights Act (IPILRA) Act 31 of 1996

The Interim Protection of Informal Land Rights Act 31 of 1996 was passed by the state in 1996 in accordance with section 25(6) and (9), in order to fulfil its constitutional duty (IPILRA). The IPILRA was designed to act as a “holding measure” or “safety-net”, offering those with legally recognized informal land rights with short-term legal protection while the government sought to develop more extensive legislation to protect and regulate customary tenure (Claassens, 2000; Cousins, 2011; Land and Accountability Research Centre (LARC), 2016). However, to the extent of the researcher’s knowledge, the government has failed or neglected passing a comprehensive law to govern customary land tenure. This has warranted an annual extension of the IPILRA since 1996 (Cousins 2011).

According to Section 2 (1) of the IPILRA, no one may have their “informal rights in land” taken away from them unless they provide their approval. To put it differently the Act protects informal land rights and the only exception to interfere with these

land rights is either if the person to be deprived consents to the deprivation or if the government exercises its power of *eminent domain* to expropriate the land subject to payment of adequate compensation. Weinberg (2015) states that the Act defines informal land rights to mean:

“The right to use, occupy or access land that falls within one of the former homelands (or was previously South African Development Trust land).

The rights of beneficiaries of trust arrangements created in terms of a law passed by Parliament. This would, for example, include people living on land registered in the name of the Ingonyama Trust or the Lebowa Minerals Trust.

The rights of individuals who previously had valid Permission to Occupy (PTO) certificates.

The rights of beneficial occupiers from anywhere in the country (who have occupied land continuously since the beginning of 1993).”

The effect of the IPILRA is that if land is held on a communal basis, the holder may be deprived of his/her informal land rights in terms of the “customs and usages” of the community. Nevertheless, according to Weinberg (2015), this is only possible if the following requirements are met;

- The holder of the informal right in land must be paid appropriate compensation by the community disposing of his/her land.
- Compliance with Section 2(4) of the Act, which stipulates that the “majority of holders of such right” who are present or represented at the meeting called particularly to debate the deprivation may only decide to dispose of rights in land.
- Sufficient notice to be given to the affected persons.

- Affected persons must be given reasonable opportunities to participate in the deprivation meetings.

The IPILRA mandates that people or corporations who want to acquire or use land in rural areas have direct discussions with the people or families who currently have informal rights to the land. Nonetheless, this is not the case in practice. In most cases, the IPLRA is “routinely ignored and undermined” (Claassens, 2016). Claassens (2016), cites the opaque mining agreements in the provinces of the North West, KwaZulu-Natal, and Limpopo that led to the deprivation of families' and individuals' informal land rights as evidence for this claim. Claassens (2016: 5) argued that “companies that were involved in these mining deals failed or neglected to obtain the required consent of informal rights holders as dictated by the Act”.

In addition, the IPILRA carries with it a lot of limitations, despite its significant effort to protect informal land rights. The Act offers rudimentary protection from the infringement of unrecognized land rights. It is void of legal certainty regarding the nature of rights it seeks to safeguard and appears to have only sometimes been utilized to successfully secure informal land rights (Claassens, 2016: 4). This has a direct effect on communal land rights, due to their informal nature. In the researcher's view, it appears likely that awareness of the IPILRA is tremendously little among government officials together with those the Act is intended to protect. In response to these restrictions, scholars have proposed a number of interventions to strengthen the IPILRA, including, among other things, making the IPILRA permanent, enhancing the legal protection of informal rights through regulations, increasing awareness of the Act, and enhancing the enforcement mechanisms provided by the Act (Manona, 2012; section 4 of the IPILRA; Claassens, 2016: 30).

c) Kwazulu Ingonyama Trust Act 1994

The discussion of this Act in this section is pertinent despite that it came into effect before the 1996 Constitution. The Act is a post-apartheid legislation and it was envisioned within the same dictates of section 25 (6) of the Constitution. The Act remain in existence and operative to this present-day. The Act was passed to manage land owned by the previous government of Kwazulu Natal homeland instantaneously preceding to the Act's dawn (Centre for Law and Society (CLS), 2015). The Act at the

current moment regulates an approximate 2.8 million hectares of land in KwaZulu Natal (Centre for Law and Society (CLS), 2015). In 1994 the KwaZulu Ingonyama Trust Act KZ4 established the Trust. The Act which established the Trust was enacted by the KwaZulu legislative Assembly on the 24th of April 1994. This was few days before South Africa's first democratic election. Under this Act, land vests in the Ingonyama, the Zulu monarch King Zwelithini. He holds the land in trust on behalf of the community. In the year 1997, the Act was amended to create the Ingonyama Trust Board. The Board was created to administer the land in accordance to the provisions of the Act (Centre for Law and Society (CLS), 2015: 1).

Despite the Trust having broad authority to manage property registered in its name, the Act contains various restrictions to safeguard the beneficiaries of the Trust's land rights (Centre for Law and Society (CLS), 2015: 1). According to section 2 (2) of the Act, all land previously forming part of the KwaZulu homeland is to be held in trust by the King to the "benefit, material welfare and social well-being of the members of the tribes and communities" residing on the land. Section 2 (5) states that the Ingonyama "shall not encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the prior written consent of the traditional authority or community concerned". Section 2 (8) states that "the Ingonyama shall not infringe upon any existing rights or interests". As a result, the Act endows legal protection for the occupation, access and use rights that people possess over land administered by the Trust.

The Trust also concedes that people possess sturdy rights over the land administered by it. For example, the chairperson Jerome Ngwenya in the Trust's 2012/2013 Annual Report said all those living on the Trust land "know that their rights are not adequately described by leasehold as theirs is more than this" (Ingonyama Trust Board, 2013: 7). Ngwenya further argues in the 2011/2012 Annual Report that "while in a legal sense [the people occupying the land administered by the Trust] are the beneficial occupiers, in reality [they] are the true owners" (Ingonyama Trust Board, 2012: 9). In essence, the Trust recognises and acknowledges that people living on the Trust land enjoy more rights than solely the right to occupy or live on the land (Ingonyama Trust Board, 'Annual Report 2012/2013': 7). Ngwenya cements this assertion when he writes; "What is important though is the subtle acknowledgement that communal land

ownership consists of more than land ownership” ((Ingonyama Trust Board, ‘Annual Report 2012/2013’: 7). Therefore, it would seem that the Trust acknowledges that residents of the trust land have strong legal entitlements to utilize the land in a variety of ways, such as for grazing.

Contrary to these avowals, declarations, and the safeguards included in the Ingonyama Trust Act, the trust has not shied away from controversy and disagreement because it has not done enough to safeguard the land rights of those residing on the trust lands. The trust has been criticised for continuing to award long-term lease contracts to mining corporations, whereby it signs lease contracts with mining firms and allowing mining operations to take place on land that is commonly occupied and used by locals (Timse, 2015). Claassens et al (2016:5) argues that “occasionally these agreements are concluded without proper communal discussion and consultation and lead to the deprivation of use and access to land rights”. However, the Trust argues that it has always acted within the law. Before approving construction and mining operations on the Trust's land, the Trust is required under Section 2(5) of the Act to secure the written consent of traditional councils. Therefore, the basis of the Trust's argument is premised on the reasoning that the written consent of the traditional council is the only requirement to be satisfied before concluding a lease over the Trust land (Ingonyama Trust Board. ‘Annual Report April 2014). This interpretation implies that all decision-making power is vested exclusively in traditional councils.

The requirements for consultation that are frequently included in customary tenure are undermined by this approach. For example, the study conducted by the Institute for Poverty, Land and Agrarian Studies (PLAAS), on customary land law in Msinga, found out that it is insufficient for outsiders seeking access to land to only obtain the approval of traditional leaders (Cousins, 2011). The researcher is of the view that it is prudent for the distribution of land to include the consultation of the prospective neighbours of the outsider applying for land. Secondly, the *ibandla* – constituted of a council of local men who are “old enough to be presumably wise” must also form part of the consultation. This is so that wider dialogue is required under customary tenure before granting outsiders land rights. The livelihood and land rights of rural communities are at risk since the Trust has continued to provide lease agreements to mining firms notwithstanding all these ideas. The Parliamentary Portfolio Committee on Rural

Development and Land Reform, a committee assigned to hold the Trust to account, has on several occasions also criticised the Trust for its lack of transparency (Ingonyama Trust Board 3rd Quarter 2014/15 Performance Report). The parliamentarians have also voiced out their concerns about the revenue received by the Trust pursuant to these transactions and its ostensible failure to reroute this revenue back to the beneficiaries of the Trust as expected (Ingonyama Trust Board 3rd Quarter 2014/15 Performance Report).

To conclude, despite the noble intended objectives by the legislatures, the Act has failed to protect the land rights of the people living in the areas under the Trust. The system continues to undermine customary tenure and rural development. Instead the system benefits only the powerful and elite, which is indirectly a continuation of colonisation and apartheid, the only difference being that this time, the oppression is by fellow African brothers and sisters.

d) Communal Property Associations Act (CPA Act) (1996)

It is envisaged that everyone who gained from the land reform and wants to buy, keep, and administer land collectively will create legal companies to do so (Clark & Luwaya, 2017). A variety of on-the-ground land ownership methods had to be accommodated by the legal bodies (Clark & Luwaya, 2017). Many of these were group-centred, where a group of people seeking rights to or interest in certain property would unite to create an association regulated by common principles outlined in a written constitution. (CPA Act, 1996, sec 1). The lawmakers then created Communal Property Associations in a bid to develop a legal entity that was suited to this objective. Community Property Associations (CPAs) were established in terms of the Communal Property Associations Act 28 of 1996 (CPA Act). The CPA Act gives an outline on the registration and administrations of CPAs. The democratic ideals that guide CPA operations include a fair and inclusive decision-making process. It is on this basis that the Constitutional Court in *Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others* 2015 (6) SA 32 (CC), paragraphs 31 and 33, described the CPA Act as a “visionary piece of legislation ‘that was aimed at transform[ing]’ customary law and bring[ing] it in line with the Constitution”. The Act mandates that CPA members create a written constitution based on the inclusion, non-discrimination, and equality tenets of democracy (Kariuki, 2004). The Act also requires

members to democratically elect a committee every few years. The elected committee must answer to the ordinary members.

However, CPAs have not been immune to challenges. They have been crippled by administrative and financial mismanagement (Centre for Law and Society, 2015: 2). CPAs have not always been able to observe the requirements stipulated in the CPA Act, including election of new committees and holding annual general meetings. Due to the fact that CPAs have far less funding than other types of legal bodies, the situation has become critical (Centre for Law and Society, 2015: 2). These challenges have opened doors of abuse in some CPAs. In some CPAs, the committees or influential members misuse their power and neglect the interest of ordinary members (Sefako, 2018). As a result, vulnerable members would be at risk and these include women. Furthermore, traditional authorities refuse to acknowledge the establishment and functioning of CPAs, as they believe that CPAs threaten or challenge their authority in communal areas (Centre for Law and Society, 2015: 2). In addition, the absence of authority of the state to intervene in matters relating to the CPAs and the issue of self-centeredness which is reflective in the disposal of CPAs property, particularly land, without the approval of the community undermines the existence and governance of CPAs (Sefako, 2018).

The problems are exacerbated by the lack of institutional support and nominal oversight by the government (Centre for Law and Society, 2015: 2). At one point the Department of Rural Development and Land Reform has acknowledged its failure to support CPAs and even proceeded to pledge its future support to them (DRDLR, 'Draft Policy Paper, 2014: 9). All these problems resulted in the government being disappointed with CPAs. The government proceeded to change its approach in policy. The DRDLR's CLTP states that "registration of new CPAs on traditional communal tenure areas will be carefully considered and principally discouraged" (DRDLR, 'Communal Land Tenure Policy, 2013: 29). The new policy was contrary to the Courts decision in *Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela*, above-mentioned. In this judgement the court "affirmed and protected the right of land restitution and redistribution beneficiaries to choose which legal entity they want to hold and manage land held on a communal basis" (Clark & Luwaya, 2017). To be precise, the Court acknowledged the importance of CPAs – particularly its

characteristics as a democratic land-holding institution – as an important option that should always be available to beneficiaries of land restitution and redistribution (*Bakgatla-Ba-Kgafela Communal Property Association v Bakgatla-Ba-Kgafela Tribal Authority and Others* 2015 (6) SA 32 (CC)).

In 2016 the Communal Property Associations Amendment Bill B12 of 2017 was published for public comment. However, the Bill was criticised for its failure to provide effective mechanisms to rectify the problems facing the CPAs. The Bill is discussed in depth later.

e) Land Rights Bill 1998

The post-apartheid democratic government's first attempt to enact legislation governing customary tenure was the Land Rights Bill of 1998. However, the Bill was criticized by Thoko Didiza, who was appointed Minister of Land Affairs in 1999. She believed that the Bill required too much governmental assistance for local institutions and rights holders (Weinberg, 2015). The Minister decided to restart the drafting process (Weinberg, 2015).

Adams et al (1999: 11) argues “the Bill intended to elevate customary land rights by giving them legal or statutory recognition without necessarily altering their essential character”. If the Bill had become law, it would have recognized the Minister of Land Affairs as the official owner of common land while granting “protected land rights” to specific people or organizations. As intended, the owners of the protected land rights would have had full management and control over those rights (Du Plessis, 2011; Wily, 2012). The Bill would have allowed the protected rights to be registered, even though the rights would still exist without having been registered (Kariuki, 2004).

In conclusion, the discussion of the Bill is simply academic. The Bill never saw the light of day, thus it failed to discharge the state’s obligation as dictated in section 25 (9) of the Constitution.

f) Communal Land Rights Act (2004)

The controversial Communal Land Rights Act 11 of 2004 (CLRA) was enacted in 2004. The Act was the subject of contestation in Parliament. A number of civil society groups

raised queries about the constitutionality of the Act in parliamentary portfolio committee hearings (Cousins & Hall, 2011). The Act was legally contested by four rural communities on the grounds of constitutional invalidity, thus it was never implemented (Weinberg, 2015). Most of the rural communities held the view that the CLRA would undermine their tenure security. These concerns were caused by the fact that the CLRA gave traditional leaders and councils broad authority (Weinberg, 2015). Traditional leaders and councils acted as the land administration committee. This includes the authority to manage community land use and occupation (Weinberg, 2015).

The North Gauteng High Court in the *Tongoane and Others v. National Minister for Agriculture and Land Affairs and Others* 2010 (8) BCLR 838 (GNP) case, declared invalid and unconstitutional at least fifteen provisions of the Act. Among the unlawful provisions were those governing the sale and registration of communal land, the creation and membership of the land administration committee, and, last but not least, those governing the Minister's determination of rights. The court held that the provisions be struck off the roll on substantive grounds. The decision was subsequently referred to the Constitutional Court for confirmation. The Constitutional Court held that the Act must be struck off the roll in its entirety. The rationale of the decision was predicated on the fact that the Bill “had been incorrectly tagged in parliament as a Bill not affecting the provinces (in terms of section 75 of the Constitution) when it should have been tagged as a Bill affecting the provinces (in terms of section 76 of the Constitution)” (*Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (6) SA 214 (CC)). In spite of the Constitutional Court declining to deal with substantive issues raised by the applicant, it was apparent that the outcry against the Act indicated that the communal people were opposed to traditional leaders possessing outright power over communal land (Cousins & Hall, 2011).

The Act allowed for the “transfer of title” of communal land to communities with a variety of restrictions (Cousins & Hall, 2011). A community had to first draft and register a set of land tenure rules in order to be recognized as a legal entity capable of holding land, and this was a prerequisite for the transfer of title to that community. Cousins (2015) contends that the community was required to first survey and register the

'community' boundaries. After that they would be required to conduct a rights enquiry on all residents of the community (Cousins & Hall, 2011). This was done to examine the nature and extent of the existing rights and interest in land (O'Laughlin, Bernstein, Cousins, & Peters, 2013).

The Act also created "land administration committees" to "enforce rules and exert ownership powers on behalf of the community" (Cousins & Hall, 2011: 9). Traditional councils recognized under the Traditional Leadership and Governance Framework Act 41 of 2003 could serve as land administration committees, according to section 21 (1) of the Act. It is unclear if communities participated in choosing which entity could act as the land administration committee. The Department of Land Affairs argued that communities were able to choose between their traditional council and some other entity (Aliber & Cousins, 2013). Instead, the Department of Provincial and Local Government refuted this claim and stated that traditional councils will be contacted in areas where they already exist to serve as the land management committee (Cousins & Hall, 2011). The Act's failure to outline specific procedures for how a community should make this decision only served to exacerbate the issue.

The Act as a result granted substantial powers over land to traditional councils and leaders. This did not only ominously weaken the tenure security of people living in rural areas but rather it "strengthened traditional leaders and councils politically at a time when the relationship between them and elected local government officials remain[ed] unresolved and often tense" (Francis, 2006). The relationship between the community and the traditional leaders fluctuated from "good, to distant and to hostile" (Francis, 2006). The Act had the effect of granting traditional leaders and councils more far-reaching powers over land than those provided for under customary law, thus undermining the local aboriginal accountability structures. It would have been difficult for regular community members to demand accountability from their traditional leaders as a result. Kariuki (2004) opines "some scholars noted that the wide discretionary powers vested in the Minister as the sole determinant of how the conversion of land rights will be undertaken centred on the land rights inequality also raised constitutional disquiets".

To conclude, the Act made an attempt to secure informal land rights and tenure security. However, it came short and contained invalid and unconstitutional provisions.

Instead of giving ordinary people tenure security, the Act protected the interest of traditional leaders and councils. The Act threatened local people's rights in land, thus it promoted poverty and anti-development.

g) Communal Land Tenure Policy (2014)

The Department of Rural Development and Land Reform, in September 2014 published a Communal Land Tenure Policy. Just like the Communal Land Rights Act of 2004, the policy recommends the transferring of “outer boundaries” of “tribal” land in rural areas to “traditional councils” (Clark & Luwaya, 2017). The policy is also known as the ‘wagon wheel’. In principle, the policy provides for Trusts or Community Property Associations to hold land titles with consent from members (Communal Property Associations Act 28 of 1996). Nevertheless, according to the Department's Draft Policy Paper on Community Property Associations and the Communal Land Tenure Policy, no new Community Property Associations have been established in all areas where traditional councils already exist. This implies according to the researcher's view that, considering that traditional councils exist wall-to-wall in communal areas, this policy will put an end to the establishment of Community Property Associations. This has the effect of communal land being transferred into the name of traditional councils. Traditional councils would acquire full ownership of land. Consequently, families or individuals occupying or using the land would be granted 'institutional use rights'(Clark & Luwaya, 2017). This policy's natural result is that any usage rights granted to families and individuals may be threatened by the traditional councils' ownership rights.

Additionally, the Communal Land Tenure Policy gives traditional councils the authority to regulate the development of communal property areas, such as grazing land, rivers, and forests, among others (Clark & Luwaya, 2017). The policy effectively gives traditional councils the authority to oversee investment initiatives involving communal resources (Clark & Luwaya, 2017). The researcher is of the view that the Policy fails to protect the rights of individuals or families to own property. The policy undermines security of tenure. It empowers traditional authorities to undermine property rights to the detriment of individual communal families. The Communal Land Tenure Policy was also criticised by the civil society. One of the major points of criticism was “that the

policy made no provision for individuals and households with institutional use rights to hold traditional councils accountable for their decisions” (Clark & Luwaya, 2017).

h) Communal Land Bill (2016)

The Bill represents the government's attempt to pass legislation governing community land. The Bill was instituted on the regulatory scheme proposed in the Communal Land Tenure Policy. However, it differed from the policy in a number of ways. Section 28 (1) of the Bill signifies the major difference between the Bill and the Policy. It states:

“A community can, by a resolution supported by at least 60% of the households in the community, choose to have its communal land managed and controlled by one of three institutions: a traditional council; a Consumer Property Association; or the Ingonyama Trust.”

In actuality the right to choose provided for in the Bill is artificial. The Draft Policy Paper on Consumer Property Associations posits that no new Consumer Property Associations will be established in areas where traditional councils already exist. This means that in reality communities do not enjoy the right to choose a Consumer Protection Association as the institution they prefer to acquire, hold and manage their land.

Further, it is prudent to state that the power to register Consumer Property Associations lies solely with the Department of Rural Development and land Reform (the Department). The Department in practice has intensely undermined and opposed Consumer Property Associations (Clark & Luwaya, 2017). Traditional councils are likely to continue to be the only options accessible to communities located in former homelands as a natural result of this. Additionally, the Bill's Section 28 lays out a rather evasive procedure for exercising such a choice. It specifies that an organisation chosen by the Minister will set the procedure (Clark & Luwaya, 2017). Additionally, if there is a “dispute” regarding the land, the Minister is prohibited by the Bill from transferring communal land to the name of a community (clause 10 of the Communal Land Bill). However, the Bill is imprecise on what would qualify as a “dispute”. Transfers may therefore be delayed for years. Numerous instances of “disputes” involving tribal boundaries and Consumer Property Associations have

been cited as justifications for why transfers to Consumer Property Associations have, in some cases, lagged for more than ten years (Clark & Luwaya, 2017).

The Bill also stipulates that in order to make decisions about land, at least sixty percent (60%) of the households in a certain 'community' must support those decisions (Clause 14 (a) of the Bill). The Bill states that the institution elected by the community cannot sell, lease, or alienate land without a resolution backed by at least 60% of the community's households (Clause 14 (a) of the Bill). Uncertainty surrounds the Department's determination that 60% of community homes would be sufficient for making decisions about the alienation of land. According to the researcher, these requirements causes a lot of problems. First off, the Bill's clauses do not distinguish between the various categories of rights holders—some have the right to access the land, while others have the right to occupy it. Consequently, the interest of these rights holders is evidently different, thus ought to be treated differently in the decision-making process. Secondly, unlike the Interim Protection of Informal Land Rights Act 31 of 1996 (IPLRA), the Bill fails to protect community rights in land. As discussed above, section 2 (1) of the IPLRA provides that “no person may be deprived of their occupation, use or access rights to land without their consent (and appropriate compensation)”. The only exception to this obligation imposed by section 2 (1) of the Act, relates to communal resources like grazing land and forests. On the contrary, the Bill fails to make this distinction, hence it is parallel to the Act.

After conducting a land inquiry to ascertain the land rights on a specific parcel of land, the Bill grants the Minister of Rural Development and Land Reform the authority to affirm, convert, or abolish any existing land rights (Clause 6 and 7 of the Bill). After deciding to terminate people's land rights, the Minister may order that the rights be transferred to the institution chosen by the community to manage the land, or that the landholder be given another type of right, as determined by the Minister (Clause 7 of the Bill). The Bill therefore gives the Minister the authority to award individuals “institutional use rights” to small areas, such as household plots. The outright ownership simultaneously granted to the community and traditional councils, however, supersedes these use rights (Clark & Luwaya, 2017). It is the researcher's view that the attempt to enact legislation regulating communal land was and remains noble.

However, the Bill is pregnant of inconsistencies and excessive shortcomings as explained above in securing communal land tenure rights.

i) Traditional leadership and Governance Framework Act 41 of 2003 as Amended by Act 3 of 2009 (TLGFA)

The Act as amended by the Traditional leadership and Governance Framework Act 3 of 2009 administers the structures of traditional governance. It is the primary legislation that would serve as the foundation for laws like the Communal Land Rights Act 11 of 2004 and others. The Act has a considerable impact on how power is distributed in communal areas, even though it is not directly tied to community land. Therefore, it remains important for this study. This section gives an in-depth review of this Act. Rather, attention is placed on some key provisions that are relevant for this specific discussion. The TLGFA bestows authority on traditional leaders or councils, or dissimulates such an act by claiming to do so (Section 20 of the TLFGA). Through the enactment of law, the Act allows for the grant of authority to traditional authorities. Section 20 of the Act includes education, land administration, administration of justice and registration of births and deaths among areas in which traditional authorities can be given a role. Further, section 28 of the TLGFA confirms the boundaries of the Tribal authorities created in terms of the Bantu Authorities Act 68 of 1951. In this section, the TLGFA reckons the tribal authorities of old to be traditional councils of the current democratic dispensation. Therefore, the traditional council's boundaries echo those of the tribal authorities created by the 1951 statute.

The Act's Section 3 specifies the form that traditional councils must take. According to this statute, the community must elect 40% of the members, and the traditional leader must designate the other 60%. Women must occupy one-third of the membership. The initial deadline for fulfilling these conditions was one year. However, the period of compliance was extended several times through amendments to the Act. Years have passed since the Act came into force; however, many councils have not had the elections, calling into question their legitimacy (Clark & Luwaya, 2017). Despite these glaring questions surrounding the legitimacy of the traditional councils, the Department's policies and Bills continue to vest power in them.

The government has falsely created the idea that the Act increased traditional leaders' powers and functions, notably in connection to land, even though it neither extends nor grants considerable rights to them. There is no law in place that grants such authority to traditional leaders. The failure on the part of the government to eradicate this false position and clearly spell out that traditional leaders do not have these powers, has created legal uncertainty allowing them to act with impunity. Others contend that the government is turning a blind eye to the traditional leadership lobby because they believe that the traditional leadership lobby holds substantial power with the rural voters (Weinberg, 2015; Buthelezi & Yeni, 2016; Weinberg & Bakker, 2015). Weinberg (2015: 14) argues that “it is dangerous to court this lobby when it has been clear that traditional leaders want to be acknowledged as the exclusive owners and controllers of land in the former homelands”.

To conclude, the Act with the aid of the government's laxity has resulted in traditional leaders exercising powers over land that they do not have. This is being done to the detriment of individual community members. It is clear that the Act does not empower traditional leaders with powers over communal land, but the conundrum is that the government fails or neglects to take corrective measures against this false position because of the alleged belief that traditional leaders hold significant power with rural voters. This paves way for insecure tenure in communal areas. With insecure tenure comes limited or no investment which equals to minimum or no development and food insecurity.

j) Traditional and Khoi-San Leadership Act 3 of 2019

The section shall firstly discuss the effects of the Traditional and Khoisan Leadership Bill B23 of 2015 (TKLB), a Bill which paved way for the enacting of the Traditional and Khoi-San Leadership Act 3 of 2019. The discussion is pertinent to demonstrate the effects of the Act on customary tenure rights. The Bill was introduced to repeal the Traditional leadership and Governance Framework Act 41 of 2003 if passed into law. The Bill presented challenges for rural communities in relation to tenure security. It reintroduced the same problematic and profoundly contested boundaries carried into democracy by the TLGFA. Additionally, the Bill gave traditional councils a second chance to meet the conditions, in an effort to resolve concerns about their legitimacy. Consequently, the Bill provided that community land would continue being held or

owned by structures based on contested boundaries and imposed identities. Further, clause 24 of the Bill empowered traditional councils with the power to “enter into agreements or partnerships with municipalities, government departments and, most importantly, any other person, body or institution” (LARC, ‘Notes on the Traditional and Khoisan Leadership Bill [B 23–2015]).

This clause had significant ramifications for people's rights under the IPILRA, particularly for communities residing on property where the government or businesses wished to engage into a contract with the traditional council. This was due to the fact that the Bill did not call for community members to be consulted in advance before forming any such partnerships or agreements. This seriously undermined and weakened communities’ ability to consent to the deprivation as was required by the IPILRA. Therefore, traditional councils could make mining transactions that would harm people's land rights without first consulting those people, which would be a clear violation of their rights (LARC, ‘Notes on the Traditional and Khoisan Leadership Bill [B 23–2015]).

As indicated above, some traditional councils have not had elections as required to this present day (Nekhavhambe, 2014). To cure this defect, in 2017, the Department of Cooperative Governance and Traditional Affairs (COGTA) published TLGFA Amendment Bill for public comment. The purpose of the amendment was to deal with the status of traditional councils by extending the time-lines compliance period. It is unclear, however, how the amendment intended to address the noncompliance by retroactively extending the compliance dates. The Bill was eventually signed into law by the President of the Republic of South Africa Cyril Ramaphosa, as the Traditional and Khoi-San Leadership Act 3 of 2019. This was despite a series of appeals by land rights activists to the President not to sign the Bill into law. Heywood (2019), after the signing of the Bill into law stated that:

“On Thursday, Parliament announced that President Cyril Ramaphosa had signed the Traditional Khoisan Leadership Bill on 20 November 2019, thereby robbing millions of people living in rural areas of fundamental rights and shoring up the power of unelected and predominantly male traditional leaders against women in particular.”

In conclusion, the Act as a by-product of the contentious Bill does little to counter the practices of traditional authorities on the ground. Neither the Act nor the TLGFA as amended advocates for a system of customary law that places people at its centre. The Act endorses a top-down, centralised system of customary law – traditional authorities at the top and communities at the bottom. The system when it comes to communal tenure and land rights has the potential to strip individuals, families, communities and groups of land rights they have held for generations. This explains the view, that by signing the Bill into law the President had signed away rural people’s rights. It is the researcher’s view, the Act threatens development and food security as landholder’s property rights are not secure. No person would want to invest in an insecure environment. Tenure security builds trust and trust motivates investment. Investment proliferates development and development brings food security.

k) Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and Regulations

The SPLUMA was enacted in 2013 by Parliament. The objective was to create a framework to govern planning permissions and approvals, together with setting parameters for new planning developments as well as determining lawful land uses (Clark & Luwaya, 2017). The rationale of the law was predicated on the need to rectify South Africa’s fragmented, complicated and inconsistent planning laws. South Africa’s planning laws had been left in a sorry state due to the repeal of apartheid planning laws (Rogerson, 2017: 93). For that reason, SPLUMA wanted to develop a “uniform, effective and comprehensive system” of planning that “promotes social and economic inclusion” (Section 3 of SPLUMA). SPLUMA also endowed the Department of Rural Development and Land Reform (DRDLR) to pass regulations (Section 54 of SPLUMA). The regulations came into effect on 1 July 2015. Even though SPLUMA boast progressive elements, its coming into effect is not shy of controversy and debate (Kerr, 2009). This is mainly because of the powers that SPLUMA and its Regulations award to traditional councils (Kerr, 2009). Further, the traditional leadership lobby also resisted the Act and requested the government to suspend its implementation. The basis for the appeal by the traditional leaders was that they had not been properly consulted during the legislative process (Fourie, 2019).

As stated above, there are serious apprehensions in relation to the powers granted to traditional councils in terms of the SPLUMA regulations. Regulation 19 (1) provides that:

“A traditional council may conclude a service level agreement with the municipality in whose municipal area that traditional council is located, subject to the provisions of relevant national or provincial legislation, in terms of which the traditional council may perform such functions as agreed to in the service level agreement, provided that the traditional council may not make a land development or land use decision.”

Regulation 19 (2) reads:

“If a traditional council does not conclude a service level agreement with the municipality ... that traditional council is responsible for providing proof of allocation of land in terms of the customary law applicable in the traditional area to the applicant of a land development and land use application in order for the applicant to submit it in accordance with the provisions of the Regulations.”

Regulation 19(2) states that traditional councils have the authority to show proof of land allocation in accordance with customary law to anyone residing in the traditional area in question to the applicant who submits a land use and development application. This would imply that traditional councils are able to delineate the content of customary law, by making a determination on what qualifies as ‘customary’ for purposes of proof. Technically, the provision gives traditional councils the authority to assume some of the land use and planning responsibilities that belong to the municipality. The regulations create the potential for traditional councils to take over local land allocations.

To add, to accept that the traditional councils are the only structures eligible to make a decision on the content of customary land rights will seriously undermine the customary law and practices of several rural communities. This is due to the fact that land transactions in the majority of rural communities occur at numerous levels, including family, households, clan, village, and sub-community. Instead of a system

that concentrates power in traditional councils, customary law is frequently described as a layered system. Therefore, according to the researcher's view, granting land planning and land use powers solely to traditional councils does not hold true to most of the communal people residing in the former homelands.

Thirdly, the regulation granting land planning and land use rights to traditional councils raises constitutional questions. The Constitution does not make provision for traditional leadership or councils to exercise government powers or functions. This position was elaborated in the *Certification of the Constitution of the Republic of South Africa, 1996* (4) SA 744 (CC) case, where the Court said:

“... if traditional leaders were supposed to have governmental powers and functions, the 1993 Interim Constitution would have specifically said so. Instead, it was only stated that the ‘institution, status and role’ of traditional leaders should be recognised”.

Similarly, at present, this is how traditional leaders are currently recognised in section 211 of the Constitution (Constitution of the Republic of South Africa, 1996). This provision makes the recognition of traditional leaders' subject to customary law. In light of this, it is very troubling that municipalities' land management responsibilities are being transferred from elected officials to unelected people and, in certain cases, traditional councils that were imposed by apartheid.

The Regulations are ambiguous about how traditional councils would be held accountable for their authority and responsibilities in land use management with regard to service level agreements, as well as their obligation to prove the allocation of customary lands. A traditional council's decisions determine how someone living in a traditional area can utilise their land and develop it. This is because the Regulations stipulate that in order for someone to be permitted to submit their application, the traditional council must first present evidence of a land allocation. The Regulations do not propose any effective means for holding a traditional council responsible to the public and the local government. Therefore, without accountability and in possession of power, traditional councils may deal with land as they please to the detriment of secure tenure, rural development and food security.

The discussion above on laws regulating communal land, clearly demonstrate the lacunae in law towards protecting communal land rights. Several laws have been enacted since the dawn of democracy, but no law seems adequate enough to guarantee against abuse of power by authorities to the detriment of the poor majority living in communal areas. In other cases, as previously described, members of the traditional elites' act in ways that are not sanctioned by the law. For example, the TLGF Act 41 of 2003 as amended by the TLGF Act, 3 of 2009 lists land administration as one of the areas that traditional leaders can be given a role through legislation. However, the discussion above clearly shows that since the striking down of the Communal Land Rights Act of 2004, there is no law giving them this role. This has not stopped traditional leaders from acting as if they have such powers. In some communities, traditional leaders continue to act as if they have the power to administer communal land, represent the community and take decisions about the communities with little or no consultation (Yeni, 2015). The law is not seen to bring such traditional leaders or councils to account (Yeni, 2015).

Some traditional leaders assert that customary law gives them the authority to represent and make decisions for the communities (Koelble & Li PUMA, 2011). However, even in terms of customary law, traditional leaders have no such powers (Geu, 2020). On ground, Clark and Luwaya (2017) argue "due to ineffective and inadequate laws governing communal land, underprivileged bucolic communities are trying to assert and hold onto their land rights while traditional leaders/councils are wielding powers of land allocation far exceeding the types of powers held under customary law". It is paramount that laws governing communal land uphold principles of democracy and transparency. In some instances, community members oppose development on their land because traditional leaders or local government authorities would have sanctioned such without consulting the communities. As such, it is the researcher's submission that the current laws are not adequate to guarantee secure tenure. To add, there is need to review, repeal and enact new laws that comprehensively ensure security of tenure to promote development and food security. Further, the law must define clear procedures and powers for all stakeholders. Priority must be centred on upholding African values, culture, practices, integrity and above all, secure tenure for all communal land. Secure tenure creates confidence and trust, exterminates resistance towards development, thus paves way for rural development

and food security. Having appraised the South African position on the above matter, the researcher deems it fit to look at other African countries and see if it can learn anything from the way customary tenure is governed in a bid to develop the South African customary tenure where it is necessary and complements the customary laws of the country.

2.2.3 Other African Countries

This section provides an in-depth review of the evolution of customary tenure in Botswana, Ghana and Zambia. The researcher chose these countries for comparison because of the renowned resilience on the use of customary tenure. This examination is done to give a cross-national comparison of approaches and experiences in South Africa and other African countries. The results are synthesised to provide guiding principles for South Africa to consider in determining systems of land administration in its communal areas. It is pertinent to argue that the majority of land in Africa falls under customary tenure system. It is true that acquiring precise data on land held under customary tenure to support this claim is difficult, but some calculations indicate that up to 90% of land in sub-Saharan Africa may come under this category (Boone, 2019: 2). Wily (2011: 468) argues “about two thirds or twenty-two billion hectares of all cultivated land in Sub-Saharan Africa is believed to be under customary land tenure”. Although customary tenure is the norm in Africa, there has always been some ambivalence around it, as previously demonstrated in the literature on land in Africa (Boone, 2019). Some in the past have seen customary tenure as unregulated capital holding back the ability of the poor people to succeed and prosper (The World Bank, 2007 & de Soto 2000). Some have also claimed that the adaptability and volatility of customary tenure equate to tenure insecurity, which causes inefficiencies in the market (Dorner, 2012 & World Bank, 2001). Recently, most African countries customary tenure as progressive and adaptable (Chimhowu, 2019; Atayo, 2018). It is for this reason that the study undertakes to investigate on the experiences and approaches of other African countries so as to model a well-informed land tenure system in South Africa to guarantee rural development and food security. The following countries are discussed: Botswana, Zambia and Ghana.

2.2.3.1 Botswana

This section provides a comprehensive review of the evolution of customary tenure policy in Botswana, their successes and their problems so far. Land governance in Southern Africa developed through a similar pattern with Botswana from the pre-colonial, to the post-colonial epochs (Khama & Seleka, 2016). Both South Africa and Botswana were colonised by the British (Khama & Seleka, 2016). After independence both countries introduced some kind of land reform with the main objective of addressing inequitable land distribution and to rationalise discriminatory land use policies and insecure tenure systems (African Union Commission- Economic Commission for Africa -African Development Bank (AUCECA-AfDB), 2010). Tribal land (communal land), accounts for 71 percent of the total land area in Botswana (Republic of Botswana, 2015). Tribal land is allocated under customary law through the Tribal Land Act of 1968. Van Niekerk (2004) contends that Botswana courts apply South African laws because of the extensive similarities in the countries legal systems. In this regard, it is justifiable to study Botswana customary tenure, borrowing from its positives and learning from its wrongs.

The progression of land administration in Botswana can be separated into three palpable epochs: pre-colonial, colonial and post-independence. Land during the pre-colonial epoch before 1895, was administered by *Dikgosi* (traditional chiefs) (Republic of Botswana, 2015). They were responsible for allocating land to their tribesmen for both domiciliary and subsistence agriculture purposes (Khama & Seleka, 2016). During the colonial period between 1895 and 1966, land was characterised into three land tenure systems of administration, namely crown lands, native reserves and freehold land (Khama & Seleka, 2016). All native lands remained under the jurisdiction of traditional chiefs for allocation to tribesmen. Freehold land was only allocated to European settlers, mainly for commercial livestock farming. The state held title to crown land for the common good. With the dawn of independence in 1966, land tenure systems continued in the same manner, save for an amendment in name of 'native reserves' to 'tribal land' and 'crown land' to 'state land' (Khama & Seleka, 2016). Botswana inherited dual forms of land tenure, one based on statutory tenure systems and the other on customary tenure.

Botswana refused to succumb to the pressure of replacing customary tenure with statutory tenure ('the replacement paradigm') (Nkwae, 2012: 1). Tribal land makes up 71% of Botswana's total land area, state land makes up 26%, and freehold makes up 3%. These three forms of land tenure systems form the foundation of the country's land governance and policy (Republic of Botswana, 2015). For this study, focus is solely placed on tribal land (communal land). Tribal land is categorised under customary law. It is governed by the Tribal Land Act of 1968. The Tribal Land Act replaced traditional land authorities with elected district Land Board (Nkwae, 2012: 1). The Land Board is the statutory body empowered to regulate and allocate tribal land. The Act bestowed all land in the respective District Land Boards. The Land Board holds the land "in trust for the benefit and advantage of the tribesmen of that area and for the purpose of promoting the economic and social development of all peoples of Botswana" (Sub-section 10(1), Tribal Land Act 1970). In consequence, the Act brought to an end the exclusive use of all tribesmen and now the word "tribesmen" has been substituted with a gender nonaligned word "citizen" (Nkwae, 2012: 1).

The land administration reform endeavoured to modify customary tenure. The Presidential Commission on Land Tenure contended:

"The desires of the people are not for new and radical forms of land tenure but rather for easy access to land for citizens of Botswana, their ability to utilize it as an instrument of development and at the same time the retention of such developed land as a family asset to be passed on from generation to generation. Tribal land tenure possesses many of the characteristics meeting such desires."
[Government of Botswana, 1983: 2]

Tribal land is allocated for various uses: commercial, industrial, residential, civic and agricultural (Khama & Seleka, 2016). The tribal land holders are issued certificates that provide them with perpetual and exclusive tribal land rights (Nkwae, 2012). In accordance with the customary law of inheritance, the transfer of customary land rights is hereditary (Nkwae, 2012). Customary tenure guarantees a secure tenure for private investment and development because it is awarded in perpetuity (Nkwae, 2012). The only exception is with regards to communal grazing land where there are no defined property rights. Tribal land holders have a right, if they

so wish, to convert the certificates into common law leases, which can then be registered at the deeds registry. Having followed this process, they obtain title to their land (Khama & Seleka, 2016). However, tribal land belongs to the state and cannot be traded except if it has been developed. In this case, the sale is deemed to be a sale of improvements and not of the land itself. The land still belongs to the state even in instances where tribal land has been converted into common law leases (Khama & Seleka, 2016). The state can repossess the land for developmental purposes through the Acquisition of Property Act.

The brief discussion above clearly demonstrates that land administration in Botswana has undergone several changes to resolve emerging challenges and to develop and preserve customary land tenure. Malatsi & Finnström (2013) together with Republic of Botswana (2015) contends that the Republic of Botswana followed a stratagem of cautious change, responding to the particular needs with land management. However, despite the careful thought process, customary tenure is besieged with a number of criticisms. Mathuba (1999: 24) argues:

“Although the Botswana Land Board model is often cited as the model for sub-Saharan Africa, it is also heavily criticised by both politicians and members of the public in Botswana.”

It has drawn criticism for failing to address the requirements of a modern society since it upholds traditional land concepts (Mathuba, 1999). The land board procedures are also criticized for being burdensome and onerous, which results in unnecessarily long delays for land distribution and the resolution of land disputes (Mathuba, 1999).

Despite the criticism levelled against the Botswana customary tenure, the system remains well developed and advanced with only a few issues that require attention. Customary tenure promotes development and investments. As indicated earlier, tribal land can be allocated under customary grants and common law grants. Customary grants are only accessible to citizens, and land held under customary endowments cannot be encumbered (Khama & Seleka, 2016). However, the landholder may convert his/her tribal land certificates to common law leases, which are registerable at the deeds registry (Armstrong et al, 2008). The lengths of the leases range from 15 to 99 years. Mortgage bonds may be registered and used as security for loans from

financial institutions once they are registered in the deeds registry (Armstrong et al, 2008).

Therefore, customary tenure in Botswana is in sync with rural development, thus guarantees food security, taking into account that rural landholders are assured of a secure tenure, an element that confirms their access to formal credit and investment. This aspect is lacking in South African customary tenure, thus South Africa may learn from Botswana in a bid to implement a system that secures communal land rights, thus promoting rural development and food security.

2.2.3.2 Zambia

Zambia just like South Africa and Botswana is a Southern African country. In the name of development, Zambia is reformulating land policies to facilitate privatisation of customary land rights (Vernon, Chinene & Banda, 2013). The general discourse is enshrined in the ideology that customary land rights are insecure and constrain long-term investment in sustainable land management and access to formal credit, thus it is argued that privatising customary land rights can stimulate land markets, access to formal credit, and (foreign) private investment, improve security of tenure (through formal title), thus leading to a growth in economy and alleviation of poverty (Vernon, Chinene & Banda, 2013 & Ambreena, 2006). This has led to recommendations that substituting customary tenure with freehold titling would lead to more investment and better productivity. The same sentiments are being echoed in South Africa. There is a common discourse as explained before that customary tenure rights are insecure and obscure investment and access to formal credit, thus are anti-development (Okoth-Ogendo, 2008). It is therefore, justified to undertake a comparative analysis of customary tenure in Zambia and South Africa to provide guiding principles for South Africa to consider in determining systems of land administration in its communal areas.

Colonialism left behind two land tenure regimes in Zambia, much like it did in a number of other African nations: freehold and customary (Lawry, Samii, Hall, Leopold, Hornby & Mtero, 2017). Customary tenure is often of a community nature, and its administration is based on customary norms and principles (Lawry *et al*, 2017). Communal people in Zambia, just like elsewhere in sub-Saharan consider land as a free commodity (Government of the Republic of Zambia, 2006). People are connected

to land through ethnic or cultural groupings. Village membership is crucial for a member to enjoy communal land rights which are basically use rights (Government of the Republic of Zambia, 2006). Lawry et al, (2017: 61-81) argues:

“Communal tenure refers to systems that combine individual/family rights to land and natural resources with group oversight and rules to keep land within the group. Communal systems are mixed regimes, comprising various bundles of individual, family, sub-group, and large group rights and duties. In communal tenure systems, land and resource rights are directly embedded in a range of social relationships and units, including households and kinship networks.”

Therefore, communal land rights are predominantly derived from accepted membership and affiliation of a social unit. This can be through birth, association and/or allegiance to a group and its political authority (Bruce & Migot-Adholla, 1994). Furthermore, this can be via transactions of various kinds – including purchases, gifts and loans (Bruce & Migot-Adholla, 1994). According to Boone (2019: 384)

“Land and resource rights may include both strong individual and family rights to residential and arable land and access to a range of common property resources such as grazing, forests, and water.”

In view of the above, land rights are both “communal” and “individual” in character. In Zambia, the administration of customary land is enormously decentralised through chiefs and their *indunas* and headman (Tagliarino, 2014). Chiefs are commonly perceived to be “owners” of land within chiefdoms (Lawry et al, 2017). This is despite that legally all customary land is vested in the President (Land Act, 1995). In practice, traditional leaders exercise virtually exclusive power over customary land management (Lawry, 2016). The only exception is with regards to cases of conversion of customary land rights to state land, which requires the approval of the District Council (Land Act, 1975).

The conundrum associated with customary land falling under the jurisdiction of chiefs is that customary laws vary by chiefdom (Tagliarino, 2014). These laws are largely unwritten and unsystematic (Hall et al, 2012). Therefore, this creates a sense of tenure insecurity considering that customary tenure security is at the mercy of uncodified laws

that differ by chiefdom. Documentation of land allocations within chiefdoms vary and as a result, in the event of death or divorce disputes often arise over inheritance and rights to land (Ndulo, 2011). In some cases, the widow or children are pushed off the land (Ndulo, 2011). Chiefs may in some cases reallocate people with little or no recourse (Higgins, Balint, Liversage & Winters, 2018).

To add, customary tenure rights in Zambia are often perceived as insecure because the land rights are not secure in law (*de jure*) and this leads to vulnerability in practice (*de facto*) (Hall *et al*, 2012). Hall *et al* (2012: 148) further argues:

“This happens, for instance, when predatory states, traditional authorities, and non-state actors reallocate land to local and foreign investors through conversion of land to statutory tenure systems, which tend to be costly and thus exclude the local customary rights holders.”

Okoth-Ogendo (2008) argues that “contemporary customary tenure has been distorted by long colonial histories of subversion, suppression and expropriation of indigenous conceptions of land rights”

However, despite the noted insecurities associated with customary tenure in Zambia, other writers contend:

“[t]enure reform should not be seen as transfer of customary rights to statutory rights, but instead as a way to secure customary *de facto* rights in law and give them *de jure* recognition.” Larson, Brockhaus, Sunderlin, Duchelle, Babon, Dokken, Pham, Resosudarmo, Selaya, Awono & Huynh, 2013: 678; Ma, Heerink)

RA (2017: 19) contend

“Documentation of customary rights at a household or communal level provides an additional level of security that is increasingly being explored globally, for example through forums such as the Interlaken Group on Community Land and Resource Rights.”

Ensminger (1997:167) concludes:

“There is increasing evidence from anthropologists and Africanists...that even the longest running national privatization efforts are unravelling, reverting to customary rights, and show few, if any, investment and productivity benefits over indigenous systems.”

The discussion clearly demonstrates that large amounts of land in Zambia accounts to customary land. For the majority of Zambians, communal land is a crucial resource for sustainable living, but its lack of development, codification, openness, and adequate administration mechanisms can result in tenure insecurity. However, freehold titling is not the answer because titling of communal lands has in the past on several times resulted in negative outcomes (Ensminger 1997). Therefore, there is no consensus on whether to replace customary tenure with formal tenure or to preserve customary tenure and give it a *de jure* recognition.

Similarly, the problems experienced and noted in Zambia are akin to the situation in South Africa. Zambia attained its independence long ahead of South Africa. Hence, South Africa must learn from Zambia's mistakes, so as not to repeat the same. Zambia is a true reflection that converting customary land rights to freehold titling is not the answer.

2.2.3.3 Ghana

Ghana is also an African country located on the Guinea Coast of West Africa (United States Agency for International Development in Ghana (USAID), 2016). Its discussion is relevant because its economy is mainly based on agriculture. Sixty-eight percent of Ghana's land is used for agriculture and fifteen percent of it is used as permanent natural pastures (Block, 2014). Of the estimated total population in Ghana, forty-nine percent live in the rural areas, and an estimated fifty-five percent of the active population works in agriculture (Martey, Etwire, Wiredu & Dogbe, 2014). According to the Food and Agriculture Organisation (2020) report, agriculture in 2006 contributed to thirty-seven and three percent (37,3%) of the Gross Domestic Product and employed fifty-six percent of the labour force. As a result, the vast majority of its land is rural or communal in nature and immensely contributes to the Ghana economy. For

that reason, its discussions contribute to the discourse of knowledge on customary tenure rights and serve as a yardstick upon which South Africa may learn from in formulating and developing laws to regulate customary land in order to ensure rural development and guarantee food security.

In Ghana, land is administered by a pluralistic legal system in which legislative and customary systems overlap (USAID, 2016). The Constitution of the Republic of Ghana vests all public land in the State, and all customary land in stool and skins that is chieftaincies, customary authorities, families and lineages (Constitution, 1992). The state owns at least 20% of the total land in Ghana (USAID, 2016). This number only refers to the land that the state legally acquired. However, the majority of the land in Ghana is held under customary tenure (Aryeetey & Udry, 2010). It is estimated that eighty percent of the land is under customary tenure and is governed by traditional rulers. Land held under customary tenure is vested in customary authorities or chiefs, earth priests – who hold spiritual authority over land issues because of their role as the progenies of the first village settlers (Imam, 2015). The traditional authorities hold the land in trust for the stool’s community, including their lineages, living members and future generations.

Members of community’s access customary lands through their male lineage, whereas “strangers” (non-nationals or emigrants) access customary lands through the acknowledged community holder of the lands – chief or earth priest (USAID, 2016). In this context, females in Ghana also have a legal right to possess and inherit property. However, in practice, under customary law they gain land use rights through their husbands or fathers but they themselves do not own land (Zevenbergen, 2009).

Customary tenure can take the following forms:

- **Allodial title**

This land title is vested in traditional stools or skins in some traditional spaces (Food and Agriculture Organisation, 2020). However, in other areas this land title is vested in subgroups such as individuals, families, sub-stools and clans (Food and Agriculture Organisation, 2020). These landholders hold their interest under customary law. They are not subject to any obligations or restrictions except to those imposed by the law (statutory law) (Food and Agriculture Organisation, 2020). The Allodial title holder

holds absolute and complete autonomy to deal with the land. However, this power is subject to the rights of the subjects of the stool/skin.

- **Customary Freehold Title**

This land title refers to an interest held by subgroups and individuals in land owned by the community (USAID, 2016). The subgroup is mandated to acknowledge the superior title of the stool (Food and Agriculture Organisation, 2020). The holder is mandated to perform certain services to the stool that owns the Allodial rights. If the holder refuses to perform customary services to the Allodial holder or deny the title of the Allodial owner, they may be required to give up the land (Food and Agriculture Organisation, 2020). The family of the subgroup/individual are allowed to inherit the interest upon the death of the individual holder. The holder holds the right to pledge, sale, mortgage or lease their title; however, the recipient of the right is obliged to recognise the superior authority of the stool USAID, 2016).

- **Leasehold, or Sharecropping Title**

This refers to a right granted to a person to inhabit specified land for a stated period. The lease may be granted by either the individual customary freeholder, stool, clan or family who hold the Allodial title (USAID, 2016). In return, the lessee is required to pay for the right to occupy the land and this is usually done through annual rent subject to the land use (Food and Agriculture Organisation, 2020). The lessee has the discretion subject to the consent of the lessor to sublease or assign the unexpired term of the lease (Food and Agriculture Organisation, 2020). This is essential as a way of gaining access to scarce land.

According to the researcher, customary tenure system in Ghana fuses indigenous knowledge systems and statutory law in a bid to promote effective land use. Customary tenure has been modernised and developed to ensure tenure security. The Allodial title holder may not deal with customary land without consulting community members. This ensures checks and balances. Furthermore, the Allodial title holder may grant the land to subgroups who have the capacity to effectively use the land under the customary freehold title. These rights are perpetual in nature and are inheritable, thus guarantees tenure security. In the same vein, the leasehold title is a clever way of availing the land to people with the capacity and capital to invest in the

land. Therefore, South Africa may also learn from Ghana customary tenure in modelling a well-equipped and developed customary tenure that guarantees sustainable rural development and food security through secure tenure and access to formal credit.

2.3 Chapter Conclusion

The chapter firstly grounded the study in theory in a bid to meticulously capture the diverse viewpoints of all disciplines. Secondly the chapter censoriously reviewed antiquated and contemporary literature so as to depict the exploration topic and develop research questions. The literature review unveiled gaps that the study intended to explore and fortify. Secondly, the chapter critically elucidated the historical backdrop of South Africa's customary law and its effect on customary land tenure. Thirdly the chapter likewise examined literature on customary law land tenure practices in Botswana, Ghana and Zambia to give a cross-national correlation of how other African nations' legal systems decipher and apply customary law land tenure systems. Fourthly, the chapter clarified that customary tenure is a system of social action and cultural meaning interlaced into the fabric of life. Fifthly, the chapter gave a review and justification of the theoretical frameworks used in the study. In the next chapter, the researcher examines the role of traditional leaders as a sector of Local Governance towards sustainable rural development and food security in South Africa.

Chapter Three

The Role of Traditional Leaders in South African Local Governance Towards Sustainable Rural Development and Food Security

“Are Africa’s traditional chiefs and elders the true representatives of their people, accessible, respected, and legitimate, and therefore still essential to politics on the continent, and especially to the building of democracies? Or is traditional authority a gerontocratic, chauvinistic, authoritarian and increasingly irrelevant form of rule that is antithetical to democracy?”

~ Logan (2009).

3. INTRODUCTION

The chapter builds up from chapter two and continues with the review of literature. The chapter evaluates how traditional leaders contribute to South Africa's sustainable rural development and food security as a sector of local governance. This chapter begins by examining the frequently contentious role of traditional leaders in South Africa's governance, with a focus on rural land. Secondly, customary tenure is anchored on traditional leadership; thus, it is important to examine their involvement towards attaining rural development. Thirdly, to accomplish this, the chapter looks backwards at the country's pre-colonial, colonial/apartheid, and post-apartheid eras. When these periods are examined, the function and applicability of traditional leadership in local governance, if any, are revealed. It is important to note that numerous parties with an interest have vehemently contested the value of and position for traditional leadership in democracies in South Africa (Indigenous and Traditional Leaders Indaba with Government and Stakeholders (ITLIGS), 2017). The notion that this institution conflicts with democracy and human rights is at the heart of the debate (ITLIGS, 2017).

3.1 Background of Traditional Leadership in South Africa

It is important to carefully examine both claims of pre-colonial roots and the political history of traditional leadership organizations when evaluating the current functions of traditional leaders. It is frequently asserted that the institution of traditional leadership is ancient, indigenous, and the preservation of an authority that dates back in time (Bank & Roger 1996). The popular belief surrounding traditional leadership is that its indigenusness and heritage can grant legitimacy (Helene, 2007). However, tradition is an extremely fluid concept, which often derives more authority from such claims than from their real relationship to historical activities (Helene, 2007). Due to the manipulation of traditional leadership throughout the colonial and apartheid eras, it is associated with primitive and authoritarian actions (Bikam & Chakwizira, 2014). As a result, the discussion over the current function of traditional leadership heavily references this difficult past.

Some believe that modern traditional leaders are fundamentally incompatible with a modern democratic government because they represent the legacy of indirect rule and the colonial and apartheid systems (Ntsebeza, 2005). Others, however, contend that traditional leadership is indispensable and has a special responsibility to play in the management of land, the administration of justice, and the preservation of culture (Ndlovu, 2017, Du Plessis & Plaut, 2019). It is crucial to stress that despite these conflicts, traditional leaders are nonetheless actively managing their communities (Human Sciences Research Council, 2008; Nonhlanhla, Zamisa & Mutereko, 2019). There has been growing efforts to outline the role of traditional leaders in present-day South Africa. In light of this fact, the chapter sets out to critically evaluate the role of traditional leaders in both local communities and governmental organizations at the national level.

3.1.1 Traditional Leadership Before Colonisation

Traditional leaders were prominent during the pre-colonial era, as was previously covered in chapter two. Selepe (2009: 103) and Zamisa & Mutereko, 2019 contends “history confirms traditional leadership existed before colonial invasion and that it is the oldest form of governance in communal areas”. Traditional leadership was a prevalent form of authority during this time among Black African communities.

Traditional leadership exemplifies an early form of societal organisation. It stands for the preservation of principles, culture, traditions, and customs. Mkhize, Beall and Vawda (2005: 84) contends:

“Communities were fluid and the *Amakhosi* [Chiefs] had ill-defined authority over the *imizi* (homesteads) in their jurisdiction. Bound together by ties of kinship, marriage or clientelism, they derived their authority from the allegiance of subjects and functioned through the distribution and redistribution of accumulated tribute, usually in the form of cattle.”

Accordingly, Amakhosi (of the Zulu Tribe), Mahosi (of the Venda Tribe), Makhosi (of the Ndebele Tribe), and Dikgosi (of the Sepedi) derived their authority from ritual, symbolism, and patronage power. In the Republic of South Africa, the institution of traditional leadership served as a political and administrative hub for governing rural areas (Tshehla, 2005). It was the system of governance with the most authority (South African History Online (SAHO), no date). Communities were created at this time, and clan heads served as their leaders (Bikam & Chakwizira, 2014). These clan leaders often had a “military” background. Being exposed to and having experience in the military benefited one's ability to command respect and authority within the communities (SAHO, no date). According to Arhin (2010), clan chiefs were frequently those who were able to free their people from slavery or secure them a piece of land to call home. This was later transformed into the institution of traditional leadership with “appropriate” governing mechanisms. Prior to the colonial system, the indigenous Black population of South Africa recognized this style of government as the appropriate one for an extremely long time (Rugege, 2009; Reddy & Mkaza, 2007).

Traditional leaders were in charge of establishing laws of justice, resolving conflicts among community members, distributing land to community members, commanding military campaigns, collecting taxes and tributes, and planning communal events. (Sakyi, 2003 & Nonhlanhla, Zamisa & Mutereko 2019). Ntonzima, & Bayat, (2012: 14) state “traditional leaders had the responsibility to provide safety and security, preserving tribal sovereignty, allocating and distributing land, settling land disputes, spiritual leadership and administration of justice”. They were given authority and responsibility in social, political, economic, and welfare matters. According to Krige

(1974), traditional leaders had a seemingly unrestricted and ambiguous amount of power over communities before colonization. Krige (1974) argues further that the wealth and taxes gathered by the traditional leaders were used for the maintenance and benefit of the traditional leaders' family, his army, as well as community projects, such as building community meeting squares or buying land or weapons from other communities, among other things. In his description of how the traditional head of the Ugandan Buganda people, who built palaces and roads for his people, carried out development activities, Gooloba-Mutebi (2007) provided an example of how these taxes or assets gathered were utilised.

However, in using this authority, traditional leaders adopted a form of participatory democracy in which the people took part in making crucial decisions that affected them (Bikam & Chakwizira, 2014). The decision-making process was done through a general assembly comprised of adult men (Bikam & Chakwizira, 2014). These talks, known as kgotla (in the Tswana Tribe), pitso (in the Sotho Tribe), or ibizo (in the Ndebele Tribe), are said to have been characterized by a high degree of free expression, with importance placed on the beliefs and attitudes of the participants (Rugeje, 2003). Rugeje (2003) claims that individuals in fact obeyed and followed the traditional leader's orders out of fear of reprisal, even if there was enormous freedom of speech in theory.

It is impossible to draw the conclusion that all traditional leaders from the pre-colonial era were admirable figures of leadership who genuinely cared for their subjects. There have been despotic and oppressive leaders (Bikam & Chakwizira, 2014). Most often, civil war resulted in these traditional leaders being deserted, ousted, or slain (Rugeje, 2003). In any case, it appears that traditional leaders during this time primarily ruled with the approval of the people. When colonial authorities imposed their dominance over traditional leaders, traditional leadership underwent a transformation. The paradigm shifted when the colonial rulers modified the governing structure to serve their interests (Selepe 2009: 109). In order to control the institution of traditional leadership, European authorities imposed legal requirements (Selepe 2009: 109). The South African Act of 1909 granted the Governor General, who served as the "Supreme Chief", the authority to create and separate tribes. He had the right to choose and remove traditional leaders based on his own opinion.

3.1.2 Traditional Leadership Under Colonial Rule

Traditional leadership was weakened and undermined by the colonial system (Himonga et al., 2014). To regulate the Black population, the British government devised and experimented two different systems (Bizana-Tutu, 2008). The first approach, which was favoured mostly in the Eastern Cape, involved weakening the institution of traditional leadership by using the colonial government. (chieftainship) (Bizana-Tutu, 2008). Under this arrangement, the system of direct, magisterial rule was used to regulate the traditional leader's authority. For example, a white magistrate who served as both an administrative and judicial authority presided over all Transkei districts (Williams, 2010). These districts were further divided into regions led by nominated headmen, some of whom were chiefs or people without traditional authority (Williams, 2010).

The second system, known as “indirect rule”, entrusted the control of Black people to local traditional leaders. Due to its dependence on the colonial authority, this system fundamentally altered the essence of traditional leadership. (Southall & Kropiwnicki, 2003). Traditional chiefs who refused to collaborate were replaced by more agreeable ones by the colonial authorities (Bekker 2014). Traditional chiefs who would work with the Crown to accomplish its colonial objectives and goals received the government's political support (Bekker 2014).

The traditional leadership structure, which had historically based on patrilineal lines, was hostile to the “indirect rule” system, in part because the traditional leaders (chiefs) were submissive to colonial bureaucracy (Du Plessis, 2018). The colonial office of the Governor-General appointed the occupant to the post of “Supreme Chief of Indigenous People” (Bennet, 2004). The Shepstone System gave the Governor-General the power to select and dismiss traditional chiefs. During British colonial rule, Theophilus Shepstone, the Secretary for Native Affairs, put into practice this system of governance that became known as the “Shepstone System”. (Southall & Kropiwnicki, 2003). Due to its dependence on the colonial authority, this system altered the nature of the chieftains (Southall & Kropiwnicki, 2003). As a result, rather than through the traditional legislative process, the colonial authority could control Black African

subjects by executive decree (Bizana-Tutu, 2008). Hammond-Tooke (1974: 17) argues that “traditional politics were being divided, merged or reconstituted in order to suit colonial policies”. The institution of traditional leadership, particularly the succession of chiefs, was undercut by the practice of “indirect rule”. According to Olivier, Bekker and Olivier (1985: 78-79)

“The result of this approach was the manipulation of the institution of traditional leadership, and the vesting of final control in the government of the day, together with the appointment and deposition of traditional leaders.”

As a result, traditional leaders found themselves in a perilous and contradictory situation where, on the one hand, they were expected and required to administer the interests of the colonial government while, on the other hand, they had the obligation to serve their constituency in accordance with their traditional roles and responsibilities.

Traditional leaders were forced to make difficult decisions since those who supported their people were overthrown and those who allied with the colonial government jeopardized their own legitimacy (Du Plessis, 2018). Southall and Kropiwnicki (2003: 48-82) argues:

“Being a chief during colonial occupation was thus a precarious occupation torn between keeping alive traditional structures and surviving the culturally inconsiderate regime of the British.”

However, although being legally subordinate to colonial governments, traditional leaders continued to exist as the primary enforcers of law and order for their people (Olivier, 2004). Traditional leaders increasingly assumed the role of government agents, answering to the administration while still exercising many of their traditional powers (Masilela, 2005). What is clear is that because tribal government was viewed as dictatorial and primitive, colonial rulers were loath to recognize the authority of local traditional chiefs (Bizana-Tutu, 2008).

The Black Authorities Act, 68 of 1951 was passed by the colonial authority in order to strengthen its grip and control over the African subjects. The Act introduced the

creation of independent homelands. Africans were given a framework for their transition to self-government and eventual independence by the Promotion of Black Self-government Act, 46 of 1959. Due to the 1913 Native Land Act and the 1936 Native Trust and Land Act, all Africans were consequently subject to the jurisdiction of one of the territorial authorities, and each authority was given access to one or more of the reserves (Bennet, 2004). Since the colonial government enforced new province and national boundaries, prohibiting unrestricted migration from one chiefdom to the next, the adoption of these statutes weakened the succession of traditional chiefs in accordance with African customs and practices (Masilela, 2005).

Due to the political vicissitudes brought on by the colonial authority, traditional leaders' position and role were consequently downgraded to that of an effective bureaucrat who reports to the judge (Du Plessis, 2018). The traditional leader would lose his position or income if he did not follow the rules laid down by the government (Bekker, 2014). As a result, traditional leaders' legitimacy, effectiveness, and capacity for good governance differed from person to person (Mamdani, 2018). In other words, traditional leaders acted as local leaders in communal areas. All local tasks were carried out through the traditional authorities. Since they were the local authorities, traditional leaders were to be sought for any services or needs that surfaced. They were, nevertheless, required to carry out their duties in accordance with the colonial government. They were no longer the supreme rulers of the Black African people. This continued under the apartheid rule.

3.1.3 Traditional Leadership Under Apartheid

Following its ascent to power in 1948, the Apartheid government solidified the colonial practice of controlling traditional leaders along with its objectives. The National Party (NP) government enacted various laws to advance their agenda. Instead of defending the stature and dignity of traditional leaders as community leaders, the majority of these statutes served to secure the interests of the National Party administration. For example, De Kadt and Larreguyz (2014: 4) argue “the apartheid government enacted the Bantu Authorities Act (Act No. 68 of 1951) to introduce ‘tribal authorities’ as a governance system that permitted the government to control communities from afar”. Traditional leadership was perverted when the tribal form of government was implemented, and through the use of legal prescripts, tribal communities were forced

to participate in the political process. Due to the use of force to impose the regimes' wishes, the apartheid system weakened trust and relationships between traditional leaders and their people (Fuo, 2014: 75). Under pressure, the people rebelled against their traditional authorities. (De Kadt & Larreguyz 2014:8).

Traditional leadership weakened and became unstable. Beinhart (1985: 19) states:

“It is widely recognized that the current form of chieftaincy was entrenched in the latter period when government officials accompanied by tame anthropologists and Black information officers scoured the rural districts for the remnants of chiefly lineages. Tribes were defined, tribal and regional authorities were created, and some of the chiefs were installed with much pseudo-traditional ceremony. Chiefs were also given salaries and scope for personal gain. In this way the state hoped to secure a conservative or reactionary rural hierarchy which would help to defuse broader national struggles.”

This indicates that traditional leadership was modified during the apartheid era to quell any danger of a resurgence of the armed might of African chiefdoms. The apartheid regime strengthened colonial dominance structures in order to undermine traditional authority. The headman was chosen by the government and was subject to bureaucratic regulations of censure and removal during the apartheid era, in contrast to succession procedures in the office of traditional leaders (Bekker, 2008). Chieftainship was largely disregarded in the legal sector. Chiefs were only permitted to arbitrate disputes in civil cases and were not permitted to make decisions in any criminal cases (Banks & Southall, 1996). Chiefs lacked the authority to enforce their orders. Any party who disagreed with the chief's ruling could appeal to the magistrate court (Banks & Southall, 1996).

Apartheid introduced foreign hierarchical titles into the traditional leadership system (Bekker, 2008). These included 'paramount chief', 'sub chief', 'independent headman' and 'supreme chief' (Bekker, 2008). According to Bekker (2008: 1-13) the title of 'supreme chief':

“Was introduced by the previous colonial regime to give the Governor-General ruling power over Africans, and later over the

State president. Other levels, such as paramount chiefs, independent headmen and sub chiefs were introduced to elevate or demote certain Africans to higher or lower positions”.

As a result, the apartheid government was modelled to be above traditional leadership. Traditional leaders were accredited to oversee Black Africans' daily concerns, but solely as government agents. Accountability moved from the communal people to government. The institutions were transformed into tribal authorities. As representatives of the Apartheid regime, these authorities held the power to rule the populace and advance the interests of the government. It was only through these authorities that one could obtain land or other necessary resources. The people could no longer use or rely on traditional procedures, conventions, or practices to hold or keep the traditional leader accountable if they believed that the traditional leader was no longer acting in their best interests. As a result, some traditional leaders turned tyrannical towards them, since they were no longer obligated to answer to the people, (Rugeje, 2003: 172). The government could now hire and remove traditional leaders in accordance with its agenda thanks to this new structure (Rugeje, 2003: 173).

However, Williams (2010: 2) argues “the institution of traditional leadership can be credited with the formation of the liberation movement (the African National Congress), and may even claim its soul”. He further argues “despite the acuity of cooperating with colonial and apartheid governments, they have jointly fought with the masses to fight apartheid” (Williams 2010:2). In addition, he argues:

“This had a far-reaching impact on de-traditionalizing and de-legitimizing of this pre-colonial institution; and this, in turn, determined the success or failure of the democratic dispensation.”

This implies that traditional leaders significantly contributed to South Africa's eventual emancipation. According to De Kadt and Larreguyz (2014: 7) referenced in Nonhlanhla et al (2019):

“By the time the Multi-Party Negotiating Forum (MNF) was established to negotiate the transition from the apartheid system to a democratic system, traditional leaders had managed to organise themselves into Congress of Traditional Leaders in South Africa

(CONTRALESA) that was founded in 1987 as their machinery to resist the Bantustan system as well.

Therefore, the best way to deal with them may be to accept them into the democratic order, despite their flaws and inadequacies throughout the colonial and apartheid epochs (Williams 2010). Credit to their involvement in the transitional phase, they were able to fight for their inclusion in the interim constitution and, ultimately, in Chapter 12 of the constitution (Selepe 2009). As a result, the recognition compelled lawmakers to include them in laws governing municipal governance. On issues impacting rural areas, traditional leaders and municipalities must work together. It is therefore important to consider how traditional leaders fit into the Constitution in terms of their roles and responsibilities.

3.1.4 Traditional Leadership in Post-Apartheid South African Local Governance

It is widely acknowledged that traditional leaders play a significant role in modern South Africa. Their function as stewards of custom and culture ought to be acknowledged and institutionalised. The institution of conventional leadership needs to be modified in light of the significant changes to the socio-political environment in which they function. Unquestionably, traditional leaders are quite powerful and will play a big part in South Africa's future rural development and related activities. The effective participation of traditional leaders at all levels of government must therefore be provided for, as recommended by the Congress of Traditional Leaders of South Africa (CONTRALESA). This section examines the roles and responsibilities of traditional leaders under the 1996 new Constitution in light of this.

In order to repair the harm that colonial and apartheid administrations caused to traditional systems of leadership, traditional authority issues had to be resolved with the emergence of democracy. Traditional leaders claimed to have been abandoned and forced to form their own political party against the government. The National House of Traditional Leaders once griped that talks with the government over the power and functions of traditional leaders within municipal structures had not progressed. It was claimed that the facilities needed for the House's members to carry out their duties were not available to them. It seems to be interesting that traditional leaders were not involved in the drafting of a White Paper on their roles and

responsibilities, a document that was about them and for them. Additionally, they were prohibited from holding meetings at Parliament. They were also barred from holding meetings at Parliament. This prompted Chief Mpiyezintombi Mzimela then to state that “government appears to have no intention of treating us as leaders of this country” (Daily Dispatch, 2001).

The post-apartheid era was intended to erase memories of the colonial and apartheid regime by adopting new province divisions (TLGFA, 2003). Homelands were abolished and re-incorporated into South Africa. Traditional leaders retained their positions, and section 181 of the interim constitution safeguarded traditional rule (Interim Constitution Act 200 of 1993). Section 181 (1) of the Interim Constitution provided that:

“An existing traditional authority would continue to exercise and perform the powers and functions vested in it in accordance with the applicable laws and customs, subject to any amendment or repeal of such laws and customs by a competent authority.”

Traditional authority was granted ex-officio membership in the local municipal entities under Section 182 of the Interim Constitution. The institution of traditional leadership was likewise incorporated into and recognised by the 1996 Constitution. According to customary law, the institution, position, and function of traditional leadership are recognized under Section 211(1) of the Constitution. This implies that traditional leaders may act in accordance with this, but they are required to abide by the relevant customs and laws (Constitution, sec 211 (2)).

Similar to this, Section 212 (1) of the Constitution provides that “the national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities”. Section 212(2)(a) of the Constitution provides that “national or provincial legislation may provide for the establishment of Houses of Traditional Leaders to deal with matters relating to traditional leadership”. These provinces require that the institution of traditional leadership be acknowledged and safeguarded. Therefore, it is clear that the aforementioned legal framework regulates the authority and operations of conventional institutions. This leads to the inevitable conclusion that, legally speaking, the institution of traditional leadership still intrinsically

retains the rights to the powers and functions of traditional leaders (Bizana-Tutu, 2008).

The Municipal Structures Act of 1998 was passed by the government in an additional effort to recognize the role and functions of traditional leaders. The Act establishes the constitutional guidelines for traditional leaders' involvement in community affairs. For instance, Section 81 (1) to (5) outlines the selection process for traditional leaders to participate in city council meetings, despite the notion that traditional leadership should make up no more than 20% of council members. When addressing issues that directly impact an area with traditional leadership, the municipality is required by Section 81(3) of the Act to give the leader a chance to express his or her opinions.

While this is evident, it is too generic and falls short of accurately articulating the role and function of traditional leaders. However, section 20 (1) of the Traditional Leadership and Governance Framework Act 41 of 2003 is very explicit in this regard. It states that the national or provincial government should give traditional leaders/councils a role through legislation or other measures. According to the Act, the government must create a framework, rules, and guidelines that specify the function and positioning of traditional leadership in democratic governance. Analysis of the Act reveals that the goal was to re-establish the institution of traditional leaders' integrity and credibility.

In his commentary on the 1996 Constitution's impact on traditional leadership, Bizana-Tutu (2008: 6) makes the following claim:

“The implementation of the final phase of elected local government and the final implementation of Schedule 4 (part B) and 5 (part B) of the 1996 Constitution, read with the provisions of the Local Government: Municipal Structures Act 82 on 5 December 2000, finally confirmed the fact that the local government functions previously allocated to traditional leadership and institutions have by and large been taken away, and have been vested in elected local government. With regard to all other statutory functions and powers outside local government allocated in terms of pre-1994 legislation to traditional leadership and institutions, it is indisputable that all such

powers and functions have with the commencement of the 1996 Constitution, been vested in the national and the provincial spheres of government.”

This indicates that tensions between traditional authorities and democratic political systems were stoked by the introduction of the new constitutional dispensation. Twigg (2015:3) argues that “when local councillors were appointed their role was basically the role that traditional leaders were playing and, precisely, rivalry occurred”. This is similar to what happened in Namibia, as seen by the following quote from the country's prime minister during the Traditional Authorities Bill Debates on January 10, 1995:

“If the kings and chiefs are going to have power, there is going to be a conflict of two power bases, legitimate political power which is represented by us in Government after independence, and the chieftainship who will also try to control a certain power base. There will be conflict. We are not going to have the unity we are fighting for.” (d’Engelbronner-Kolff, 1998: 67).

Traditional leaders and democratically elected institutions have a tense relationship, as shown by the *Congress of Traditional Leaders of South Africa v Minister for Local Government, Eastern Cape, and Others* 1996 (2) SA 898 case, where traditional leaders argued that the Local Government Transition Act, 209 of 1993's application in the Eastern Cape's rural communities had stripped them of their legal authority. The court dismissed the matter on a point of technicality that traditional leaders were supposed to have instituted the action in their own names and not through Congress of Traditional Leaders of South Africa (CONTRALESA) since as an organisation was not being directly affected by the issue in dispute. The case was not decided on merit. This indicates that the traditional leaders' concerns remained unresolved and unmet. Nevertheless, opinions on traditional leadership and governance continued to be equivocal despite efforts to recognise it.

It was said that traditional leadership fostered ethnic and tribalism divide (Vail, 1989). Furthermore, it was believed that traditional leadership was patriarchal since it promoted traditionalist male interests above those of women, children, farmworkers, or others who were without a land title (Bizana-Tutu, 2008). For example, in the case

of *Mthembu v Letsela and Another* 1997 (2) SA 936 (T), at 944B, it was argued that “the principle of male primogeniture providing for inheritance by the eldest son (or nearest male relative) discriminates on the basis of gender”. The argument was that it should be struck down. However, Le Roux J, dismissed the application.

Some traditional leaders, such as Chief Luthuli, the 1952 ANC president, were alleged to be government stooges (Oomen & Kessel, 2000). Other traditional leaders' credibility was also questioned. This prompted the former president Thabo Mbeki to convene an expert team to look into the traditional leadership contests in 2003. Only six of the 13 paramount kingships were legitimate enough to be recognized as kingships or queenships, according to the panel's findings. When the former President Jacob Zuma took office, he promised that the unelected traditional chiefs would not be deposed but rather that their positions would terminate with their deaths (Mybroadband, 2010). Thus, the legitimacy problem was not entirely settled. Traditional leaders still remain despite negative perceptions of them and efforts to demote them (Nieuwaal, 1991).

While it is clear that the institution of traditional leadership receives a lot of criticism, some of which is justified and some which is not, it is wise to take note of and take into consideration the dissenting minority judgment of Ngcobo J in the *Bhe and Others v Magistrate, Khayelitsha and Others; Shibi v Sithole and Others; SA Human Rights Commission and Another v President of the RSA and Another* 2005 (1) BCLR 1 (CC) case, when he said:

“Ours is not the only country that has a pluralist legal system in the sense of common, statutory and indigenous law. Other African countries that face the same problem have opted not for replacing indigenous law with common law or statutory laws. Instead, they have accepted that indigenous law is part of their laws and have sought to regulate the circumstances where it is applicable. In my view this approach reflects recognition of the constitutional right of those communities that live by and are governed by indigenous law. It is a recognition of our diversity, which is an important feature of our constitutional democracy.”

Despite their critiques, the judgment promotes the preservation of traditional legal procedures and tradition. In the same vein, Twigg (2015: 3) argues “traditional leaders have a crucial role to play because of their authority and proximity to the people in rural communities who are most vulnerable owing to their weak socio-economic conditions”. He further says “the role of traditional leaders emanates from their primary mandate to preserve customs and traditions derived from the Constitution” (Twigg 2015: 3). Some councillors believe it is their duty to serve rural communities in communal areas, taking on a role that was before filled by traditional leaders (Twigg, 2015). However, the majority of them are unavailable and ignorant of the local peoples' personal circumstances (Knoetze, 2014). Given that they are given extensive jurisdictions to manage as council members, some of them are not even known by the communities they represent (Twigg, 2015).

In that regard, the study proceeds to examine the roles and functions of traditional leaders in contemporary South Africa. Despite the difficulties traditional leaders continued and still continue to perform their duties. Regarding social grants, they assist in identifying community members who are eligible and informing the proper government officials (Bizana-Tutu, 2008). Additionally, they have the authority to summon community members to gatherings, which are held at the residence of the relevant traditional leader (Peter, 2005). Their responsibility with regard to communal land is to distribute or allot land to their subjects for habitation, farming, and grazing (Bikam & Chakwizira, 2014). They typically carry out this function through their ward or clan heads, unless those officials are unable to do so for other reasons (Bikam & Chakwizira, 2014).

The TLGF Act of 2003 mandates that traditional leaders work to further the objectives of gender equality, human dignity, and independence. In addition, they owe it to society to safeguard customary law and traditions. Therefore, they must work to strengthen tradition and culture as well as to advance peace, harmony, nation-building, and the rights of cultural, linguistic, and religious communities (ANC Today, 2003). The Act further stipulates that in their interactions with all branches of government and state institutions, traditional leaders have a responsibility to advance the ideals of cooperative governance. Traditional leaders should also promote a fair system of justice administration and an effective, fair, and efficient conflict settlement process.

The White Paper and draft Bill on Traditional Leadership and Governance provides that “traditional leaders are custodians of tradition and culture” (ANC Today, 2003). It further states that “their role should be advisory, supportive and promotional in nature” (ANC Today, 2003).

The participation of traditional leaders in decisions affecting their communities is provided for by the Constitution and other legislative measures noted above, but how this is implemented locally, particularly through bylaws, is unclear. Knoetze (2014: 167) argues “traditional leaders are not recognised and their contributions go unrecognised because of vague and inadequate policies”. Their role and functions are often understated and overlooked (Twigg, 2015; Knoetze 2014). As an element of public administration and often sponsored by the government, this violates rural communities' right to be supported and led by the institution of traditional leadership (Selepe, 2009). This is notwithstanding capacity problems in municipalities as revealed by Wentink and Van Niekerk (2017).

This incapacity can be covered by the traditional leadership institution. Catturani and Sacchetti (2017:6) contend “cooperation theory applies in symmetric structures, where actors occupy mutually dependent positions matched by expectations of reciprocity amongst peers”. In this context, traditional leaders and local government must engage in cooperative governance. Their relationship must be guided by the cooperative guidance principles recommended in the Constitution and the White Paper on Local Government (Knoetze 2014). The rationale for this proposition is based on the legal authority that both institutions have to serve the same rural areas, which necessitates their coexistence as well as the requirement that they act honourably and reciprocally respect one another's status.

As shown above, both municipalities (local government) and the institution of traditional leadership have unique but connected and dependent functions that should be governed by cooperative governance protocols to avoid overlap, role conflict, and rivalry. In that regard, to avoid unnecessary tension and conflict between traditional leaders and government structures, traditional leaders must be allocated the relevant authority, role and function within their domain while local government functions must be handled by democratically elected people. Having established the evolution of

traditional leadership, its criticism and shortcomings, its roles and functions, it is prudent to proceed and examine the notion of governance.

3.2 An Overview on the Current State of Governance in South Africa

It is prudent to look at the current status of governance in South Africa after establishing that traditional leadership and municipalities have different but connected and co-dependent functions that must be led by cooperative governance principles. An examination of the current state of governance is pertinent to shed more light on the positives and negatives embedded in the current system of governance. This is pertinent to suggest appropriate legislation or policy changes to encourage cooperative governance between traditional authorities and governmental organizations.

According to Landell-Mills and Serageldin (1991), governance is defined as:

“...the use of political authority and exercise of control over a society and the management of resources for social and economic development” (Landell-Mills and Serageldin, 1991: 3).

This definition emphasizes the political and administrative aspects of governance, but it does not describe the nature of the interaction between the public and the authorities. Another definition is offered by Charlick (1992) for the United States Agency for International Development (USAID) Africa Bureau Democracy and Governance program, as Governance is:

“... the effective management of public affairs through the generation of a regime which set rules, accepted as legitimate for the purpose of promoting and enhancing societal values sought by individuals and groups” (Charlick, 1992: 3).

The definition of Charlick (1992) gives a progressively normative dimension to the concept regarding the results of the process and the nature of the relationship between "power holders" and the "rest of society". It is likewise spoken about the quality of the administration process. With everything taken into account these definitions are

reflected in the accompanying qualities which numerous observers attribute "Good Governance".

The Cotonou Partnership Agreement characterizes Good Governance as:

“The transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development, in the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law” (Cotonou Partnership Agreement Art 9.3).

Governance in South Africa is arguably at a tipping point. President Ramaphosa, speaking at a conference in June 2018 said, “Governance is collapsing” (Address by President Cyril Ramaphosa at the Kgalema Motlanthe Foundation, 2018). The statement by the President followed the release of pejorative statistics about the state of governance in South Africa, which showed that only a meagre 7% of all the municipalities in the country are fully honouring their mandate (Maserumule, 2020). In the same vein, the Auditor -General, Kimi Makwetu, stated that in the 2016-2017 financial year only 8% of the municipalities had received a clean audit (Auditor-General Report, 2018). Added to this are the findings of the Zondo Commission into State Capture which revealed a listing of malfeasance involving municipalities conspiring with the officials of the Venda Building Society Mutual Bank to drain off municipal funds envisioned for service delivery (Motau, 2018).

Additionally, municipalities and traditional leaders have engaged in a number of land disputes, which is a sign that governance and administration are deteriorating. One instance is the dispute that exists between the Makhado Municipality in Limpopo and the Netshituni traditional leadership (Makungo, 2017). In one instance, a dispute arose over a parcel of land in Nzhelele that was around 100 hectares in size. The municipality, according to the Netshituni traditional leadership, had no legal authority to put the land up for auction because it belonged to them. The municipality had already started the auction procedure, and some bidders had actually put down R10,000 as a deposit. On the other hand, some traditional leaders have been accused

of poor administration and corruption (Mnwana, 2018). For example, Mnwana (2018: 1) argues:

“Lack of transparency and accountability, plus serious allegations of corruption have been levelled against chiefs. For instance, Kgosi (chief) Nyalala Pilane of the Bakgatla-ba-Kgafela community – perhaps even more than any other chief in South Africa – has been the subject of a litany of maladministration and corruption allegations.”

The discussion above demonstrates that South Africa suffers from a variety of administrative issues, primarily at the local governance level. It is claimed that traditional leaders and governmental organizations are both corrupt and dishonest in how they carry out their constitutional obligations. Maserumule (2020) argues that, “An important determinant of a functioning state is the efficiency and the social effectiveness of its administration”. Unfortunately, given the appalling facts listed above, this cannot be true about South Africa.

Maserumule (2020: 13) makes a compelling case when he states:

“The administration of the state in South Africa is fraught with the oddities and aberrations that weaken its capacity to deliver fully on the mandate of the constitutional democracy. Much is said lamenting the appalling state of governance, largely ascribing this to abrogation from the virtue of the public service. The popular grimace of disquiet in the country is manifest in the dearth of ethical leadership, rampant corruption and looting of state resources. All these are advanced as the reasons for the deteriorating quality of managing public affairs. However, aren’t these manifestations of a problem rather than the cause? Why is the post-apartheid state susceptible to the greediness of those who want to profit from it? Is it possible that the answer to this lies in the system of organising the post-apartheid state, which has an ideological posture that is inherently selfish?”

The argument by Maserumule (2020) confirms that governance in South Africa is at the tipping point. It is rife with peculiarities and abnormalities that limit its ability to

adequately carry out its mandate. The critical question is why? The issue stems from the colonial and apartheid systems that South Africa's post-apartheid government inherited. As was already mentioned, colonization and apartheid undermined South Africa's traditional system of government. It brought Eurocentric political ideals. The South African state was thereafter consummated at the altar of neoliberalism – a system that is market oriented and not people oriented. Contemporary South Africa is the function of the intersection of neoliberal prescriptions with colonial edifice (Maserumule, 2020). This produced a disastrous system of managing public affairs.

The post-apartheid government took over the running of the country with zero experience. According to Dudley (2015: 6),

“The ANC had failed to develop in time a model of our own on how to run government. In other words, we ran into government in 1994 completely unprepared and as a result, we often got compromised into embracing the [colonial] apartheid governance model.”

The ANC government failed to breakdown the colonial administration. To exemplify this, an analysis of the Public Service and Pensions Act 29 of 1912, the legislation that provided the framework for the administration of the colonial state, shows that it is similar in structure and content compared to those that came after it in different historical periods of the evolution of South Africa (the Public Service Act 111 of 1984 and the Public Service Act 103 of 1994). The latter legal prescripts did not bring much change to the philosophical orientation of the South African public service since its colonial underpinning (Maserumule, 2020). Therefore, the convergence of neoliberal prescriptions and this colonial structure is what gives rise to South Africa's current system of governance.

Nevertheless, in most cases, the causes of the administrative evils are confused with their manifestations. Maserumule (2020: 13) asks critical questions on this aspect:

“Is this administrative evil a manifestation of the failure of governance or a cause of it? And why is it becoming increasingly rampant in the administration of the state?”

The administration evil is not caused by the failure of governance, rather the governance system itself is the cause of the administrative evil. To exemplify this, corrupt government officials are sometimes caught, arraigned and imprisoned but the system that produced them continues to produce many more (Pillay, 2004). For that reason, the cause of the failure of governance in the country is the function of the adopted colonial and apartheid system.

This brings us to a critical question, what is the way forward? Democracy is about improving the quality of citizens' lives. Micklethwait & Wooldridge (2014: 1) contend:

“The best way to solve the central paradox of capitalism – the existence of poverty among plenty – was to improve the quality of the state”.

Turok (2007: 17) argues,

“The victory of the ANC should create a situation where monopoly capital would be challenged in the new South Africa and the socioeconomic challenges of poverty and unemployment should be overcome through a major state intervention in the economy”.

This implies that the state owes it to its citizens—particularly the historically discriminatory and segregated rural communities—to improve the quality of their lives. To do this, a strong state's capacity for managing public affairs must be built. According to Maserumule (2020: 13),

“This is achieved by creating an inexpensive, efficient and effective public service, staffed by the nation's brightest and best servants, who are innovative and capable of discharging public duties conscientiously.”

The Batho Pele principle, kgosi ke kgosi ka batho, must be ingrained in the government structure (a chief is a chief thanks to the people). This implies that the government structure must be changed to put the needs of the people first. The objective of governance must be to eliminate past socioeconomic disparities. Micklethwait and Wooldridge (2014: 1-10) argues that:

“Democracy in conditions characterised by inequities in socio-economic gains is not sustainable, particularly in South Africa with the history of many decades of systematic marginalization”.

In that regard, the governance system in South Africa necessitates rethinking the ideological edifice that frames it. The current administrative structure, which was inspired by colonialism and apartheid, has to be decolonized. According to Swanton (no date), the state of happiness serves as a proxy for the influence of the government's efforts to construct a system that satisfies all facets of human life. The governance system must be African sensitive. Nkrumah (1964: 70) argues that “governance requires new narratives based on the humanist principles underlying African society”. Onyebuchi (2010: 190-191) states that humanism is:

“A demand for creative intersubjective formation in which the ‘other’ becomes the mirror for [one’s] subjectivity. [It] suggests that humanity is not embedded [in a] person as an individual, [but] is co-substantively bestowed upon the other ... [It] is a quality we owe to each other. We create each other and need [each other] to sustain this otherness creation. And if [we] belong to each other, we participate in our creations.”

This implies that humanism must influence governance and governance must be focused on people. Rural communities as discussed earlier remain food insecure and underdeveloped in the contemporary South Africa. Therefore, it is pertinent to rethink governance and incorporate traditional leaders in local governance structures. Traditional leaders have a legal and cultural mandate to uphold and develop communal people. In order to promote rural development, it is imperative that traditional leadership be integrated into local governance. This integration should be based on African ideologies that are relatable and resonate with indigenous black communities. It is essential to recognize the importance of traditional leadership in rural areas, as it plays a significant role in the social, economic, and political development of these communities. By incorporating traditional leadership into local governance, we can ensure that the voices and needs of these communities are heard and addressed.

Furthermore, it is crucial that these ideologies are rooted in African culture and traditions, as this will foster a sense of ownership and pride among the local population. This approach will not only promote sustainable development but also preserve the rich cultural heritage of these communities. Overall, the integration of traditional leadership into local governance based on African ideologies is a vital step towards promoting rural development. It is imperative that we recognize and value the unique contributions of traditional leaders and work towards creating a more inclusive and sustainable future for all.

3.3 Chapter Conclusion

The chapter gave an appraisal of the role of traditional leaders in South African local governance towards sustainable rural development and food security. The chapter examined the often contentious governance role of traditional leaders in South Africa, with a specific focus on rural land. The chapter established that customary tenure is anchored on traditional leadership. Traditional leaders are required by law and the constitution to create and uphold prevailing customs and law. They are a recognised authority in communal areas. However, the colonial and apartheid institutions warped their roles and functions. Their purpose and position in the modern world are still unclear. This has led to tension between them and government entities that seem to have taken on the responsibilities that formerly belonged to traditional leaders. However, it is clear that these institutions serve different but related and dependent roles. To promote rural development and food security, governance must be reformed to integrate and absorb both institutions at the local level. In order to create a governance system that is cantered on Africa and serves the greater good, a serious commitment to decolonizing the colonial and apartheid-influenced governance system is required. The next chapter, reviews literature on rural development and food (in)security.

Chapter Four

Rural Development and Food Security

“Sustainable Rural Development can make a powerful contribution to four critical goals of poverty reduction, wider shared growth, household, national, and global food security and sustainable natural resource management.”

~World Bank (1997)

4 INTRODUCTION

This chapter is a continuation of literature review. The chapter reviews literature on rural development and food (in)security. The aim is to establish a nexus between customary tenure, rural development and food (in)security. The first part focuses on

rural development. South African rural societies remain one of the absolute most ruined social orders, furthermore, access to employment, education, land, housing, healthcare and other basic resources still separate them from their urban neighbours (Nelson, 2017). The second part examines the effect of customary tenure towards rural development and food security.

Relating to the first issue, most rural communities live in extreme destitution and there is next to no development activities occurring in these areas (Cele, 2019). Neely and Ponshunmugam (2019) posits that rural areas in South Africa have consistently stayed poor, devastated, lacking and less occupied. Govender, Pillay, Siwela, Modi and Mabhaudhi (2017) educates us that rural communities in South Africa are a reason for incredible concern. These communities appear ignored and bear extraordinary poverty and hardship. Poverty seems, by all accounts, to be extending in rural areas and some type of development and financial aid is direly required for rural communities (Orford 2004).

Regarding the second issue, Baden, Hasim and Meintjies (1999) are of the view that destitution in South Africa is most incredibly horrible among rural women living in KwaZulu-Natal, Eastern Cape and Limpopo Provinces. Unemployment among rural African men is on normal 45% while provincial African women experience an unemployment rate of 62% (Daniels 2001; Alenda-Demoutiez & Mügge 2020). Additionally, Orford (2004) sees rural communities in South Africa as a reason for extraordinary concern. They are ignored and persevere through incredible destitution and hardship and they rely upon the handouts they get from the small wages from their relatives working in towns and cities. People need to have a purpose in life re-ingrained in them, to build up their ingrained instincts and to use the land, the little they have, with a contribution from government. The starting point is to forge partnerships with the structural government to help rural communities in South Africa to develop and become food secure. The researcher adds that rural communities use indigenous knowledge for their own survival since poor people truly have ingrained survival instincts. Therefore, the second part examines the effect of customary tenure towards rural development and food security.

4.1 Development

As indicated by Mabogunje (2015: 35),

“In literature, the primary role of economic forces in bringing about the development of society has often been taken as axiomatic, so that development and economic development have come to be regarded as synonymous”.

Development goes beyond economic development, it includes food security, access to employment opportunities, and the reduction of the income imbalance gap (Mabogunje, 2015). Estimating a nation's development was to be established on inspecting accomplishment on three perspectives: destitution, joblessness, and inequality. In situations where the significant levels have declined or are declining that suggests the nation is developing (Mabogunje, 2015).

The ideas of development and underdevelopment have been existing and keeps progressing after some time as impacted by overall turns of events. The notion development can be followed back to a discourse presented by the then President of United States, Truman. Truman's discourse understood another adjustment in attitude towards the planet as he required the United States (US) to begin a program that will ensure that it shares its logical scientific breakthroughs and mechanical advancement with the rest of the world in order to invigorate development of the underdeveloped nations (Kutor, 2014).

Fleurbaey, Kartha, Bolwig, Chee, Chen, Corbera, Lecocq, Lutz, Muylaert, Norgaard and Okereke (2014: 178) argued:

“Development must therefore be conceived of as a multidimensional process involving major changes in social structures, popular attitudes, and national institutions, as well as the acceleration of economic growth, the reduction of inequality and the eradication of poverty”.

According to Kutor (2015), development has to do with subjective and quantitative development in all spheres of human activity, including the economic, political, social,

environmental, and societal elements. Later on, United States utilised its capacity and impact to command and force its ethos to the remainder of the world. Therefore, one may argue that development was initially primarily about amassing wealth for the superpowers in the West with no understanding of the human or social point. This has subsequently changed as evidenced by the increase in donor aid coming from the West.

For any development plan to succeed, it ought to perceive social, ethnic and national multifarious variety. The community structures and traditional leaders should be consulted before planning any development for the rural poor since there are societal viewpoints that should be taken into account. In like manner, for any development to succeed, it should be localised to get a handle on the socio-economic circumstances of the community. It is on this basis that the study intends to integrate traditional leaders as custodians of customary tenure and local government systems in order to develop South African rural communities so as to guarantee food security.

Another related development is the acknowledgment of civil society associations as significant components in delivering social services and in social responsibility. The interest of clear change in the lives of the individuals on the ground being developed ventures fortifies the criticalness of refining inspection and evaluation frameworks, to improve pellucidity and accountability. Organised, dynamic and participating citizens can affect service delivery by accepting accountability for delivery, contracting, or involvement in the administration of provision of services. Communities no longer should be spectators of their development as they are at present accepting responsibility and in any event, considering government responsibility in occurrences where they feel marginalised. In that regard, traditional authorities should be recognised and allowed to execute their duties in local governance as they represent the interest of the communities. Indigenous customs and practices allow people to air out their views and interest to their traditional leader (Wiessner, 2008). In that vein, traditional leaders are expected to convey same to the government to ensure development. This implies that laws must be enacted to protect indigenous customs, values and traditions, customary tenure included to develop rural communities.

4.1.1 Rural Development

Silberfein (2019), argues “rural development is a subset of the broader field of development, which has followed the overall general patterns of development”. According to Singh (2009: 39), “rural development is a subset of the broader term development. It connotes the overall development of rural areas with a view to improving the quality of life or rural people”. Torre and Wallet (2016: 105-110) contend rural development:

“Is a strategy to enable a specific group of people, poor rural women and men, to gain for themselves and their children more of what they want and need.”

Similarly, Singh (1999: 39) argues that it is “a process leading to sustainable development in the quality of life of rural people, especially the poor”. Agreeing, the World Bank (1997) argued:

“Sustainable Rural Development can make a powerful contribution to four critical goals of poverty reduction, wider shared growth, household, national, and global food security and sustainable natural resource management.”

Obadire, Mudau, Sarfo-Mensah and Zuwarimwe, (2013) argue that the Comprehensive Rural Development Programme (CRPD) defines ‘rural development’ as “the actions and initiatives taken to improve the standard of living of communities in non-urban areas”. At the end of the day, the central point of rural development is to capacitate rural people to assume responsibility for their fate, in this manner admirably managing rural poverty through the ideal use and the management of resources (Obadire, et al., 2013).

Be that as it may, the acknowledged meaning of rural development stays challenged and unclear (Torre & Wallet, 2016). Berriet-Sollicie and Trouvé (2013: 34) contends:

“It is not possible to construct any comprehensive and generally accepted definition of rural development. The notion of rural development (emerges) through socio-political struggle and debate”.

The term rural development is ambiguous to the degree that it permits the user to let it mean what (s)he needs it to mean (Torre & Wallet, 2014). Suppositions continue to converge towards disposing of the traditional worldview of rural development. Generally, the thought of rural development was mistaken for the idea of agrarian development (Torre & Wallet, 2016). This was a direct result of the prevalence of agrarian business activities and the significance of the agricultural segment in rural territories (Perrier-Cornet, 2011). Torre and Wallet (2014) contend that the rural development program was described principally by a solid accentuation on agriculture, a factor roused by the need to build food security and the gigantic nearness of labourer farmers in most rural areas. In this study, rural development is a mechanism to reconstruct and heal a profoundly disfigured nation bruised by centuries of exploitation of its human and natural resources, where the rural commonalities seek inclusion and shared wealth in a richly gifted land.

Given the examination of industrialisation with development during the 1950s and 1960s, the development help given during that time was transcendently progressively centred around developing rushed industrialisation, paying little heed to the economic or social setting. Nonetheless, during the 1970s, this approach was changing as natural resource enrichments were getting increasingly significant as methods for re-appropriating natural resource management and non-profitable parts of essential production (Greenberg, 2003: 6).

Moreover, with development all around, rural development began as a development driven and top-down imposition onto diverse culture and economies. Majova (2018: 56) communicates that:

“[t]he focus of World Bank interventions in rural areas was on the construction of large dams that often failed to provide water to local farmers, and that have a disastrous record of displacing people from their lands”.

Remarkably, rural development is of extraordinary importance for agrarian development just as lessening poverty in developing nations. Rural development goes past agriculture development. It is tied in with improving vocations of the rural poor. Rural development's key focus is to ensure that rural poor produce household income

and along these lines rouse their occupations. Plus, rural development must encourage resource dissemination for rural communities, secure access to central needs, for instance, wellbeing, education and food security (World Bank, 2011: 31). Along these lines rural development must be seen as an enabling impact in improving rural livelihoods.

Though rural development strategies spread an extent of objectives, ranging from environmental protection, the guideline center in various countries is around the economic aptitude of rural communities. Inside that unique circumstance, effective rural development is assessed by yields and results, for instance, access to fundamental basic services, low indigence rates, high salary levels and low unemployment rates, “[y]et, it is hard to put a weight on each” (Midmore, Partridge, Rose Olfert, and Ali, 2010). From the beginning, development and related assistance was based on stretching out industrialisation paying little psyche to the economic or social setting. In any case, during the 1970s, the attitude changed and during this period natural resources enrichments were seen as imperative. This, therefore, affected agriculture and rural development (Greenberg, 2003).

Racial divisions exist within South Africa's dualistic agrarian system. This reality resulted from the previous legal-administrative and social partition of rural areas into communal lands governed by the then-traditional authorities and commercial farms owned by Whites. According to Du Toit (2018: 1086), “the colonial system systematically disadvantaged African farmers in their competition with Whites”. The policies of the colonial government promoted the coercive and ferocious integration of Black rural people into the social and political formations of the industry economy (Ndlovu 2017). African farmers were forced off their land by the economic practices of the colonial authority, where they were forced to sell their labor in the mines (Wolpe, 1980; Ndlovu, 2017). The implementation of this segregationist policy actively hindered the growth of a stable Black urban working class. Maylam (1990) posits “Blacks were understood to be only ‘temporary sojourners’ in the towns”. Black employees were expected to return to Native reserves once they were no longer required in the urban economy (Barchiesi, 2011).

Black workers were excluded from social protection systems. Formal systems of social protection were reserved for the welfare state for Whites (Seekings & Nattrass 2005,

Barchiesi 2011). Du Toit (2014: 833) argues “Black labourers were expected to depend on informal systems of family-based welfare and social camaraderie that existed in the Native reserves”. Fiscal demands coupled with land starvation guaranteed that personal agricultural production was insufficient for Black peasants’ household survival. As a result, Blacks’ reliance on wage labour and involvement in the formal economy for food security increased. Du Toit (2018) states that political suppression and segregation ensured that wages remained low and insufficient. He further states that “the weight of social reproduction and welfare was displaced onto the impoverished communal areas” (Du Toit 2018: 1086). Consequently, communal areas subsidised urban profits and development.

Greenberg (2003: 13) reveals more insight into this as follows:

“Before the re-emergence of popular resistance after the thrilling repression of the 1960s, little consideration was given to the basic needs of the Black population. Official government commissions throughout this time identified extreme poverty and lack of resources for productive activity in the reserves as key threats to the continued functioning of the segregationist system” (Greenberg, 2003: 13).

As a result of growing popular opposition in the 1970s, the South African government started providing essential services and infrastructure to particular Black communities. Before apartheid ended, the majority of rural areas were still dealing with massive infrastructure backlogs and a lack of basic essential services. All of these efforts to persistently provide services to specific territories with the objective of breaking resistance and opposition to apartheid rule had failed. “Cronyism and nepotism were rife, with white consultants and Black administrators and politicians making huge profits off the imposition of large-scale infrastructure schemes particularly in agriculture and water surely” (Greenberg, 2003: 14). The recipients of these schemes never took an intrigue in the planning and identification of their local infrastructure and services and that came about to construction of undesirable, incongruous and unbecoming infrastructure (Greenberg, 2003: 14).

Midmore, et al (2010: 25) contends:

“Many rural development policies have focused on agriculture (or other primary sectors) with objectives of competitiveness, diversification, and food safety, or on land or resources, typically targeting environmental protection and land-use optimisation. However, a place-based rural policy focusing on rural communities and population would have a different focus – supporting entrepreneurship, providing rural infrastructure (transportation, communication), adequate public services, promoting diversification, and facilitating access to markets and information flows in a way that is place appropriate”.

A sustainable development like the one needed in rural areas will have an impact on people's lives long after the government and development organizations have left, thereby assisting future generations. Sustainable development can be characterized as:

“A development that meets the needs of the present without compromising the ability of future generations to meet their own needs. [This] definition also highlights the need for the integration of the economic, ecological and social impacts of development.”
(Bansal & Gao, 2014: 113).

Along these lines, any sort of rural development program that is actualized must concentrate on grasping the key segments of sustainable development. Sustainable development advocates for the association of the individuals who are affected by or remain to profit by a specific development during the approach and execution of development program.

While most rural families are busy with agrarian activities for their subsistence, they are also by and large affected or impacted by an extent of economic activities that lie beyond the farming circle. As a result, there are additional economic activities including commercial trading enterprises that cater to immediate local needs as well as provide income for nuclear families through non-farm operations within rural areas. The other wellspring of income for rural networks is off-farm employment, for the most part outside the local communities in the small conurbations or in large metropolitan

and civic areas working as migration labours in the plants and mines, some stay in these various zones closer to work and simply get back during excursions, while others drive on everyday schedule and there are the individuals who stayed away forever to their rural homes (Dzanku, 2019).

These migration patterns from rural territories have progressively more become a huge phenomenon of a livelihood methodology that normally changes sexual orientation occupations and obligations seeing those remaining behind as women bear expanded labour (Ullah, 2017). In any case, migration and extra work outside agriculture can in like manner invigorate rural development and improve occupations and prosperity of rural nuclear families and systems through remittances which can be used for household needs (for instance securing of fertilizers, pesticides, farm equipment, food, clothing, school costs, health charges and construction (Hill, 2011). (Hill, 2011). According to Hill (2011, 14), “[r]ural men and women often migrate in search of economic opportunities, better infrastructure, and for better chances of acquiring land and other assets”. Agriculture is thusly not by any and all means the only spine of a rural economy. Or maybe, there are other non-agriculture or off-farm activities that add to the rural livelihoods and economy. For the government to address rural development, there is a need to help non-farm agribusiness by strengthening customary tenure rights to promote investment and access to formal credit. As not every single rural family unit participate in agribusiness, non-agriculture and off-farm work is vital to their survival.

If rural areas are established around agrarian activities and a non-farm rural economy, they may operate as a source of employment to local communities, reducing family disintegration and urban migration as a result of the migrant labor system. Various theories around rural development contend that within the rural development discourse, the structure of a rural economy is regularly associated with the ceaseless introduction of new, non-agrarian enterprises. (Van der Ploeg, Renting, Brunari, Knickel, Mannion, Marsden, De Roest, Sevilla-Guzma'n & Ventura, 2000: 401). In addition, Van der Ploeg et al., (2000: 401) note that,

“There is an entrenched assumption that [the] agricultural sector is incapable of generating rural renewal. Rural development process[es] can involve many different actors. [W]e reject the notion

that rural development can only proceed through the expropriation of agriculture” (Van der Ploeg et al., 2000: 401).

It is on this regard that this study proposes policy and law reform to ensure secure communal land tenure rights in order to promote rural development and food security.

Van der Ploeg, et al., (2000: 391) contend that in the current theories, various researchers are finding it hard to comprehend the new model of rural development that is arising in both methodology and practice. Rural development perspective has displaced the modernisation perspective that once commanded strategy, practice and hypothesis (Goudzwaard and Bartholomew, 2017). Rural development is supposed to be a stunned methodology set up in chronicled customs. At all levels, rural development has developed as a chain of responses to the perspective of modernisation (Van der Ploeg, et al., 2000). The most important level is that of the total interactions between people and agriculture, which encourages realigning agriculture to fit the rapidly shifting needs of people. Rural development is moreover grasped as the agriculture development model (Nedumaran, 2020). Agritourism, natural cultivating, organic farming, high-quality product production, landscape management, the discussion of new nature values, and other practices all fall under the broad umbrella of rural development, which has many facets. Rural development generally refers to strengthening the rural economy by the introduction of non-agrarian activities and coordination of rural resources, including land, labor, nature, ecosystems, animals, plants, and handicrafts, as well as market partners and town-village relations (Van der Ploeg, et al., 2000: 398). As a result, secure communal land tenure rights promote investment and access to formal credit or mortgages. Furthermore, rural land owners will be able to sale or lease their land at market related prices. This will promote rural development and create employment within rural communities. Communities will be able to participate in their development through the use of their natural resources, customs and practices.

On that basis, one may be inclined to argue that for any development to be successful, the communities it would affect need to be more thoroughly consulted and included. Development should be driven by the needs of the people, with communities actively establishing their own development priorities rather than waiting for government intervention. In order to encourage growth in their localities, traditional authorities must

operate as a sector of local governance. In light of this, it is important to sustain, conserve, and build indigenous knowledge systems that are pertinent, useful, and widely known by the populace. Municipalities must consult with traditional authorities and the communities concerned in order to bring about sustainable development.

A variety of initiatives aimed at enhancing rural areas where the majority of the population is involved in agriculture make up rural development (Li, Fan and Liu, 2019). Activities related to rural development go beyond just mobilizing people and material resources to get rural communities to the point where better daily living circumstances are introduced. Packaged development plans will empower them to part away from each auxiliary inability presented by temperance of living in the rural periphery (Kakumba & Nsingo, 2008). According to Kakumba and Nsingo (2008), the poor will in general characterise their situation regarding absence of fundamental needs, for example, food, housing, apparel, healthcare and education. Effective rural development intercessions must have the ability to address the status quo of the rural poor in this way bearing them access to basic services and resources.

A functional rural development strategy should be established on multipronged, composed and viable government activities that are adequately unequivocal to have a veritable effect to the limit of distraught rural people (Rao, 2019). The rural areas will continue to be somewhat impoverished for a considerable amount of time to come because no rapid, miraculous improvement is possible. The researcher in this manner advocate that high priority should be put on the viable conveyance of administrations, effective delivery of services, health and education of people and that the right of rural people to represent their interests be upgraded. Such interventions will allow rural people to end up being logically helpful citizenry and give them a prevalent chance of utilising the economic opportunities that come their way. In any event, increasing the quantity and quality of such opportunities continues to be the most important and difficult challenge for an effective rural transformation.

In that regard, the researcher argues that traditional authorities must play an active role in governance and delivery of services. They represent the interest of the rural communities and they have a direct contact with the people they represent. In the same vein, land is a crucial aspect of development in the rural communities. There is need for a paradigm shift of rural communities relying solely on agriculture for

development. Land as a resource can be used in various ways that are non-agricultural to bring sustainable development. However, key is to first ensure that land tenure rights are secure. This is because secure land tenure promotes investment and access to formal credit. Rural people will be enabled to rely on their land to develop their own communities and to invest in their land without fear of being dispossessed of same. The following section will discuss the strategies instituted by the government to realise rural development since 1994.

4.1.2 Strategies Instituted by The South African Government to Realise Rural Development Since 1994

In 1994, the African National Congress (ANC) was elected for government. The ANC Government took over an astonishingly resource- and income-divided nation that had developed a progressive racial system. While the bulk of South Africa's white population resided in metropolitan areas, the majority of the Black population—roughly 50% of the total population—hailed from the impoverished rural areas (Berry, 2018). In 1995, it was estimated that forty million people in South Africa, or 50% of the population, were living in poverty, with 72% of them being in rural areas (May, Stevens & Stols 2002). Additionally, rural poverty was typically worse than that experienced in urban areas (May et al., 2002: 294). The Reconstruction and Development Program (RDP), which was created by the government to address these irregular characteristics, intended to provide basic services and raise living standards to reduce destitution (Manomano, 2013). Through the RDP, the ANC recognized the need for government departments to merge for development purposes and for a rigorous monitoring and assessment program to assure success and accountability (Zantsi, 2020). Land reform was emphasized in relation to rural development even though the RDP sought to meet the needs of the people through many frameworks (ANC, 1994). The RDP contended “[l]and was the most basic need for rural dwellers” (ANC 1994:2), continuing:

“A national land reform programme is the central and driving force of a programme of rural development. Such a programme aims to address effectively the injustices of forced removals and the

historical denial of access to land. It aims to ensure security of tenure for rural dwellers. And in implementing the national land reform programme, and through the provision of support services, the democratic government will build the economy by generating large-scale employment, increasing rural incomes and eliminating overcrowding” (ANC 1994:2.4.2).

The Growth, Employment and Redistribution (GEAR) program replaced the RDP as the government's economic development policy in 1996 while a land reform program was being explored (Jara & Hall 2009). This policy argued that increased employment would result from economic growth and lessen poverty. Additionally, this plan obligated the government to provide for the people's basic needs (Department of Finance). In this approach, the South African government acknowledges the importance of economic development and the provision of basic services for rural development and the reduction of poverty (Grant, 2011). Similar to the RDP, GEAR blended rural and urban development, and land reform was lauded as a significant step forward for rural development:

“The land reform programme, combining asset redistribution with enhancement of tenure has an important role in improving the long-term prospects for employment and income generation in the rural economy...Complementary initiatives include emergent farmer support programmes. As these gain momentum, emphasis will shift to marketing support, appropriate technological interventions and streamlined extension services. Over time, agricultural development associated with land reform will play a key role in improving the distribution of income and economic activity” (Department of Finance :16).

A Land Reform Program (LRP) was also established in 1997 to evaluate previous administrations' policies and hasten rural development, namely through economic development like agriculture, in order to reduce rural poverty. The Land Reform Program sought to provide secure land tenure and an inexorably equitable distribution of land in order to accomplish these objectives (Department of Land Affairs 1997). Notwithstanding these development programs, in 2005 it was reported that

disregarding the way that the rural commonalities had tumbled to 41 percent, larger part of impoverished people, 59 percent, despite everything lived in the rural areas (Schatz, Madhavan, Collinson, Gómez-Olivé & Ralston, 2015). Also, 68 percent of rural occupants were living in dejection and poverty as opposed to 33 percent of urban occupants (Armstrong, Lekezwa & Siebrits 2008).

This improvement in poverty figures is characteristic of the accomplishment, or dissatisfaction, of the previously mentioned approaches. Given the consolidated idea of the strategies, it is implausible that the difference between actualising rural development, rather than urban development was completely valued. Moreover, the complexities and difficulties of organising agrarian and rural development systems, of which land ownership is all things considered in one area, was demonised, while the provision of basic services and infrastructural development was routinely ignored (Borras & Edelman, 2016). For example, coordination across government departments is necessary for service delivery and infrastructure development, but given the isolation of some rural communities, this can be questionable. In addition, the previously mentioned strategies recommend that the Government has given little thought to the more extensive principles of poverty that constrain development.

Sen (1999) argues “development should aim to relinquish the sources of 'unfreedoms', which incorporates destitution, absence of economic opportunities and public facilities, deliberate social hardship and intolerance”. While the South African Government included procedures to address some of these issues in the RDP, which were continued to the GEAR program, and the Land Reform Policy, others were ignored. Specifically, policies have not looked to build what Sen (1999) depicts as in people, which he contends is a “free and sustainable agency” in people, which he contends is a “constitutive part of development”, adding to the fortifying of other agencies, which are critical for development.

Essentially, Sen (1999) and other development masterminds have been calling for an extensive and more nuanced conceptualisation of poverty, and how it might be diminished, than most governments, organisations and actors have previously thought of (Mukwada & Sekhele, 2017; Gibbens & Schoeman, 2020). This is particularly evident in rural areas. Along these lines, giving access to land as a beneficial resource can only be a piece of any intervention. One must consider all of the contexts,

dynamics, and restrictions that contribute to rural poverty and define unfreedoms, as well as the wider range of interventions and options available to provide rural people and communities with the opportunities and capacities to make decisions about how to live their lives and create their livelihoods.

An additional objective for “Land Reform, Rural Development and Agrarian Change” was announced at the ANC meeting in Polokwane, Limpopo, in 2007 (Jara & Hall, 2009). This was a unique integrated development model for the rural areas as opposed to the RDP and GEAR. The War on Poverty (WOP) initiative was launched by the South African government in 2008 with the premise that rural areas are more affected by poverty than metropolitan areas (Maharaj, 2012). The success of this initiative depended on its ability to help hungry and poor South Africans and ensure that people control their own destiny. WOP was anticipated to eventually ensure that communities become independent (South Africa Yearbook 2010/11: 410). This campaign was anticipated to help the government better understand the hardships faced by communities and households, particularly those that have to do with poverty and the need for mediation for those families who are in dire need. A Comprehensive Rural Development Program (CRDP) was created in 2009, and between 2009 and 2010, it was implemented in 21 communities across South Africa, with the objective of reaching 160 areas by 2014. (Department of Rural Development and Land Reform, 2010:3).

In that regard, the government of South Africa has over the years embarked on a journey to ensure that rural areas develop. The land reform program focuses on redressing the historical wrongs by availing land to Black majority South Africans who were previously marginalised. The study agrees to the suggestion that giving access to land as a beneficial resource can only be part of any intervention. However, land remains a significant resource towards rural development. In that vein, it is essential to examine how land impacts on rural development.

4.1.3 Communal Land Tenure *Vis-à-vis* Rural Development

As discussed earlier, poverty is so abject in rural communities with next to zero prospects of growth (Shifa, 2011). Rural communities must become active economies in order to combat rural poverty. Thusly, the agricultural sector is said “to play a crucial

role [in] development, especially in low-income countries where the sector is large both in terms of aggregate income and total labour force” (World Bank, 2011). Agriculture improves the lives of the poor and vulnerable in rural areas as it gives nutritious food, bolster economic growth (Griggs, Stevance & McCollum, 2017).

While the study agrees with the above-mentioned proposition, it goes further to argue that rural development goes beyond agriculture. Indeed, land is essential in agriculture activities but it must be seen beyond agriculture. The most essential aspect is that of secure land tenure rights. Communal landholders must be given access to secure land tenure rights in order to develop rural communities. Secure communal land tenure rights are thusly crucial to alleviate rural poverty. Put differently, secure land tenure among other stratagems may lead to rural development and food security. With access to land, rural people, given the suitable environment, can sustain themselves, thusly, the help of land access for impoverished rural people can add to poverty assuaging. Hanstad, Prosterman, and Mitchell (2009:17) contend “access to land enables majority of rural people to help themselves and their families, through the provision of nutrition and earnings”. Where impoverished people are given secure sufficient land and support to set up small farms, they can grow crops or potentially livestock, while palatable and remedial wild plants and wood can be gathered, which would all be able to be consumed while surpluses can be sold for money. Consequently, access to secure land tenure can add to household food security, encourage economic freedom and the accumulation of wealth (Ashley & Maxwell 2002; Hanstad, Prosterman & Mitchell, 2009).

Such tenure security can promote investment in and development both on and off the land when people have legal ownership to the land. When a secure land title is held, it is possible to lease or sell the property to others or to domesticate animals to provide insurance against stuns. Additionally, communal landowners can increase credit by using their land as insurance against debts, and they can pass this sustainable resource on to the next generation so they can benefit from the security it provides (Hanstad, Prosterman & Mitchell 2009). This infers access to secure land rights can create income generation, amassing of wealth and can allow people to increase societal position (Hanstad, Prosterman & Mitchell 2009). In spite of the way that land access just as ownership does not ensure poverty mitigation (de Janvry et al. 2001;

de Wet 1994; Kepe & Cousins 2002), it is a fundamental part in the obliteration of rural poverty and rural development (Quan 2000; Kepe & Cousins, 2002). A vital element of development and the reduction of poverty in community areas can be secure communal land rights.

Aside from secure communal land tenure rights, traditional authorities are additionally fundamental as they can deal with the land reform program on account of their inherited rights and the fact that many have past involvement in the administration of the former homelands. This infers they are better set informatively, and have an unrivalled comprehension of bureaucratic organisation in administration than other community members (Fraser 2007; van Leynseele & Hebinck, 2009). The government regularly underpins them given their dynamic mien to development (van Leynseele & Hebinck 2009; Fraser 2007). In such manner, traditional leaders have a significant role to play in preserving customary land tenure, thus promoting rural development.

Accordingly, it is appropriate to promote a collaborative methodology between government structures and traditional leaders to address the absence of basic human needs, decent shelter, food security, water and sanitation, electricity, social facilities and enhancements in rural areas. This will attract little small sustainable enterprises, industries, people with distinctive and other particular aptitudes, representatives, business people, rural urban linkages, local markets and credit facilities. To accomplish this, government departments and traditional authorities should begin cooperating by embracing an incorporated planning approach (The Presidency, 2011: 3). The next section will discuss the concept of food (in)security.

4.2 Food (in)security Background

This section reviews literature on food security. This will be pertinent to establish the link between customary tenure and food (in)security. Food security is a concept that has grown extensively throughout the years. It is an intricate issue that describes the present world economy (Mohapatra, Koundal & Pal, 2010). The United Nations (UN) describes food security as “a condition in which all people consistently access enough food expected to live an active and healthy life” (FAO, 2010:4). Hunger, vulnerability, and restricted access to food are some of the components of food insecurity (Devereux, 2000). Research (FAO, 2010; Richardson, 2010) shows that food

insecurity has been expanding all through the world, and malnutrition remains a serious problem particularly in developing nations. The FAO (2010) announced that in 2010 right around one billion individuals on the planet were undernourished, which is 40% higher than the two preceding decades. Food insecurity and hunger are predominantly prevalent amongst the rural and urban poor (Goodall, 2009).

Tonukari and Omotor (2010:1) argue “food insecurity is caused by the economic inability of households to consume a healthy diet, thus leading to a lack of nutritional balance”. The issue of food security identifies with the issue of poverty apparent in numerous parts of the world. The World Bank (2011) estimated that around the world, one of every five individuals live in a state of poverty, with an income of US\$1/day or less. An empirical investigation directed by Mwaniki (2011) found that in developing countries the reason for food insecurity is firmly identified with the inability of households to access adequate and sufficient food because of absolute poverty, and this thus brought about major health issues and loss of human growth.

Pereira, Cuneo and Twine (2014) expressed that continuous examinations have shown that another methodology that joins all the different stressors to food security ought to be considered. The first Millennium Development Goal (MDG) to “decrease hunger by half by the year 2015” proved to be a challenge (FAO 2014). Sub-Saharan Africa notwithstanding everything remains the landmass with the most imperative pace of food insecurity and undernourished people on the planet regardless of various endeavours to reduce the numbers (Ndaguba & Hanyane, 2018). The Food and Agriculture Organisation (FAO 2015) assessed that 795 million individuals were relentlessly undernourished. The modest progress and predominance is in Sub-Saharan Africa where the extent checks show that one of each four people are undernourished (Ndaguba & Hanyane, 2018).

Despite being considered a country with stable food supplies, the majority of South Africans nevertheless experience localized food insecurity, especially in rural areas (Labadarios et al. 2011; Pereira et al, 2014). Notwithstanding the economic and political advancements that have been made, empirical studies have confirmed that many South Africans continue to face food insecurity, poverty, and unemployment (Altman, Hart, Jacobs, 2009; Labadarios et al, 2011; Pereira et al, 2014). The nature and form of economic growth despite everything stays probably the greatest

challenge notwithstanding the difficulties of job creation, poverty and crime. Unemployment and the varying rate of income disparity is the premise on which destitution, hunger and food insecurity flourishes among many families (Development Bank of South Africa, 2011). There are numerous perplexing difficulties confronting food security internationally and locally. In that regard, it is pertinent to analyse the concept of food (in)security deductively from a global, African and local viewpoint.

4.2.1 Food (In)Security: Global Viewpoint

Food i(n)security as a worldwide phenomenon, has been seen as a disaster since the World Food Conference held in 1974 when large-scale food deficiencies and imminent starvation was viewed as inevitable (FAO, 2006). Despite everything, there is still a huge problem with and concern about food security because so many people are still impacted. As showed by the FAO (2014) the inescapability of undernourished people living in Sub-Saharan Africa and food insecurity is continuously transcendent in developing countries as opposed to developed countries (Labadarios et al. 2011; Pereira et al. 2014; Steyn & Temple, 2008).

The notion about food security can be followed back to the 1943 Hot Springs Conference of Food and Agriculture. From that point forward the subject has experienced a few redefinitions (Marion, 2011). The conference developed the notion of a “secure, adequate and suitable supply of food for everyone” in characterising food security (Marion, 2011). The FAO (2016) portrays food security as “being evident when everybody has adequate food for an active and healthy lifestyle”. At global level the United Nations characterised food security in the following terms:

“Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties. (...) Accordingly, the eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help” (United Nations. 1975. Report of the World Food Conference, 1974).

Smith (1993) argues there are now almost two hundred definitions of food security, which is a strong indication of differing opinions and approaches to the problem.

However, the definition by the World Food Summit in November 1996 appears to have acquired the broadest acceptance:

“Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life” (Marion, 2011: 44).

The definitions above categorises food security into pillars: accessibility, availability, utilisation and stability (Marion, 2011). Likewise, Labadarios et al. (2011: 891), also contend “food security rests on three pillars of strength: food availability, food accessibility and food usage”.

The notion of food security brings into context the issue of food insecurity. The non-availability of food or access is a consequence of food insecurity. FAO State of Food Insecurity (2010) defines food insecurity as:

“A situation that exists when people lack secure access to sufficient amounts of safe and nutritious food for normal growth and development and an active and healthy life.”

Food insecurity directly affects lack of malnutrition, with the fundamental cause of malnutrition being inadequate dietary intake and sickness (United Nations Children's Fund, 1998). Labadarios et al. (2005: 259) argued “most of the children affected by malnutrition originate from the rural areas of Sub-Saharan Africa, where stunting and underweight are common nutrition disorders”. Malnutrition, inadequate diets, and food insecurity all have a direct impact on one another and create a vicious cycle of infection. Stunting and issues related with being underweight globally remain mostly common nutrition disorders together with expansion rate of corpulence and obesity as seen in the previous few years (Labadarios et al. 2005; Ng, Robinson, Thomson, Graetz, Margono, Mullany, Biryukov, Abbafati & Abera, 2014). According to the National Food Consumption Survey audit (2011), one child out of every five is either stunted or underweight. According to DBSA (2008) stunting, poor mental health, disability and children's ability to learn can emerge because of the micronutrient deficiencies in children. Moreover, micronutrients deficiencies can likewise result into death, especially if there is a Vitamin A deficiency.

Van Stuijvenberg, Nel, Schoeman, Lombard, du Plessis and Dhansay (2015) demonstrated that 20% of preschool children in Calvinia West, Cape Town were stunted and had micronutrient inadequacy. The United Nations Children's Fund (UNICEF, 2014) report showed that one out of each five children were stunted in South Africa. It further featured elements, for instance, poor household access to food, deficient maternal and child care, poor access to health care services, undesirable environments with constrained access to clean water and safe water disposal that contribute significantly to poor food intake and sickness. Likewise, absence of resources and broadness of poverty further add to hunger (UNICEF, 2012). Globally it can be argued that developing nations, South Africa included, are the most affected by the issue of food (in)security. After obtaining a general understanding of what constitutes food security, the next section discusses the concept of food security in Africa.

4.2.2 Food (In)Security: African Viewpoint

The African continent has been poverty stricken for various decades and progress towards alleviation has been generally delayed in spite of the worldwide exertion to diminish the number of affected people. Africa is seen as the most food-unreliable continent on earth, and for a serious long time hunger has reliably been a troublesome issue in the continent (Bwalya, 2013). Sub-Saharan Africa remains the most extremely affected and has the most noteworthy food unreliable masses with 214.1 million people undernourished (Mtolo, 2016). The report further specifies that 40% of the masses in Sub-Saharan Africa regardless of everything lives in outrageous destitution (United Nations, 2015).

One out of every four nuclear families in Sub-Saharan Africa do not have sufficient access to food, according to the United Nations' Human Development Report (UN, 2012:1). In this way, achieving food security is still a major concern for Africa (Bremner, 2012). The challenge of food security is exacerbated by the quick rising in the population bringing about a prerequisite for extended measures of food to take care of a great many family units. The rising in the cost of food is another hazard factor to household food insecurity considering the way that the majority of the Sub-Saharan countries import food as agricultural development is still commonly low as a result of scant resources (United Nations, 2012:2).

Poverty is unquestionably the central factor and critical force for food insecurity in Africa. African people need to rely upon retail markets to access food as a tremendous degree have no land to develop, and those families that have access to land normally do not have the resources to invest into productive assets and agricultural technologies for adequate agricultural (Pereira et al. 2014: 339; FAO, 2010). Pereira et al (2014: 339) contend that helpless African communities depend upon agricultural production to subsist and climate changes engender vulnerability among them. In light of climate change, Sub-Saharan Africa has hurt land so much, that the impact influences crop production and can never again be cultivated.

Climate delicate catastrophes are most likely going to rise, for instance, fracture valley fever that influences stock, and an absence of or an abundance of water, which can demolish infrastructure. Disasters, for example, these shift priorities instantly, where resources are diverted to manage the crisis rather than being used for development. Additionally, African agriculture needs adequate strategies. Nations have feeble institutions, and administrative structures are poor, all of which undermines innovative research and development in the sector.

Only a small percentage of the 26 countries in Sub-Saharan Africa have policies that are supported by functioning institutions and administrative structures; the remainder are either lacking or too frail to even consider promoting agricultural growth (FAO 2014). Dependence on agriculture makes African communities not just increasingly vulnerable to exposure to occasions of extreme nature yet in addition to unfavourable effects of climate change (Davis & Vincent, 2017). A decline in agrarian production in most rural African communities from tremendous field production to minimal home nurseries is a direct result of absence of help from the government as far as policy changes (Glover & Kusterer, 2016). Long-term investment in agriculture is vital in strengthening food security later on by expanding competition among farmers, lessening costs and making food progressively affordable to poor people (FAO 2010; Godfray Toulmin, Beddington, Crute, Haddad, Lawrence, Muir, Pretty, Robinson & Thomas, 2010; Altman et al. 2009; Collier & Dercon 2014).

The significance of research in unravelling this issue can never be downplayed. Different studies have been directed with an ultimate objective to measure food security in different countries. A study by Knueppel, Demment and Kaiser (2009) in

Tanzania exhibited that lower levels of educational accomplishment are legitimately connected with high food insecurity. Of the sampled people, 48.1 % were concluded to be seriously food insecure (Knueppel et al, 2009). A practically identical report by Rudolph, Kroll, Ruysenaar and Dlamini (2012) revealed that there is a strong link between employment, income and food (in)security (Rudolph, et al, 2012). The study assumed that people from a household who hold all day employments will undoubtedly be food secure than those with part-time occupations. Mjonono, Ngidi and Hendricks (2009) attempted to appreciate the adjusting strategies for food insecure families in rural South Africa. The primary conclusion of this study was that the greater part of nuclear families relied upon different expects to adjust to the burden of lack of access to food. Among these *modus operandi* were buying little amounts of food, rationing of meals and dependence on neighbours for help during difficult times.

Decrease in African agriculture in this manner forces people to rely upon income and purchase food through local markets (Pereira et al. 2014: 339). The World Bank (WB) (2006) communicated that “the consumption of food in any nuclear family is affiliated to income; people buy what is affordable notwithstanding the healthy benefit”. An enormous degree of that income is spent on staple foods. Food is expensive as there is deficient domestic production subsequently food ought to be imported (MacDiarmid, Clark, Whybrow, De Ruiter & McNeill, 2018). It is assessed that 30 billion dollars is spent every year on imported foods in Africa (Mtolo, 2016). This dependence on international markets for food diminishes the financial resources for infrastructure and socio-economic amenities. The impact on income changes as a result of price unsteadiness lessens the nutritional status of adults and children's consumption of basic nutrients during beginning of life and consequent permanent reduction of future earning capacity and perpetuated status of destitution (FAO 2014; Pereira et al. 2014; Labadarios, Steyn & Nel, 2011; Collier & Dercon, 2014).

Short- and long-term solutions to assist in reducing unpredictable food prices and the state of malnutrition in Africa are pertinent (FAO, 2011). However, reliance on agriculture alone to alleviate food (in)security is not sustainable as shown in the discussion above. Hence, the significance of new strategies to bring about food security can never be downplayed. It is in that regard that the study recommends the introduction of secure communal land tenure rights as a strategy to alleviate rural

poverty in addition to the already existing strategy of promoting and investing in agriculture. Therefore, the study examined the efficacy of customary tenure as a tool for rural development and food security. To effectively research on this aim, the study proceeded to examine the concept of food security in South Africa.

4.2.3 Food (In)Security: South African Viewpoint

The South African government has always prioritized food security as a top priority in national initiatives and projects (Hendricks, 2014: 3). In any event, Hendricks (2014: 1) communicates that the food security issue has been seen and opened to varied comprehension by different governments over the years. Food security was one of the primary strategies and policies that helped form the new South Africa. The national policy for food and nutrition security in South Africa emphasised the need for policy development. In 2002 the South African Cabinet introduced the national Integrated Food Security Strategy (IFSS) to direct and organise food security programs (Koch, 2011).

These projects face different difficulties that need a multidimensional procedure. A few variables, for instance, globalisation, environmental change, trading agreements, food storing and distribution speak to a risk or challenge to food security. The government acknowledges that by working up a food security strategy, it will help, portray and measure food security, give a structure to different procedures and projects, and make a stage to fathom worldwide commitment towards restrictions and parameters (Department of Social Development (DOSD) 2013: 3; Department of Agriculture (DOA) 2011). South Africa is among the 49 Sub-Saharan countries tortured by hunger and poverty (Austin & McKinney, 2012:). Despite the fact that there is enough food available nationwide, studies conducted in South Africa have shown that there is a threat to national food security and that there are numerous expands at the local and household level (Haysom & Tawodzera, 2018; Lemke, Yousefi, Eisermann, & Bellows, 2012; Crush & Riley, 2018). Hendricks (2005: 1) cites that “South Africa is broadly food secure yet proposes that somewhere in the range of 58.5 and 73 percent of South African households experience food insecurity”. Jacobs (2009) observed that “all things considered; about 80% of family units cannot expend a nutritional basket of food amounting to R262 per person in one month, this depends on 2005 food prices”.

Statistics South Africa (Stats SA) (2019) showed South Africa is food secure at national level yet food insecure at family level. This is on the grounds that not all households have access to sufficient food. At the point when the survey was led in 2017, just about (20%) of South African households had deficient access to food (The Extent of Food Security in South Africa, 2019). The Limpopo Province (93,6%) had the most noteworthy extent of households that detailed sufficient food access (The Extent of Food Security in South Africa, 2019).

Nonetheless, the report demonstrated that Provinces that are basically rural and with significant levels of destitution, for example, Limpopo (25%), Eastern Cape (20%) and KwaZulu-Natal (20%) had the most elevated quantities of families that depended on agriculture to supply their own food (Food Security in South Africa, 2017). Altman et al. (2010) demonstrate that it is as of now unrealistic to monitor progress towards more prominent food security. This is on the grounds that food insecurity is not viewed as a disappointment of food failure of food production at the national level however as a livelihood failure (Joala, Chadza, Mable, Kumwembe & Kambwiri, 2019). Hendricks (2005) takes note of a move towards more household-focused food security estimation strategies in such manner.

Conditions are made worse by the shrinkage of commercial production. According to the South African Government insights report (2011), the level of destitution changes marginally across in different provinces. The Eastern Cape was the second most afflicted region with 60.8%, KwaZulu-Natal was third with 56.6%, and Limpopo had the highest notable incidence of hunger and poverty at roughly 63.8%. The South African national general family outline (2014) exhibited that 11.4% of families were so far vulnerable to hunger. The critical challenge in South Africa regarding food security is the nonattendance of absence structures to review the food security impact on government programs. Pereira et al. (2014: 339) clarified that “due to policy brokenness in South Africa and an absence of coordination exacerbates the food insecurity issue”.

The South African Bill of Rights specifies that every individual should access food and clean water. Issues of joblessness, urbanisation, globalisation, hunger, indigence and Human Immunodeficiency Virus and Acquired immunodeficiency syndrome make it incredibly difficult for South Africans to achieve food security (Dodo, 2020). The slight

and whimsical world economy drives food, fuel and input costs to increase, which consequently puts pressure on the rand (Codagnone & Martens, 2016). This is particularly risky for the least fortunate households who depend upon bought foods to meet their regular nutrient prerequisites. Shockingly, purchased foods are ordinarily continuously exorbitant and can be undesirable and unhealthy (Nawrotzki, Robson, Hunter, Twine and Norlund, 2014; Labadarios et al. 2011; Pereira et al. 2014).

As reported by Hendrks (2014: 4), “approximately 30-50 % of the population has inadequate food and consumes an unbalanced diet”. Despite all, South Africa does not currently have any regularized approaches to monitor progress or deficiencies in the area of food security, nor does it have any defined and acceptable measures in that regard (Ngumbela, 2018). For a middle income nation with raised degrees of destitution and food insecurity this should be a critical concern. So as to achieve food security austere policy monitoring and appropriate reporting framework should be developed. Hendrks (2014: 4) contends:

“there are various components that ought to be thought of, for instance, source of income, access to land, developments in rural areas, retail markets, changing household structures, education, health, and nutrition information, water and inputs to annihilate food security”.

According to Labadarios et al. (2011), South African families average four people, and maintaining a good, balanced diet requires about R38.20 per day or R1146 per month. The conditions are more appalling in households with less wealth because there are frequently more family members. Family size, educational attainment, and the presence of both parents all contribute to food insecurity, and household food security is solely dependent on total household income. Import demand is driven by rising customer preference for increasingly expensive imported commodities over locally produced foods, which in turn reduces consumer buying power (De Schutter, 2017: 705). This routinely brings about customers purchasing the most economical foods, which are locally processed, lack micronutrients and are high in sugar and fats. These sorts of diets have long-term negative health repercussions (Pereira et al. 2014; Sharafkhani et al. 2011; UN 2010; Dorosty, Karamsoltani, Jazayeri, Siyasi & Eshraghian ,2008).

Besides, for the greater part of South Africans, the absence of land to develop food suggests that food must be purchased monetarily. Household income is crucial to ensure food security; just as economic growth is essential for a nation to develop. The magnitude between taxpayers, unemployment and grant beneficiaries is lopsided. The number of people on social grant beneficiaries rises every year (Gutura & Tanga, 2017). There are a bigger number of individuals on social grants than with employment, in this way burdening tax payers (Chakona & Shackleton, 2019). Many households who rely solely on grants will not have enough money to buy food since grants are insufficient as a source of family income (Hendrks 2014; Labadarios et al. 2011; South African Social Security Agency, 2013).

The income of communal areas is by and large lower than urban areas. In South Africa, rural communities are generally underdeveloped as compared to urban areas (Du Toit, 2018). In any case, hunger is inescapable in the two areas, however on an alternate scale. Nawrotzki et al. (2014: 290) specify that “households with a high percentage of working members have a more grounded food security status”. Labadarios et al., (2011: 891), contends “less fortunate households have somewhere in the scope of six and seven members, and the food items found in the basic food item pantries are beneath the normal or least prerequisite to achieve or maintain a balanced healthy diet”. When faced with hunger, families frequently have to make drastic changes, which reduces their consumption of healthy foods. Hendrks (2014) admits that promoting rural farming improves both food accessibility and food nutrition.

Difficult times can urge households to put their methods of source of income available to be purchased and sometimes families need to apply for credits to survive. These activities leave households devastated, impoverished and indebted for significant stretches of time, and basic essentials, for instance, education and health are undermined and become costly luxuries (Dewbre, 2010). New interventions are major to create a healthier, food secure nation in order to ensure an unrivalled future. A couple of studies assert that families with a superior family food security status have members with more elevated levels of education, along these lines education is noteworthy and is a strong defensive factor (Nawrotzki et al. 2014).

Development and structural change may be seen as the best approach to achieving family food security, however people cannot wait for that as hunger is an immediate

need. Dewbre (2010) in like manner communicates that when people are hungry today it is an aftereffect of accessibility as opposed to availability of food. Food can be available in the market yet not open to people because of various factors. The most important thing is to ensure that the country and its kin access food, either by developing produce or by purchasing food to eat. A lot of money is given each year to alleviate hunger and poverty through food aid programs, yet there is no proof of the effectiveness or acceptability of such social alleviation assistance (Hendrks, 2014). Agricultural projects implemented by various government sectors frequently lack coordination and innovation and concentrate on backyard production, which despite all has no significant and quantitative worldwide validation in terms of its impact on nutrition (Hendrks, 2014). It is necessary to identify household food insecurity for any food aid program to be effective (Dewbre 2010). Food aid initiatives might be a temporary solution to food security, hunger, and poverty, but they do not improve the lives of families who are food insecure on a long-term basis (Hendrks, 2014).

A multitude of issues are threatening and engulfing South Africa's food security, necessitating massive actions with regard to policies and approaches (Haysom, 2016). The objective for this specific study is based on the efficacy of customary tenure as a tool for rural development and food security. With the dawn of democracy, the government introduced the land reform program with the aim to redress the historical wrongs and improve food security in rural areas. Making land accessible through the reinforcing of communal land rights permits nuclear families to grow harvests and support livestock, which therefore brings about an increasingly ceaseless progression of food to families, just as potential money (Ghalieb, 2018). This decreases the degree of destitution and takes into account improved sustenance and human development (DLA, 1997). This is much the same as what happened in West Bengal, the Nijo Griha Nijo Bhumi, where the land-distribution program upgraded the food security of rural families (Santos et al., 2013).

However, in South Africa, not many studies have examined the impact of land reform on food security. The review programme conducted by the Land Redistribution for Agricultural Development, established that living standards initially plunged with land transfers but improved by fifty percent over the medium term (Keswell & Carter, 2014). Kepe and Tessaro (2014) argue that most rural people preferred to leave the land

follow as they feared losing control of the management of land, suggesting a lack of compatibility between land tenure programmes and food security stratagems. It is therefore paramount to examine the impact of customary tenure on food security and the compatibility of land tenure systems with food security strategies.

4.3 Chapter Conclusion

The chapter first reviewed literature on rural development. The aim was to establish a nexus between customary tenure and rural development. Secondly the chapter proceeded to review literature on food security. Likewise, the aim was to establish the link between customary tenure and food security. On the first aspect of rural development, the reviewed literature concluded that functional rural development strategy should be established on multipronged, composed and viable government activities that are adequately unequivocal to have a veritable effect to the limit of distraught rural people (Rao, 2019). No sudden, miraculous change can occur and the rural areas will remain moderately deprived for an extensive time span to come. The chapter also discovered that despite the serious efforts by the government to develop rural communities, South African rural communities remain poor.

In addition, the examined literature also exhibited that rural underdevelopment has a direct negative impact on food security. In the same vein, the chapter also established that communal land is essential in agriculture activities but it must be seen beyond agriculture. To achieve development, a plethora of scholars reviewed in this chapter proposed access to secure land tenure. It is contended it improves household food security, encourage economic freedom and the accumulation of wealth. Secondly, the writers propose a collaborative methodology between government structures and traditional leaders to address the absence of basic human needs, decent shelter, food security, water and sanitation, electricity, social facilities and developments in rural areas.

Regarding the second component of food security, the examined literature showed that it is at risk and entangled by a broad range of issues that need for significant interventions with regard to policies and strategies (Haysom, 2016). The chapter also highlighted the fact that while food aid initiatives could be a temporary solution to issues like food security, hunger, and poverty, they are not a sustainable way to make

life better for families who lack access to sufficient food. Making land accessible through the reinforcing of communal land rights permits nuclear families to grow harvests and support livestock, which therefore brings about an increasingly ceaseless progression of food to families, just as potential money (Ghalieb, 2018). This decreases the degree of destitution and takes into account improved sustenance and human development (DLA, 1997). The next chapter discusses the research approaches and methodologies used in the study.

Chapter Five

Research Methodology

“The value of scientific research is partially dependent on the ability of individual researchers to demonstrate the credibility of their findings.”

~ McGlamery & Shillingstad (2013)

5. INTRODUCTION

The interdisciplinary study employed an explorative qualitative research approach, comparative approach and the Black letter law approach, known as the doctrinal research approach. The degree to which the subject is responsive to the participants' worldviews and is aligned with it will determine how effective the three approaches together are. In order to guarantee that a research study obtains credible results, it is paramount for the study to be grounded on some fundamental philosophical assumptions about what makes up a 'legally binding' research. Secondly, it is important to ascertain which research method(s) is/are appropriate for the progression of knowledge. It is therefore crucial, when carrying out and assessing a credible research study to be acquainted with the philosophical assumptions.

Chapter five discussed the research approaches used in the study. The discussion began by giving an outline of the research approach adopted by the study. The study used a qualitative methodology. Various methods of data collection were employed in the data gathering process. The chapter proceeded to detail how the pilot study was conducted. In addition, the researcher discussed the population and project areas. The chapter also discussed the research instruments that were going to be developed and applied in pursuit of the research objective. Lastly, the chapter discussed the selection of research participants, methods of collecting data, analysis method and synthesis of data.

5.1 Research Paradigm

Costa, Soares and de Sousa (2016: 531) define a 'paradigm' as "a conceptual framework shared by a community of scientists which offers them an appropriate model for examining problems and finding solutions". Kuhn (2011: 25) contend that "it is an integrated cluster of substantive concepts, variables and problems attached with corresponding methodological approaches and tools". Therefore, a paradigm entails structure, scientific and academic ideas, pattern or values and assumptions (Kivunja & Kuyini, 2017). A research paradigm/ philosophy is a belief about the way in which information about a phenomenon should be gathered, analysed and used (Khaldi, 2017). In short, a paradigm denotes a basic set of dogmas that guide action.

A paradigm influences a person's opinion of the cosmos as well as one's conception of time and space. According to Wolgemuth, Erdil-Moody, Opsal, Cross, Kaanta, Dickmann and Colomer (2015: 351-372):

"Paradigms represent what we think about the world (but cannot prove). Our actions in the world, including the actions we take as inquirers, cannot occur without reference to those paradigms: as we think, so we act."

Roy (2014: 117-128) argues "the researcher is guided by a paradigm not only in choosing the method but in epistemologically and ontologically essential ways". The term epistemology (what is known to be true) as opposed to doxology (what is believed to be true) encompasses the various philosophies of research approach. The purpose of research, then, is the process of transforming things believed into things known: doxa to episteme.

Social reality can be observed as being created. To put it differently, it pivots on a continuous progression of interpretation and reinterpretation of the intentional, evocative behaviour of people – researchers included (Smith, 2011). Consequently, delineation of the social inquiry is a constructive process and the investigator cannot be secluded from the phenomenon examined (Smith, 2015). Two major research philosophies have been identified in the Western tradition of science, namely positivist (sometimes called scientific) and interpretivist (also known as anti-positivist) (Myers, Lee, Galliers, Nandhakumar, Scarbrough, Germonprez, & Sharma, 2016). For the purposes of this study, the researcher elected to conceptualise the study within the interpretivist paradigm.

5.1.1 Interpretivism

The phenomenological method is another name for the interpretative paradigm. Gray (2014: 15) opines “interpretivist view the world as too complex to be reduced to a set of observable laws”. He further argues “for interpretivist, generalisability is a less important issue than to understand the real conditions behind the reality” (Gray, 2014: 15). Interpretivist value understanding the meaning of the social situation from the viewpoint of those who live it. Prewitt, Schwandt and Straf (2012:11) argue “the researcher must construe the phenomenon, comprehend the process of meaning construction and reveal what meanings are embodied in people’s actions”.

The fundamental tenet of this paradigm is that research cannot be impartially examined from the outside. Instead, it must be experienced directly by the people in order to be perceived from the inside. Secondly, in the classroom setting, where teachers and students construct meaning, it is impossible to demonstrate the causal nexus that can be established in the study of natural science. As a result, it is the role of researcher in the interpretivist paradigm to comprehend, elucidate and interpret social reality through the eyes of diverse participants (Kotele, 2018). Thus, Interpretivism places emphasis on exploring the complexity of social phenomena in a bid to gaining understanding. The prime objective of study in Interpretivism is to comprehend and interpret social structures, everyday experiences, and occurring - as well as the meanings people attribute to these phenomena (Collis and Hussey, 2011; Rubin & Babbie, 2010).

Reality ought to be construed through the denotations that people give to their life world. The interpretivist paradigm was relevant in this inter-disciplinary study because it sought to disclose different direct experiences of people in the legal fraternity who interpret and implement the laws and communal indigenous values and norms of people who were directly affected by the alleged insecurity embedded in customary tenure rights. In this study, meaning of social aspects were understood through examining African value systems of native people. Through observing and learning cultures and African indigenous law systems of the people under study, knowledge was established and theory was constructed through growing ideas from observed and interpreted social constructions. For example, the primogeniture culture practiced by the community discriminated against women and undermined women's right to land. The other cultural issue that was pertinent was the sole responsibility of the chief to allocate land. This aspect was criticised for promoting favouritism, discrimination and nepotism, allegations that seriously undermined customary land rights. These cultural practices to mention a few were critical to establish knowledge and construct theory. On the other hand, sieving through legal documents, precedence, newspapers also give the legal interpretation. So, the study adopted this paradigm to combine these two worldviews (the legal and social), in order to make sense of customary tenure phenomenon objectively. This was necessary to help appreciate, elucidate and interpret social realities of customary tenure phenomenon through the eyes of different lens (social and legal).

5.2 Research Approach (Design)

Salter and Kothari (2014: 54) contend that a research approach constitutes “the blueprint that guides the researcher in the process of organizing, analysing and interpreting data”. A research approach can be tersely defined as the master plan or road map of a research. It illuminates on how the study is to be executed. In other words, it is a plan that shapes the research study (Alase, 2017). According to Pietkiewicz and Smith (2014: 7), “a research approach is a programme that guides the researcher in collecting, analysing and interpreting observations and data, in order to find answers to research questions”. Queirós, Faria and Almeida (2017:1) states that “a research approach refers to the basic methods that a researcher can use to gather evidence used to make conclusions concerning a question under investigation”.

Yin (2017: 14) submits that “colloquially a research approach is an action plan for getting from here to there, where ‘here’ may be defined as the initial set of questions to be answered and ‘there’ is some set of (conclusions) answers.” From the definitions given above, it follows that a research approach is a strategy that includes sampling, data collection, and analysis. Additionally, it determines the way in which the focal parts of the research coordinated in intending to address the research questions and objectives.

This interdisciplinary study employed two different approaches (designs); qualitative research approach and the Black letter law approach (doctrinal approach). The first approach guaranteed a deep inquiry and understanding of the social phenomenon underpinning customary tenure discourse. Secondly, the doctrinal approach was essential to attaining a full and rigorous comprehension of laws governing customary land tenure. These two approaches are discussed and justified below;

5.2.1 Qualitative Research Approach

The study used a qualitative approach because the approach guarantees a deep inquiry and understanding of the issue under discussion. Shank (2002: 5) as quoted in Mapara and Makaudze (2016: 243-249) argues:

“... qualitative research is “a form of systematic empirical inquiry into meaning”. By *systematic* he means “planned, ordered and public”, following rules agreed upon by members of the qualitative research community. By *empirical*, he means that this type of inquiry is grounded in the world of experience. Inquiry into meaning says researchers try to understand how others make sense of their experience’.”

Also, qualitative research is defined as “a multi-method that involves an interpretive, naturalistic approach to its subject matter” (Denzin & Lincoln, 2000: 55). This suggests that researchers employing the qualitative method study the phenomena in their natural scenery and attempt to construe them in terms of the connotations people make out of them. A variety of instruments that describe experiences and meaning in peoples’ individual lives is used to achieve this objective. These include interviews, observations, visuals and interactions. According to Myers (2010), qualitative data

sources include among others fieldwork, interviews and observations. In this context, data is collected through observing the behaviours of the participants during interviews as well as from transcribed opinions. The arguments by Domegan and Fleming (2007) and Velluet (2011), is that human dogmas are best researched by using qualitative data.

The study disregarded the quantitative approach in favour of the qualitative approach because unlike the qualitative approach, the quantitative approaches are methods employed to collect data that can be measured, sorted and classified (Bernard & Bernard, 2013). Statistical analysis is pertinent for quantitative researchers, in order for them to make sense of quantitative information. In this regard, statistics are both descriptive or inferential. However, for the purposes of this study, descriptive statistics were not of value. This is because the study sought to explore views and experiences of rural indigenous communities and their respective authorities regarding customary land tenure. A qualitative research design was deemed to be the most suitable to explore the efficacy of customary tenure in pursuit of rural development and food (in)security. Moreover, the latter entail that an efficacious understanding of this data can be best done by adopting qualitative research approach. For that reason, a quantitative approach was, consequently, not pertinent as it did not permit the researcher to learn people's subjective experiences and people are not necessarily studied in their natural environment (Bryman, 2017). In this regard, an explorative qualitative approach was opted for this study.

a. Exploratory Research Approach

Seaman and Baxter (2009:10) posits "an explorative qualitative research follows a design that seeks and defines new observations, in cases where no prior information existed or complex or intricate issues are involved". The study was explorative and investigated the efficacy of customary tenure as a tool for guaranteeing food security and rural development thus, employed the qualitative research approach. This, therefore, assisted, to a greater extent, in finding out what shapes customary tenure and the attitude of people towards the tenure system among other things.

The view put forth by Tesch (2013) and Guba (2013), who suggested that in selecting the most appropriate research approach it is sensible to choose that paradigm

whose assumptions are best met by the phenomenon being investigated, served as the study's main inspiration for choosing the explorative qualitative research approach. The study was influenced by communal people's experiences and descriptions of customary tenure and its effect on rural development. It was essential to understand the views of people who live and practice customary law as opposed to classroom views and/or any statistical data. McNabb (2013: 35) argues "exploratory qualitative approaches 'provide a wealth of information, which is easy to understand and interpret". Leedy and Ormrod (2010) weighs in and contends that "the primary goal of exploratory qualitative research is to develop an understanding of how the world is constructed". In this vein, the objective of this study was to borrow from indigenous knowledge systems so as to increase the understanding of customary tenure and rural development from within the communal communities and recommend relevant policies and legal amendments.

To add, an explorative qualitative research approach was suitable for this study considering that it pursues and describes new observations, where no prior information existed, or complex issues are involved (Seaman & Baxter, 2009). As previously indicated, the study endeavoured to unveil the effectiveness of customary tenure that had been clouded in negativity thus, giving genuine views of it within traditional communities so as to align traditional governance practices with modern governance policies and laws. The explorative qualitative approach was appropriate in that it integrated an all-inclusive strategy which endowed the researcher to strongly think about distinctive issues related to customary law land tenure in South Africa.

Further, the approach was adaptable and spared time and expenses on the part of the researcher as it sought in-depth information from few participants (Kugara, 2019). In addition to all the above-mentioned strengths associated with the explorative qualitative research approach, the study chose this approach because it had the ability to give a clarification of 'how' and 'why' rather than just 'what' (Yin, 2003). This will be crucial for this inquiry so as to recognise how viable customary tenure is towards rural development and food security. Yin (1994: 283-290) corroborates this reasoning when he states that:

"An exploratory design is equipped for giving a rich and detailed depiction of the subject matter being examined, which enables the

researcher to have numerous and evolving elucidations, something that would have been outlandish in a quantitative research design.”

As shown in the quotation above, exploratory qualitative research approach was essential as the study undertook to expand the understanding of Indigenous Knowledge Systems and beliefs and their impact and effect on customary land tenure, food security and development. An understanding of these systems, practices and beliefs helped in developing relevant and effective policies that are not alien to communal people. These policies will go a long way in solving African problems in an African way. Further, this will help in developing a system of law that is acceptable and applicable to people who live and practice the law.

5.2.2 Doctrinal Research Approach/Black Letter Law

From a legal perspective, as highlighted above the study also employed the doctrinal (Black letter law) research approach. Hutchinson (2014: 579-584) states that the “doctrinal research method assists in giving a critical conceptual analysis of all the relevant legislation and case law to explain the law.” Pearce, Campbell and Harding (1987:6) defines doctrinal research as “a research that provides a systematic exposition of rules governing a particular legal field and explains an area of difficulty and in most instances predicts future developments.” Opinions in respect of the doctrinal research approach originate from authoritative sources, which includes among others rules, principles, case law, and scholarly publications. Langdell (2009: 67) states that,

“The library in legal research is parallel to what a laboratory is to the chemist and to what a museum is to a naturalist, thus the law ought to be studied from its own concrete phenomena that is case law and legislation.”

Kharel (2018: 1-10) defines doctrinal research as “systematic investigation towards increasing the sum of knowledge of law”. The study made use of the doctrinal research approach to get a better understanding of aspects relating to law in the study. The doctrinal research approach was essential to attaining a full and rigorous comprehension of laws governing customary tenure while arguing for amendment and development of such laws. This approach was suitable for this study because any

recommendations of amending and developing the relevant laws required a critical understanding and evaluation of the 'Black letters' of the relevant legal provisions. The study was underpinned by the comparative legal research approach;

5.2.2.1 Comparative Legal Research Approach

The researcher employed a comparative legal research approach, under the doctrinal research approach. In general, the acceptable view is that comparative law compares and contrast legal systems, norms, cultures, policies, institutions, principles and so on. Comparisons are helpful in noting similarities and differences in a study. There is no exclusive method that comparative law research is mandated to follow (Van Hoecke, 2015). However, there exist a sliding scale of methods that may be followed and the best approach is always determined by the specific purposes of the study, the affordability of the costs and lastly, the idiosyncratic skills of the researcher (Myers, 2009). The researcher, in this study, used the comparative legal approach to compare between freehold and customary tenure.

This approach made it possible for the researcher to formulate sound and pertinent conclusions on the abilities of customary tenure law system in guaranteeing food security and rural development. The freehold systems are generally viewed as complex, sophisticated and well developed (Payne & Durand-Lasserve, 2012). Thus, the researcher used them as a yardstick to measure the effectiveness of customary tenure as well as to note the differences and how best customary tenure may be developed as a distinct and separate system of law that is sufficient to meet the needs of indigenous Black people. Also, the approach was adopted to compare customary tenure of different jurisdictions and countries. The study briefly examined customary tenure in Ghana, Zambia and Botswana so as to give a comparative analysis to that of South Africa.

5.3 Study Area

It is vital, when choosing the study area to nominate an area that one can study more effectively. A study area refers to a geographical boundary created to describe the extent of the study analysis. A series of land ownership conflicts between the municipality and traditional leaders have been on the rise in South Africa (Bennett, Ainslie & Davis, 2013). Traditional leaders argue that the land belongs to them, while

municipalities on the contrary argue that land falls under their administration. The issue is hinged on the fact whether traditional leaders and structural government sectors can work together given the ambiguity on the role of traditional leaders in matters relating governance. The conflicts have a bearing on development and food security in rural areas. Furthermore, they bring into aspect the question of land tenure. Headlines pertaining to such conflicts have been appearing on the television and newspapers. The conflicts led to television and radio discussions. It was through these discussions and debates that the researcher heard about the land disputes. These issues intrigued and motivated the researcher to study the land tenure system in South Africa. The researcher chose Limpopo Province, South Africa because he had access to the Province. To add, the researcher chose Limpopo because the land conflicts are at the rise in the province and also Limpopo still has rural communities that still practice and observe traditional values, cultures, norms and systems. Accordingly, the study was conducted in the Vhembe District of the Limpopo Province, South Africa.

5.3.1 Limpopo Province

One of South Africa's provinces is the Limpopo Province. It is branded the “Golden Horseshoe” because of the “huge arc of unspoiled natural countryside”. In addition, the Limpopo Province is viewed as the “gateway to the rest of Africa’ due to its uniqueness in that it shares international borders with three countries, namely Zimbabwe, Mozambique and Botswana”. The Vhembe district is located in this province.

Makungo (2017) reported on the land conflict issue between the Netshituni traditional leadership and the Makhado Municipality in Limpopo. He stated that the two parties:

“...have been embroiled in dispute over a piece of land at Nzhelele outside Louis Trichardt. The traditional leadership filed notice at the High Court in Thohoyandou to interdict the municipality from auctioning the land. The traditional leadership argues that the land belongs to it.”

According to Bikam and Chakwizira (2014), the Limpopo Department of Local Government and Housing, 2010 indicated that when it comes to residential development/housing projects/ township establishment, at least four conflicts out of

every five cases arise between traditional leaders and municipalities. The main cause of the clashes pivoted on the lack of traditional leaders' involvement in development processes (traditional leaders represent customary tenure and indigenous knowledge systems whereas municipalities represent the statutory or formal tenure system).

In 2015 a land dispute ensued between the University of Venda and Muthufela Mathivha (*University of Venda v Mathivha and Others* (684/2012) [2015] ZALMPTHC 6 (3 September 2015)). The first participant Muthufela Mathivha occupied and developed a certain portion of communal land. The land had been given to his mother by the traditional leaders of the Tshivhase community under customary law. However, the University claimed legal ownership of the land and argued that the land had been donated to them by the Department of Higher Education and also that the traditional authorities had no legal right to allocate this land. The matter had to be resolved through a judicial process.

Recently, the Tshivhase Traditional Council allegedly without the consent and knowledge of the traditional leaders and communities awarded the Mmamba Metal Group (Pty) Ltd mining and prospecting rights (Bloom, 2020). The community was worried that starvation would follow if the site was desecrated (Bloom, 2020). Interestingly the alleged authorisation as depicted in the letter of authority allegedly granted by the Tshivhase Traditional Council claimed the issuance was motivated by the need to develop the community. It can therefore be argued that land conflicts between traditional leaders and statutory government departments are high in South Africa's Limpopo Province. This is one of the major reasons why the researcher chose this province.

Figure 5.1: Map of Limpopo Province



Source: Chiliza and Richardson (2008)

The picture shows the Map of Limpopo Province. The study area is within Limpopo Province in Vhembe District under Thulamela Municipality.

a) Vhembe District

The Vhembe district is situated in the north of the Limpopo Province, South Africa. Four local municipalities, namely Collins Chavani, Musina, Thulamela, and Makhado, make up the Vhembe District Municipality. This study will be conducted in Thulamela Municipality. Thulamela was the area that the researcher chose since it reflects what the researcher was endeavouring to uncover. That is, there were clashes between investors and local people and authorities on the land issue (mainly under customary land tenure); Nandoni case, Phiphidi case, Thathe case, Fhundudzi case, Makwarela case, etcetera. Also, the place was within the proximate of the researcher. Lastly, the researcher was well conversant with the cultural protocols observed and had little understanding of the local language spoken in the area in question, Tshivenda. As

such, the study was in three areas under Vhembe district; Vondo, Thathe and Makwarela. The map below shows the study area

Figure 5.2: Map of Vhembe District



Source: Mpandeli (2014)

Picture shows the Map of Vhembe district and the municipalities situated in the district.

5.4 Target Population of the study

Silver (2013: 34) argues “population of the study refers to the total number of members of a defined class of people, events, objects or places selected because they are relevant to the research question”. According to Potter (2011: 78), population of the study relates to “a group of individuals taken from the general population who share a common characteristic such as age, sex or health condition”. The population for this study consists of rural women, men, traditional leaders, elderly people, people from the department of rural development and land law experts residing in four villages of Vhembe district, namely Tshivhuyuni, Makwarela, Thate Vondo and Dzwaini (Phiphidi). Table 1 below is a table that justifies the selection of the participants in this study;

Table 5.1: Participants and justification for their selection

Category	Targeted number	Justification	Inclusion and exclusion criteria
Community members <ul style="list-style-type: none"> • Men and women 	4 members per village.	There are directly affected by the poverty that is embedded in rural areas. Further, they are the ones that still have the strength to work and provide for their families. They are youthful and up to date with current affairs.	Who are/were directly affected by the issue of customary tenure and development.
Traditional leaders; <ul style="list-style-type: none"> • Chiefs, • Headman and • Their councils 	2 traditional leaders per village.	They are knowledgeable about customary law and customary law land tenure. They play an important role towards its application, existence and enforceability. They are the link between the community and the government.	Who have been leaders for more than ten years.
Elderly people (above 50 years)	3 elderly people	They have the knowledge about the history in the use of	Who have been part and parcel of

	per village.	customary law land tenure and still uphold the cultural norms and traditions of the Venda people. They relate both with the apartheid and post-apartheid period.	decision making bodies relating land; those who sit in traditional councils.
Professional people who include; <ul style="list-style-type: none"> • Government officials from the department or rural development, • Members of the rural municipality, • Lawyers, • Judges/Magistrates • Investors 	5 members; each person per category.	They are well trained and knowledgeable in governance, land law issues, disputes and effects of how the land reform program directly impacts on rural development.	Who have been in office for more than five years dealing with rural development matters relating to customary matters.

5.5 Sampling

Neuman (2011: 240) defines a sample as “a small set of cases a researcher selects from a large pool and generalises to the population.” According to Etikan, Musa and Alkassim, 2016: 1-4), sampling refers to a “statistical method of acquiring representative data from a population study”. The study used non-probability sampling method for the purposes of this study.

5.5.1 Non-Probability Sampling

Baker, Brick, Bates, Battaglia, Couper, Dever, Gile and Tourangeau (2013) define the non-probability sampling method as a method in which not every element of the population has an opportunity of being selected in the sample. This means that the non-probability sampling approach is some *modus operandi* where the samples are collected in a manner that does not permit all entities in the population equal prospects to be selected. The study used this method because it was not sophisticated, thus reasonably economical and less time consuming. The following sub-types of non-probability sampling were used: purposive sampling and snowball sampling.

5.5.1.1 Purposive Sampling

This method is also known as the selective, subjective or the judgmental sampling method. Purposeful sampling technique helped to ensure that the participants with the knowledge of customary tenure and development in rural communities are identified and included in the study. The categories of participants targeted by the sampling method included traditional leaders, indigenous community members, elderly people and professionals as the researcher submits that they are custodians of Indigenous Knowledge (IK) because of their age and experience as shown in table above. This method was preferred because it enabled selection of participants based on their role in the communities and the knowledge they possess. Above all, this method was economical because only a part of the population that had vital knowledge to the area of study was sampled. This is consistent to the argument by Easterby-Smith, Thorpe and Jackson (2012: 31) when they argue “the researcher forms an outlook to the anticipated qualities of participants that can be utilised on extremely sensitive research study populations”. In justifying this selection, the researcher chose the study entities that were available and willing at the time of collecting data.

5.5.1.2 Snowball Sampling

Snowballing entails, a situation whereby the researcher approaches the chosen participants (picked through purposive sampling) and the approached participants act as informants and identify other members who are specialists in the field of Indigenous Knowledge Systems, customary law and customary tenure as well as aspects of development and food security (Elder & Glen, 1998; Elder, 2018). The targeted

participants were interviewed during the data collection process and were asked to identify more people who fit the study's profile. The chosen participants were contacted and interviewed. The process was repeated until saturation was achieved. The reason why the researcher relied on the snowball sampling method was because the method had the capacity to unveil hidden participants who were of significant value to the study.

Consequently, the researcher was able to include some participants in the study that he would not have known about otherwise thanks to the selection process. The study also ensured that there was gender balance, without one gender dominating the study. This was done to do away with gender disparity embedded in customary tenure and have all views explored to avoid bias. The sampling method was used when the researcher interviewed knowledge holders (traditional leaders, elderly village men and women, land experts and so on). In turn, these Knowledge holders were expected to keep on giving referrals to other knowledge holders.

5.6 The Pilot Study

Kim (2011:190-206) defines the pilot study as “a mini study that entails to authenticate and endorse the actual study by giving reference to the degree to which it is able to measure what it is envisioned to measure”. The researcher did a pre-test of all the research tools among a selected group of people. This was done to measure its effectiveness. The pre-test was successful and it also enabled the researcher to refine the exact issues he was supposed to measure. For example, the researcher conducted a pilot test on the semi-structured questions to assess and establish if they meant what the researcher intended them to measure. This was crucial considering a research instrument like semi-structured questions might fail to measure a projected subject because the participant cognizes the question in a dissimilar manner from the envisioned meaning. As a result, this assisted the researcher to refine such instruments to ensure that they were correctly understood by the responded, in the manner the researcher desired.

The researcher conducted the Pilot study on the semi-structured questions in Tshivhuyuni Village. The Pilot study in this regard involved 4 people, two males and two females. The pilot study helped in changing some of the questions, for example

the question: What is the role of traditional leaders towards rural development and food security? was amended after the pilot study to read, are traditional leaders a sector of local governance and what is their role towards rural development and food security? The researcher identified that the question was not comprehensive to achieve the desired results. To curtail this, the researcher had to break the question into two, in order to simplify the question. The change was crucial to ensure that the researcher would first ascertain whether the participant is aware of that traditional leaders are a sector of local governance, then if so, proceeds to ask how their role in this regard is linked to rural development and food security.

The researcher also conducted a Focus Group Discussion in Makwarela, Thohoyandou, Limpopo, South Africa. The researcher first sought permission from the participants. The participants were five (5) in total, three males and two females. The researcher chose a Saturday afternoon to conduct the FGD, to ensure that all participants attend the session, with no absentees. Fortunately, all of them managed to attend the session. Preceding to the Focus Group Discussion, the researcher developed a list of topics to be explored. The research questions listed in chapter one served as the basis for developing the topics. The discussions took place inside Makwarela stadium, which is under construction. Permission to use the terraces was first sought from the contractor before the day of the discussions. The place was preferred because it was convenient, proximate and quiet, thus no or very minimal interruptions.

The purpose of the pilot Focus Group Discussion was to discover and ascertain probable research areas, and gain more insight into the *Vha-venda* land tenure system and the clash, if any, between traditional leaders and municipalities in community development programs. This also abetted in conceptualising the questions to be used in the comprehensive interviews and consequent Focus Group Discussions. Participants were involved at this stage to augment the instrument's content validity and rationality, by recognising them as specialists or experts in their own right. Therefore, a review of the instruments was appropriately done as required.

The pilot Focus Group Discussions educated and had a bearing on the researcher's decision to use a balanced sex of participants. This was because women were reluctant to talk about customary law practices that undermine their rights as women

in the presence of their male counterparts who were dominating them. In addition, the pilot Focus Group Discussion informed the researcher's decision to choose research sites, areas affected with land conflicts were given out. Research assistants attended the discussion and assisted as interpreters, moderators and with the taking of notes. The researcher audio-recorded the sessions and transcribed verbatim soon afterwards to assess the success of the preliminary session and to adjust the instruments.

5.7 Data Collection Methods

By virtue of being a multidisciplinary study, the study employed a holistic approach in gathering data. The approach involved multiple research instruments to gather as much data as reasonably possible in addressing this phenomenon. As a result, the researcher used both the legal (doctrinal) and the empirical qualitative methods of data collection. Brewer and Hunter (2011: 7) posits that "multiple methods of data collection allow a systematic exploration of new research avenues". To add, multiple methods of data collection provide opulent prospects for cross-fertilising and cross-validating research findings and procedures (Brewer & Hunter, 2011). Furthermore, they contend that "if appropriately applied, each type of method, could potentially lead to valid theoretical and empirical generalisations about social life and society" (Brewer & Hunter, 2011). The investigation of land issues, indigenous knowledge systems sustainable development and food (in)security carried out in this study is a relatively sensitive and new area of research, hence the use of multiple data collection methods to elicit rich empirical qualitative and legal data.

5.7.1 Doctrinal (Black Letter Law) data collection methods

To begin with, the study used the doctrinal data collection method. The method involved an in-depth descriptive and legal exploration of materials, concentrating on secondary data such as legislation, books, newspaper reports, journals and articles, scholarly materials on internet and case law observation. The following instruments were used:

5.7.1.1 Case law Observation

This research method comprises of a comprehensive, profound and full-fledged exploration of subjects and the facts of a case including its correlated contextual conditions. Matshidze, Kugara and Mdhluli (2017: 9007) contends that “[a] case law study seeks to analyse subjects in a social context by means of construing actions and beliefs of a single group and/or community”. Cases are reported in law reports if they meet the following requirements:

1. If the case contributes to legal development (Bhe case, 2005 (1) 580 (CC)); or
2. If the case defines a new legal principle (Grootboom case, 2001 (1) SA 46 (CC)); or
3. If a former High Court decision has been reversed; or
4. If the case has an influential minority judgment.

Generally, human beings have disagreements over issues and in that regard, require a third party to solve that issue. That is where courts of law come in. Courts are responsible for interpreting the law (help to make the law clear), deciding on a disputed matter and to resolve and settle disputes about the legal standing of parties. Thus, courts have a hierarchy that arranges them from more important ones (ones bestowed with high status like the Constitutional Court, Supreme Court of Appeal, and High Court), to less important ones, with lower status. Consequently, the higher the status and prominence of the court, the more power will its decisions carry, the more weight it contributes as a source of law. For that reason, courts keep record of all decisions they make. However, not all recorded decisions are published in law reports but those published will be used as precedence (source of law). The purpose of reporting cases is to create legal certainty. The reported decisions are referred to as precedence or case law.

In order to conduct this study, the researcher attended court hearings involving land disputes. In addition, the researcher also asked for related reported cases from the court. The researcher attended mainly one court case and also pursued a completed case that he had been advised of at the court. The researcher picked the cases

because of their similarity for the purposes of comparison. The case law study was employed in many instances to contribute to our knowledge of organisational, individual, political and social related phenomenon. Case law studies are relevant mainly when ‘how’ and ‘why’ questions are being posed, which is the case in this study. Apart from giving literal interpretations of a doctrine, cases may be useful as indicators of how the courts interpret the law.

The researcher deliberately chose to follow one ongoing case and a completed case because it was not possible to track the ongoing case up to the end because of a variety of constraints including resources and time. As a result, the researcher attended court sessions of the ongoing case. Permission had to be sought from the Registrar for the researcher to sit on the front row of the gallery, close to the litigant’s bench so as to observe and follow clearly. The researcher also got updates from the applicant’s counsel and related well to the proceedings because of his legal experience and background. By virtue of being a former Magistrate and legal practitioner by profession, the researcher was able to follow the proceedings with ease. The researcher was given access to court papers and the relevant laws that were used in the cases. However, the researcher could not have access to certain information because of confidentiality reasons as well as the need to avoid obstructing the course of justice in case some information would leak out unlawfully.

5.7.1.2 Newspapers

The desk-based research involves a comprehensive analysis of materials such as newspaper reports both printed and electronic (from the internet). In this regard, the researcher followed newspaper reports concerning the conflict between African landholders (indigenous knowledge systems) and the municipalities (government structures). Because of flexibility and costs, the researcher decided to keep track of electronic newspapers. The newspaper reports were not restricted to any timeframe. This was crucial to give a historical analysis of the land issues and its effect on development and food security. The researcher preferred this data collection method because it was convenient, cost efficient and time saving. To ensure authenticity and validity, the researcher thoroughly checked the source of production, author’s position and its purpose.

5.7.1.3 Legislation Dealing with Communal Land

The researcher also examined legislation dealing with communal land as a data collection method. To begin with, law is laid down by the Government. Parliament legislates the law in South Africa. The parliament is responsible for enacting the law, to amend existing laws and to repeal existing or old laws. This function of the parliament is guided by the Constitution. The Constitution is the supreme law of the land and governs all laws and conduct (Section 2 of the Constitution of the Republic of South Africa, 1996).

In that regard the researcher assessed legislations on communal land in South Africa. The researcher looked at laws dating back to the colonial epoch. The assessed laws include *inter alia*, Article 13 of the Pretoria Convention 1881, Natives Land Act 27 of 1913, Native Administration Act 38 of 1927, The Development Trust and Land Act 1936, Group Areas Act 41 of 1950, Constitution of the Republic of South Africa, 1996, Interim Protection of Informal Land Rights Act 31 of 1996, KwaZulu Ingonyama Trust Act 1994, Communal Property Associations Act, 1996, Communal Land Rights Act, 2004, Traditional leadership and Governance Framework Act 41 of 2003 and the Spatial Planning and Land Use Management Act, 2013. The researcher utilised this method to assess whether the legislature as required by section 25 of the Constitution had been able to develop communal tenure laws to redress colonial and apartheid historical wrongs and to ensure that customary law operates at an equal footing with common law laws on land.

5.7.2 Qualitative Data Collection Method

After making use of the Black letter law data collection methods, the study proceeded to employ empirical data collection methods. In that regard, the study used the following qualitative data collection instruments; semi-structured one-on-one interviews, Focus Group Discussions. These are discussed in-depth.

5.7.2.1 Semi-Structured One-On-One Interviews

Using this method, the interviewee can freely express his or her opinions without limitations in response to open-ended questions from the interviewer. Siedman (2006: 582) defines open-ended questioning as “a set of questions posed to the participants

in which the researcher always probes for further elaboration”. Interviews maybe defined as a method of gathering data through verbal questioning using a set of pre-planned principal questions. Key informants were interviewed in semi-structured interviews by the researcher. Through the recommendations of other participants and FGDs, several of these crucial informants were identified. This method allows the interviewer to pose open-ended questions to the interviewee who in turn freely expresses his/her opinion without limitations.

This method was highly advantageous. It allowed for the acquisition of rich information and ideas. The interviewer was able to generate opulent information because the dimension and level of questioning was wide-ranging to fit the context. The interviewer diligently made follow up questions and questioned the interviewee more deeply on specific issues as they arose. To add, both parties (interviewer and interviewee) were in a relaxed mode since the setup was more like a discussion on the given topic. Both parties directed the interview. The interviewer took into cognisance the arguments by Preece, Rogers, and Sharp (2012), when they postulated that “semi-structured interviews make it difficult to homogenise the interview across other interviewees, considering that each interview takes on its own format”. Developing from this argument, the interviewer opted for a multi-disciplinary method, that allowed participants to give their views in line with their expertise.

The table displays how many participants were interviewed for the study at various locations within the Vhembe District.

Table 5.2: Semi-Structured Interviews Participants

Type of Key Participant	Total Number
Traditional leaders	6

Rural men and women	12
Elderly people (above the age of 50 years)	9
Representatives from the department of rural development	1
Representatives from municipalities	1
Lawyers	1
Academics	1
Judges/Magistrates	1
Grand Total	33

The distribution of the participants who participated in the one-on-one interviews is shown in table 2 above. The table represents participants in all the research areas. The interviewer tried his level best to keep a uniform number in the study areas.

However, it was not possible to do so in certain areas because of the unavailability of the participants and a series of other unanticipated complications like denial of access to meet the intended interviewee. For instance, it was not easy to meet with the Judges of the Higher Courts because of security issues as well as their busy schedules. Further, accessing them was not easy because of the Covid-19 pandemic restrictions

The interviewer managed to closely observe research participants and took note of all non-verbal cues they made. This according to Frankfort and Nachmias (2000) and Edwards, (2013), helps in trying to cognise their views and experiences in consciously sharing their emotions, beliefs and values as far as circumstances permit. According to Rossman and Rallis (2011), “working in the field face to face with real people entails an appreciation of how they make sense of their world through various approaches that are interactive and humanistic”. These methods include listening to individuals, conversing with them, examining their attire, home decor, physical behaviour, and reading them. Likewise, during interviews the interviewer observed participants closely. The interviewer spoke and listened to most of the participants as they narrated their stories. From this the researcher was able to understand their perceptions regarding the communal land tenure phenomenon, and this stimulated the researcher’s curiosity and understanding of how it impacted on development and food security.

One-on-one interviews allowed the researcher to be in contact with people’s emotions. There was an emotional outburst and anger by one old man who claimed that the disregard of customary tenure by the government and economic sector who are mainly aligned to preserving colonial and apartheid traits was the cause of their suffering and underdevelopment. The man was visibly angry and emotional. The point about emotions in the field confirms that the researcher works with people who carry emotions based on their life experiences. Therefore, it is practically unmanageable, regardless the claims for objectivity in research, for any researcher to remain completely impartial. The point here is that at times the researcher was also equally emotionally moved by some of the stories. Some of the issues touched on one’s identity as a Black African. The expression on the faces of some participants registered feelings of pain, anger and helplessness. When talking to participants who had emotional outbursts, the researcher found himself grappling on how best he could

calm the emotions. For example, at times the researcher had to change to some other issues so as to allow the participant to calm down before we could continue. The researcher also exercised the little counselling knowledge he acquired when he was employed as a Magistrate.

The researcher anticipated such circumstances, taking into account the sensitivity of the topic under discussion, thus went to the research sites prepared. The topic was political in that it touched on African identity and had a nexus with colonial and apartheid historical wrongs. Hence, the likelihood of emotional and anger outburst. The researcher noted that most of the emotional reactions came from the poor rural people, while participants holding professional posts maintained calm attitudes. The pitch of their voices would change when narrating their opinions and experiences, as did their body language and not to mention their expressions made using both hands.

Participants were informed ahead of time through invitations and were prepared on arrival for interviews. During the invitations, participants were encouraged to observe social distancing and to wear masks. The researcher was escorted by research assistants he had chosen and among those were members of the communities. The researcher provided the research assistants with surgical masks and hand sanitisers to use during the interviews. The research assistants were also encouraged to observe social distancing during interviews. This arrangement of including locals as research assistants made it easier for the researcher to access the area and obtain the trust of the locals. Further, the locals assisted the researcher with cultural demands of accessing the area. For example, they taught the researcher that as a custom one was required to go and visit the Chief and give him a token of respect (*nduvho*). The researcher, in addition also used the snowball sampling technique in selecting more participants.

The length of the interviews with each interviewee varied. Some just lasted a few minutes, while others went on for several hours. Participants were asked clarifying questions so they could respond. The researcher noted that at times the participants would divert to other issues during the interview. For example, some participants would try to interview the researcher, while he was in the process of interviewing them. Some participants were mainly concerned with the purpose of the research, how the researcher intended to use the information, whether the researcher would disclose

their names and how they will benefit from the exercise. Some clearly told the researcher that if they were not receiving financial gain, then they were not interested. To cure their concerns and for ethical considerations, the researcher explained to them that this was an academic inquiry. However, presentations of the findings and recommendations would be availed to relevant stakeholders to serve as a spur for social development. The researcher further explained that their names would not be used in the reports. Most of the interviewees appeared relieved after the explanation though some appeared disgruntled as they wanted recognition as custodians of indigenous knowledge systems. Others even insisted that they would want the researcher to make mention of their names in the report acknowledging them for their knowledge input. However, the researcher continuously explained to them that he was not able to do so because of ethical considerations.

After being content with the reasons and explanations for the interview, the researcher gained access into their personal lives, experiences and knowledge. As a youthful researcher, the researcher was at times told by the elders that some of the information is too confidential to be revealed and that the researcher was too young to make any significant changes since the land issue was big, political and historical. However, the researcher explained to them that the research will not mention names, was non-political oriented and was solely for academic purposes. Further, the researcher was assisted by one of the research assistants who was an elder in the community, he was trained prior to conducting interviews and was well equipped with the intentions of the research. He was always on the researcher's side, defending him and the work. He helped the researcher to access information that alone the researcher would have been denied access to.

5.7.2.1.1 Fieldwork Experience

Gaining the trust of the community members requires developing a rapport with them (Frey and Fontana, 1994). In their research, Frey and Fontana (1994) communicated that "the advantage of knowing a community language with the ultimate objective of data gathering is that it urges one to have better correspondence with people in the community". Connections just with the individuals did not for the most part help in setting up a nice relationship with the participants. Different family members probably would not welcome outsiders in their home. Thusly, in order to set up amplexness in

the family, the researcher acquainted himself and his research assistants with the traditional leadership and seniors of the divisions of family alongside the members. There were times when the researcher talked for a significant long time with the father in law and with the son-in-law just to set up a dependable relationship. Building affinity with the family members in like manner encouraged the path towards conversing with the participants of this study. Occasionally we even ate together in the midst of data gathering as it was a part of the community's way of showing oneness.

This study did not attempt to pick up quantifiably critical outcomes, rather it tried to investigate about communal peoples' understanding and convictions that they frame either from family or society, and their mind-sets towards those convictions. Since the study was qualitative in nature, getting to know the participants was crucial to gathering data and considering people's experiences (Brockington & Sullivan, 2003; Chapman, 2017). An ethnographic researcher, Alejo (2003: 15) argues “exploring on a community issue is an additional preferred viewpoint of unheard and underestimated voices of the rural people”. Therefore, this study concentrated on a different extent of rural men and women and experts who may have diverse convictions and frames of mind, considering their experience and setting, concerning the effect of customary tenure on rural development and food security (Desai and Potter, 2006).

While gathering data, the researcher communicated regularly with supervisors through messages to discuss routine experiences, progress, and seek advice on how to gather rich data and create a seamless flow. The researcher experienced various difficulties, for instance, cash related limitations, transportations and distances, travelling out to inaccessible data collection areas and the withdrawal of some participants due to fear of being infected with the Covid-19 virus. Following literature (Seligman, Rashid & Parks, 2006), the scholar also reasonably analysed the assets expected to lead and finish the data collection successfully. Along these lines, the researcher limited this study undertaking to three villages, just, as it was viably available and furthermore rich in data.

In an exploratory qualitative study, Seligman (2006) takes note of the fact that it is normal to encounter problems in getting acceptance from research communities. The researcher confronted tantamount complications as the people were from the outset reluctant to participate in this study, in any case, their refusal and nonappearance of

support did not dishearten the researcher from persuading them. The three villages that the researcher visited took several days to open up to the researcher. In the midst of the underlying couple of days, the researcher just went to familiarise himself with them, adapt himself with the system and develop a relationship with them. Some community members assumed that the researcher was a private property developer who had come to scout for land to appropriate. While a few additional people thought that the researcher was from a television station that had come to make a narrative film on the lives of rural people. The researcher came to completely comprehend these when he started the interviews, and appreciated these perceptions and starting nerves with the participants.

A large portion of the community members whom the researcher met had no idea about the significance of this study, nor did they understand the core issue of this exploration. In solicitation to make them informed, the researcher indicated to them that he was conducting a research on the lives of rural communities, where he would discuss their Indigenous Knowledge Systems with regard to the link between customary tenure and their development and food (in)security. In any case, the researcher faced difficulties to get trust from the people from all the villages. This was further exacerbated by the fact that the researcher was not fluent in the local language and would use English or make use of the interpreter at some point.

At the point when the researcher revealed his objective that he had not come to spy, criticise, distort or disrupt their lives but instead expected to grasp their IKS with regards to land and their views on how this may be developed to ensure the development of their communities and food security, the researcher was fairly acknowledged and welcomed by the members and it ended up being basic for the researcher to develop a good partiality with the participants in the villages. At the point when the villagers acknowledged and accepted the researcher, it became easy for the researcher to approach participants for their views. The news spread quickly about the researcher in these villages and the message that went transversely over was that "there is a young man who is examining customary tenure and its effect on our development and food security...". Others said "there is a gentleman who wants our traditional leaders to work together with the government for our wellbeing...let us

assist him for it is to our own good...we need young people like him to preserve our knowledge in books for the future generations...”.

The researcher offered assistance to a few participants interviewed – giving them a lift and transport money to get a taxi to come back. This runs the risk of undermining authenticity and raising moral questions. From a moral viewpoint, their financial situation was hopeless to the point that my ethical commitment was to support them. This was not a novel practice in the *Tshivenda* society, which produces its social-cultural norms and values by acts of kindness and consideration for those in need, according to an African indigenous perspective. Even the business community feel compelled to help their customers monetarily and set up funds for the poor from their month to month profit.

On a practically identical note, Desai and Potter (2006) suggested that paying impetus or a gift is helpful in a lower salary community since people's time is limited by pay procuring services. Venda culture regards standard giving and exchanging gifts. Giving incentives or gifts where suitable is similarly a sign of kinship that sustains the subjugation of shared appreciation and moreover closes the opening between any hierarchal relations. As indicated by Frey and Fontana (1994), getting trust is critical in generally hierarchal relations and crash uncertainty or disarray. This trust was constructed not through the system of formal talking yet rather through exchange of points of view and the sharing of ordinary everyday presence that made our relationship insinuate and carried the researcher close with practically the entirety of the participants.

In addition to the previously mentioned tangible presents, the researcher and his assistants occasionally helped the participants with household tasks in an effort to become more familiar them. According to African custom it is rude to stand and talk while elders are working. At one point the participant was an elderly woman. She had never conceived in her life and was a widow. When the researcher arrived for the interview, the researcher found her in her garden. The researcher also joined in as he discussed with the participant. After working the garden, the researcher, the participant and the research assistants proceeded to the participant's home where she cooked and we ate while continuing with our discussion. She became more open as a result

of the gesture and answered all questions with joy. The researcher recalls her saying, verbatim:

“At first when you approached me I was sceptical. You are not originally from this place so I wondered what you wanted. I do not want any trouble and I prefer living a secluded life because people in the community accuse me of being a witch because I never conceived and my husband is dead but what you did for me today my children, I will never forget you. By putting this information in a book you are preserving Indigenous Knowledge for future generations...”

When other community members saw the researcher and his assistants helping the elderly woman, they also started opening up to the researcher.

In order to make the questioning progressively useful, the researcher rephrased and re-explained the questions to participants. While undertaking the interview, the researcher sought after the suggestion given by Desai and Potter (2006) concerning coordinating agreeable, conversational and loosening up meeting. The researcher continually recalled that a meeting is definitely not an interrogation and it should not be subverting to the interviewees. Furthermore, the researcher recalled that the data gathering instruments (i.e., semi-structured questions and Focus Group Discussions) were critical to collect thick and rich unmistakable data with respect to an exploratory qualitative research design. In particular, building up the inquiries for this study and contextualising those by following the foundations of each participant in the midst of data gathering required a lot of persevering work and was a thought in the midst of translation. Before data gathering stage, the researcher's visits and ensuing stay within these communities gave him a conventional introduction about their lifestyle and social beliefs.

Rashid (2006) suggests contemplating one's own experience at that point and afterward ask appropriate follows up inquiry to the participants. This urges participants to open up their different perspectives, especially, semi-structured questions and focus group discussions. This furthermore guides participants to what sorts of data is requested from them, especially, when the participants are commonly uneducated.

The researcher used to start the conversation by bringing up the land reform issue, which made the participants to the study to take interest.

The researcher continually kept up the situation of a decent audience and never let his own considerations sway the participants. As a general rule, the exchange proceeded on a scope of points from customary land tenure, rural development, food (in)security, traditional leadership, local governance to regular survival techniques of poor community members in the village and sustainability of livelihoods. The researcher never meddled with the surge of the dialogue, yet endeavoured to bring back the conversation to the effect of customary tenure on rural development and food security, when participants would have started long conversations about issues not pertinent to this study.

Above all else, some participants were reluctant to participate and air their views through fear of being victimised. The researcher would in some instances be accompanied by (*Mukoma*) at the directive of the Chief as a good gesture. Some community members who saw us with him became reluctant to say their mind taking into account that the land issue is a political issue. However, he did not take part in our discussions and interviews. He would just accompany us and show us directions then return. On the contrary some community members gained our trust when they learnt that we had first sought the chief's permission before entering the village. It was a sign to them that we respected their African culture and traditions. The research assistants had notified the researcher that he should not approach the chief empty handed. In that regard, the researcher would carry (*nduvho*) token of respect when approaching the chief for introductions and permission to enter his jurisdiction. The approval and consent of the chief would pave way for me to access participants. The Chief would in some instances guide me on which rich knowledge holders to approach.

The research assistants and the researcher chose to visit a certain village at Tshivhuyuni, where they met with a traditional leader and his council. The appointment had been made for 12:00 hrs in the afternoon and the sun was very sweltering. At the point when the researcher arrived, he was welcomed and ushered into the chief's (*Musanda*) household. What has been said concerning the sitting of a chief (*Musanda*) was likewise true for this one; the site afforded a wide perspective on the surrounding country, while remaining itself for all intents and purposes imperceptible.

At the point when the researcher arrived at the chief's compound, he was invited by the *vhakoma* (chief's mother) who guided the researcher and his assistants into the *khoro* where we were seated in order to wait for the chief to arrive. At that point the chief sent word that we should go to the upper floor, where he was. The chief, a gentleman in his early sixties, had just gathered his Makhadzi in agreement with the arrangement we had made. We presented ourselves and demonstrated the motivation behind our visit. The chief was upbeat that we had come to visit his place. Before starting with the meeting with the chief, the chief related how he became a chief in his village. The researcher could see from the manner in which he was talking that he was exceptionally relaxed and cheerful, as he narrated.

“When my father died I was chosen as the first born male child to succeed him. The elders secretly decided on the appointment issue. When the decision was made, the makhadzi and khotsimunene then appointed me. According to our culture makhadzi together with the khotsimunene are the only people who have the right of appointment.”

This made the researcher exceptionally inquisitive and listened seriously. The researcher then asked him to explain on the appointment of traditional leaders in the Tshivenda culture. The narration will be discussed later in chapter 6. After the interview, the researcher asked the chief if it was possible for him to link us with other rich Indigenous Systems Knowledge holders and he agreed. We did this with most of the participants and that helped us to reach certain individuals whom we would have not ordinarily known on our own.

The researcher conducted a pilot study and collected preliminary data during the Covid-19 pandemic. The researcher and the assistants followed the safety procedures. The researcher and assistants would cover their faces and frequently sanitize their hands. It was also mandatory to wash hands on a frequent basis. During this epoch the researcher visited Makwarela stadium, one of the researcher's case. In order to identify with the participants, the researcher also wore the reflector vests, safety boots and a mask. This was done to ease his way in and identify with the Expanded Public Works Program (EPWP) labourers who were also members of the local villages. The researcher joined in and assisted them with their tasks to create a

relationship. The researcher also complied with the safety regulations on site. In doing so he also wore the safety boots and reflectors as shown in the picture below.

Figure 5.3: Picture showing Personal Protective Equipment (PPE) compliance on site



Source Picture captured by researcher during data collection

The picture shows the researcher during data collection. The researcher was wearing construction protective wear in compliance with construction site health precautions. The face masks were in compliance with Covid-19 safety regulations to ensure the safety of the researcher and the participants.

5.7.2.2 Focus Group Discussion (FGD)

According to Kazer et al (2011: 581), focus groups relate to a “qualitative research method whereby the researcher listens to people and learn from their personal recitations”. The study utilised FGDs to collect data from participants. This enabled

the researcher to explore and gain much insight into the topic at hand. The FGDs were very vital, as some of the participants later served as key informants. Secondly, because some of the participants in the FGDs went on to work as research assistants in the communities, it was relatively simple for the researcher to gain access to the identified potential research participants.

The FGDs were used to obtain both general and specific data relating to customary tenure and its effects on development and food security. The primary intention of utilising FGDs was to generate understanding of participants' experiences and beliefs through guided group discussions. The FGDs allowed informants to "speak their free minds" on the topic under examination. These enabled informants to give descriptive data from which deductions were made. FGDs were most relevant in this study, because they created room for follow-up questions to measure the researcher's understanding of informants' responses (Petra, 2012). To add, the interview technique allowed for the probing and clarification of answers (Petra, 2012).

FGDs also allowed some uncomfortable and sensitive matters that could have ordinarily been overlooked or missed by an individual to be raised. Further, the researcher noted that certain information one would not have thought about on their own were brought up. Hennink, (2013), in his study concerning FGDs recommends that when conducting FGDs participants should vary between six to twelve participants. In this study, two FGDs were conducted in the Vhembe district, Limpopo, South Africa. In the first FGD, seven participants attended the session (four males and three females). In the second FGD, also 11 participants attended the session (six females and five males). The researcher cautiously observed the issue of gender balance as the issue had been noted on the pilot study. The researcher also observed the Covid-19 regulations as this was a pertinent issue even during the Pilot study.

The researcher, all in all managed to conduct two FGDs. The research assistants, who were community members, assisted in making arrangements for the meetings. The sessions were held in community centres that the researcher had reserved with the local administration. The researcher ensured that the composition of the participants represented at least both genders and all age groups, the youngest being 18 years old. Additionally, participants came from a variety of backgrounds to reflect the society's diversity of viewpoints. The research assistance gathered participants whom

they considered to be representative of the community members. In general, rural communities have similar features. They are rural based, speak the same language, have a sense of belonging to each other and their communities, share the same socio-cultural values, live a communal life and interact freely with one another.

Guided by Abbas (2010) submissions, the researcher selected the study entities that were available and willing at the time of collecting data. However, the researcher took great care to ensure that there was a balance in gender and age. The FGDs were used in the study to triangulate data from other sources. Prior to the FGD settings, the researcher sent invites to participants. This was done to confirm availability and to notify participants of the date, time, place and topic under discussion. During the FGDs the researcher paid particular interest in the way that participants responded to each other's contributions. The responses and the interactions that took place within the group helped me to build up a view. Further, the FGDs created and contributed to networking and enhancing social capital which is an important ingredient for community development. Various stakeholders and participants exchanged contact details and emails and the researcher noticed a candid determination to continue meeting, engaging and networking. Some community members were impressed as they were able to meet officials from the department of rural development and municipalities that they could not have ordinarily and easily meet. They managed to express their opinions on issues pertaining to rural development and collaboration between municipalities and traditional governance to achieve greater good. Issues affecting the communities were also raised and the officials promised to attend to the issues within a reasonable short time.

The researcher was assisted by research assistants in carrying out the FGDs. The research assistants helped to breach the language barrier. The language issue was easily resolved since most participants in the study area spoke *Tshivenda*. However, the participants greatly assisted even on those participants who spoke different languages in the targeted areas. Prior to beginning data collection, the researcher carefully chose enthusiastic research assistants who were eager to assist with recruiting participants and language translation. The research assistants assisted in taking down notes and with the recording of the discussions. Prior the recordings, the researcher made sure that proper ethical procedures had been observed and applied.

The participants filled in consent forms and the researcher explained the objective of the study. Attached at the end are the copies of the consent forms.

Participants were urged to respond sequentially, in narrative style, with the least amount of interruption possible, to maintain order. All interviews, including the FDGs were video-taped. This method allowed the researcher to observe non-verbal responses like gestures, frowns and smiles which carry information that complements or contradict the verbal responses. The researcher employed the convenience sampling method in recruiting participants for the FDGs. As stated earlier, the recruited sample was composed of participants who were available and willing. In addition, the researcher did not impose restrictions or limits on the number of participants, as a result, in both instances the gender was not balanced.

5.8 Data Analysis

Sharma (2018: 3) defines data analysis as “the process of systematically applying statistical and/or logical techniques to describe and illustrate, condense and recap, and evaluate data”. Lemon (2017: 3305) argues “describing data that has been collected can be a complicated, problematic and demanding process hence the need to break it down into manageable units”. For the purposes of this study, data was collected and stored in notebooks and on the recorder. In order to analyse the collected data, the researcher re-read and continuously on a multiple occasions played the recorder to capture the overall account of the interviews. This was done in order to put in writing the essential views and annotations of participants. In addition, the researcher ensured that all the recorded data from informants was translated into English from the different languages of the participants.

After this, all the translated data was further transcribed into writing. The researcher then proceeded to conceptualise the captured data from participants as responses to the research problem. An important trait of analysis and interpretation in a qualitative study is to explore the meaning through direct interpretation of what is observed by the researcher. In addition, it is also vital to explore the meaning through what is experienced and reported by the participants. The researcher in this study, analysed and interpreted data using thematic analysis.

5.8.1 Thematic Analysis

As stated above, the study adopted the thematic analysis method. Thematic analysis refers to a systematic way of using themes that appear as being substantial to the description of a phenomenon (Braun, 2012). The researcher drew the themes from the research questions (Fereday and Muir-Cochrane, 2006; Yin, 2017). The thematic analysis method was employed because it is the standard accepted method for analysing qualitative data. In addition, (Maguire & Delahunt, 2017) contend that the thematic analysis method is customarily favoured over other analysis methods because by "...its theoretical freedom, it provides a flexible and useful research tool, which can potentially provide a rich and detailed, yet complex, account of data." The researcher relied on this categorisation to construct comparisons among patterns as well as to deduce information from them.

5.9 Reliability and Validity of Data

For an instrument to be said to be valid, it must be able to measure what it claims to measure. To guarantee that all data collected in this study is valid and reliable, the researcher warranted that the instruments used to collect data were easy to understand and not vague. To achieve the intended objective, the researcher invented a control mechanism in which responses given were tested. In instances where the participant gave a response which did not fit into the category, immediately the researcher will be alerted that either the responded misunderstood the question or the question wanted to be put differently. The researcher was careful to do a pilot test before the actual data collection to minimise or avoid such challenges. Following the pilot test, the researcher attended to the flaws noted on the data collection instruments. The researcher also changed some of the questions that the participants had difficulty understanding.

5.9.1 Bias

The researcher was at pains to guard against bias. The researcher was copiously cognisant that certain groups of people carry similar beliefs, hence he circumvented including akin groups as participants at the expense of other groups. In addition, the researcher in an attempt to avoid bias, approached triangulation to verify the authenticity of the responses.

5.9.2 Credibility

Shenton (2004: 63) argues “credibility is primarily concerned with the question of how congruent are the findings with the reality”. According to Guba and Lincoln (2012: 13), “one of the most essential factors in establishing trustworthiness is by ensuring credibility”. In this study, the researcher found that some of the participants were knowledge holders with useful information, despite some of them not being able to read or write. The researcher made accommodations for these individuals by simplifying the questions and/or translating the questions into the local dialect in try to remedy the deficit. Furthermore, to guarantee that the translation was accurate, the researcher liaised with experts in the field of the language being translated.

5.9.3 Confirmability

Confirmability may be defined as a way of establishing the effectiveness of the research (Wessels & Edgerton 2008). Put differently, confirmability refers to the impartiality and objectivity of the data. The researcher sought this impartiality and objectivity in the study to ensure checks and balances on whether the data collected was relevant and meaningful. The researcher also guaranteed that the findings are factual reflections of the participants’ answers during interviews. In order to guarantee that the findings are accurate, the researcher previewed the findings by re-reading the responses and replaying the recordings.

5.9.4 Transferability

According to Sinkovics and Alfoldi (2012: 17), “transferability in a qualitative study rests on those who will be prepared to use it correctly at the receiving context”. The researcher made sure that the findings were easily applicable to correlated studies from similar environments. Likewise, the researcher laboured to ensure that the data collected and recorded from participants was analysed at the best of his ability. The objective of this exercise was to make sure that the findings would be simple to use for individuals who wanted to use them to make decisions about policies and other pertinent matters.

5.9.5 Neutrality

Doody and Noonan (2013: 14) argues that neutrality means “being impartial or not supporting either sides”. It implies that the researcher will conduct the study objectively and without bias. During the interviewing process, the researcher's motivation, bias, or interest had no bearing on the study's findings. Instead the findings were influenced by the participants. Consequently, during the study and collation of the findings, the researcher retained the duty of good faith and reported the findings *bona fide* without any attachments of feelings.

5.9.6 Truth Value

Mies (2014: 112-148) defines truth value as “the attribute given to a suggestion in respect of its truth”. In this study, the researcher did not interfere with the findings to suit personal outcomes. The researcher used all pertinent techniques to make the study speak for itself.

5.9.7 Data Triangulation

The researcher used various methods of data collection to ensure rich prospects for “cross validation and cross-fertilisation of research findings” (Brewer & Hunter, 2010). The multi-method approach employed in the study by the researcher was a means of triangulation. Denzin (2014) defines triangulation “as a method of cross-checking and confirming the information produced from qualitative data sources”. Denzin (2014) proposed various methods of collecting data as part of the methodology; these harvest rich data and provide prospects for more meticulous analysis, which is a key advantage of the research approach employed in this study. In that regard, data were interpreted from various perspectives.

5.9.8 Field Assistants Training

The researcher enlisted two assistants (one with Master's degree in law and the other with Master's degree in Public Administration) to assist him with conducting in-depth interviews. Both assistants were multi-lingual. The assistants underwent two training sessions on the research focus and procedures. The assistants were also exposed to practical demonstration sessions to warrant mastery and competency before commencement of fieldwork.

5.10 Research Ethics

Ethics is the practice of moral beliefs by an individual or group of people. Collett, van den Berg, Verster and Bozalek (2018: 117) states that “the handiness of research ethics in a research helps researchers to address ethical quandaries that may rise for the duration of the progression of the research write up”. Kelley et al (2013: 2146) argue that the ethics ‘concept’ “is an intricate construct, instilled with meticulous values and beliefs that persuade how research is approached”. Gallagher (2009) explains the concept in simpler terms to mean “principles of right and wrong conduct” that must not be despoiled. The study raised numerous ethical issues that were addressed during and after research had been conducted. The study was established on a qualitative study that involved exploring data on the efficacy of customary tenure and its impact on rural development and food security. Looking at the sensitivity and political nature of the topic, it thus obligated strict devotion to ethical issues to gather fruitful data.

Creswell and Creswell (2017: 15) argues that “a researcher has a duty to respect the desires, needs, values and rights of the participants”. In this regard, the researcher observed and obeyed all relevant research ethics. The UNIVEN policy research ethics were obeyed to all the way through the study: research policy, procedures, techniques and ethical guidelines. With regard to research participants, the researcher took into account the following ethical issues.

5.10.1 The UNIVEN Policy Research Ethics

To begin with, the researcher obeyed the UNIVEN policy research ethics throughout the study: research policy, procedures, techniques and ethical guidelines. Concerning the clearance certificate, the researcher submitted the research proposal to the University of Venda Research Publications Committee (RPC), which examines all proposals for conducting human research under the patronages of the university. This enabled the proposal to be examined by a panel of lecturers before it is approved. This board, which is composed of researchers and scholars across a broad range of disciplines, scrutinises proposed research studies to guarantee that the proposed procedures are not harmful to participants. Secondly, the board checks if suitable procedures are followed to get participants’ informed consent. Lastly, the board also checks if the participants’ privacy and anonymity are guaranteed.

5.10.2 Confidentiality, Anonymity and Informed Consent

The researcher, throughout the fieldwork and writing-up of this research study guaranteed the confidentiality and anonymity of informants. To succeed in doing so, the researcher refrained from using the informants' identities such as their names in the analysis. Therefore, all names mentioned in this study are pseudonyms. The researcher did not coerce informants in any way to participate in interviews. To confirm that the researcher had no harm on informants in mind, informants were educated that they had a right to withdraw from the interviews at any point, if they felt uncomfortable.

Furthermore, the researcher made sure that research participants were not exposed to psychological or physical harm. Also the researcher ensured that participants were not exposed to unusual stress, loss of self-confidence or embarrassment. The researcher where necessary, first acquired authorisation from traditional leaders, or any relevant institution, in an area to interview residents or employees. The researcher explained the purpose for the study to all informants. Informed consent was sought from the informants before conducting interviews. This was done by revealing the purpose, objective, topic and aims of the study.

5.10.3 Interview Ethics

The researcher contacted and enlightened the significant 'experts' (participants) of this study of the goal of the study. He then proceeded to invite them to participate in the research data collection process. Preceding to the interview, these participants were furnished with a copy of the UNIVEN ethical clearance letter together with an interview schedule in order to establish the veracity of the research. Throughout the interviews, the researcher ensured that he clearly explicated his motive to keep count of notes on issues arising from the discussion. This was done fastidiously to put away scepticism that often comes out when the interviewee realises that his/her contributions were being recoded.

One significant issue that is frequently overlooked is cultural sensitivity. Given that the study's foundation was largely based on cultural systems and values, it should come as no surprise that all cultural norms, beliefs, and practices were strictly observed in order to be openly welcomed. According to Silverman (2011), "the relationship of the

researcher and the envisioned subject throughout the interview and afterwards needs to be respected in line with the values of the researcher and cultural values”.

5.10.4 Referencing

The researcher was honest in reporting his findings. He accomplished this without exaggerating or misrepresenting the facts. The researcher did not fabricate or engineer data to support his conclusions. To prevent academic theft or plagiarism, all sources were cited. According to the UNIVEN reference style and requirements, the researcher cited all of the authors or scholars whose work was utilised in the thesis. Additionally, all sources used in this study, collected from newspapers, journals, articles and the internet were properly referenced.

5.10.5 Research Safety Protocol

The issue of the security of the researcher and research assistants was of foremost significance. For the wellbeing of the research group and participants, traveling and meetings were directed during working hours. Wearing of masks and maintaining social distancing and hygiene were mandatory during the interviews and FGDs due to the coronavirus pandemic. The picture below shows how the researcher endeavoured to comply with Covid-19 regulations on safety during interviews at Makwarela stadium.

Figure 5.4: Shows the Researcher complying with safety protocols



Source Picture taken by researcher during data collection

The picture shows the researcher on Makwarela site office. The researcher ensured that he complied with the safety regulations on site.

5.11 Limitations

Land reform is broad in context and the study limited itself to land tenure as a component of land reform within the district of Vhembe. In the same vein, the topic on land tenure was also broad and extensive in scope. It involved discussions on the effect of insecure tenure, the status of customary tenure as a property law in South Africa, policies and law relating to land tenure, the historical impact of colonisation and apartheid on land tenure and so on. However, the study limited its focus on land tenure as an economic emancipatory tool in the context of land reform. The study embarked on a comprehensive study of customary tenure in South Africa and its role towards rural development and food security. The focus was specifically on customary tenure in South Africa. To sum, the study was limited to examining the effectiveness of customary tenure in South Africa as a tool for rural development and food security.

The researcher also encountered some limitations in conducting the study. These limitations included the struggle of getting participants at prearranged times. Some of the participants cancelled or postponed appointments thereby disrupting other pre-set meetings. This led to setting new appointments, thus disappointing some of the participants who would have set aside time out of their busy schedules to accommodate the researcher. More so, another challenge arose wherein some participants had high expectations. These participants believed the researcher was just another benefactor or humanitarian who had come to help them out financially. Some expected and demanded remuneration for their contribution.

As well, the issue of emotions proved to be a major limitation. It was quite a huge challenge to ignore emotions of some of the participants as well as my own emotions. Various participants, especially those who were once direct and indirect victims of violated land rights, could easily become very emotional during the interviews. The researcher also faced difficulties in accessing certain communities. This was because of the poor road networks in some study areas, combined with the remoteness of some of the communities. The other chief limitation met during the investigation phase was the language barrier. The researcher engaged an interpreter during the semi-structured interviews and informal deliberations with informants. However, the researcher noted that the interpreters' understanding of the language appeared compromised because of dialect problems. As an antidote to this etymological challenge, the researcher asked additional questions for clarity during the interviews. This explains why the interviews were semi-structured, to allow the researcher to ask follow-up questions as a way of trying to eschew linguistic misinterpretations in the translation process.

The researcher also faced difficulties in obtaining data from some informants due to the sensitive and political nature of the topic under discussion. The researcher was sensitive to the fears of the informants by enlightening them that they are not obliged to respond to questions that they are not comfortable with. Some of this information touched on the legitimacy of the traditional leadership existence, councillors role in executing his duties, historical impact of colonisation and apartheid, land redistributions, inefficiency of certain government officials and so on. These issues were highly sensitive and political hence the phobia. In addition, access to information

in certain places and/or institutions was reliant on the researcher following the established channels of protocol. The researcher, would approach the traditional leadership for permission before interviewing local residents. At some point in a specific village, the researcher approached the traditional leadership to obtain authorisation to speak to the residents. As a matter of protocol, the researcher was accompanied by the headman to the informant's homes. Consequently, informants became nervous and reluctant to answer some questions.

In addition, another challenge encountered was in obtaining data from some relevant government institutions. The researcher was told to get a clearance letter from the Premiers office. Upon trying to commence with data collection, he was then advised that he was supposed to also get a clearance letter from the relevant government department. The protocol was too long, complex and tiresome. The response from some offices took too long to come and some of the relevant participants had busy schedules to accommodate the researcher. Some of the research participants had to withdraw because of Covid-19 infection fears. The pandemic was rampant and public gatherings were being discouraged. This also made it difficult to access certain offices considering most companies and government departments were working from home and the few that were open were not allowing walk-ins.

5.12 Chapter Conclusion

In this chapter the researcher explored the research approach, sample and population. The chapter also dealt with data collection tools namely semi-structured interviews. Also, the chapter proceeded to give a highlight on the strength of the data collection tools. The administering of these research tools in the study was approached to produce quality and reliable results. The researcher also consulted secondary sources to validate the data collected using these research instruments. In this chapter, the researcher also assessed the research ethics which the researcher thoroughly obeyed during the data collection processes and after. The researcher submits that the method employed to collect data was the right method as it complimented and met the expected standard of collecting data without permitting the researcher to manipulate the data. The subsequent chapter provides the findings from the interviews, questionnaires, and secondary sources that were gathered in sync with the research

questions and objectives. In the next chapter, the researcher presents and analyses the data collected.

Chapter Six

Data and Presentation Analysis

“[t]he remaking of development must start by examining local constructions, to the extent that they are the life and history of the people, that is, the conditions for and of change”

~ Escobar (1995: 98)

6. INTRODUCTION

Chapter six builds from the preceding chapter on how data in this study was collected. This chapter presented the findings and its analysis. The findings were primarily qualitative. In other words, chapter six answered the research questions introduced in chapter one. The chapter was exploring whether customary tenure still plays a dominant and critical role towards rural development and food security in the VhaVenda indigenous communities. In so doing, the chapter analysed the views and opinions of the Venda people on the efficacy of customary tenure as a tool for rural development and food security as obtained in the field. The chapter proffered unadulterated Indigenous Knowledge (IK) on the study. This was critical considering that Indigenous Knowledge offers immense wisdom and understanding about how people live according to one another and to nature for the wellbeing of the whole. Therefore, the researchers interviewed participants on their lived experiences and understandings on customary land tenure.

Firstly, the chapter gave a demographic background of the study, Secondly, the chapter discussed the political and socio-economic history of Venda, thirdly, the chapter discussed the contemporary state of land governance in rural South Africa as reflected in day-to-day newspaper reports, fourthly, the chapter discussed the role of media in showcasing contemporary governance issues, fifthly, the chapter discussed the role of traditional leaders in governance, thereafter, the chapter obtained the communities comprehension of customary tenure and then lastly, the chapter discussed the implications of customary tenure on rural development and food security.

6.1 Demographic Background of Participants

A total of thirty-two (32) participants took part in semi-structured interviews. These were made up of twelve (12) community members, six (6) traditional leaders, four (4) female elderly people, five (5) male elderly people, and five (5) professional experts in land governance, development and food (in)security issues. In addition, eleven (11) people participated in the focus group discussion – all drawn from the groups above.

The table below summarises the above-mentioned information.

Table 6.1: Demographic Background of Participants

Category	Number	Age
Community members <ul style="list-style-type: none"> • Men and women 	12 (6 men and 6 woman)	18 - 49 years
Traditional leaders; <ul style="list-style-type: none"> • Chiefs, • Headmen and • Members of the tribal council 	6	40 years and above
Elderly people	9 (4 females and 5 males)	Above 50 years
Professional people who include; <ul style="list-style-type: none"> • Government official from the Department 	5 (one person per each group)	32, 40, 29, 50, 45, 40

<p>or Rural Development,</p> <ul style="list-style-type: none"> • Member of the rural municipality, • Lawyer, • Judges/Magistrate • Investor 		
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6.2 The Political and Socio-economic History of Venda

As indicated in chapter five, this study was conducted in the Vhembe district, Venda, Limpopo Province. The researcher did not want to take it for granted and make an assumption that people are knowledgeable about the area under study and its history. This is because history is pertinent to interpreting and understanding the present as discussed in chapter two under the Sankofa theory. In that regard, the researcher took the liberty of giving a brief historical and socio-economic background of the Vhavenda people to depict how their history influences and shapes the present concepts under discussion in this study. Traditional leadership, values, norms and practices can only be understood against the backdrop of such contexts. Much of the data presented below was collected through documentary analysis and narratives of some knowledge holders.

6.2.1 Political History

Venda is one of the former Black homelands in South Africa. It was known as the Republic of Venda during the years of 1979 and 1994. Fokwang (2005: 6) claims that Venda “traverses the zone from longitude 29o40' E. to 30o50' E. also, scope 22o20' S. to 23o 10' S in Limpopo Province in South Africa”. While some verifiable records have kept up that the Venda (additionally called the VhaVenda) originated from the Congo district, Fokwang (2009: 30) argues “they moved from the Great Lakes of Central Africa over a thousand years back and moved towards the southern part of

Africa”. Oral tradition indicates that the vast majority of the significant relocations to the domain referred to today as Venda originated from north of the Limpopo River in the 17th and 18th hundreds of years.

Thohoyandou is a town in the Limpopo area of South Africa. It is the administrative centre of Vhembe District. It is additionally known for being the former capital of the Bantustan of Venda. Stayt (1968) has portrayed Thohoyandou's rule as the most effective of the Vhavenda. This is on the grounds that all the chiefdoms were joined under Chief Thohoyandou's initiative. However, after the passing of Chief Thohoyandou, family debates and 'internecine fighting' encouraged the deterioration and division of the kingdom. Tshivhase and Mashau (2020: 572) reported:

“oral tradition holds that at the time of Chief Thohoyandou's passing, Dimbanyika had four grown-up sons of whom Phophi was the oldest. He had appointed them as petty chiefs in satellite villages: Phophi governed in Nzhelele the capital, Tshisebe in Makonde, Tshivhase in Phiphidi, and Bele in Vuba. After Thohoyandou's demise, different siblings pronounced their villages independent of the capital. Of the 25 tribal authorities that make up Venda, Tshivhase is the most populated and biggest in land zone”.

The Mphephu and Tshivhase chiefdoms, which are the “senior” Venda chiefdoms in terms of ancestry, routinely engage in warfare among the 25 tribal authorities, each of which comprises a unique chiefdom.

Buthelezi, Skosana, and Comaroff (2018: 110) argues “Tshivhase also holds rivalry with the neighbouring Mphaphuli chiefdom, however, the relationship between the two is less petulant than that between Tshivhase and Mphephu”. This animosity is a result of the Tshivhase believing the Mphephu were more compliant with the colonizers than they were (Muthivhi, 2018). This is a reference to the Mphephu's involvement in the Boers wars, which took place between 1867 and 1899, as well as their collaboration with the apartheid state (Heyden, no date). The Tshivhase additionally see the Mphephu group as more 'acculturated' attributable to their land closeness to the white settlements of Louis Trichardt and Schoemansdal. Specifically, the Tshivhase detest the way that Patrick Mphephu ruled over their chiefdom in his endeavour to resuscitate

the Venda kingdom during the homeland epoch. The last factor ought to be considered so as to comprehend current chiefdom governmental issues in Venda.

The tribal councils continued to function as they had before the Republic of South Africa reintegrated Venda in 1994, despite the Municipal Structures Act of 1993's fundamental limitation of their authority, just as more recent laws have done. After the creation of the Thulamela Municipal Council (previously Thohoyandou/Malamulele), 14 of the 25 tribal authorities (counting Tshivhase) were coordinated into the district while the others, including the Mphephu chiefdom, were consolidated in different municipal areas. The Tshivhase Tribal Council has kept on playing a significant role in rural local government, usually, in serious conflict and contention with the new metropolitan municipal authorities at Thohoyandou.

The discussion of the political history depicts the basis for the contemporary chiefdom governmental issues in the area under study. It is reasonable in the circumstances to argue that these disputes and continued historical contestations distort togetherness among the Venda traditional leaders. Consequently, this weakens the institution of traditional leadership, thus undermines indigenous values, norms and systems. A distorted leadership paves way for poor governance. There is need for traditional leaders to unite in order to establish strong councils that represents their interest and the community interest in municipal collaborations. Therefore, a continued contestation hinders rural development and food security. It is in this regard that the research undertakes to promote collaborative governance not only between traditional leaders and government structures but also between traditional leaders themselves and their communities regardless of tribe or clan.

6.2.2 Socio-Economic History

The Venda people, despite everything, still live in villages and mostly depend on subsistence farming, regardless of whether as an aid to different types of procuring an income (Matshidze, 2013). Many persons in the rural areas still live in extended families and lead a generally basic simple life. They domesticate livestock and cultivate crops for consumption (Matshidze, 2013). Various individuals migrated to Thohoyandou and other Venda towns after the 'independence' of Venda in 1979 (Matshidze, 2013).

In 1990, Venda's population was projected to be 542 000, and its unemployment rate was 34.8%, the highest among the so-called independent homelands (South African Institute of Race Relations, 1992:3). Comparing rates in other free homelands, Venda's personal monthly income per person was R59, which was likewise the lowest (South African Institute of Race Relations, 1992:3). Currently the population of Venda people is estimated as 1 500 000 to the extent of the researcher's knowledge (Huq, Obida, Bornman, Lenardo & Chevrier, 2020). According to the Statistics South Africa Quarterly Labour Force Survey, Limpopo shed 35 000 jobs during the last quarter, and its unemployment rate in 2019 was 27.6%. These observations shed light on the citizens of Venda's financial predicament during its period of "independence," as well as the challenges they encountered following Venda's reintegration into the Republic of South Africa. This problem was not limited to Venda alone. In the new South Africa, the Limpopo Province had one of the lowest levels of development. According to data from the 1996 census, the province's population older than 15 years old had an illiterate rate of up to 50%. In addition, 50% of economically active people within the population were unemployed (Statistics SA, 1998).

Despite enormous efforts to undertake development initiatives for Venda inhabitants, it is obvious from the aforementioned insights and the researcher's observations on the ground that the majority of the population lives in poverty. During the period South Africa proclaimed Venda an independent republic, the Venda Development Corporation (VDC) was established as the essential agent of development. Its fundamental target was "to erect, plan, finance, co-ordinate, promote, relocate and continue industrial, commercial, financial, mining and other business enterprises" in the Venda domain (Ross, 2017). The VDC likewise built many houses for the government employees and the emerging elite class in Thohoyandou.

Due to what some have described as its "unfavourable location", Venda was not (and still is not) profoundly industrialized, despite the fact that a few enterprises were located in Shayandima, a neighbourhood adjacent to Thohoyandou, where over a thousand people were employed (Fokwang, 2005). During the homeland epoch, Venda was likewise a labour reserve for the industries and mines basically in Johannesburg and other mining towns (Fokwang, 2005; Rogerson, 2017). Employers prefer to hire readily available workers who reside in Gauteng Province due to the

collapse of the Apartheid State and the consequent concentration of migrants in South Africa's major urban centres (Deegan, 2005). This implies Venda, similar to other homelands is not, at this point apparent as a labour reserve.

Additionally, the majority of the industries in Shayandima have either closed down or relocated outside of the Venda domain. This precipitated a crucial rise in unemployment. It is difficult to determine which “tribal authority” was most impacted by these developments because they appear to have had a significant impact on the entire Venda region. It seems that the reintegration of Venda and other homelands into South Africa sparked significant socioeconomic upheaval, occasionally leading to increased poverty and financial fragility. Most government workplaces in Thohoyandou shut down after 1994, inferable from the way that Venda was consolidated into the Northern Province (presently Limpopo) which has its administrative headquarters at Polokwane. This situation of ‘economic crisis’ is not inconsequential to the rise and noticeable poverty apparent in Venda. Statistical data by Stats SA (2007) reported that:

“Vhembe district covers 21 407 square km of land with total population of 1.240 035 million people ...of which only 1.1% of the district is urban area. Large part of the land falls under the tribal authorities. This makes it difficult for development to take place, as the land tenure system is not favourable to commercial development.”

Consequently, the above issues are critical for an appropriate comprehension of the objectives of this study as depicted in chapter one. The brief discussion depicts that the study area is underdeveloped and potentially food insecure. In that regard, the research is critical and relevant. After having traced such historical data linked to this study, it is therefore pertinent to obtain contemporary unadulterated views and perspectives of the inhabitants situated in the area under study.

6.3 Exposition of the Contemporary State of Land Governance in Rural South Africa as Reflected in day-to-day Newspaper Reports

To have a contemporary picture of customary tenure conflicts in Vhembe district, reported cases were compiled from newspapers, internet websites (desk-based

research). The compilation was restricted to contemporary newspaper articles reporting on the communal related land issues within the area of study. To ensure systematisation, the researcher limited the search to at least three years, that is from 2017 to 2020. The researcher discovered that stories about land predominate when one flicks through the pages of the majority of South African publications. In South Africa, land reform disputes and issues of insecure land tenure rights are still common mostly in rural areas. Some issues go unreported and get to be settled informally without involving local authorities and/or courts. The undertaking of this compilation was done to give a contemporary exposition of the situation before engaging the community and obtaining primary data. The exercise prepared the researcher on issues he was likely going to encounter in the field. Below is a list and summary of newspaper reports on customary tenure and its effect on development.

a) 21 December 2017

“Makhado municipality, traditional leadership embroil in land dispute”¹

“As the conflict over a piece of land of about 100 hectares in Nzhelele continues, the sale of residential sites has been stopped. The Netshituni traditional leadership and the Makhado Municipality in Limpopo have been embroiled in dispute over a piece of land at Nzhelele outside Louis Trichardt. The traditional leadership filed notice at the High Court in Thohoyandou to interdict the municipality from auctioning the land. The traditional leadership argues that the land belongs to it. As the conflict over a piece of land of about 100 hectares in Nzhelele continues, the sale of residential sites has been stopped. The Mphephu and Netshituni royal councils and the Makhado Municipality are involved in the dispute. The municipality had to suspend the public auction of stands due to the conflict. It had already appointed an auctioneer who had placed advertisements in the media. The auction has however been called off at the eleventh hour after the Netshituni traditional leadership made known its

¹ Makungo, M (December 21, 2017 “land issue dispute between traditional leaders and council press: Makhado municipality, traditional leadership embroil in land dispute” <http://www.sabcnews.com/sabcnews/makhado-municipality-traditional-leadership-embroil-land-dispute/> accessed 20 July 2020).

intentions to take legal action to stop it. The traditional leadership wants the court to review the ownership of the land. The Makhado Municipality and the royal council have been in a dispute over the piece of land since 2012. The municipal spokesperson, Louis Bobodi, says they'll await the court ruling on the disputed piece of land: "We received a letter with the intention to interdict us if we continue with the sale of those 70 stands they were complaining that we were not supposed to sell those stands, because there's a pending court case relating to these particular issues hence we decided to postpone the sale of those 70 stands." Several people have already paid the 10 000-rand registration fees for public auction of the stands."

Analysis

This story reflects the land conflicts in the area under study. Traditional leaders argue that they are the custodians of communal land. On the contrary municipalities also hold the view that they own the same land. The dispute has dragged since 2012 to date. This shows that customary land rights are insecure and not protected adequately at law. Thus, the people who held customary land rights for years can work up to the realisation that they have lost their land. The long disputes have the effect of weakening customary tenure rights. The other critical issue is that of government reselling the repossessed land without the input of the community. The question is what happens to landholders who do not have the capacity to pay the registration fee. Furthermore, such land disputes have the effect of distorting people's confidence and investments in communal land. In that regard, customary land rights are insecure.

Therefore, it is justifiable to argue that such conflicts have the potential to destroy investor confidence. It is pertinent that land ownership in rural areas be regulated by law to avoid conflict. Furthermore, the case is a clear example of why traditional leaders and municipalities should work together. Marej (2021: 209) argues:

"The role of the institution of traditional leaders is to promote and contribute to the development, service delivery, nation building,

community peace, stability and social cohesion, moral regeneration and the preservation of culture and tradition”.

Yanes, Zielinski, Diaz Cano & Kim (2019:2506) argue:

“In performing its role, the institution must partner with government at all levels to advise on issues of custom, culture and tradition when policy is being developed, and to participate in all service delivery and development and the effect thereof on traditional communities”.

This confirms that both institutions have distinct but interconnected functions, thus must work together to preserve culture and tradition and promote service delivery and development.

b) 21 March 2020

“Limpopo villages up in arms over fears shopping mall will take their water”²

“Community members in Magangeni, Limpopo are upset with Chief Samuel Mukhari, accusing him of breaking a promise to sink boreholes for them. The traditional council, however, denies any such promise was made. The village of about 100 households is 30km from Louis Trichardt. The construction of a sizeable mall in Elim, about 5km from Magangeni, has left community members fearing for their water supply. Their only source of water is the Lemana Dam which is a 15-minute drive away... According to community leaders, when construction started on the second phase of the mall two years ago, Mukhari promised that in return for using the dam, boreholes will be drained in the village.”

Analysis

² Chiguvare, B. (March 21, 2020 Limpopo villages up in arms over fears shopping mall will take their water https://www.news24.com/SouthAfrica/News/limpopo-community_members-up-in-arms-over-fears-shopping-mall-will-take-their-water-20200321 accessed 2 May 2020).

This newspaper article exposes the absence of due diligence by traditional leaders towards proposed development projects. Development projects are essential to bring about rural development and food security. However, there is need for due diligence and Environmental Impact Assessments (EIAs) before committing to a project. This, therefore, mandates cooperative governance between municipalities, which are expected to bring expert services and traditional leaders who represent the interest of people, in order to ensure rural development and food security. Secondly, there is need to educate indigenous communities on how to protect their land rights. In this case, the Chief and his council allegedly promised to sink boreholes to the community in exchange of the community allowing the mall to draw water from the river, their only source of water. Such agreements must be reduced in writing and legally binding before the projects starts.

However, this scenario clearly shows the weakness embedded in customary tenure rights considering the process is oral and unsophisticated. In this case, the land holding rights are insecure, and the landholders are not able to reap the full benefits of the land they live on. Hull & Whittal (2018) argue:

“...when developers arrive to mine or construct wind farms in customary areas, they consult with the chiefs and local authorities. The economic and social benefits of such transactions should trickle down to the community households, but it is far too easy for some to take more than their fair share. Having secure tenure should lead to improved opportunity for development and help communities to rise out of poverty.”

Therefore, it is crucial that indigenous people become aware and emancipated that traditional leaders do not own communal land. The land belongs to the people and should serve the interest of the indigenous people.

c) 5 April 2017

“Communal land belongs to the people, not to the chiefs”³

³ Duda, T. (April 5, 2017 Daily Maverick news: Op-Ed: Communal land belongs to the people, not to the chiefs. <https://www.dailymaverick.co.za/article/2017-04-05-op-ed-communal-land-belongs-to-the-people-not-to-the-chiefs/> accessed 30 July 2020).

“It’s time the South African government made it clear that traditional leaders do not legally own the communal land that lies within the boundaries of our former homelands. The Minister of Co-operative Governance and Traditional Affairs (CoGTA), Des van Rooyen, and the Director-General of Traditional Affairs, Professor Charles Nwaila, peddled this myth most recently on 21 February when they briefed the CoGTA portfolio committee on the impact of the State of the Nation address. Reading the department’s presentation, the Deputy Director-General of CoGTA, Themba Fosi, said “the other critical issue is the participation of traditional leaders in the community consultation processes ... and because traditional leaders own land ... the role of traditional leaders in releasing land for development ... how they partner with municipalities around issues of revenue generation in communal land areas”. This notion that traditional leaders own land is a misleading distortion that downplays the strong family-based ownership rights that exist in terms of customary law.”

Analysis

This newspaper article depicts another critical issue on the role of traditional leaders in releasing land for development. It is the duty of traditional leaders to work with municipalities on concerns of revenue generation in communal land areas. However, it is critical to understand that they are only custodians of communal land and hold the land in trust on behalf of communities. Leonard (2019: 290) argues

“Indigenous people will be further disempowered and relegated to subjects of the chief, not citizens of the country, if traditional authorities are recognised as owners of the land...the role of traditional leaders, should be to protect customs and traditions, while land administration should be left in the hands of the people living on the land”.

In this regard, it is crucial to decolonise the “powerful role attributed to traditional leaders or chiefs in land allocation matters by the settlers” (Henn, 2018: 42)

d) 5 July 2018

“South Africa traditional leaders warn ANC to keep its hands off their land”⁴

“The leaders are key to the political base of the African National Congress (ANC) and control communal land comprising 13 percent of South Africa. Party reformers want to dilute their power by providing people in such areas with direct property ownership. Tribal authorities have sway over access to resources on such lands, including who can farm certain plots, and they also negotiate deals in such areas with companies including miners, giving them significant power. Land ownership is contentious in South Africa a generation after the end of apartheid because most is still in the hands of the white minority...The Congress of Traditional Leaders of South Africa (Contralesa) also said the government must not move to expropriate communal land, which is in the former “homelands”, islands of rural poverty where most Blacks were confined under apartheid according to their tribal grouping. “There is the land which is under the stewardship of traditional leaders, which is referred to as communal land. We are saying that is already land in the hands of Africans,” Contralesa General Secretary Zolani Mkiva told Reuters. “It is the little land that was left for the Africans to reside on, so that land is not up for grabs. It’s not for expropriation,” he said in an interview on Thursday. Contralesa and the ultra-left Economic Freedom Fighters (EFF) party say all that land must be in the hands of the state. This is another headache for Ramaphosa, as the party has not taken such a radical stance and relies heavily on the tribal leaders for the rural vote.”

Analysis

⁴ Bigg, M.M (July 5, 2018 Reuters news: South Africa traditional leaders warn ANC to keep its hands off their land <https://www.reuters.com/article/us-safrica-politics/south-africa-traditional-leaders-warn-anc-to-keep-its-hands-off-their-land-iduskbn1jv2iq> accessed 29 August 2020).

The article shows land contestations in South Africa twenty-five years after independence. It remains in dispute on who owns communal land. Communal land rights remain precarious and insecure. The increasing competition and social strife for land that can be seen as a result of population expansion but also political influence is another aggravating aspect described in this article. One indicator of this, "autochthonous" community leaders are asserting exclusive land rights at the expense of community members, even though the latter have been residing on and farming the land for centuries. This has led to a narrowing definition of customary tenure rights. Chiefs and other traditional leaders take ownership of community land for their own personal gain by using their influence, especially their political connections outside the community (Baldwin & Holzinger, 2019.).

Alden (2018: 9) also argue

“It is also not uncommon that chiefs sell community land to outsiders as if it were their own private property. Community members are denied independent rights to land by the tribal authorities with no other alternative than to remain as “slaves” within their own families or to leave the community altogether”.

In the same vein, the Chiefs power over customary land is also not absolute as the government may arbitrarily take the land for other development projects. Therefore, what is crucial from this article, is the need to strengthen customary tenure rights to safeguard them against arbitrary interference by either the state or tribal authorities.

a) Analysis of the Compilation

The above surveyed newspaper articles confirm that communal land remains a contested terrain in contemporary South Africa. The researcher submits that throughout human history; customary tenure rights stay stifled. Therefore, in most areas of land controlled by customary law in rural South Africa, tenure insecurity is a fact. As is regularly the situation as shown in the above-mentioned newspaper articles, these land rights have a lower legal and economic social status with the title vesting paternalistically in the state.

Communal landholders continue to live in uncertainty more than 25 years after independence. Some of them fear that their land maybe subjected to expropriation by the state as depicted above. To add, some community landholders' right to the land is at the mercy of their traditional authorities who continue to pose as owners of the land. It is not clear who owns communal land, is it the community members? Is it the traditional leaders? Is it the local rural municipalities?

Some traditional authorities like in the newspaper article titled "Limpopo villages up in arms over fears shopping mall will take their water" cited above, make decisions with regard to natural resources without the consent of the community members in the name of development, while in reality the deals end up having a negative impact on the economic and social well-being of the community members. In this case, the Chief and his council allowed the mall to use water from the community river, knowing well that the river was the communities only source of water. Land conflicts are rampant as demonstrated in the newspaper articles discussed above. Municipalities are fighting with traditional leaders; traditional leaders are fighting with the national government while communities are fighting with traditional leaders. Some traditional leaders view individual land ownership as a political move to dilute their power. It is reasonable to argue that this current chaos is enough to hinder any meaningful development and access to food security. It is unimaginable to perceive anyone investing in such an insecure contested terrain.

Conversely, it is reasonable to deduce from the above-mentioned newspaper articles that traditional leaders still hold a lot of power and influence over communal land. Thus, it is reasonable to argue that these land rights are secure under their protection. Given this argument, communal land remains essential when it comes to development and food security. What is pertinent is for the traditional authorities to negotiate deals in such land areas with investors.

The compilation of the newspaper articles shows that on one hand communal land rights remain insecure and that communal people's day to day affairs are directly affected by this economically and socially. On the other hand, there is reason to believe that communal land rights remain secure under the protection and custodianship of traditional authorities. In the next section, the study will discuss the role of media in showcasing contemporary land issues.

6.3.1 The Role of Media in Showcasing Contemporary Issues

The researcher discovered that most current heated stories in South Africa are by and large effectively spread through movies, shows and soapies aired by broadcasting offices. Local African soapies proliferate African standards, qualities, customs and underscore more on sex, savagery, fetishism, mystery, voodoo and other negative issues (Quaife, 2012). Udomisor argues “they are intended to educate, socialise and play a therapeutic role in the entertainment function of the mass media”. Moreover, Olaleye, Adegoke and Oyewole (2010: 49) hypothesises the accompanying assessments with respect to reception of information disseminated through movies:

“In a country where people do not read and where public libraries are almost non-existent, you have people relapsing to supernatural explanation to national phenomena. People rely more on local films for social counselling and as means of reference. You often hear people, including unfortunately the so-called educated elite making reference to films they watch ... as reference as if they are citing academic work.”

Many people in South Africa and in particular Limpopo Province watch local South African soapies (Sicetsha, 2018). Sicetsha (2018: 1) states that,

“If there is one thing South Africans have in common, it’s their love for soapies ... Topics that are much closer to home, like the dynamism in the relationships formed with people from different classes and race, are very relatable and that is what producers like Mfundu Mvundla use in creating soapies ... Soapies are the crown jewel of local and international TV.”

To most of the inhabitants of the study area, African soapies or dramas that deal with local African issues, tradition and culture stories are treated as documentaries or educational movies. Most of these inhabitants are passionate devotees who follow the celebrated television programs that have been said to proliferate Black magic convictions, Muvhango. A prime-time television drama called Muvhango centers on the lives of the royal Mukwevho family, which is headed by village chief and family patriarch Azwindini Mukwevho. The television show, which is set in the fictional rural

communities of Thathe and Johannesburg, contrasts traditional values and lifestyles with the difficulties of contemporary city living. The *Tshivenda* drama, has entertained audiences with storylines that talk directly to the African experience for more than two decades and keeps on to attract millions of viewers every week night at 9 pm. Muvhango is seen each day from Monday to Friday for 30 minutes during prime time by nearly everybody in the area under study.

Maune (2020:13) argues that:

“The Broadcast Research Council has released the latest viewership statistics which reveal that SABC1’s flagship soapie, *Uzalo*, garners the most eyeballs in the country... Rounding out the top five is SABC2’s *Muvhango* which, together with *Scandal*, has disrupted SABC1’s clean sweep of the top five soapies. The *Venda* saga has 4.4 million people tuning in every day. The show has been holding its own for over 23 years and despite not winning any major television or film awards for the past ten years it is still a major favourite among fans.”

On *Muvhango*, two different storylines during the period ranging March and May 2020 highlighting customary land conflicts were in progress. This dramatisation consistently portrayed the conflicts associated with communal land and its effect on rural development and food security. Below is figure 6.1 which shows a picture of Gugu Nkosi the Chief Executive Officer of (MMC).

Figure 6.1: A Picture Showing Gugu Nkosi On *Muvhango* Drama Discussing the Land Issue.



Source: Google Image

As can be seen on the picture, Gugu Nkosi the CEO of Mukwevho Holdings is insisting that the communal land in Thathe belongs to the company and not the Villagers

The brief facts of the first storyline are as follows:

Chief Azwindini before he was dethroned issued a piece of farming land to local community members. The Chief gave the community members a stamped letter as proof of ownership. Mulalo, Chief Azwindini's brother, was the MEC at that time. He also issued the same piece of land to a private company and issued the company with a government document to that effect. However, he did so without consulting the Chief. The purchasing company subsequently sold the land to another private company Mukwevho Holdings Corporation (MMC). MMC moved in to start excavations without communicating with the royal family and regent Gizara. The community protested this move and stopped MMC company from starting with the construction. The land at the time was being farmed by the community members. Gizara, the regent, in a bid to solve the conflict encouraged MMC to give the community members jobs during the construction as well as guaranteed work after the company start operations in the village. Further, the community

members were offered 1% shares in the company. But before the resolution, the community members protested and burnt MMC's construction equipment. This had been provoked by Khakhathi Mulaudzi (KK), MMC's CEO, who had botched a plan to have the community member's crops destroyed. However, Gizara was not motivated by the need to help the community members, rather he wanted to ensure that MMC benefits since the royal house is the major shareholder and also he intended to use the situation to reinforce his position as Chief of Thathe in the vein of dethroning Azwindini permanently.

The following are the brief facts of the second storyline:

Tendamudzimu, the current MEC, requests for a piece of land from Gizara the (Khotsipfarelo) regent. Gizara and the royal family are of the view that the piece of land in question is cursed. This was because community members who had once worked the land had fallen sick. Therefore, it was concluded that the land is cursed. However, Tendamudzimu discovered that the land was rich in minerals. It was the minerals that were underground that caused the community members to be sick. Phusuphusu, one of Gizara's brothers, is suspicious of Tendamudzimu and even suggests to Mulalo, the Mayor that, it was pertinent for Gizara to have first consulted the municipality and do due diligence before signing off the land to Tendamudzimu. However, no due diligence was done, and the royal family signed off the land rights to Tendamudzimu.

The researcher's observation was that Muvhango soapie has become a vital medium to exhibit contemporary issues. The soapie originates from the area under study and it portrays the Indigenous Knowledge Systems of the *Vha-venda* people. Therefore, it depicts in a dramatised manner a reflection of the contemporary issues affecting the area under study. The soapie in the first storyline clearly depicted the insecurity that is associated with communal land tenure rights. The community members were the first to be awarded the land rights and they had documentary proof signed by the Chief to that effect. However, the resolution adopted was biased in favour of MMC, the

private company. The community members were not compensated for the damages done to their crops, rather they were offered employment and only 1% shares in the company.

The soapie also portrayed the scepticism and mistrust in communal land holders against the alleged developers and traditional authorities. In the soapie, the community members refused to yield to the promise that the intended development project would create employment opportunities. They argued that most companies promise but end up disregarding their promises. They bring along employees from the major cities and argue that communal people are incompetent to hold critical positions in their businesses. This was despite the fact that even the royal family had attested to the promise. The soapie showed that it is not every development that takes place on communal land that benefits local people, hence the distrust embedded in communal people.

However, the resolution to a greater extent represents long-term development. Therefore, the drama on the other hand, highlights the need to develop indigenous ways for example, the need to keep land registers and/or secure land tenure rights. Furthermore, the drama promotes collaborative governance between traditional leaders and government structures to promote rural development and food security. Had the MEC and Chief consulted each other, double allocation would not have occurred. On the same note, when both parties collaborated to find a solution, the community members were guaranteed rural development and food security through long-term employment and shares in MMC.

In the second storyline, the soapie showcases the weaknesses that are contained in indigenous property law systems and policies. The traditional indigenous way of doing things is unsystematic and lacks expert professional opinion. In the soapie, community members were allocated a piece of land. They started falling sick and it was concluded that the land is cursed. However, Tendamudzimu the current MEC, discovered that the land had minerals underground. The picture in figure 6.2 below shows Tendamudzimu explaining to his partner that there are minerals in the ground.

Figure 6.2: A Picture of Tendamudzimu on Muvhango Discussing the Minerals in the Land.

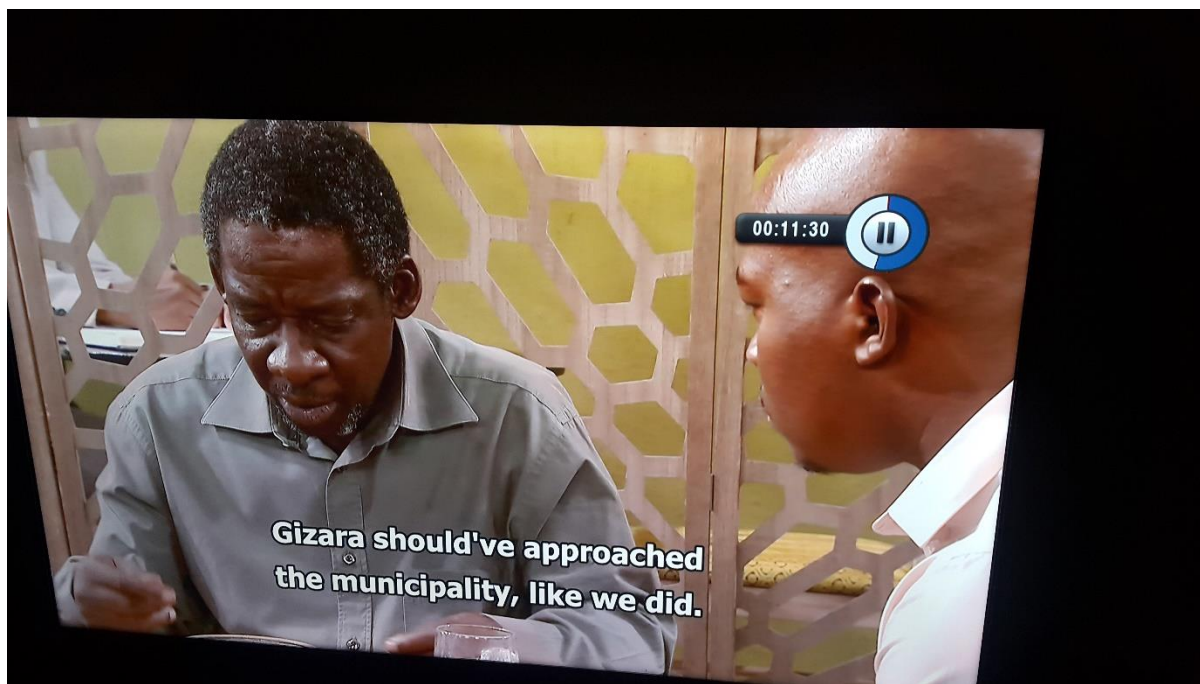


Source Picture captured by the researcher during data collection

As can be seen on the Picture, Tendamudzimu is explaining that they were minerals in the ground.

Equipped with this knowledge, Tendamudzimu takes advantage of the royal family's ignorance to obtain the land. Gizara, the regent, allocates the land to him without any due diligence. Had there been collaboration and co-existence between the regent and the municipalities, an Environmental Impact Assessment exercise would have revealed the minerals underground. In this regard, the soapie demonstrates the need for collaborative governance between the municipalities and traditional leaders. Phusuphusu raises this issue with the Mayor, Mulalo, suggesting the need to consult the municipality before allocating communal land. Figure 6.3 below shows Phusuphusu raising this important aspect.

Figure 6.3: A Picture of Phusuphusu in Muvhango Suggesting the Need for Collaborative Governance.



Source Picture captured by the researcher during data collection

In the picture Phusuphusu is suspicious of Tendamudzimu. He is therefore of the view that Gizara, the Regent, should have first exercised due diligence by approaching the municipality for advice before allocating the land to Tendamudzimu.

The municipality holds expert knowledge and would assist in conducting environmental impact assessments before communal land is allocated. Secondly, the municipality would also bring in the aspect of land zoning and planning. Traditional leaders would remain the custodians of communal land and preserve their practices but with the advice of expert knowledge. This is crucial to safeguard natural resources for the development of communal citizens. Had Gizara consulted the municipality, he would have known about the minerals in the land. Those minerals would have gone a long way in developing the local people. Therefore, the soapie demonstrates how communal people remain underdeveloped and insecure despite the available natural resources at their disposal. The soapie also demonstrates that development and food security is not always found in towns and cities but can be achieved locally, with adequate policies and measures in place.

6.4 Understanding Traditional Leadership as a Sector of Local Governance and Its Role Towards Rural Development and Food Security

The first research objective was to critically review the sector of traditional leadership as a sector of local governance and its role towards rural development and food security. Therefore, this section aimed to explore the unalloyed and pure understanding of the participant's views regarding the role of traditional leaders in governance towards rural development and food (in)security. The researcher asked the participants the following question in this regard:

Are traditional leaders a sector of local governance and what is their role towards rural development and food security?

The question was layered in form as it touched on various aspects. In order to ensure that participants clearly comprehend the question, the researcher first dealt with the concept of governance looking at the meaning as defined in existing literature as well as obtaining the participants' understanding of the concept of governance. After that, the researcher also obtained the participants views and understanding of rural development and food security in their communities.

All this was done to ensure that whenever participants make mention of 'governance, traditional leadership, rural development and food security' it would be very clear what they meant. After all this was done, the researcher then proceeded to gather participant's views and opinions on the role of traditional leaders towards rural development and food security. At this stage the researcher was confident that the participants clearly understood the question that they were responding to. This was pertinent to ensure that the data collected is relevant and accurate.

6.4.1 Governance

As discussed previously in literature review, according to Landell-Mills and Serageldin (1991:3) governance is defined as:

“...the use of political authority and exercise of control over a society and the management of resources for social and economic development”.

This definition emphasizes the political and administrative aspects of governance, but it does not describe the nature of the interaction between the people and the government. Another definition is offered by Charlick (1992) for the United States Agency for International Development (USAID) Africa Bureau Democracy and Governance program, as governance is:

“... the effective management of public affairs through the generation of a regime which set rules, accepted as legitimate for the purpose of promoting and enhancing societal values sought by individuals and groups” (Kapucu, 2010: 45).

The concept of the process' outcomes and the nature of the interaction between “power holders” and the “rest of society” are given a gradually normative component by Charlick's definition". With everything taken into account, these definitions are reflected in the accompanying qualities which some observers attribute "Good Governance" (Kapucu & Hu, 2020).

The Cotonou Partnership Agreement characterises Good Governance as:

“The transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development, in the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law” (Holland & Koloamatangi, 2006: 101-120).

Concerning the definitions emanating from the existing literature above, one needs to recognise various characteristics of good governance as there are in model among others, openness, participation, legitimacy, transparency (Pomeranz & Stedman, 2020; Addink, 2019; Floress, Thompson & Fisher, 2019).

The researcher did not want to make an assumption that everyone understands the meaning and interpretation of governance. In that regard, it was pertinent to also gather the community's understanding of the term “governance”. In doing this, the researcher posed the following question to participants to get their views, understandings and convictions on what it was, so that whenever they make mention to ‘governance’, it would be very clear what they meant.

What is governance?

The researcher was amazed with the responses that came out. The various responses given by participants showed that people had a varying appreciation and understanding of the concept. From the responses given by participants, governance signifies the process of decision-making and the procedure by which decisions are implemented (or not implemented). A certain participant who was interviewed said:

“Governance can be comprehensively comprehended as the interaction between governments, business partners and non-profit organisations by which and policy decisions implementation are undertaken.”

One community member said:

“Governance identifies with the transparency of government accounts, the effectiveness of public resources management, and the stability and dependability of the regulatory environment for public benefit.”

A certain legal practitioner who was interviewed said:

“Governance in my view refers to the management of economic and financial resources for the reasons of equitable and sustainable development, with regards to a political and institutional environment that defends and respects human rights, rule of law and democratic principles.”

There seems to be agreement among rural citizens and public officials that governance can be utilised in a few settings, for example, corporate governance, international governance, national governance and local governance (Young, 2018). An official from the municipality indicated that:

“since governance is the process of decision-making as well as the process by which decisions are made, an analysis of the concept of governance must focus on both the formal and informal actors involved in decision-making and implementing the decisions made”.

The official further stated,

“Focus must also be placed on the formal and informal structures that have been set in place to arrive at and implement the decision”.

The common view by the participants as narrated by a certain official indicated that:

“Governance is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law”.

The following are the participants' responses to the researcher's exploratory question about the characteristics of good governance:

6.4.1.1 Participation

Lovan, Murray and Shaffer (2017:14) argue “participatory governance refers to the active commitment of communities in the affairs of municipalities of which they are a fundamental part, specifically in planning, service delivery and performance management”. Participation alludes to the association of residents in the improvement process (Gustafson & Hertting, 2017). The majority of the participants concurred that governance must be participatory. The researcher learnt that participation by both men and women is a key foundation of good governance. A certain *Musanda* (chief) who was interviewed postulated that:

“Beneficiaries and groups affected by a project need to participate that the government can settle on informed decisions regarding their needs and social groups can protect their rights.”

A representative from a certain Non-governmental Organisation (hereinafter referred to as NGO) who was interviewed said:

“Participation is likely to create more trust and confidence in the end result and in the institutions which deliver policies. Therefore, governments should follow an inclusive approach when developing and implementing policies.”

A certain elderly community member in his response argued that:

“Our traditional ways of doing things used to give us an opportunity to raise our views with our traditional leaders. Our traditional leaders would consult with the community and their councils before making a decision that affects the community. Our interest was upheld where reasonable. However, in the present-day, the European system of governance mostly leave us in the cold. The system limit citizen participation to voting leaving actual governance to politicians. How will you know our interest and concerns if we as a community are not involved? The municipality must work hand in glove with the community through our traditional leaders in order to improve service delivery and protect the rights and interest of the community members.”

Of critical interest was the argument raised by a certain public official who said “it is critical to categorically state that representative democracy does not really imply that the concerns of the most vulnerable in the public eye would be taken into consideration in decision making”. Participation should be informed and organised. The researcher understood that what participants meant in this regard was that governance must be accompanied with freedom of association and expression from one viewpoint and an organised civil society on the other hand. The evidence obtained from the interviews and focus group discussions seemed to suggest that participation guarantees that corruption is limited, the perspectives of minorities are considered and the voices of the most vulnerable in the public eye are heard in decision-making. In addition, participatory governance is likewise receptive to the present and future needs of society.

6.4.1.2 Rule of Law

Hill (2012: 21-39) defines ‘rule of law’ as:

“The authority and influence of law in society, especially when viewed as a constraint on individual and institutional behaviour; (hence) the principle whereby all members of a society (including those in government) are considered equally subject to publicly disclosed legal codes and processes.”

Ten (2017: 47) also argues that the term 'rule of law' "is closely related to constitutionalism as well as 'Rechtsstaat', and refers to a political situation, not to any specific legal rule". Therefore, good governance must be subject to the rule of law. The governance systems must comply with the set laws to ensure transparency, accountability and impartiality.

According to a certain legal expert interviewed,

"good governance requires fair legal frameworks that are upheld and enforced impartially. It additionally requires full insurance of human rights, especially those of minorities. Unprejudiced enforcement of laws requires an independent judiciary and an unbiased and ethical police force."

A certain public official from the department of rural development postulated that in exercising their powers, both traditional leaders and officials from the government must always remember that they are subject to and accountable to law. In verbatim he said:

"Rule of law simply means that government officials are restricted from any form of arbitrary exercise of power by subordinating it to well-defined and established laws. All people and institutions are subject to and accountable to law that is fairly applied and enforced; the principle of government by law."

6.4.1.3 Transparency

Bernardi and LaCross (2005: 34) have defined transparency as "the principle of allowing those affected by administrative decisions to know about results and about the process that led to decisions". Hermalin (2014) argues that transparency implies that citizens must be acquainted with the guidelines applied in the system for exercising their rights, in an unmistakable and reasonable way.

Data gathered from interviewing both local government officials and community members point to the argument that governance must be transparent. According to the information obtained, transparency implied that decisions taken and their

enforcement are done in a way that adheres to rules and guidelines. It additionally implies that information is uninhibitedly accessible and legitimately available to those who will be affected by such decisions and their implementation. It likewise implies that enough information is given and that it is given in effectively justifiable structures and media.

A certain community member raised an interesting view, she said:

“In governance issues transparency is inevitable. Corruption is rampant these days and one can be forgiven to conclude that our development is being seriously hindered by a few rotten apples in the basket. In that regard I believe that transparency is a fundamental element of abolishing corruption. Transparent governance is essential to local governments and the communities they serve since corruption compromises good administration, prompts the misallocation of resources, harms public and private sector development, and misshapes public policy. Controlling corruption is just conceivable when government, residents, and the private sector coordinate to guarantee transparency.”

Taking this into consideration, transparency is inevitable in good governance.

6.4.1.4 Responsiveness

Participants indicated that good governance necessitates that organizations and processes attempt to serve all stakeholders inside a sensible time allotment. A certain elderly village man during the focus group discussion raised an interesting argument. He said:

“Europeans brought about development and modernity in the way to do things. In as much as I appreciate the modernisation that came with the white system I still strongly believe they are certain ways that we used to do things that must be adopted. In our traditional way of doing things, we have direct access to our traditional leaders. They stay within us, experience what we experience and suffer what we suffer, Therefore, if there is a problem they quickly respond because

they understand us better. This modern system allows for someone who knows nothing about us being our representative in the government. Some of these councillors stay very far from us yet allege to represent our interest. That is the problem.”

A certain lawyer who was interviewed weighed in and said:

In my view, I think the issue of responsiveness is engraved on the lack thereof of good policies and laws. Local governance issues must be regulated by laws that are people oriented. In law we say, justice delayed is justice denied. In the same vein, I argue that service delayed is service denied. Our leaders must be governed by the rule of law. That way we will be able to put them to task if they violate the regulations. Therefore, I suggest that with proper policies in place the issues of late response will be an issue of the past.

In summary, the general agreed position was that organizations and processes attempt to serve all stakeholders inside a sensible time allotment.

6.4.1.5 Consensus Oriented

Interviews with officials showed that there are many viewpoints and actors in a given society. One official said

“Good governance requires intervention of the various interests in society to reach a broad consensus in society on what is in the best interest of the community and how best this can be accomplished.”

In this sense, good governance requires a wide and long-term viewpoint on what is required for sustainable human development and how to accomplish the objectives of such development. This can only result from a comprehension of the historical, cultural and social contexts of a given community.

6.4.1.6 Equity and Inclusiveness

Most of the community members interviewed commonly expressed that a general society’s prosperity or wellbeing relies upon guaranteeing that everyone of its

members feel involved and not excluded from the mainstream of society. All groups, especially the most marginalized, must have opportunities to enhance or maintain their wellbeing in order to do this.

One of the interviewed community members stated that:

“Everyone within the community has a role to play towards our personal development. If only our leaders would take time to consult with us on what we want and think. Most of the times we see projects already underway, without our input as the beneficiaries.”

A traditional leader who was interviewed had this to say:

“The Municipality seems to forget that we exist. We as the traditional authorities represent the interest of the people. If the municipality keeps us in the dark when planning, it follows that they are leaving our people that we represent in the dark. We as the community need to feel involved and part of the projects. This explains why most of the projects are failing. We feel neglected as a people.”

A certain young female community member interviewed also said:

“Equity and inclusivity are key in good governance, regardless of gender, race or education. In our African culture, we as women feel neglected and discriminated against. Our societies are patriarchal in nature. That is why I for one prefers the modern system of doing things because it encourages non-discrimination and equality. Woman are also vital in development processes. We need to be treated equally and also incorporated in the development processes.”

The general position apparent in the participants’ responses was that good governance must ensure that all community members feel involved.

6.4.1.7 Effectiveness and Efficiency

Risse (2011:201) argues that “policies have to be effective delivering what is needed on the basis of clear objectives, an evaluation of future impact and – in case of availability – of past experience”. The argument by Risse (2011) is in sync with the view held by the participants interviewed. There seemed to be general agreement between traditional leaders and public officials interviewed that good governance implies that procedures and organizations produce results that address the needs of society while utilising resources available to them. The efficient use of resources and environmental conservation are also included in the notion of proficiency with reference to good governance.

According to an official of the Department of Rural Development, “effectiveness relies upon executing policies in a proportionate way and on taking decisions at the most fitting level”. Similarly, another public official from the municipality said:

“The management of effectiveness incorporates especially a technical dimension since effectiveness concerns the capacity of public bureaucracies to handily and effectively transform public resources into services and infrastructure which compare to publicly decided needs. Performance orientation and transparent strategies are key facts of effective public management.”

This aspect is crucial in remote villages that are blessed with natural resources. In that regard, it is the responsibility of the traditional authorities and municipalities to use the available land resources to address the needs of the community in the best way possible.

6.4.1.8 Accountability

Ysa, Colom, Albareda, Carrión, Ramon and Ramon (2014: 243) argue that:

“In practice accountability means that decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders.”

The definition by Ysa et al (2014) matched with what one of the interviewed legal experts said. In his response he said, “the public ability to participate and to hold those in power accountable depends on the availability of information about laws, procedures and results”. By the same token, community members interviewed generally concurred that accountability is key in good governance. They stated that traditional authorities and government agencies needed to answer to the general public and its institutional stakeholders. Who is accountable to whom? Depending on whether decisions or actions are done internally or externally by an association or organization, the dynamics change. An organization or institution must ultimately answer to the people whose lives will be impacted by its policies or actions. Without openness and the application of the law, accountability cannot be enforced.

6.4.1.9 Closing Remarks

The findings above and more from interviews and the focus group discussion conducted give the impression that good governance is an ideal which is hard to achieve in its totality. Nevertheless, steps must be taken to advance this ideal in order to make it a reality in order to ensure sustainable human development. In that regard, the study proposed a model that promotes local governance in Vhembe district so as to augment human development and food security. Sebola (2015) contends that the general objective of local government ought to be to make a conducive environment within which its municipalities can improve the quality of life for residents. Local government is required to just make ideal conditions to allow people within the concerned community to achieve this quality of life according to their own, physical and mental capacities (Sebola (2015).

Having understood the participants’ understanding of the term governance, the researcher proceeds to examine the participants understanding of the role of traditional leaders in South African local governance. In addition, the next section will also obtain the participants understanding on the role of traditional leaders towards rural development and food security.

6.4.2 The Role of Traditional Leadership in South African Local Governance, Rural Development and Food Security

As aforesaid, the first main research objective was anchored on determining whether traditional leaders are a sector of local governance, and if so, what role do they play towards rural development and food security? To answer this question, the researcher first obtained the participants' unadulterated understanding of governance and traditional leadership. Having satisfied himself that the participants had a clear appreciation of these concepts, the researcher then proceeded to interview the participants to obtain their personal views on the first research objective. This was crucial to ensure that the data gathered was accurate and relevant to addressing the research aim. However, before presenting and analysing the participants views, it was pertinent to briefly reflect on the meaning of rural development and food security as depicted in literature review in the previous chapters. This was done to ensure that the researcher asks relevant and connected questions, so as to avoid wasting time on unnecessary issues not relevant to the study.

According to Singh (2009: 39), "rural development is a subset of the broader term development ... It connotes the overall development of rural areas with a view to improving the quality of life of rural people". Torre and Wallet (2016) contend "rural development is a strategy to enable a specific group of people, poor rural women and men, to gain for themselves and their children more of what they want and need". In the same context, the United Nations describes food security as "a condition in which all people consistently access enough food expected to live an active and healthy life" (FAO, 2010:4). Therefore, it was apparent that rural development is key to food security. If the rural community is developed, it is consequent that it will become food secure. In the next subsection, the researcher discussed the findings thematically.

6.4.2.1 The Role of Traditional Leaders in Local Governance Is Vague

Reverting to the first objective, the participants submitted that traditional government is grounded in the conviction that the power to rule was passed on from time immemorial, informed and maintained by the ancestors. Legitimacy to leadership was in this manner dependent on sacrosanct traditions, being what the community owes to its progenitors and/or ancestors. Tradition in this way legitimised the institution of

traditional leadership since it is viewed as established in the acts of the ancestors. Fundamentally, a traditional ruler's powers within the Venda people were coordinated by the adaptable traditional norms dependent on lawful, social and religious thoughts regarding good governance.

These norms were versatile to evolving circumstances, without a particular authoritative procedure important to realise change. Traditional leaders were not chosen by the individuals however obtained their positions through family bloodlines. This implies that the traditional leadership position is inherited through blood relations and only the eldest heir with royal blood was entitled to ascend the throne. Like other institutions and structures of governance, the establishment of traditional authority developed over time however European colonial expansion into Africa, and especially in South Africa, essentially adjusted the social association of African social orders and changed them so they got amiable to European control. These submissions by the participants confirm that during the precolonial epoch coming to the colonial and apartheid period, traditional leaders were a sector of governance. This is despite the distortion of traditional leadership brought about by Europeans.

Most of the interviewed participants reiterated that even with the dawn of independence and the adoption of the alleged neo-apartheid Constitution, the role of traditional leaders in governance remain unclear. One of the community members interviewed indicated that the Constitution is quiet on the role which traditional leaders have to play in the newly created municipalities. In verbatim a certain public official highlighted that “the powers and authority of traditional leaders are being reduced by the existence of local municipalities”. To emphasis on this point, a certain chief that was interviewed opined “the problem between the local governments and traditional leaders has a history that is established in the apartheid time when tribal leaders were given custodianship of land that was then designated by them to individuals from the community for different uses, for example, grazing, arable and residential”. This, according to the chief's submissions, definitely prompts clashes and resettlement on both sides.

A public official from the municipality indicated:

“in spite of the fact that the Constitution of South Africa Act 1996, along with Traditional Leadership Governance Framework Act, 2003 (Act 41 of 2003), states that local government and traditional leaders should cooperate, the relationship is not as healthy as would be expected as there are misunderstandings between these structures”.

The public official proceeded to state that the local municipality appear to have assumed control over some of the functions of traditional leaders, for instance, the designation of land. According to the submissions by most of the participants, this implies that the power of traditional leaders has been abridged. These findings prompted the researcher to inquire on the implications of the conflicts between traditional leaders and municipalities on rural development and food security.

6.4.2.2 The Implications of the Conflicts Between Traditional Leaders and Municipalities

A majority of the participants indicated that the conflicts between traditional leaders and the municipality hinder development. A certain community member said:

“There is conflict between chiefs and representatives from the municipality. The chief would want to prove that he has power. On the contrary, the municipality would insist that they are doing their job as mandated by law. In some cases, the chief ends up inciting the community to demonstrate against intended developments. Delayed development is denied development. I just wish if both parties would amicably co-operate.”

Likewise, another community member interviewed said:

“Recently, a certain contractor was awarded a tender to do a tarred road in our community. However, the municipality did not notify the chief about the development. The contractor moved in to establish the site so as to start work. The chief sent his boys to stop any work on site. He argued that he had not been notified and that the contractor had disrespected him by coming into his community without permission. The contractor was told to leave the village, or

the community members would burn his equipment. The contractor apologised, moved out and later came and sought audience with the chief. He gave the Chief nduvho and was then allowed to start work. As you see this bulldozer machine has been parked idle here for days with no progress.”

Figure 6.4 Shows The Bulldozer Referred to by the Responded Above



Source Picture captured by the researcher during data collection

The picture shows a bulldozer that belongs to a contractor that had been ordered to stop work because the Chief alleged that he had not been informed of the intended development on his land.

Figure 6.5: Expanded Public Works Programme (EPWP) Workers on Site



Source Picture captured by the researcher on site

The picture shows EPWP workers refusing to work in solidarity with the Chief. The Chief stopped work on site because the Municipality had not engaged him about the intended development project in his village.

Extrapolating from the above brief findings, the conflict between traditional leaders and municipalities hinder development and consequently impacts negatively on indigenous communities being food secure. The proposed development in the above discussion has the capacity to create employment, thus the EPWP workers from the communities would be put in a stable position to feed their families. However, the delays due to the conflict between the authorities implies a delay in the prospective employment as well as delayed development. Against this backdrop, it was pertinent for the researcher to inquire on the potential positive impacts of partnerships between traditional leaders and municipalities. In the next section, the researcher asked participants to express their views on partnerships between traditional leaders and municipalities.

6.4.2.3 Partnerships Between Traditional Leaders and Municipalities

A majority of the participants maintained that traditional leaders' powers and status remain intact and recognised by law, hence they are with no doubt a significant sector of local governance. The majority of the participants generally held the view that the

law confers power in traditional leaders or councils – (Section 20 of the TLFGA). Section 20 of the Act includes “agriculture, land administration, welfare, safety and security, economic development, tourism, the management of natural resources, the dissemination of information relating to government policies and programmes; and education” *inter alia* other areas to which traditional leaders can be given a role.

A certain legal practitioner interviewed within the study area had this to say:

“The TLGFA recognises traditional leadership positions. The Act further provides that a traditional leader performs the functions provided for in terms of customary law and customs of the traditional community concerned, and in applicable legislation. This implies the legislature’s intention to recognise traditional leaders as a sector of governance.”

In the same vein, a certain government official said, “section 5 of the TLGFA promotes partnerships between district and local municipalities with traditional councils”. He argued that the alleged partnerships “reinforce that the institution of traditional leadership is inherently engraved in governance”. According to the official’s submissions, one may not be able to separate traditional leaders from local governance. Section 5 of the TLGFA provides that:

“The national government and all provincial governments must promote partnerships between district municipalities and kingship or queenship councils and principal traditional councils through legislative or other measures. (2) The national government and all provincial governments must promote partnerships between local municipalities and traditional councils through legislative or other measures. (3) Any partnership contemplated in subsections (1) and (2) must- (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and (b) be guided by and based on the principles of co-operative governance. (4) A traditional council may enter into a service delivery agreement with a municipality in accordance with the Local

Government: Municipal Systems Act, 2000 (Act 32 of 2000), and any other applicable legislation.”

It was generally agreed by the participants that the law is not clear on what role traditional leaders should play in governance and in this context rural development and food security. Participants generally further agreed that there is need for a new law to be enacted to close this lacuna caused by the TLGFA. However, most of the participants emphasised that despite this gap, traditional leaders are not absolved from ensuring the good welfare of their people. This argument was based on the fact that the TLGFA acknowledges the function of traditional leaders under two authorities: relevant law and the customs of the traditional community in question. Therefore, even if the law may be vague but they still have an obligation in terms of customary law and customs of the community concerned. In that regard, the participants argued that traditional leaders have a responsibility to ensure that the welfare of their people is taken care of.

A certain traditional leader who was interviewed indicated that him as a chief together with all other chiefs have a role to play in governance. In verbatim he said:

“As a chief of my community, I have been working with the government, that is the local, provincial and national government since democracy. I have always considered the Constitution of our country as a guideline on how to approach the governance issues in order to meet the needs of my people. I also work together with the Non-profit organisations in development projects. I also involve the community in all development projects so that no one is left out.”

One of the interviewed community members had this to say:

“With more synchronicity and good governance, I believe our traditional leaders will do more. However, as it stands, speaking on behalf of my community chief, I can confidently say he has been a success in governance issues. In collaboration with the municipality, the chief managed to connect at least three reservoirs where boreholes pump water. Water is connected to every street, where the community members fetch water right at their gates.”

Figure 6.6 Water Tanks in the Village



Source Picture captured by researcher during data collection

The municipality managed to connect three reservoirs in the village where boreholes pump water. Water is connected to every street, where the community members fetch water right at their gates. The picture is showing a water tank in one of the streets that supplies clean water to the villagers.

Likewise, another community member indicated that in their village, the chief had facilitated installation of electricity. Currently, every household in the village is connected. In corroborating this, most of the participants interviewed in this village stated that the installation of electricity had bettered their life. Some of them are now able to connect irrigation systems to water their crops. Some indicated that they now own machines, for example peanut butter making machines, something they could not do before since they had no electricity.

A certain elderly community member interviewed said:

“During our youth days dating back to our forefathers, Africans could only farm for subsistence. However, with the developments brought about by our traditional leaders and the municipality, I think it presents a better future for our young people. In my village, the

construction of tarmac roads is in process. These roads ensure a smooth transportation of our crops to the market. Vehicles can now reach our farmlands to ferry our goods. As I speak now, I supply tomatoes to women who sell at Tshakuma market. This is now possible and efficient because of these roads. However, I pray that one day, we as communal land holders are able to access formal credit. This will go a long way in economically emancipating us.”

Figure 6.7 Construction of a Tarmac Road in the Village



Source Picture captured by the researcher during data collection

The picture is showing a tarmac road under phase two construction in Tshivhuyuni Village.

In another village, the chief interviewed indicated that it is a challenge when it comes to food security. The chief proceeded to state that in the old days' communal people in his village used to be food secure. They would be given a piece of land by the chief to grow crops for subsistence and selling. Likewise, they would also do farming of poultry, pigs, cattle, goats and sheep. They would store their harvest for years and when in need of meat, they would simply kill one from their kraals. However, in the present-day, farming is now difficult because of several factors which include, changing climate conditions, limited rainfall but above all insecure communal land rights and deprived access to formal credit. As a result, people now prefer to build houses on the land instead of farming. With houses, they can build backyards for

renting out. Consequently, when in need of anything, one is now forced to use money. Traditionally, community members would rather trade their harvest for what they need. Without harvest and limited employment opportunities, most families have now become food secure. The chief emphasised the need to encourage and equip communal people to rely on their land for their personal development and food security.

In this regard, despite the evident challenges facing traditional leadership in a democracy, traditional leaders have a role to play in local governance. Traditional leaders must actively participate in the development of the indigenous communities. This will positively impact the indigenous communities to become food secure. Therefore, the findings reveal that the best way to ensure that indigenous communities are well developed and food secure, is to promote partnerships between traditional leaders and municipalities at local governance level. In the next section, the researcher obtained the participants understanding of customary land tenure.

6.5 Customary Land Tenure

The researcher wanted to have an unmodified view of the understanding of customary tenure from the community. There has always been an argument that there exists a mismatch between customary tenure as the people live it and customary tenure as contained in policies and statutes (Larson, Brockhaus, Sunderlin, Duchelle, Babon, Dokken, Pham, Resosudarmo, Selaya, Awono & Huynh 2013: 678). Other arguments as discussed before in the study pointed to the fact that unshakeable, unfathomable and profound cultural land beliefs and practices of Africans find no expression in written law. A qualitative data collection research in the study area was pertinent to identify if what is on the ground is the same with what the codified laws say. This was crucial to fashion appropriate recommendations. However, before analysing and presenting the participants' views, the researcher first defined customary tenure using the existing literature. Customary tenure alludes to a system that Africans use to operate to declare or confirm proprietorship, ownership, and access, and also to govern use and transfer of land (Wily 2011). Wily (2011: 210-237) argues that "customary tenure is as much a social system as a legal code and from the former obtains its enormous resilience, continuity, and flexibility".

A certain legal practitioner interviewed described customary tenure as frameworks regulated by traditional norms and practices, inside which land rights are socially implanted. The participant additionally indicated that these land rights are dynamic, multi-layered and receptive to the requirements of the community. From the interviewed participant's submissions, customary tenure is inclusive and socially embedded. Just like what the legal practitioner interviewed above said, most of the participants stated that customary tenure is both individual and communal, thus can be seen as an arrangement of corresponding interests held at the same time by different people. Put differently, the majority of the participants discoursed that customary tenure depend on a thought that individuals and families hold relative rights to the same residential and agricultural land. These relative rights may even overlap. Therefore, communal people and/or families need to negotiate access to natural resources, for example, grazing land, forests or streams. Customary tenure are in this manner nested or incrustated with different people or groups holding fluctuating degrees of rights and interests over land and resources.

Accordingly, and despite the common view, the majority of the participants stated that customary tenure rights can offer secure tenure. Most of the participants, likewise, submitted that customary tenure refers to systems governed by tradition, norms, customs and values to regulate land ownership and transfer within the indigenous Black people of South Africa. Most of the participants showed faith in customary tenure rights. They generally agreed that in as far as they are concerned, these land rights are secure and suitable to achieve economic development, contrary to the view held by the government and other investment centres. One of the participants interviewed stated that:

“The government perceives customary tenure as unreliable and an obstacle to economic development. This comprehension isn't right and sabotages Indigenous Knowledge Systems. South Africa needs to move away from the shared worldview that settles in colonial and apartheid period thinking, and move towards a methodology that is better adjusted to living norms and traditions.”

Majority of the interviewed participants reiterated that the problem comes from the fact that indigenous systems of land proprietorship are not the same as the absolute

ownership approach favoured by the West, nor are they what early colonialists expected when they embraced a mutual worldview, accepting that land was all things collectively owned by indigenous communities (Larrain, 2013). This was not the situation. Some land was for common use (especially grazing and some agricultural land), however families and people held exclusive use rights over other areas such as homesteads. Participants further propounded that the heritage of this misconception is devastating. A certain public official proceeded to contend that adherence to a communal paradigm strips communal people of the capacity to hold land rights exclusively. This is illegal. However, the paradigm perseveres: as illustrated, for instance in the Communal Land Rights Act and the communal land tenure policy.

After interviewing traditional leaders, the researcher realised that the aspect of communal land is viewed differently depending on the social standing of the person. Most of the traditional leaders interviewed indicated that by custom all communal land belongs to the traditional leader of the respective community, since he is the head of the community or village. They further opined that no one may acquire land without the permission of the traditional leader. The traditional leader and his royal council decide on the request for all land claims. In that regard, the land belongs to them by virtue of their office. According to them this is what the ancestors endorse.

On the contrary, most of the participants disputed this assertion. They insisted that the understanding that traditional leaders own communal land is a misrepresentation that undermines the solid family-based ownership rights that exist in terms of customary law. One of the participants indicated that:

“Traditional leaders are custodians of communal land by virtue of their office. They do not own the land, rather they are responsible for land administration as per the custom of the respective community as well as the relevant law. They enjoy the privilege that they have influence over access to resources on such lands, including who can cultivate certain plots, and they likewise negotiate agreements in such areas with organisations including miners, giving them noteworthy power. This however does not make them owners of such land.”

A public official from the municipality also stated that:

“There is no law that endows traditional leaders with communal land. In fact, the TLGFA and all other laws regulating communal land are silent on the role of traditional leaders. In that regard, I am transfixed if not mesmerised on what bases are traditional leaders claimed to own communal land. In as far as I know, communal land belongs to the community members. That explains why no origin of a particular community is required to purchase communal land. Consequently, it explains why no one is allowed at law to sell communal land. One only owns the developments on the land and not the land itself.”

Most of the interviewed participants generally agreed with the view that traditional leaders are only custodians of communal land. Therefore, customary land rights were confirmed to be dynamic, multi-layered and receptive to the requirements of the community. They held the general view that transferring ownership of customary land to Tribal authorities denies land rights-holders of their property rights, rendering them subjects of the traditional leader rather than citizens of the country. Such a methodology was named to be unequivocally unconstitutional.

6.5.1 Formal Land Titling vis-à-vis Customary Land Tenure

After hearing the community’s understanding and appreciation of customary land tenure, the researcher asked the participants’ views towards communal land rights. Most of the customary land rights-holders in the Vhembe district held reservations towards discarding these rights in favour of formal titling. However, a few participants argued in favour of discarding customary land tenure. These few participants viewed titling as a definite method to lift poor communal people out of poverty. This was regardless that most of the participants who said this failed to establish a nexus between giving people title deeds to their communal land and poverty alleviation. They contended that customary tenure is problematic because banks do not acknowledge untitled land as security for bank loans. This constrains the poor communal land right-holders from getting funding to put resources into businesses of their own. In any case, the responses of most of the participants interviewed demonstrated that few of communal land holders were willing to risk their homes through mortgages.

In addition, these enthusiasts argued that under customary land tenure, development, land use planning, service delivery and public investment are constrained. Elite capture or abuse by unaccountable leaders can likewise occur undetected, as in communal areas where minerals are found and traditional leaders and councils go into business deals with mining establishments that advantage just a few. Further, these participants acquiesced that customary tenure frustrates the capacity of land markets to transfer land to increasingly proficient uses. Likewise, these participants further argued that customary tenure risk institutionalising powerful local leaders, who may become disinclined to surrender control over group tenure.

From the interviews the researcher conducted with community members in Vhembe district, most of them argued against land titling (formalisation). They argued that formalisation could realise more prominent frailty of land tenure, especially for women and other vulnerable groups. From these interviews and the focus group discussion, the greatest feelings of trepidation around formalisation or titling were:

1. Having title to land is costly on the grounds that you are quickly subject for rates and taxes, and banks may hold onto your property should you default on credit instalments. While, under customary land tenure, water is usually connected for nothing out of pocket and electricity rates are insignificant. Additionally, there is no weight of month to month rates and expenses.
2. For the poor and vulnerable people, particularly, this may prompt a decrease in tenure security and drive them further into indigence. This is because most rural poor people do not afford to buy land at market value, a system usually hinged on formal titling. Secondly, the system is serviced by a Deeds Registry, private sector surveyors and conveyancers, as well as municipal officials, all governed by a scope of laws and guidelines in a mind boggling and interlocking way.
3. Formal titling additionally stimulates loss of tribal identity since people may decide to sell their lands to outsiders who do not relate to the customs and traditions of the area.

The general view held by these participants was that the government and the business network wrongly see formalisation through enlistment and title as a convenient “silver bullet” solution, yet this framework in their view is assailed with unmanageable

problems and conflicts. Most of these participants emphasised that given the option to choose, they would prefer customary land practices since they do not relate to government's imposed system of ownership. It was commonly agreed by the community members that present laws and policies seek to undermine customary land rights-holders, permitting them just to lease land from the state or to have auxiliary use rights as subjects of traditional authorities. The majority of the participants presented that customary tenure in Vhembe district was appropriate to challenge the supremacy of titling and to push off the shackles of the communal paradigm.

In that regard, the participants further discoursed that customary tenure ensures rural poor people access to a parcel of land, in this way decreasing set-up costs. In addition, most of the participants submitted that titling does not just empower the individuals who have money to acquire expensive land leaving out a dominant part of people without land for socio-economic activities. For example, production, agriculture and housing; yet additionally gives the owners of land the right to speculate on land to the disadvantage of economic growth and development. In support of preserving and upholding customary land tenure, participants further indicated that communal land rights can possibly diminish rural migration to urban areas which creates the unplanned expansion of urban areas.

In this same vein, most of the community members and government officials also indicated that communal land rights can conceivably diminish unemployment and retrenchment during times of monetary crisis. Laid off workers can utilise land to engage themselves in economic activities. The submissions by the participants indicated the benefits of accessing communal land. In emphasising on this point, the participants in passing touched on aspects of communal land allocation. The researcher probed on land allocation to inquire more on the land allocation process. The inquiry was pertinent to establish the type of rights embedded in customary land tenure. The researcher was interested in obtaining an understanding as to whether from the community's view, customary tenure provided them with ownership or only land use and access rights.

6.5.2 Communal Land Allocation

The researcher interviewed the participants on the process of communal land allocation within the *Vha-Venda* people. Participants were asked how they came to live in the lands in which they live. They were additionally asked some information about ways one could gain access to various kinds of land in their particular communities. They were asked about the way towards obtaining land, the rules utilised in designating land just as the people who are answerable for making these decisions. Participants were also asked if the land allocation process had changed after the 1996 Constitution. Understanding the allocation process was germane to determine the role and place of traditional leaders in land administration and the type of rights bestowed under customary land tenure.

6.5.2.1 Ways of Obtaining Land

In Tshivhuyuni village, participants revealed that in the past titles were given showing designation of land in the homeland area and for this one would go to the headman. A participant recounted:

“One would go to the headman. On the off chance that I have a son, and I have residential land and a title, I currently need him to get his very own place. I would assist him with searching for a spot that is fit for cultivating. At the point when he has discovered that plot, we would approach the headman and exhort him. On the off chance that the land is not saved for grazing land, they [the headmen] would then proceed to survey that land and he would be given the title. The title suggests the right to use the land.”

A participant in Thathe Vonde also reported:

“Someone who is youthful like me before the 1996 Constitution was never qualified to get a field, even a building site. In the event that they were dispensed one it would be of a specific class, not as much as that of somebody with a title.”

In terms of women, a Makwarela woman said:

“In the times past an unmarried old woman would remain in their parental home and construct her own hovel inside the site. An unmarried woman would not be designated a site. Nowadays, if an individual needs a site, regardless of whether they are female, land is allocated to them. They are given residential land.”

However, in spite of the noted changeover about women in the present-day Vhembe district to acquire land, challenges still do exist. For example, when a certain traditional leader was asked what number of women he had offered land to in the previous three years, explicitly women with children and woman who had get back in the wake of being married, he announced:

"Since I began, I do not think I have thirteen".

This could imply that relatively few women had approached the traditional authorities about gaining access to land despite the fact that they detailed that the procedure had gotten simpler. Some participants announced that there had been other significant changes with respect to access to land. The procedure was not simple previously:

"In the beginning, years passed by, only wedded people were given stands. In outstanding cases, where the young unmarried people consistently battles the guardians, the latter can approach the traditional authorities and request that their son/daughter be dispensed a piece of land for harmony's purpose. It can likewise occur for an 18 or more years individual to get a stand however subject to the endorsement of their parents."

According to most of the participants, at present there was no segregation and anyone could access land. It was reported that all one needed to do was go to the traditional leader to apply for the land and be an individual from the community.

"You simply must be more than 18, regardless of whether you're married or not and whether you have children, whether you are a man or a woman, it doesn't make a difference".

6.5.2.2 Communal Land Designation Decision-Making Process

When solicited if the procedures for allocating land in the village had changed, many announced that it changed after the 1994 elections. From the interviews and FGDs held the participants indicated that in contemporary Vhembe district, customary tenure requires decision-making about land to happen at different levels and with different people or groups, including individuals, family units, kinships and communities. To show this point, the community members portrayed the procedure through which a man may attempt to acquire land regarding customary tenure systems. The participants indicated that a man would initially approach his father for authorisation to utilise family land, if that land is inaccessible, he would ask the headman to obtain land in the vicinity. This is akin to what Cousins (2008: 47) contends when he writes that “a man would first ask his father for permission to use family land, if that land is unavailable he would ask his neighbour, and if he were unable to acquire land in this way he would approach the headman to acquire land in the vicinity”.

These layered frameworks of decision-making substitute conspicuous difference to the endeavours of the colonial and apartheid states to centralise decision-making power over land in traditional leaders. In this regard, decision-making corresponding to land in Vhembe district is by all accounts significantly more nuanced and comprehensive. Traditional authorities may still have a role in land-related issues, despite popular belief to the contrary. By approving the transfer or allotment of land that has been decided upon by other levels of the community, traditional authorities play an important role in the study area.

6.5.2.3 To Preserve or to Discard Customary Land Tenure

The following section offers more qualitative insights from a selection of the participants interviewed. The following quotes capture some of the reasons given by the participants who argued for preserving the land allocation process.

“I was born in 1950, and am a father of 5 children. I have stayed in these rural areas since I was born. I survive on agriculture. I prefer the communal land allocation process that we use in our community. It allows us the rural poor to also access land free of charge. The process is easy to comprehend. Furthermore, you do not require any money to transfer ownership in your name. The traditional leader

issues you with an offer letter and the letter is sufficient proof of ownership.”

“I am of the view that the communal land allocation process that we are using is essential to redress colonial injustices. The modern system of land registration was designed to suite the Europeans and not us. With the communal land allocation system, we as Africans have an opportunity to also acquire land.”

“I am a young male aged 24. I am not yet married. I was raised and grew up in this village. When I graduated, I proceeded to rent a flat in Polokwane Town. I was working as a teacher at one of the secondary schools in the area. The rentals were too much and I was struggling to meet my financial demands. I sought for a transfer and went back to stay in my village. I requested for land and was allocated by the traditional leader I managed to build my house and am also doing crop farming and poultry project. I have now employed three people who are working for me. All this was possible because of our communal land allocation system. I did not need savings to purchase land. Life in the city was expensive. I realised that the city life was designed to further impoverish Africans. If you need a house in the City, you have to take a mortgage loan that you pay for the rest of your life. This is contrary to the village. All you need is to submit your request for land and pay the administration fee.”

“I have a lot of cattle. In this village we have very good grazing land. In the city, the Whites control the land. You are not allowed to herd your cattle everywhere you like. In the city there is zoning and limited space. However, in the village we can make use of our land according to our traditions and customs. We are also able to grow our own crops and sustain ourselves on the land. If we disregard this land allocation process and adopt the European way of doing things, we lose our livestock and farming land. Buying land is expensive and some of us cannot afford. Secondly the property law system in urban areas is complex and expensive. You need to register the property

at the Deeds Registry and also look for a conveyancing lawyer. I rather prefer we uphold our African way of doing this.”

“The communal land allocation process allows us to maintain our tribal identity, traditions and customs as we are able to control who acquires land in our community. In addition, if traditional leaders are excluded from the land administration process, community members will be left vulnerable to the elite and powerful. As traditional leaders it is our duty to protect the land for our future generations.”

From these quotes and interviews, the participants were in support of the communal land allocation system. There was a general consensus that the current customary land allocation process was suitable for economically emancipating the rural poor from poverty, and a few argued that it was urgent priority to have the land allocation process changed. As indicated in the quotes, a certain participant argues that customary tenure gives the communal people access to land. Formalised urban land is expensive to purchase and most people residing in former homelands do not have the financial muscle to purchase such because of the colonial and apartheid injustices of the past. The quotes further show the argument that customary tenure allows the rural communities to maintain their tribal identity, traditions and customs, as it is easy to control who acquires land in the respective communities. In the same vein, the quotes also show that customary tenure is essential in promoting small scale farming, an activity essential to guarantee food security at a household level. Furthermore, some indigenous people may be able to grow economically without the strain of debt in the form of mortgages, a Eurocentric property law system that can be argued to have been designed to keep the poor in debt for eternity. In this regard, the majority of the participants argued in favour of preserving and developing customary tenure allocation process.

Despite the majority of participants arguing in favour of preserving customary tenure allocation process, a few of other participants on the contrary expressed the need to overhaul the land allocation process. The following quotes reflect the reasons for such proposition.

“The current land allocation process is prone to abuse and corruption. For example, we have heard stories of traditional leaders allocating land to outsiders for want of material benefits. We have people who got land in this village but they are not from our tribe or village. The only reasonable explanation to justify that is material gain on the part of the traditional leader.”

“In our custom, you cannot approach the traditional leader empty handed. You have to give the traditional leader nduvho. This is a good practice to show respect and honour to our leaders. However, I strongly submit that if the traditional leader has the sole power to allocate land, what stops him from being compromised by the rich and mighty who offer the traditional leader huge material benefits. I would like to believe that the location, type and size of land given to the poor is not the same to that allocated to the rich.”

“I am strongly against the communal land allocation process. The process lacks planning and due diligence. There is no land zoning and environmental impact assessments conducted before land is allocated. Some of the land is not suitable for residential purposes. That explains why this area is prone to many floods because some of these lands are wetlands. Without due diligence, traditional leaders even allocate land full of minerals for residential purposes. I suggest a paradigm shift from this process. We need a new way of allocating communal land.”

“I have read and heard about several cases where traditional leaders abuse their land holding and allocation powers. In some instances, we have heard cases where they allocate land to private corporates or mining companies for their personal benefit. The community will be forcefully evicted by these mining companies and they are not compensated. The traditional leader and other political actors would benefit and conceal injustices. This system needs to be developed to meet democratic principles.”

“The communal land allocation process has contributed to so many legal injustices especially towards the vulnerable groups, women and children. Land is allocated to the husband and upon separation the women is evicted. In some cases, the wife and children are left stranded upon the death of the father or husband as the husband’s family takes over the alleged deceased estate. Our communal land system needs to be gender sensitive. A woman cannot only hold secondary rights to land through the husband. This also applies to girl children. In the African culture, a girl is not qualified to be allocated land in her personal capacity.”

From the above quotes, the main issue noted was the need to bring checks and balances in the allocation system in order to minimise or eradicate alleged abuse and corruption. The participants were very vocal against the abuse of power by traditional authorities pursuant to the current communal land allocation process. Secondly, the participants criticised the customary land allocation process as unsystematic and backward in that it lacks planning and zoning. Lastly, the participants indicated that the customary land allocation process discriminates on vulnerable groups, for example women and children.

6.5.2.4 Changes in the Customary Land Allocation Process Since 1994

The section examined whether the land allocation process had transformed since 1994. From the views of the majority of the participants, the researcher noted that the land allocation process had changed since the 1994 elections. At the present-day, customary tenure in Vhembe district is gender sensitive. Every person in the community regardless of gender has legal capacity to apply for land allocation before the traditional leader and his council. The participants revealed that before if a woman was unmarried or in the event that she was somebody who had returned from a marriage, she would need to have a male member from her family to approach the traditional leader of the community on her behalf. Participants said that nowadays this is not, at this point practised, as the traditional leaders of the community just consider the woman’s age and her capacity to provide for herself. In this context, it was noted that historically, under customary law, women had no legal status or right to acquire land. In the same vein, girl children could not acquire land from their parents or

traditional authorities. Only male children had the right to acquire land. Girl children would only access land through their brothers while married women accessed land through their husbands.

In the present-day, in spite of the fact that women's access to land had gotten easier, it was reported that when a husband and wife need to acquire a land parcel just the husband's name shows up on the title deed. It is just when the man dies that the title can be changed to the woman's name. One of the men in Tshivhuyuni affirmed this by saying:

"What happens is that when the site is allocated for residential, it is not allotted to somebody who is a woman but only to men and the example is Mashau homestead, the homestead is mine. It might be our own in light of the fact that I have a wife however what is enlisted in the books is this is Mashau's home."

A female participant in Thate Vonde also reported:

"The name of the woman does not show up on the title. It only appears when the man passes on. That is the reason she needs to go change the proprietorship."

In the same vein, a certain female participant also said:

"Woman are treated differently with man. As an unmarried girl-child you are not qualified to apply for land in our culture. Only a woman with children can be allocated land. On the contrary, a male son may request for land even before marriage. He goes in the company of elders and if the request is substantiated, he is then allocated land."

This notion was reiterated by other woman participants in the community who said that even given changes after some time, women despite everything felt that they had no rights.

"You can have your own home and own it, however the greater part of the woman – I am certain 65% of woman – feel they have no rights,

most women would be ousted from her own home in the event of divorce." (Tshivhuyuni woman).

From the above interviews, the researcher noted that despite the notable changes regarding the customary land allocation process, women continue to feel marginalised and belittled. The Constitution requires that women be treated equally with men. However, some customary law practices in the Vha-Venda culture continue to undermine women property rights. However, there has been some significant changes though the implementation seems to be lagging behind.

Focus group participants in Vonde Thate revealed comparative stories to those of Tshivhuyuni. It was reported women were reportedly not allocated land in the past until they were married. As indicated by participants there was social strain to get married on the grounds that the household would have sons and daughter's in-law living on a similar land as the guardians. In this manner, unmarried women were encouraged and at times compelled to get married by relatives. One participant revealed that a great deal of the pressure originated from women's brothers and sister-in-laws;

"Your father does not state that yet your brothers and their spouses state that. They will continue discussing for what reason are you remaining at home, and afterwards your brothers come and approach you. It's the spouses, particularly, that impact the brothers. They influence the brothers to chase away the sisters. Their spouses feel threatened by the sisters and basically in the African context it is difficult for two women to stay in the same house. Further, the issue also hinges on inheritance. With the continued stay of the sisters, the brother's spouses feel that the future of their children's welfare is threatened. "

The participants responded that because marriage was a way of life that was so thoroughly ingrained in the community, all women eventually got married, even the ones who were perceived as being ugly, when asked what might happen to the women who did not get married in the past, for example, women who were not approached by men for marriage:

"There were ugly ones, yet they used to get married. The terrible ones were there yet they likewise used to get married. Some of the time we could see that an individual is ugly and unsophisticated yet she would be married."

Due to the widespread belief that single women would acquire land through marriage, there were not as many requests for land from them in the past. There has reportedly been a decline in marriage in recent years, which has made it easier for women to access land because there is currently less of a strong social push to be married. More specifically, acquiring a piece of land has become easier for women with children. Without a doubt, now and again a women having children were the thought process behind her family needing her to get her own land since they believe her to be irksome. One of the participants indicated that:

"Presently, they give her a piece of land since she would not like to get married. She continues having kids thus they state she should have her own home."

In spite of the considerable reports about it being simpler for women to get land, the situation on the ground in the area under study depicts that women still face serious challenges when it comes to accessing land. The interviewed participants indicated that in the contemporary Venda culture, unmarried women can still not access land unless they are a few justified exceptions. A woman access land through his husband. The only acceptable exception commonly known is that which relates to unmarried women with children. According to the participant's reports, these ones can access land. When it comes to inheritance, the participants indicated that if the husband dies, the surviving spouse is allowed to inherit the land. The land is not taken away. In the same realm, children of the deceased are also allowed to inherit land. Likewise, the participants also indicated that girl children can also inherit land upon the demise of their parents.

The discussion clearly demonstrates that there have been significant changes as far as land allocation is concerned since 1994. Women can now access land in their own right. Children who are minors may in exceptional circumstances also acquire land through their surviving mother upon the demise of the father. Therefore, customary

tenure is evolving aligning itself to the dictates of the Constitution. However, the implementation is still lagging behind and some women still feel deprived of secure property rights. In this regard, there is still need to continue transforming customary tenure and also ensure practical implementation of the changed policies.

6.5.2.5 The Impact of Land Inheritance on Rural Development and Food Security

The issue of gender in communal land allocation triggered a discussion on inheritance and land. This was because the researcher picked from the participant's responses that the historical undermining of women and children's rights used to emanate mostly upon the death of the father or husband. Therefore, it was critical to assess whether the equality clause enshrined in the Constitution had been successful to reverse the wrongs embedded in customary law practices, in this context with regards to communal land access. The aspect was critical on the aspects of secure tenure, investments and food security. Therefore, the researcher proceeded to ask the participants to explain more on issues of gender and land inheritance in their customary law practices.

The interviewed and focus group participants were asked to discuss the inheritance process when it comes to customary land. The participants reported that in their Venda culture, marital status or sex used to be a key determinant of accessing land. Participants made passing references to the widely held belief that under Vhavenda customary law, married women used to obtain land through their husbands but lacked ownership over the land and its yields. In the same context, widows would only be caretakers accountable for the land while their sons were minors and would not have control in their own right. Unmarried women may access land through their fathers or brothers but lacked ownership. The researcher further explored if these acknowledged wisdoms may have changed after some time. It was crucial to depict this variable in a way that accurately captured how social ties were perceived.

When asked about inheritance concerns, participants responded that married women were not likely to lose access to land in the event that their husband passed on. The cohabitating women were the ones who were most likely to have issues with inheritance. The only cohabittees who possessed ownership of the land were those who had signed the deed with their partners. One participant revealed:

"It relies upon who signed up for the land. If you went together, at that point there is no issue in light of the fact that both your names are on paper. Be that as it may, in the event that he went alone and gained the land all alone, at that point you may have an issue. Now and then in the event that he passes on, his family may come and chase you away."

Another participant stated:

"In this community in case you are not married, and your husband passes on, his family can come and claim his land, paying little attention to what extent you have been staying with him."

The following quotes elaborates further on the issue of inheritance and gender:

"In our culture, an unmarried girl cannot access land. What if she decides to marry and abandon the land allocated to her? This practice is not meant to discriminate against girl children but to make sure that all land is put to good and maximum use. However, they are allowed to inherit their parents' land in the event that there is no surviving son."

"Only unmarried women with children can access land. However, women are allowed to inherit land upon the death of their spouses, parents or brothers."

"The area is still grey when it comes to inheritance. In most cases, the situation is simpler if there are no surviving sons. Then the girl children may inherit without difficulties but in cases where the deceased is survived by male sons, they usually inherit the land. The girl-child is allowed to stay on the land until they get married"

"The law has evolved in this regard. Section 9 of the Constitution provides that no one should be discriminated based on gender. In that regard, females have an equal right to access land and to inherit land just like their male counterparts. If the custom does not permit,

it must be repealed because it is contrary to the Constitution which is the supreme law of the land. Issues of inheritance have been expansively dealt with by our courts. Reference is the Shilubana case and the Bhe case. As a woman we need to fight for our rights.”

“Giving an unmarried girl access to land promotes promiscuity. An unmarried girl needs to reside with her parents so that they can protect and nurture her. This is part of our custom to preserve morality and to protect female children. Girl children are more vulnerable to abuse as compared to their male counterparts. In the same vein, not every unmarried boy child can access land. They need to be above 18 years old and with a good and justifiable reason. If that is the case, the male child would then approach the traditional leader in the company of his father and/or uncles to explain and justify the need for land. Only if the traditional leader is satisfied, is the land allocated.”

“The customary law succession issue was resolved in the Shilubana v Nwamitwa case. The Constitutional Court on appeal ruled that in the past it was not permissible by the Valoyis that a female child be heir, in terms of democracy and the new Republic of South African Constitution it is now permissible ... since she is also equal to a male child.”

“In the Bhe case, Justice Siphon Ngwenya held that the Black Administration Act was unconstitutional. He wrote that: ‘... a situation whereby a male person will be preferred to a female person for purposes of inheritance can no longer withstand constitutional scrutiny. That constitutes discrimination before the law. To put it plainly, African females, irrespective of age or social status, are entitled to inherit from their parents’ intestate estate like any male person. ... On the facts before us, therefore ... [Nonkululeko and Anelisa Bhe] are declared to be the sole heirs to the deceased’s estate and they are entitled to inherit equally’. That in my view settled the inheritance issue. In the present-day South Africa, everyone

regardless of gender and within the dictates of law is legally qualified to inherit a piece of land from deceased parents, husband or relative, in whatever the case maybe.”

Therefore, the interviews and FGDs uncovered that though there has been change regards land inheritance, the change is not significant on the ground. Women still feel left out when it comes to land inheritance. However, the law is evolving and the constitutional rights of women and children in the inheritance issue have since been addressed.

After establishing this aspect, the researcher asked the participants to express their views on how the inheritance issue impacts rural development and food security. Some of the participants indicated that customs pertaining to inheritance within the *Vha-Venda* communities harbour a positive effect on rural development and food security. The following quotes elaborate on their arguments:

“Our land tenure system provides for perpetual succession. This implies that my children will inherit this land of mine and all its development. In the same vein, my grandchildren will also benefit as such. Our family is therefore guaranteed food sustenance for generations. As you can see, we grow crops for subsistence and selling. I also have a lot of livestock, and well-built houses. This means I have established a base for my children to develop and also be food secure.”

“I inherited everything I have from my deceased father. He left me a house, cattle, sheep, goats, chicken, farming equipment and rich pieces of land to farm. I use this property to provide for my mother, siblings and my wife. I give credit to our customary practices of inheritance because wealth stays within the family. If for example, my sister had inherited my father’s estate, when she got married she would have been entitled to take everything with her. What would happen to us remaining at home and what would happen to her if she happens to divorce.”

“Our customary system of inheritance is effective for us the rural poor. The modern system of dealing with a deceased estate is expensive, complex and time consuming. One has to register the deceased estate, appoint an executor, conduct and edict meeting, do the inventory and adverts in newspapers and gazette then also pay the Masters fee. If you are poor, you end up liquidating the estate to raise the Masters fee and other expenses and that may leave you worse off. With our traditional system of inheritance, the process is simple and less cost effective. It guarantees continued sustenance, development and food security in the bereaved family.”

“When I die, my homestead and farming land goes to my wife and children. The land does not go back to the Traditional leader. My wife has a right to stay on the land and raise my children. They are guaranteed farming land and shelter. I think that is a positive development especially when it comes to being food secure.”

“Our inheritance system guarantees us secure tenure. The land is subject to perpetual succession; thus we are not afraid to invest long-term in the land. Testament to that is my homestead. I have built a beautiful home, I electrified the home and drilled a borehole. I connected an irrigation system to water my orchard. I supply supermarkets and individual people with fruits for resale. The good thing is I did not buy the land. I got the land from my father and I further developed it. I am told the land has been in the hands of our family for decades. My family is food secure and fairly developed. Tenure security is key to impact long-term development and I am of the view that our land rights are adequately secure.”

The responses by the majority of the participants clearly portrays that land inheritance has a huge impact on rural development and food security. People are not afraid to invest long-term if they are assured that their families would be able to inherit the estate upon their death. Also, the surviving spouse and children, will not be left homeless and destitute after the death of the spouses or parents.

On the contrary, a few of the participants argued that the *Vha-venda* inheritance system impacts negatively on rural development and food security. Here is what they said:

“Our inheritance system discriminates against women. An unmarried girl-child cannot access land in her personal capacity. This is regardless whether she has capacity to develop and invest on the land. Why should woman be defined through their husbands. Women have a lot to offer towards rural development and food security. If she has capacity to positively use the land, why deny her access just because she is female. That kind of mentality is hindering our progress as a people and community.”

“Women in our village have no incentive to contribute towards development and food security. There is too much pressure to get married. Even if you strive to develop your household, you will eventually leave the home going to your husband’s place. Therefore, your stay at your parents’ home is temporary. While at your husband’s place, you are regarded as a second-class citizen. The homestead technically belongs to the husband. Upon divorce high chances are you are sent back to your parent’s place. So, as a woman your stay both at your parent’s place and husbands place is always temporary, thus no motive to develop.”

“Most women and children become food insecure and shelter less upon the death of their husbands or parents. Relatives in the name of custom ordinarily chases the surviving spouse away, especially those who were cohabiting. The woman and the child will be left destitute. In most cases, these children would be forced to drop out of school for lack of resources. There is a need to educate rural people on their rights when it comes to inheritance laws. A lot of us, do not know the law nor do we have access to legal representation. We, therefore, resort to traditional systems of dispute resolution, systems which are predominantly patriarchal.”

The researcher noted that despite the significant efforts by the courts and legislators to develop customary law to be consistent with the Constitution, some people within rural communities still remain ignorant. Thus, they fall prey to unconstitutional practices by avarice relatives and spouses. However, what was conclusive is that land rights in rural Vhembe district are inheritable. The land rights are subject to perpetual succession. Everyone is qualified to inherit land regardless of gender. Lastly, the researcher noted that the inheritance system according to the participant's submissions is deemed to be sufficient to realise rural development and food security, though there still exist some grey areas that needs to be attended to. Therefore, there is a serious need to educate rural indigenous peoples their rights according to law to ensure that they are not taken advantage of because of ignorance. The issue of inheritance gave rise to the issue pertaining to the legal protection of customary tenure rights. The issue sparked a lot of debate especially when it came to the aspect of women inheriting land upon the death of their husbands and/or parents. Thus, the following section dealt with this issue in more detail.

6.5.3 Legal Protection of Customary Tenure Rights

Simić (2018: 25) defines legal protection to mean “that benefit or safety which the government affords to the citizens”. In this context, the section endeavoured to examine the legal protection that is given to communal land holders against third parties. This was crucial to respond to the alleged tenure insecurity issue. The general notion as was depicted in literature review, was that customary tenure rights are legally insecure, thus a threat to rural development and food security. Okunlola, Ngubane, Cousins and Du Toit (2016: 48) indicated that:

“Rural people are facing critical times when all people are free ... Facing a chain of taxation, being in the position of losing rights of land without compensation, put on the street as wild animals, treated not as South Africans, forced with custom which comes from apartheid boundaries, women are not encouraged to participate in all matters freely.”

A few of the participants in the FGDs were asked to explain their understanding of legal protection. This is what they said:

“Legal protections are laws and other official measures planned to secure individuals' privileges and opportunities. Legal protections allude to guarding a person or thing. Through protection, we protect and shield things. Since protection is to safeguard from hurt, protection is the demonstration of doing as such.”

“Legal protection basically entails that your rights are protected and recognised at law. In other words, no one may arbitrarily interfere with your rights except through a legal channel.”

“Legal protection extends to both a natural and/or a juristic person. It implies that the person's rights are recognised and enforceable at law. In the event of interference or breach, the right holder may approach the courts for a remedy. What this means is that no one may pierce through such rights except under legally justifiable reasons endorsed by a Court of law.”

Following this background, customary land holders and certain legal experts were asked if customary land rights are legally protected. The participants held different views in this regard. A majority of the participants argued that customary tenure rights give de facto security to landholders, however, commonly lack legal enforceability and marketability, best presented by freehold or long-term leasehold titles. In any case, they further stated that these land rights with a couple of developments, are adaptable and low-cost strategies for making land rights legally enforceable, however they are regularly less effectively marketable than freehold or leasehold.

These participants further indicated that in certain conditions perceived tenure security can be higher under informal, responsible local bodies than corruptible and weak statutory tenure system. Their argument was hinged on the conjecture that with appropriate administration customary land rights are realistic to expand tenure security in rural areas and unblock the process of urban planning, land taxation and infrastructure provision. The following quotes represent some of the verbatim responses that were given by the participants:

“I was born on this land in 1976. I also birthed my children on this land. All this time we have never been disturbed or threatened with

eviction. Instead, the municipality in conjuncture with our traditional authorities connected us to water and electricity. Therefore, I honestly do not understand the fuss about customary land rights being insecure. In my view, customary tenure is not really less secure than formal tenure as opposed to the general supposition held by the vast majority.”

“Tenure security/insecurity are about land administration. It is the core function of land administration to protect individuals' tenure rights and to mediate disagreements. Thus, a land administration framework that neglects to execute these capacities fair-mindedly or does this inadequately, is well-suited to be a wellspring of insecure tenure. This is whether or not the tenure framework is formal or informal or whether the administration framework is customary or statutory.”

“Traditional leaders are recognised and respected in South Africa. They represent the interest of their people in governance. Therefore, the government cannot arbitrarily work up one day and appropriate customary land. This explains why communal people have been occupying these lands since independence. Furthermore, the Constitution will not permit the government to arbitrarily interfere with customary landholder's rights living them shelter less. That is a violation on the right to human dignity, shelter and the right to property. The courts have been seen to protect customary land rights in the past by interdicting unwarranted and illegal invasions or evictions.”

Extrapolating from the above quotes, the majority of the participants are of the view that security of tenure is not embedded in titling but has to do with good governance and administration systems. These participants are of the view that customary tenure is secure in its own right. Therefore, what is pertinent is to ensure that the administration and governance is transparent, effective and systematic. Therefore, the solution is not in titling but in good administration. These submissions by these

participants matched the arguments by Domeher and Abdulai (2012) who argues that tenure security is all about an individual's confidence of the right. He states that:

“In every human society, challenges or disputes are bound to occur over landownership, but with security, these rights should be protected and enforced. Security is thus about the exercise of one's rights without the fear of unnecessary interference or fear of forceful eviction” (Domeher & Abdulai, 2012: 56).

On the contrary, a few interviewed participants indicated that customary tenure rights lack adequate legal protection. They stated that freehold unlike customary tenure gives solid legal frameworks to forestall land snatching post-titling, and solid administrative frameworks to guarantee land transactions are effective and dependent on reasonable valuations. Some of the participants from the FGDs further discoursed that without formal state recognition, customary tenure rights do not have the advantages of legal enforceability, denying administrations of significant income streams from land and property tax assessment.

The interviewed participants in this regard stated that customary tenure rights confine the marketability of land in two different ways. To start with, without formal lawful recognition of new ownership, purchasers and banks may not be certain that their full rights to land will be regarded the predominant informal authorities. Second, without the openly perceptible record of land transactions and the notable valuations that a very much managed formal land market can provide, informal land transactions neglect to produce the basic information on market prices that is fundamental for a well-working land market.

Lastly the participants further stated that under freehold tenure, unlike under customary tenure, a private proprietor, for example, an individual or organisation, has full and unending rights to develop, collateralise, and sell the land they own. Under long-term leasehold tenure, a landowner, ordinarily the administration, gives a lease passing on such rights to a leaseholder for a period regularly enduring 49-99 years (Pienaar, Johnson and Du Plessis, 2019). Whenever accompanied by well-working legal and administrative frameworks, freehold and long-term leasehold titles are the best quality standard of land proprietorship.

The submissions by the participants confirm that customary land-holders in Vhembe district regard customary land rights legally secure and/or protected in their own right. However, some of the participants raised issues that warrant development. This section was pertinent to respond to the supposition that customary tenure rights are not legally secure and/or protected. The next section will present and analyse the participants' views and understanding of land dispute resolutions in Vhembe district.

6.5.4 Resolving of Land Disputes

The section looked into traditional land dispute resolution mechanisms in Vhembe district. This was crucial to gauge the remedies available to landholders upon interference. It was not enough to ascertain aspects of legal protection without examining the traditional method of enforcing land rights. As indicated in chapter two, the study was underpinned on theoretical frameworks that encourages adopting and developing African solutions to African problems. In that regard, it was crucial to examine the enforceability of customary tenure rights in an African perspective, hence the discussion of indigenous conflict mechanisms.

The interviewed participants were asked to describe the dispute resolution system within Vhembe. They indicated that indigenous resolution mechanisms use local actors and traditional community-based judicial and legal decision instruments to oversee and resolve clashes inside or between communities. In describing the process, the participants discoursed that when a land dispute arises, the aggrieved party approaches the traditional leader to lodge a complaint. The issue is tried at the instance just of the victim or the victim's representative. The traditional leader will then set a date for the hearing. The traditional leader after that summons the alleged perpetrator to attend the hearing. The traditional leader presides over the matter usually in the presence of *makhadzi* and the Royal council.

A traditional leader is additionally given exhortation from his senior male family members. They mediate with the traditional leader if a man feels aggrieved by some action or decision of the traditional leader. The traditional leader announces the verdict after seating on the matter and consulting with the royal council and *makhadzi*. The participants also indicated that the traditional leader's ruling should be respected and abided with. The duty of the traditional leader is not simply confined to participating in

conflict resolution mechanisms, yet in addition to envision and, in this way, intercept conflicts. The traditional leader does not get paid to seat on a matter but rather as per custom, one is required to bring along *nduvho* when approaching the traditional leader as a token of appreciation and respect.

Once a verdict has been issued, the losing party has the obligation to abide by the ruling. However, if either party is not satisfied with the ruling, (s)he must appeal to the Magistrate Court. The Magistrate Court will then hear the matter *de novo* (afresh). However, the traditional court has no jurisdiction to hear criminal cases regardless of whether the issue is emanating from a land dispute. A criminal wrong incurs the intervention of a Magistrate court. The participants were asked to comment on the aspect of traditional courts and if they regarded them as adequate to resolve land disputes, to protect and enforce their land rights. Below is a representation of quotes that elaborate on responses given by participants who were in support of traditional land dispute mechanisms.

“A criminal wrong incurs the intervention of a traditional court, not really that of the traditional leader which is at the pinnacle of the dispute resolution or adjudication structure. This is ideal especially for us rural people because the said traditional leader would be well informed of the facts of the case, considering that (s)he was involved in the land allocation process. Therefore, their judgment is motivated by reasons that are not detached to the issue in dispute.”

“Traditional courts have a significant favourable position in comparison with different types of courts in that their procedures are generously informal and less scary, with the individuals who use these courts being quieter in an environment that isn't premonition.”

“The headmen or traditional leader who preside over customary courts are commonly charismatic and acquainted with the populace that use the courts, are respected to a degree that judges are not, play an active role in the proceedings and are not timid to recommend mediation at practically any point in the proceedings susceptible to that form of resolution.”

“The jurisdiction of traditional leaders in our village is strictly territorial and is bound to people occupant to a chieftdom, paying little heed to their ancestral alliance. Jurisdiction is likewise naturally presented by reason of the litigant being inhabitant within the area concerned. This implies that the process is cost effective, considering that parties obtain redress within the community concerned. Secondly, they are high chances of finding a lasting solution, since the Traditional leader has a direct connection with the people.”

“Traditional courts are simple and cost effective. Parties ordinarily represent themselves, so there is no need for fancy expensive lawyers. Secondly, no fees are charged for lodging a case nor for defending oneself. In the event of paying a fine, people are usually ordered to settle the fine with things within their reach like cattle, chicken, crops or even just an apology or returning the land to the alleged owner unlike modern courts which may warrant civil imprisonment or eviction in the event of default.”

Extrapolating from the above quotes, a majority of the participants interviewed were in favour of indigenous resolution mechanisms. They mentioned that they are cost effective, unsophisticated, gives a win- win situation to both parties in most cases and that the traditional leader at the helm of the court is mostly well acquainted with the issues in dispute. In this regard, the argument was that traditional courts are well equipped to deal with land issues, thus providing the land-holders with secure tenure.

However, a minority of the participants indicated that traditional leadership land dispute resolution mechanisms are flawed and inadequate to safeguard communal land rights. In verbatim these participants indicated that:

“These traditional leaders are compromised by need of material gains. This aspect of nduvho, despite its good intentions compromises the integrity of traditional authorities. We have seen instances of those who are rich obtaining judgments in their favour. For example, if I am involved in a land dispute with someone with the capacity to give the traditional leader a cow as nduvho, while I myself

bless him with a chicken, the person likely to win in this case is that with a cow to offer.”

“When it comes to land disputes between community members, those ones can be easily resolved. The issue is when the conflict involves corporate entities or mining companies. These leaders are promised a good stake or a handsome payment. Their judgment becomes compromised. I do not blame them because some of them are poor. The government have an obligation to ensure that our leaders are well taken care of to minimise the chances of being corrupted. They carry a lot of power and power that is not accompanied by wealth usually corrupts.”

“The weight attached to traditional courts is seriously compromised. This prompts people to disregard and undermine these courts in favour of white people’s courts. Why should I attend a hearing which I can simply appeal at the Magistrate court and it starts de novo? It appears traditional leaders are inferior in status to modern courts so rather we approach the courts with power than to waste time and resources attending a traditional court.”

“Traditional leaders are not legally trained. Some of them are not sophisticated enough to comprehend sound arguments. Just because someone is born royalty does not imply wisdom and intellectual soundness. To imagine that some are even dropouts or never attended school is a setoff. At least all presiding traditional leaders must be compulsorily taken through short legal courses to equip them to interpret and understand traditional laws, customs and policies.”

The submissions by the participants were embedded with mixed emotions. However, the majority of the participants indicated that traditional land dispute resolution mechanisms are sufficient and suitable for enforcing and preserving their land rights. This is in spite of the fact that a few of the participants criticised the resolution system as archaic and unsophisticated to comprehensively safeguard communal land rights.

6.6 Implications of Customary Tenure on Rural Development and Food Security

Building up from the previous section which laid a foundation on what constitutes customary land tenure, this section examined the implications of customary tenure on rural development and food security. This was critical to determine and recommend policy or law reform. By establishing the effects, the researcher was placed in a position to make relevant and well-informed recommendations on whether to overhaul the system in entirety or to simply develop the system to be compatible with emancipating rural people from poverty through ensuring their development to guarantee food security.

Verifiably and universally, as demonstrated in literature review, the prevailing contention gives off an impression of being that of the superiority of freehold tenure. This contention is/was made by scholars, colonial authorities, African elites, the World Bank (which keeps on giving subsidising to land titling ventures in sub-Saharan and North Africa), USAID (for example Egypt in 2000) and other foreign aid benefactors. Freehold tenure is introduced as a fundamental condition for expanded farming efficiency, access to credit, social cohesion, political stability and environmental sustainability. It is contended that transformation to freehold tenure will positively affect agricultural profitability since individualisation expands tenure security, which thusly gives farmers the motivating forces to put resources into farming production (Ayamga, 2012).

Then again, it is contended that customary/indigenous tenure frameworks, created to support subsistence farming, present an impediment to agricultural development and expanded efficiency/productivity (Saeed & Khan, 2007). Freehold tenure seemingly gives people guarantee to raise loan finance and, credit organisations will extend agrarian loaning as the flexibly cost of credit diminishes in light of the fact that the expense of loaning is decreased by improved credit value and higher insurance values (Payne, Durand-Lasserve & Rakodi, 2009) It is contended that individualisation and freehold rights lead to the development of an effective land market, which guarantees that land is passed to the most capable farmers and that tribal exclusiveness is broken down (Holden & Otsuka, 2014).

Despite what might be expected, it is contended that tenure security/insecurity are about land administration (Simbizi, Bennett & Zevenbergen, 2014). It is the core function of land administration to protect individuals' legitimate tenure rights and to mediate disputes (Patel, 2012). Thusly, a land administration framework that neglects to execute these capacities fair-mindedly or does this inadequately, is able to be a wellspring of insecure tenure (Aliber et al, 2004). This is whether or not the tenure framework is freehold or customary or whether the administration system is traditional or modern. Some contend that insecure tenure increases the vulnerability of communal land holders (Miggiano, Taylor & Mauro, 2010). It demoralises the productive investment that has ability to assist poor rural people to improve substantially.

From this background, it was pertinent to examine the implications of customary tenure on rural development and food security from the participants' unadulterated views and opinions in order to juxtapose such with what is contended in existing literature. As indicated in chapter two, the study was underpinned on a theoretical framework that endeavoured to unearth African solutions to solve African problems, thus the need to obtain the community's indigenous knowledge on the issues that were in context. Therefore, the submissions were presented in the following two themes that emanated from the discussions and interviews, livelihoods and customary tenure and investing in customary land.

6.6.1 Livelihoods and Customary Land Tenure

The section was pertinent to establish the implications of customary tenure on the livelihoods of rural people in Vhembe district. This issue raised much controversy during interviews and the FGD. This matched the submissions by various authors who argue that there has been much heated debate on the relationships between customary tenure and livelihoods (Zamponi, 2016: 1). Participants were asked to give their views on the implications of customary tenure on livelihoods (rural development and food security). Some of the participants indicated positive implications while a few outlined negative implications. The discussion was relevant to obtain the community's views and opinions on customary tenure.

6.6.1.1 Positive Implications

Small-scale farming in rural areas is efficient and profitable, according to the participants who argued for customary tenure based on economic efficiency and poverty reduction, and this is sufficient to mitigate or counteract urban and industrialisation biases. The participant's economic argument centered on the claim that small-scale farming produces more yields than large-scale capitalist farming on corporate farms because of the low transaction costs, particularly when purchasing communal land and supervising subsistence farm work in communal areas. Others made an increasingly political argument, arguing that allocating communal land to Black people is not only wise but also socially correct.

The interviewed participants discoursed that customary tenure system furnishes communal people of colour with access to land, increase their benefit base, give new surges of income from farming – or if very much developed from leasing and selling the land. Also, the participants reported that communal land managed by less privileged people will in general use all the more locally supplied services and inputs, consequently non-farm income increases. The participants also expressed the opinion that customary tenure lessens the severe land disparity in the country, a factor that impedes development and enhances rural livelihoods by granting rural poor people access to land.

Some of the participants who participated in the FGDs indicated that customary tenure run against the Eurocentric philosophy which unavoidably observes the triumph of industrialist agrarian relations over subsistence-oriented peasant production systems. Their thinking was inserted on the idea that South Africa ought to abstain from applying an oversimplified categorisation framework, given the diversity of livelihood strategies and class positions. The legislature must consider different hub of separation, which incorporates sex, ages, race, ethnic groups as reflected in the complex social cultural politics of processes of land reform, where various identities, identifications and senses of belonging are represented.

The submissions from the participants stated that as the freehold tenure system is not tailored to fit African issues and lifestyle, the administration should not be persuaded to impose it on communal people. As an alternative, the government need to support traditional practices for managing land. Because rural residents are accustomed to these methods and because they were historically disadvantaged, it was claimed that

this would significantly improve their quality of life. It was argued that a highly developed and replicated customary tenure would reverse rural people's marginalization and put them at the forefront of agricultural and development policies.

Participants also noted that customary tenure encourages a delinking from non-agricultural jobs, which enhances rural people's welfare and means of subsistence. They asserted that the bulk of rural residents originate from low-income backgrounds and are frequently forced to provide cheap labor on farms in order to survive. In any case, those who have access to communal land are in a situation to produce a harvest for both selling and subsistence. They gain self-reliance status as a result, which helps them flourish and become food secure in their own right.

The following quotes, offer some insights into the positive implications of customary tenure on rural development and food security. Every one of the cases highlights an alternate dynamic, and an alternate sense of how customary tenure fits into a more extensive picture of livelihoods change.

“I was born in Tshivhuyuni village. My parents influenced me, as they were skilled farmers. I married in Makwarela and built a good house in this village. We now have 5 children with my wife. I have managed to build this house, buy a car and I own several livestock through subsistence farming. My house is electrified and connected to water. I have 3 employees. Farming is my main occupation now, but I also offer transport services to other community members since I own a small lorry. I acquired my farmland through the chief 10 years ago.”

“I have never been formally employed, since I did not go to school. I am now over 80 years of age. I have always been a farmer and Blacksmith. I have worked hard on this land to educate my children. Two of my children are teachers, one is a lawyer and the last one is a mechanic.”

“Our livelihoods are much better compared to most people in urban areas. As you can see, we have electricity and water in our homes. We are not worried about losing our houses due to defaulting in payments. Customary tenure system gives us an opportunity to stay

in decent homes unlike people who stay in shacks (mikhuku) in urban towns. These people do not have access to fresh water or electricity. They are overcrowded and prone to diseases, for example this contemporary dreadful coronavirus. We have enough land to farm and live on. We also get assistance from CIVIC organisations and the government.”

“Currently it is a challenge when it comes to food security compared to the days of old. In our indigenous culture and tradition, agriculture was central to our way of way. In that regard, our land tenure system was hinged on obtaining land for agriculture. In those days every household were given a piece of land when they do plough maize-meal, peanuts, vegetables etcetera. After harvest, we would store our produce for years. We did not need to buy any food. We would look into our storage and kraals. We were food secure. With modernisation, today people are concentrating on building houses on those pieces of land than doing ploughing. Now we are faced with a situation where everything needs to be bought by money even tomatoes. This has made us food insecure. Most of us survive on grant money which is not enough. Modernisation has taught us to be embarrassed to go back to our indigenous ways of living.”

6.6.1.2 Negative Implications

There were others who argued against the researcher's findings, despite the fact that most participants acknowledged positive benefits of customary tenure on their personal development and food security. These participants claimed that a long-term process of development away from agriculture is on the rise throughout Africa and that supporting such exits and the expansion of alternative livelihoods, including rural ones, is more pertinent than investing in subsistence farming set up under customary tenure. These participants asserted that, unless combined with an extraordinarily generous interest in the development of non-agricultural enterprises, customary tenure based on smallholder farming makes little sense beyond temporary welfare relief reduction. The participants stated that anticipating development and food security under

customary tenure is merely a populist dream that produces no profits and perpetually reduces Africans to abject poverty.

Others argued that by focusing on peasant systems of agribusiness and emphasizing local markets and the development of community-based agri-food systems, a solution that never truly addresses past inequalities in land and money was presented. Therefore, Africans will purposefully and continuously remain impoverished and on the periphery of the economy. Each of the following quotes highlights the alleged ills of customary tenure on rural development and food security.

“Customary tenure creates rights that are not legally recognised in the corporate world. Thusly, communal land rights holders like me, cannot access formal credit or assistance to grow. Therefore, our capacity remains constrained and we are forced to remain small holder farmers who only grow crops for subsistence. This is not sustainable in the long-run. The world is evolving and as a communal people we also need to adapt and acclimatise but this is not possible because our land tenure system remains engraved in archaic principles.”

“Small holder farming alone in the communal areas will not suffice to economically emancipate us from poverty. We need to be able to use our land to create access in other off-farming enterprises. However, with customary tenure, we are not allowed to use the land as an investment capital. You cannot sell the land; you cannot mortgage the land or even lease it out. This is a major disappointment that is associated with customary land. If communal Africans are serious about development and food security, we must push for reforms in our communal land policies. Land is extremely valuable to use only for residential purposes and subsistence farming.”

“Customary tenure lacks proper procedures and systems in its administration. The chiefs who are the custodians of the land fail to keep proper records of land allocation. As a result, they are always dangers of double allocation and land conflicts. You would find that

someone who have lived on a piece of land for a long period one day faces eviction especially in instances where the other party is high and mighty. This continuously threatens our development as a communal people.”

“We lose our natural resources to outsiders and foreign companies because we do not know what we have. When giving away land our traditional authorities do not follow due diligence. Some of the lands are rich in minerals and we only realise it after the land has been allocated to big corporate companies. In most of these cases, as a community we lack resources to fight them. In some cases, people are allocated wet lands as residential areas. No wonder why we have a lot of flood cases in this area. This hinders our development as a people and consequently threatens our food security.”

“Our traditional leaders take advantage of customary tenure. They sometimes issue this land to mining companies and other big corporates without consulting the community. They in turn receive financial gain at the expense of the people’s welfare. They use these proceeds and payments for their personal use and that of their families. However, it is us the people who will be forcefully evicted without consent. In some cases, these intended developments will threaten our existence as a people. They destroy our water streams, pollute our environment and expose us to various diseases.”

The submissions by the participants on the aspect of rural development and food security above, clearly demonstrates that customary tenure has the capacity to bring development and food security to the communal people. Several reasons have been submitted why the participants hold this view. To mention a few, the participants indicated that the system is flexible, accessible, affordable and they are able to comprehend it. However, a few issues against customary tenure were also raised. These included among others, corruption and abuse of the system by traditional authorities, lack of access to formal credit and investments and absence of due diligence when allocating land. No doubt these issues require immediate redress. This discussion in context connected with one of the burning issues that arose during the

interviews and FGD. The respondents mentioned Fundudzi and Tate Vondo as one of the issues that reflects on the implications of customary tenure on livelihoods. It was therefore pertinent for the researcher to ask the participants in the area to express their views on how the Fundudzi proposed mining project affected their development and access to food security.

6.6.1.1 Fundudzi/Tate Vondo

The researcher interviewed participants on the sacred lake Fundudzi and Tate Vondo forests. The case was pertinent to this study because it demonstrated the conflict between government structures and traditional communities concerning customary tenure rights. The analysis of the case was pertinent despite the fact that Fundudzi is a lake. The basis of the analysis is engraved on the fact that the Fundudzi river is situated on communal land that is regulated under customary tenure. Therefore, its discussion was pertinent to demonstrate the undermining and interference of customary tenure rights by government officials and investors without regard to customary law practices and customs.

The analysis also demonstrated how the undermining of customary tenure impacts rural development and food security. In this case, the government awarded mining rights over Fundudzi lake and Tate Vondo lands without consulting the community and traditional leaders despite the fact that the lake and lands were situated on communal land governed by the tribal authorities. On April 4, 2018, Bongani Hlatshwayo, who works for the Limpopo directorate for mineral regulation, is said to have approved and signed the prospecting license. It likewise expressed that the regional manager would “approve the relevant Environmental Management Plan and sign the right on 25 April 2018”. In spite of the awarding of the prospecting licence, the community together with the traditional authorities and the Tshivhase Royal Council, refused to accede to the mining activities taking place. They insisted that Lake Fundudzi and Tate Vondo fell within tribal land and it was their duty to preserve and protect the sacred sites.

The participants claimed that the mining activities threatened the livelihood and well-being of the community members in the pretext of development. The Lake is situated in the Forest of Thathe Vondo. Lake Fundudzi and its environs is found in the northern piece of South Africa. It is situated in South Africa's northernmost Province, - Limpopo

Province. The Lake is located in Vhembe District Municipality. Under the Vhembe District Municipality are four Local municipalities of Musina; Collins Chabane; Makhado and Thulamela. Lake Fundudzi exists in Thulamela Local Municipality. Lake Fundudzi is located in the Southpansburg range of mountains. The lake measures 5 km in length and 3 km in width when full, normally after the seasonal rains (Rogerson, 2017). The southern half of Lake Fundudzi was a wetland. Below in figure 6.8 is a picture which showed Lake Fundudzi.

Figure 6.8 Lake Fundudzi



Source: Google image

The picture is showing Lake Fundudzi and the mountainous areas surrounding it.

The researcher asked the participants to explain Lake Fundudzi and the myths surrounding it. This was pertinent because it is alleged that the undermining of customary tenure and the spirituality that engraves it impacts negatively on rural development, production and health to mention a few. The participants indicated that sacrosanct Lake Fundudzi is a wealth of mythology and folklore. Some of the interviewed participants indicated that Lake Fundudzi was created by a landslide that

obstructed the course of the Mutale River. However, from a Venda point of view, Lake Fundudzi takes on a different meaning from present day geological propositions. Vha-Venda folklore and fables accept that Lake Fundudzi was made when a passing leper was declined food and asylum by community members at the Mutale River. The outcast reviled and/or cursed the town that therefore disappeared underneath the waters of the recently formed lake.

The lake and its inhabitant crocodiles just as the close by forest of Thathe Vondo, are viewed as sacrosanct by the *Vha-venda* people known as *Vhatatsindi* (the people of the Pool). This has linkages to their veneration of Lake Fundudzi. These people according to the participant's submissions are available in only three villages, Makuleni, Mulume and Tshilungwi, that are situated some distance from the shores of the lake. The participants also indicated that the Venda people link the lake with folklores and a hierarchy of ancestral beings. At the apex is '*Nwali*', the god of the Venda people before the effects of Christian preachers in this part of South Africa in the nineteenth century. According to their submissions, the *Vhavhenda* people believe that *Nwali* lives in a cave Tate Vondo, a sacred Forest toward the east of Lake Fundudzi. In addition, they discoursed that it is believed that when *Nwali* heads out from the cavern to Lake Fundudzi to bath this is accompanied by magnificent lightning and thunder. This is consistent to what Odhiambo and Manuga (2017: 17) said when they argued that "Folklore has it that when *Nwali* travels from the cave to Lake Fundudzi to bath, this is accompanied by awesome lightning and thunder".

The interviewed participants further stated that second in hierarchy from *Nwali* is the Albino Python god. The researcher discovered that despite the fact that the shading is yellowish-white, the Venda allude to it as "albino". This god according to the participants lives in the backwoods and slopes that encompasses the western and north eastern parts of Lake Fundudzi. The picture showing the albino python maybe sensitive, thus the researcher took initiative to warn the reader of its attachment. Below in figure 6.9 is a picture of the "albino python god".

Figure 6.9 Shows the Picture of the "Albino Python God".



Anyumba and Nkuna, 2017

The picture shows the albino python snake that the Vha-Venda people refer to as a god. The snake lives around Lake Fundudzi.

Some elderly community members interviewed indicated that there are also ancestral spirits that occupy the lake. According to them, the Venda chief and clan interpret the mood of the ancestors, purportedly by changes in the environment around the lake. Furthermore, the elders in the community further discoursed that there is the folklore of the Guardian White crocodile. What was of intrigue was that Lake Fundudzi has a sensible populace of 'ordinary' crocodiles. It was likewise asserted that there is no record in living memory of any attacks of people on the shore or in the lake by these crocodiles. For sure, those fearless enough swim with the crocodiles. Below in figure 6.10 is a picture showing a white crocodile.

Figure 6.10 Shows The Picture of a White Crocodile



Anyumba and Nkuna, 2017

The picture shows a white crocodile believed to be a guardian by the Vha-Venda people. The alleged crocodile resides in Lake Fundudzi. It is believed to be harmless as there is no case of attack recorded ever since.

The participants indicated that it was their responsibility as the Venda clan to be the spiritual custodian and/or overseer of lake Fundudzi. They stated that the Chief of the clan, is responsible to keep the Lake and its environment profoundly spiritually clean and will ward off people and improvements that (s)he thinks about inconvenient to the spiritual upkeep of the lake. The Chief with his/her group is responsible for making blood penances to the divine forces of the lake and sacrosanct woods (Anyumba and Nkuna, 2017)

At the point when the researcher showed up at the lake in the company of certain elders in the community, the seniors demonstrated that it was custom that upon arriving at the lake for the first time, one was committed to bow and expel a strand of hair from one's head, which was to be tossed into the water as a method of offering respect to the ancestors. The researcher noticed the conviction and authority that was engraved in the elder's eyes and voice when explaining and giving instructions. It was

clear that they knew and understood what they were talking about and they believed in what they were saying. Therefore, the contention was that traditional leaders must be consulted first before interfering with communal land, so that they may first appease the ancestors.

After obtaining background information on Lake Fundudzi and Tate Vondo lands, the researcher proceeded to ask the participants what they knew and understood concerning the intended mining activities on Lake Fundudzi and the surrounding lands. The participants indicated that Lake Fundudzi and the Thathe Vondo communal lands are perceived South African treasures, ensured by the legislature under the National Heritage Resources Act. Be that as it may, since April 2018, with the endorsement of the Department of Mineral Resources and Energy, a mining organisation has been prospecting for diamonds, gold, coal and platinum — which it has now evidently found. The participants further indicated that they knew close to nothing of the prospecting licence, a reality that renders it all the more unlawful. They stated that they were never consulted prior to the issuing of the prospecting licence.

One of the interviewed traditional leaders proclaimed their goal to end the mining venture on the shores of Lake Fundudzi and in the Thathe Vondo communal lands. In verbatim he said:

“It is critical to us to desirously guard this place. We need to preserve biological diversity by reinforcing sound ecosystem management. Regarding easing indigence, we have to equitably share the advantages of ecotourism between local communities and indigenous people, which would be accomplished by acquiring their educated assent and full investment in planning and management”.

A certain participant weighed in and discoursed as follows:

“All over rural South Africa, mining companies have been exploiting apartheid-era customary laws by bribing officials and paying off chiefs. They simply approach traditional council members who are amenable to selling out their people for a fee. The rural people enjoy zero benefit from the mines that would be sunk on their land. This

trend must stop. In that regard, we as a community will not seat and relax while our future livelihoods are being threatened.”

The participants were asked if they had seen the mining prospecting licence. All of them responded in the negative. However, they made it clear that they were not denying that the mining prospecting licence was authentic. What they verified was that Lake Fundudzi and Thate Vondo lands falls within ancestral land located within their region and that it was their duty to ensure [the] national heritage buffer zone as proclaimed by the government in 2014. The researcher asked the participants if the local community had given its consent or if not, would give its informed consent to the licence. The participants were forthright and blunt.

“The appropriate response is NO. We could never agree to Mammba Metal Group mining in the Lake and Thate Vondo. This lake and surrounding lands are sacred to us since well before the white men showed up with their science and their maps. We have never required ecologists to reveal to us that starvation would follow if lake Fundudzi and Tate Vondo communal lands were desecrated or destroyed. Lake Fundudzi and Thathe Vondo communal lands have served endless ages as Venda's regenerative spring from the focal farmlands of the plateau to the untamed bramble in the low-lying east.”

The researcher proceeded to ask the participants the following question:

“How do the intended mining activities impact your livelihoods and would you consent to any other alternative developments on the Lake and communal lands?”

A majority of the participants raised negative ramifications. They demonstrated that the area has no less than four river sources. These were the rivers which offer everyday livelihoods to the number of inhabitants in Venda. Along these lines, it was their duty to save biodiversity in totality. A representative from Dzomo la Mupo — which signifies “to speak for the natural world” — demonstrated that the ancestors had now been slighted in the most noticeably awful conceivable way (Odhiambo and Manuga, 2017). In the same vein, one elderly participant in one of the villages said:

“Thathe is the most noteworthy pinnacle of the Southpansburg, so it is a significant catchment zone. However, with Lake Fundudzi, which is in that spot, it is additionally the most profound spiritual spot in the entire of Venda. It is the home of everything, the wellspring of all-encompassing life. If they mine in that place, we will have to give up. That will be the end of our livelihood”.

The researcher noted with concern the torment that was implanted in the participants when they were responding to the questions. It was clear they were making some hard memories handling the idea of mining exercises occurring on Thate Vondo communal lands and Lake Fundudzi. They seemed to have an enormous load on their shoulders. The elderly participant put me in contact with a couple of elders, two men from the clan liable for securing the sacrosanct lands.

"Mining?" said one of the elders "not in Thathe Vondo, I do not need mining inside."

The other elderly participant was similarly stunned, his voice trailing off into despair as he thought about how conceivable it was that Lake Fundudzi would be desecrated. He proceeded to say:

“The mine would more likely than not poison the rivers that streamed down from the mountain into the Kruger National Park, he stated, just as draw water from the Thathe Vondo dam and the lake itself, which would strengthen the suffering in an area attacked by dry season.”

Most of the participants additionally referenced the bleak endeavours at mine recovery in Venda, taking note of that Exarro's open-cast Tshikondeni coal mineshaft had for all time pulverized the dirt, water and housing of the encompassing community. One of the participants in the FGD had this to say:

“These mining activities always live some bittersweet memories in villagers. Villagers are promised development, employment and a better life. However, when operations begin, they are not employed and if employed they get inferior positions. The companies bring their own experienced and educated personal. The proceeds benefit the

company and SARS not us villagers. When the mining activities are complete, the land and rivers are left desecrated. For example, at Tshikondeni, everybody is crying. They allowed mining to take place and they are now worse off than they were before the mining.”

A certain legal practitioner interviewed in this matter indicated that:

“Obviously the local community has not given its free, prior and informed assent to the prospecting for minerals in the territory, which would make the licence unlawful according to the Interim Protection of Informal Land Rights Act of 1996.”

The community members equated Lake Fundudzi and Thate Vondo to religious sanctuaries and indicated that the intrusion was as if their Jerusalem temple was at genuine danger of being demolished. They indicated that in a world without Lake Fundudzi or the Thate Vondo Forest, it would not exclusively be them that would grieve but all indigenous people of South Africa. The researcher likewise noticed that a portion of the participants appeared to ensnare positioning individuals from the Tshivhase Royal Council in genuine indecencies, raising the likelihood that they were associated with the conceding of the licence. It was pertinent from these discussions that the majority of participants were against the mining development taking place. They feared that such an activity would destroy their source of water and would also desecrate their spiritual beliefs as Africans. They regarded Lake Fundudzi and Thate Vondo as a sacred place of worship, where they worshipped their deity. The place was more than just a source of water for the community members, but it was a sacred place which gave them an identity as African people.

The participants further stated that rainfall is relatively high in the land area and that the climate is generally subtropical. In this regard, the participants explained that the high rainfall in the central areas of Venda, where Lake Fundudzi and Thate Vondo lands are located have a high agricultural potential though the area is relatively underdeveloped. These participants stated that these lands are well suited to a wide range of crops, including sub-tropical vegetables and fruits under dry land conditions. They stated that this had been a critical aspect on them being food secure. The participants indicated that they used these crops for food and selling for income. In

return, they would buy food, send children to school and also develop themselves materially through building houses and many more projects. The participants also indicated that a lot of farmers had created their own irrigation systems on plots from the river. These farmers are engaged in intensive production of fruit, tomatoes and vegetables, with little or no help from the government. The participants further indicated that some of the people had accumulated large cattle herds and use these lands and waters for their cattle. Against this backdrop, the majority of the participants were against the mining development project. They held the view that the intended development had the effect of reversing the community development and also making them food insecure.

However, a few of other participants held the view that the mining activities had potential to develop the locals. Participants in support of the intended mining activities said:

“I think people are blowing this issue out of proportion. Our people are poor but they are sitting on top of wealth. These jewels if mined have capacity to transform the lives of the local people. The mine will create employment, will develop infrastructure in our area, boost the economy as all employees would seek local accommodation and groceries etcetera.”

“The local people should understand that this issue is bigger than them. It is a matter of national interest. These resources would benefit the whole of South Africa and Africa. The government must weigh between preserving the sacred site and keep it as a water source or the greater good the mining would bring not only to us locals but to the whole of South Africa and the African continent.”

“This case is a good example that shows the repercussions of non-coexistence and collaboration between traditional authorities and government structures. Both arguments raised by the traditional authorities and the prospective mining company and/or government are pertinent. We need to balance between upholding the sacred rights of the indigenous people and economic development. In order

to do this, both parties must collaborate and work together. With proper planning and discussions, I am quite confident, it is possible to avoid such impasse in future. This is now a question of power. The community maintains the Lake and forest falls within its jurisdiction while the government on the other side issued the permit without consulting the traditional community.”

“I do not think it is practical and economically sound to believe that the mining will be abandoned. It may be delayed but not disregarded inevitably. The problem is hinged on customary tenure rights. They lack security, thus the government can unilaterally interfere with such rights. I would want a law to be developed to protect communal rights and the interest of communal land holders. This would protect the communal people in like cases. In the meantime, I would propose a joint venture effort between the traditional leaders and the government to resolve this impasse. In a nutshell, I think with proper planning, environmental impact assessments and clear benefit allocation towards community members, the mining activity would develop the locals and make them food secure.”

“I think the effects of mining are drastic. After the mining, the lake and the forest would be desecrated beyond repair. The local people would suffer indefinitely. However, I am against the place remaining idle in the name of tradition, culture and myths. The government must work together with traditional authorities on how best to maximise on this place. We can bring tourism at the place. The local communities would be asked to guide the developments in order to preserve the sacredness of the land. The locals can even be employed on the site to act as tour guides and experts of tradition on the land.”

From this background, the researcher discovered the cacophony that is between traditional authorities, communities and government structures. The discord seriously affects the development and food security of communal people. It creates an impasse between the parties and some of these issues end up impacting negatively on the community people. In this regard, the participants appeared to recommend

collaboration between the government structures and traditional authorities before making a decision that affects communal land rights holders. In summary, the majority of the participants were against the mining activities. They indicated that such activities would destroy the communal lands and the lake. This would also destroy their source of water, thus would seriously impair their development and food security.

On the contrary, others argued that the intended project would improve the livelihood of the local people by creating employment and bringing business and infrastructure. However, what was not in dispute is the fact that there is need for collaboration and co-existence between government structures and traditional authorities on issues affecting communal land rights holders. Such collaboration would eradicate some of the conflicts and challenges and allow the parties to do due diligence on the feasibility and benefit of the intended project in the interest of local communal people. The case also showed the insecurity that is embedded in customary land tenure. The government can arbitrarily interfere with such land rights without first obtaining the consent of the tribal land holders. Therefore, there is an urgent need to develop policies and laws to secure customary tenure rights.

6.6.2 The Likelihood and Efficacy of Rural Landholders Investing in Land Over Which they have no Official Assurance of Persistent Use Rights.

The issue of whether communal land holders would invest in customary land arose during the interviews and discussions. The researcher was alive to the fact that this theme would ordinarily fall under the implications of customary land tenure. However, despite this clear characteristic, the researcher was of the view that this characteristic was critical since it discussed in depth issues pertaining to development and food security, thus deserved special mention. In this regard, the theme was discussed separately from the other implications of customary land tenure. However, this does not negate the fact that this theme is a continuation on the implications of customary land tenure. The researcher proceeded to interview the participants on the issue. This was pertinent to understand the community's views and thoughts on customary tenure. Further, the discussion was critical to examine the efficacy of customary tenure as a tool for rural development and food security.

One of the intermittent myths about communal land tenure in Vhembe district, according to the participants, was that investment has been huge in the communal areas: land is being sufficiently utilised except for small portion lying inert, individuals are focused on farming and infrastructure development. This is regardless the alleged impression of lack of order and asserted poor tenure security. The participants suggested that investment is anticipated to be disregarded in such argued conditions. In any event, this is far from the truth. Land clearance, cattle, farming equipment, transportation, and housing have all seen notable investments. Contrary to popular belief, concerns about tenure security do not seem to have prevented investment, except in a few limited circumstances.

The researcher saw that the investment carried out by people themselves, and without critical help from government or help organisations, is considerable, and gives firm establishments for the future. However, the researcher also observed that there is a minor section of participants who indicated reservations in investing in communal land. They stated that customary tenure rights were insecure, thus investing in such was too risky. Further these participants also raised some challenges that are limiting or hindering investment. The section started by discussing the views of participants who were of the opinion that opposed to conventional wisdom, issues of tenure security, do not appear to have sabotaged investment. The following sub-themes emanated from the interviews and discussions:

a) Land Clearance

The participants indicated that all communal land holders needed to explore a host of difficulties to get set up on their land parcel upon assignment by the chief. In many sites, the land had not been recently utilised for any cultivating or residential purposes, rather some had recently been utilised for extensive cattle grazing. For those wishing to set out on arable farming or residential purposes this involved considerable investment in clearing the land to set up fields and to assemble houses. Other participants showed that at first, they did not have the draft power for tillage purposes, yet they have since bought same.

Some indicated that they had done a large portion of the clearing by hand since they could not manage the cost of mechanical methods. Others employed physical work to

clear the land – including clearing the bramble and destumping. This spoke to an average investment in land clearance. Generally, the researcher saw that a considerable measure of land had been cleared over the study area. The majority of the land was being developed and cultivated. In verbatim the following quotes indicated some of the responses that were given by the participants in this regard.

“I learnt that no one wanted this piece of land. Everyone complained that the land was not conducive and favourable. The land was covered by a thick and scary bush. The area was also known to harbour dangerous snakes. When the chief allocated me this land, I was taken aback a little. I interpreted that he was just looking for a humble way of turning down my request. I also did not have money to hire people or machines to cut the trees. I worked with my two sons and wife to clear the land. It was difficult but we persevered. I used an axe and hoes to cut down the trees and uproot them. I remember we killed about two snakes during that time. As you can see, now we have our homestead on the land. We also have a garden that you are seeing. We are growing sweet potatoes and maize for subsistence and selling.”

“It is common cause that most of the communal land would be bushy during allocation. I had to hire a tractor to clear the land. At least I had received my pension benefits. I then used my benefits to prepare for my life during the retirement period. After that I built my house and prepared my fields. I also built a kraal for my sheep, goats and cattle. I would say it was a costly investment but worth it.”

“I am not formally employed. I survive through doing piece jobs. I am engaged by most of the people in this village to clear their land for farming and residential purposes. I have cleared most of the lands in this village. It is not easy to clear the land. It takes hard work and resources. It is rare for one to get a cleared land unless it is through inheritance or it is abandoned land.”

The discussion with the participants demonstrated that communal land holders invested in their land by clearing the land. Some had to do the clearing manually themselves and others engaged mechanical help to do so. All in all, this was pertinent to show that regardless the alleged insecurities associated with customary land tenure, communal land holders in Vhembe district do invest in communal land.

b) Infrastructure

The participants indicated that separated from the individuals who acquired and/or inherited land from their parents or spouses, a large portion of them needed to begin from scratch. A large portion of these participants indicated that truly they would develop houses with mud and poles. They clarified this was partially because of absence of tenure security. On the other hand, the researcher observed most improved housing and material. The researcher further observed that the pattern of investment in housing infrastructure correlates with success groups or social standing. Notwithstanding this, a greater part of the households was built of brick with iron or tile material. Mud and pole houses are presently basically utilised as outside kitchens and storage facilities. The picture in figure 6.11 below shows an example of a mud and pole thatched house that was being used as a kitchen.

Figure 6.11 Thatched Kitchen



Source Picture captured by researcher during data collection

As indicated in this picture, the main house is made of brick and zinc roof. The kitchen outside is made of cheap mud bricks, while it is thatched with grass.

In other exceptional cases, thatched houses had been modernised and looked perfect and exquisite. The participants indicated that in the course of recent years an impressive interest in housing infrastructure happened. Given the expenses (counting both work and materials) the investment into infrastructure has been gigantic. The researcher observed that most of the communal land holders had built expensive and exquisite mansions. The picture below in 6.12 shows one of the houses observed by the researcher during data gathering.

Figure 6.12 A Modern House in The Communal Areas Under Study



Source Picture captured by researcher during data collection

The picture shows one of the modern houses built on communal land in Vhembe district. The house symbolises a huge investment as it looks spacious and expensive.

The researcher had the liberty to interview a certain traditional leader and community members on this issue. The participants responded as follows:

“I feel secure and content on my land. Since I was born, we have never been bothered or threatened with eviction. This our land and

the government understands and appreciates that. I spent a huge sum of amount building this house. It took me a few years to finish it since I did not have a lump sum. I am proud of myself and my family. We have a decent house that is well furnished more than some of the people in the urban towns.”

“We have people working in the government who also reside in this village. They are also investing through building nice houses. Even our traditional leaders also own nice and big expensive houses. This goes to show that we are not afraid of investing in the land. I am surprised to hear on television and the news that rural people are afraid to invest in communal land because of insecure rights. If you look around you, do you see people who are afraid? I am actually in the process of trying to secure another stand to build a house for my son.”

“To us Black people, I don’t think we regard communal land rights as insecure. We have lived like this since the beginning. This is our own unique property law system. The only problem begins when we try to explain and see things from a European point of view. Why should we wait for someone coming far away from the West to tell us whether our own systems and laws are good or bad? To us communal people, these land rights are as secure as they can be. We are not influenced by the white people. We believe in our system and we will continue to invest in it. I have a big beautiful house that I have built on my land.”

The participants likewise indicated that the Thulamela municipality in conjuncture with traditional authorities had been additionally putting resources into these communal lands. The participants indicated that their houses had been connected to electricity. The process was done by the municipality in a bid to develop the communal areas. One of the participants said:

“I am so grateful to our government. Life was hard without electricity. we would struggle to connect with the outside world. Now we are able

to watch television, listen to the radio and even access internet. We are also able to furnish our houses with modern things. Above all, electricity is relevant for development. We are able to also do certain businesses that we could not do in the past because of lack of electricity.”

“I have heard about the argument of insecure communal land rights. Come to think of it, if communal land rights were insecure, why would the government invest in the land. We are now connected to electricity, water and sanitation projects are underway, tarmac roads are being constructed. Why would the government do all this, if our land rights were temporary? This is a white man’s way of trying to discredit Black people. The problem is that Blacks have lost their identity and believe every European explanation is right. I do not agree to this notion and I insist that communal land rights are secure.”

Below is a picture in figure 6.13 showing electricity poles.

Figure 6.13 Electricity Poles



Source Picture captured by researcher during data capturing

The picture shows some of the electricity poles connecting electricity to the communal households in Vhembe district.

In a similar vein, the participants additionally confirmed to the researcher the development of tarmac roads. One of the roads was at that point in stage two. These roads as indicated by the participants, empowered the communal land holders easy access to their homes just as towards the transportation of their agricultural yields. Further, the participants showed that every one of these investments by the municipality expanded the valuation of their properties.

Notwithstanding these investments at a family level, the participants likewise told the researcher that others have additionally occurred at the community level. These are similarly great. Over the study sites, schools, places of worship, markets and different structures have been assembled. The participants demonstrated that the endeavours in building the schools and all the aforesaid infrastructure sanctions the security that is implanted in communal land rights. These investments are considerably progressively hard to assess, however are huge, and again proof of the responsibility of communal people and government structures to improving their territories paying little mind to the supposed tenure insecurity. Below is figure 6.14 and 6.15 showing one of the schools in Vhembe district.

Figure 6.14 Name of The School



Source Picture taken by the researcher during data collection

The picture shows Tshivhuyuni primary school. The picture proves that not only communal people invest in communal land but also the government does invest.

Figure 6.15 Tshivhuyuni Primary School



Source Picture captured by researcher during data collection

The picture gives a more detailed view of Tshivhuyuni Primary School. The picture demonstrates the gravity of investments being done on communal land.

A certain chief that was interviewed on this issue said:

“Our village has three schools. Two of them are primary schools and one secondary schools.”

The submissions by the participants concerning the issue of infrastructure, proved beyond reasonable doubt that communal land holders and government structures together with other Non-governmental Organisations (NGOs) continue to invest in communal land regardless the alleged tenure insecurities embedded in these land tenure rights.

c) Farming Equipment

A larger part of the participants affirmed ownership of ox-ploughs on their communal land to cultivate their land. A correspondingly distinguished pattern is shown for the ownership of cultivators. The participants highlighted that cultivators as well as tractors are possessed by only a few people. The participants indicated that these are costly and not essential pieces of equipment, and acquisitions have been concentrated among not many rich households. The participants additionally showed that there has been an expansion in the ownership of scotch carts in the villages. Furthermore, the construction of tarmac roads and the significance of transport in the communal areas of Vhembe locale, permitting smallholders to transport harvests to business sectors, was reflected in the acquisitions of vehicles among the communal land holders.

In any case, the researcher noticed that not all have managed to invest. The participants indicated that the people who own scotch carts among the communal landholders among the communal households have more extensive advantages, as those without can borrow or hire. The researcher observed that the majority of the communal land rights holders demonstrated assurance to secure profitable cultivating resources. The landowners demonstrated that a large portion of this equipment were bought on cash and not through credit plans, and this was witness to the genuine commitment to farming shown by numerous communal land farmers. A certain participant indicated that:

“Across communal areas in Vhembe district, investment in equipment for farming has been significant. While there have been loan schemes for equipment, most farmers did not benefit from them. Instead they have used whatever resources they had – from farming, remittances or off farm work – to invest in productive assets.”

The participants discoursed that with all assets, the more noteworthy accessibility of equipment, transport, or dairy cattle implies that there are more extensive, aggregate advantages through sharing, borrowing and hiring arrangements. Taking every one of these collective resources thusly, the general estimation of the investments was colossal.

d) Water and Sanitation

The participants discoursed that at the point when the land was assigned to indigenous people of colour at first in the homelands, there was practically little or no water and sanitation infrastructure. This, according to the participants, proceeded considerably after independence in 1996. In the present-day, at the point when land is dispensed by the chief, the land is for the most part empty and denied of any infrastructure. The participants indicated that communal people in their villages used to depend on some small dams or constrained running water and latrine facilities that were built by the apartheid government.

Be that as it may, these were extremely constrained and for the most part group shared. Accordingly, communal land proprietors have needed to put resources into the improvement of water and sanitation facilities. Without outside help, this has solely been done through the communal people's own endeavours. The investments had been significant yet a greater part of the people were all the while battling, particularly when it came to latrines and running water. Notwithstanding absence of materials, resources and outside help, the people demonstrated a genuine determination to improve their sanitation facilities.

The interviewed participants stated that gardening is a critical piece of agricultural systems in the communal areas. Be that as it may, gardens need making, and fencing and water sources are required. The communal land holders have built gardens and fenced them with brushwood. For the reasons for water, the burrowing of wells and additionally boreholes had likewise been a significant investment across Vhembe communal areas. Other public wellsprings of water, (for example, dams and waterways) were similarly significant.

As of late, participants stated that the government and/or the municipality has likewise weighed in by investing into water and sanitation projects in Vhembe district. A few toilets and water investments have been implemented and some are as yet in progress. This affirms as well as reacts to the subject of whether communal landowners and some other investors would put resources into communal land. The picture below in figure 6.16 shows a water project underway.

Figure 6.16 Laying in of a Water Pipe



Source Picture captured by the researcher during data collection

The picture is showing Expanded Public Works Programme (EPWP) labourers laying a water pipe. In this picture a tender has been awarded to a contractor to connect the village to water.

The interviewed participants stated that they now have access to water through reservoirs. One of the participants indicated that:

“Currently, in this village we have three reservoirs where boreholes pump water. the community never runs short of water. Water is connected to every street, where the community members fetch water right at their gates.”

Below in figure 6.17 is a picture of one of the water reservoirs.

Figure 6.17 Water Reservoir



Source Picture captured by the researcher during data collection

The picture shows one of the water reservoirs supplying water to the village. This also served as proof on the investments being effected on communal land.

The researcher also observed that some of the households had more than one toilet outside. This prompted the researcher to inquire why. The participants indicated that some of the communal landholders had constructed blair toilets for themselves. The municipality subsequently introduced a project to build toilets for communal land holders. This explains why some households had two toilets while others had none. The researcher later observed a contractor that had been engaged by the municipality to do water and sanitation projects. They were busy digging and erecting toilets on each household. The participants affirmed they did not pay for any of these developments. The municipality was the one supporting these developments. Along these lines, as far as water and sanitation, the municipality demonstrated its readiness to put resources into the communal lands. Below in figure 6.18 and 6.19 are pictures showing the construction of latrines.

Figure 6.18 Picture of Latrine Under Construction



Source picture captured by researcher during data collection

The picture shows an EPWP worker constructing a toilet in a certain village.

Figure 6.19 Picture of a Completed Latrine Structure



Source Picture captured by the researcher during data collection

Picture shows a completed latrine structure. The latrine was built for a village household by the municipality free of charge.

The submissions by the participants in the interviews and FGDs positively responds to the question of whether communal land holders would invest in communal land. However, the answers go further to prove that, even the local government has been investing in communal land, despite the alleged tenure insecurity associated with customary land tenure.

e) Natural Resources and Trees

The planting of trees and the reception of indigenous soil conservation measures is another significant aspect of communal people's investment in the land. The participants stated that a majority of the people across the study area had planted trees, the vast majority of them fruit trees. Albeit few had put resources into conservation measures, nobody denied their significance. It was hard to esteem these sorts of investments, yet evaluations of the monetary estimations of trees and soil conservation if a more extensive thought of significant worth, past direct use, is taken. Below in figure 6.20 is a picture showing fruit trees on one of the participant's orchard.

Figure 6.20 Fruit Trees



Source Picture captured by the researcher during data collection

The picture shows an orchard on a certain participant's yard. The participant is investing in fruit trees. He is supplying mangoes to vendors and supermarkets.

The participant's indicated that the vast majority of rural Vhembe district is semi-bone-dry, encountering a variable climate with extraordinary occasions, for example, droughts, floods or rainstorms. In spite of this, the participants stated that communal farmers develop indigenous systems to adapt to these extremes so as to sustain agricultural production. To adapt to extraordinary climate, interviewed participants stated that communal landholders depend on rainmakers and traditional healers in drought years, open waste pathways to deplete abundance water during floods, burn incense to subdue rainstorms and lightning, at that point utilise the aloe plant, ashes and cow dung to control bugs and sicknesses. It was further said that farmers likewise invest in drought tolerant crops (sorghum/millet), varieties (yellow maize) to adapt to droughts; and practices, for example, intercropping and crop rotation to sustain soil profitability. To conserve soil and water, participants indicated that communal land holders utilise raised beds, mulching, early developing crops, gullies and ridges, earth dams and animal excrement in the gardens; while contour farming, zero culturing, fallowing, porches and animal manure are utilised in the fields.

Participants in the FGDs indicated that techniques, for example, zero tillage, porches, ridge, raised bed and mulching were received from science. While fallowing, contour ploughing, manure use, earth dams and rain-water harvesting are Indigenous Knowledge Systems. The participants stated that as Indigenous people groups are connected to nature. They discoursed that they form part of the earth wherein they live. According to their submissions and culture, the participants alluded that natural resources are viewed as shared property and are respected as such. By protecting and investing in natural resources, like rivers and forests, numerous indigenous communities help moderate the effects of environmental change. Since numerous indigenous people groups in the study area live in extreme environments, they have picked crops that have also have to adjust.

The participants further discoursed that indigenous people groups in Vhembe district often grow and invest native species of crops that are better adjusted to local contexts and are regularly progressively impervious to dry season, altitude, flooding, or other extraordinary conditions. They stated that, used all the more broadly in farming, these crops could help build the resilience of farms presently confronting a changing, progressively extreme climate. Indigenous people groups have adjusted their ways of

life to fit into and regard their surroundings. In mountains, indigenous people groups' systems preserve soil, lessen disintegration, conserve water and decrease the danger of debacles. In rangelands, indigenous pastoralist communities oversee cattle grazing and cropping in sustainable ways that protect rangelands biodiversity.

The submissions by the participants demonstrates the investment effected in trees and natural resources by the communal land holders. This is evidence enough to prove their attachment to communal land. The investment is invaluable and demonstrates the communal people's permanent residency interest in the communal land. Indigenous people groups in this context are invaluable partners in exterminating hunger and in giving answers for climate change. It is, therefore, arguable to submit that South Africa will never accomplish long-term solutions to climate change and food security and nutrition without looking for help from and ensuring the rights of indigenous people groups.

f) Livestock

The interviewed participants indicated that they have been investing in livestock. They disclosed that cows, goats, sheep etcetera have for quite some time been viewed as a wellspring of riches for some South Africans, that financial investors in the present-day are currently deciding to buy into livestock directly. One of the participants in verbatim said:

"I have yet to meet a Black man who does not want to own cattle."

The participants narrated that in communal areas livestock was regarded as a serious source of wealth and investment. They further opined that in the present-day, investors would even buy shares in a cow. Upon selling the cow, each investor would then get his share profit. One of the interviewed investors stated that:

"The meat is sold online, or through bulk wholesale to niche export markets, and the owner – or investor if you will – makes a return of between and 10% per annum. and 15% per annum from the sale of the meat."

The participants indicated that the essential investing strategy with livestock is to purchase at a low cost and sell at a lot higher one. The selling cost ought to be sufficiently high to cover both the underlying buying cost and every single other cost identified with raising domesticated animals to procure a decent benefit. The participants further stated that when putting resources into live cows, you have to take a gander at it as some other serious investment, which means you should begin with a field-tested business strategy. Concerning choosing the type of cows to buy, you can choose from beef or dairy bovines. In the event that you need to sell beef cows, angus bovines (Scottish breed of small beef cattle) sell at a higher price, making them an incredible option. Below in figure 6.21 and 6.22 are pictures of domesticated livestock taken during data collection.

Figure 6.21 Cattle



Source Picture captured by the researcher during data collection

The picture shows the investment in cattle by a certain villager in Vhembe district.

Figure 6.22 Pigs



Source Picture captured by the researcher during data collection

The picture shows one of the participant's investments in pigs for consumption and resale.

The following few quotes outlines in verbatim the responses given by the participants on this aspect:

“Historically as a Black people, our wealth is measured in livestock. When you invest in livestock, you are guaranteed almost 100% returns. This is unlike buying cars. A car depreciates in value, but cattle appreciates value. This explains why white people own hundreds of cows on a farm.”

“I own at least 30 herd of cattle, goats, pigs, chicken and donkeys. I invested in livestock because of the availability of grazing land in our village. When allocating land, our traditional leaders preserve certain pieces of land for grazing purposes. We also use the cow dung as manure to enrich our soil.”

“I invested in dairy cows. I supply fresh milk to individual people and supermarkets. I have survived on this business for years. I pay fees for my children through this business. In the event the cow is old, we slaughter it and sell or we can even sell it to butcheries. I then use the proceeds to buy more young dairy farms. I decided to venture into this business because of the availability of free access to grazing

land in our community. I was also awarded a big portion of land where I built my paddocks. This business is rare in Black people. Most Black people prefer cattle for milk not dairy. I learnt about the trade when I used to work on a white man's farm."

"I started a piggery project few years ago. The project is growing remarkably well. I now supply pork meat to the local general dealers and other individuals within the community."

The researcher observed that a considerable number of communal people had invested in livestock. Almost every household owned a reasonable number of cattle. However, it was not everyone who had invested in livestock. Some believed in building houses or buying other assets. Be that as it may, the observations of the researcher and submissions from participants in this regard showed that communal land holders were indeed investing in communal land. This was against the conventional thinking which posits that, investment is influenced or determined by the tenure arrangements. In that regard, the researcher proceeded to ask the participants their views and opinions on the nexus between investment and tenure security. Several responses emanated in that regard. The following discussion outlines the submissions posited by the participants in that regard.

6.6.2.1 Investment and Security of Tenure

After discussing the aforesaid, the section proceeded to outline the views of participants who argued that the insecurity embedded in customary tenurerights is a hindrance to any meaningful investment. The ordinary intuition by a portion of the participants set that, with more secure form of tenure (with freehold as the best quality level), then finance would flow.

Some of the interviewed participants posited that it makes sense to feel that the absence of an adequate document validating property rights in land is an obstruction to credit access and that programs that give individuals title to their property will, in this way, lead to an extension of credit access. It was further stated that bigger credits are normally founded on the use of land as insurance, and where banks require appropriately recorded records of real property ownership (regardless of whether deed or enlisted title) so as to conclude a loan transaction, an oversimplified conviction that

having a land title will make credit accessible to farmers and other underprivileged business visionaries, helping them move out of neediness, has formed expectations for programming to improve land rights. The participants emphasised that investors, academics and land tenure experts across the globe believe that land titling added to an expansion in access to credit for the rural poor and have since started underlining this result as defence for land titling projects. A certain legal practitioner interviewed said:

“The honest truth is that titling is essential in the corporate sector. In order to obtain capital or loan assistance from the bank, the applicant is expected to provide collateral. The bank requires assurance that the applicant would be able to reimburse the loan and in the event of default, the bank requires a fall-back position. This is purely business. The challenge with informal title is that, one cannot use such land as collateral security. A communal land holder only enjoys use rights and not ownership rights. This is contrary to freehold land. The owner of such may use such land as collateral. They obtain a loan which they would invest in their agricultural businesses.”

On the contrary, a majority of the participants alluded to the fact that in spite of the fact that there is genuinely all inclusive understanding among experts that while formal documentation of land rights does make a difference in the expansive plan of financial sector development, it is not adequate to realise increasingly quick access to credit, particularly for the rural poor. They opined that there are numerous other pieces (both as far as land rights and regarding financial market development) that should be in place. These other critical components, (for example, income level, accessibility of credit in the market, and viability of the borrower’s business plan) decide if one gets a loan and what the conditions of that loan are. A certain interviewed participant said:

“Sadly, while numerous or even most land tenure and property rights experts have since a long time ago left aside the simple expectation that issuing titles will bring credit access, this expectation is still very regularly heard among policy and programming decision makers, prompting to continued

unrealistic expectations and deficient grasp of the different manners by which improved tenure security and property rights systems can affect development outcomes—economic, social, and environmental.”

As appeared from the above discussion, the section tried to set up the connection between tenure security and investment. As had been examined all through the study, there had been a lot of much policy discussion around types of tenure, with solid contentions being made for formalising communal tenure courses of action so as to empower and build investment. The data from the study sites above is equivocal. The standard contention runs that, without formal tenure security – through freehold, on the off chance that not through leases – investment will not materialise.

This did not appear to be the situation as shown above through the data that was gathered. Investment was going on everywhere throughout the study sites under a scope of tenure arrangements, including customary land tenure, with houses being built, fields cleared and ploughed and heads being accumulated. The vast majority of the participants felt that tenure was secure enough and the probability of communal land being taken away again was little. The researcher observed this was a political judgment that depended on a trust in the government's promise to the irreversibility of the land reform – a commitment that has been adopted by the majority of the political parties in the Republic.

Nonetheless, all participants concurred that some fundamental policy clarity was required. In the event that communal offer letters from the traditional leaders were to be transferred into formal permits, at that point, communal people contended, this may permit them to acquire finance or formal credit. Post establishing that, communal land tenure arrangements are not necessarily a hindrance to investment. It became pertinent to also ask the participants to explain further on what they thought were the real issues affecting communal land use and investments.

6.6.2.2 Challenges Limiting Communal Land Investments and Use

The participants raised several issues that they contended limited communal land use and investment. This portion was important to comprehend why, if traditional tenure was not the reason for the lack of investment, as claimed by the participants, most rural communities remained underdeveloped and food insecure. The participants raised a number of concerns, which they claimed prevented efficient communal land usage and development.

i) Too Much Reliance on Government Assistance

Most of the study participants agreed that the reason the fields are left uncultivated is because people are too indifferent to even consider going to work the land. The participants blamed the government for creating a dependency syndrome in people. They claimed that instead of cultivating their property, people now feel entitled and rely on social demands and grants. Contrarily, some of the participants asserted that the issue is not really one of laziness but rather that people no longer have access to the same number of livestock they once did to perform the necessary physical labor and they lack other tools and tractors to be able to use the land to its fullest extent. A male participant reported:

“Our fields are eaten by the cattle as they are simply not utilised, the rivers get full and we cannot go to the fields and end up sleeping. We chose to quit using those fields in light of the fact that the cattle on the opposite side feed on the fields, so we quit everything.”

ii) The Land is Owned by the State

Notwithstanding not using the land, the majority of participants explained that they are unable to sell or lease it to those who could use it successfully. It was reported that communal land is held in trust, and residents only have the right to occupy it; they have no control over how it will be used. A certain participant said:

“Everything that we have counted here in terms of pieces of land that we share as the community, are owned by the state through traditional leaders. We only enjoy rights to use. However, we cannot even lease the property or sell. Therefore, we do not feel incentivised to develop the land.”

Another stated:

"Indeed, even the titles that we have do not permit us to sell land. The genuine titles are those of the people in urban properties in light of the fact that they purchased their property and have rights over it."

iii) Lack of Resources

In Tshivhuyuni just as the other two study sites, lack of money was referred to as one of the primary challenges to using the land since it affected pretty much every part of farming. Participants detailed the difficulties they had concerning cattle and farming equipment. One participant revealed:

"The reason behind why people no longer utilise their fields are on the grounds that we no longer have cows. Presently, people are jobless and cannot afford to hire tractors to plough the fields with the goal that we can have great harvests. We need to develop our fields, however, we do not have tractors, we have no money and people are jobless."

Another community member revealed:

"An individual gets R1000 from his/her old age pension or social grant. She needs to pay R200 for the tractor to plough the field. At that point the individual should hire five individuals to help and they charge R100 every day. So, those are examples of the things that dishearten people."

Regardless of the monetary challenges, a few participants said that the reason some of the fields were not being fully utilised was on the grounds that they were a significant distance from the village. For example, one of the participants reported:

"Let me respond regarding my own home. My home's fields are ... a distance from the village where I'm staying. So, our land is over the stream. As my parents grew older and weaker in terms of strength, they got incapable to go to the fields... This brought about our leaving our land neglected and seeing it as dead since it is far away."

iv) Lack of Unity and Communalty

Some participants suggested that the demise of the "Ubuntu" way of life was another reason why land was not being used. They claimed that the manner of life in which neighbours assisted one another, essentially through a practice known as "share cropping", had vanished:

"I would prefer not to state that the times are different, however, I should state that the spirit of Ubuntu does not exist with people any longer. We used to come together and help each other. However, these days each family has to provide for itself"

The participants stated that as Africans, we are required to be compassionate and be engrained in "humanity". A certain participant said the spirit of Ubuntu states that "I am because we are" thus, it is imperative that indigenous peoples in communal areas unite to ensure their development. Some participants emphasized that the share cropping practice was based on giving something in exchange for receiving something else. They supported a form of sharing that was increasingly selfless, such as giving without expecting anything in return. They explained that giving land to those with the capacity to use it without expecting payment is one way that it might be put to use:

"In a scenario that you have 15 hectares of land and somebody needs to use some portion of the land to plough, you could give him five hectares and he would use it and not share any of the produce in the end, yet it's simply to ensure that the land is being utilised. The problem is people feel entitled and expect payment if someone is to request using their idle communal land. If the land is put to good use, it would increase food security and development rather than the land to stay idle."

v) The Young People Are Not Interested in Agriculture

Some participants reported that cultivating gardens and fields needed physical strength that many people no longer possessed. As they could no longer till the land themselves as they once could, elderly participants said that they had grown more and more reliant on the help of others. They added that since the younger children in the

family were not prepared or willing to labor in the fields, money was needed to hire more help to work the land. According to one of the participants:

“In the olden days the people who tended to the field were our parents around our age. We no longer have the strength. Our children do not do much around the home and we find it hard to do what we used to do as kids. Some of the time we do not have the financial capacity to hire trucks to turn the soil and sow the seeds.”

A certain participant detailed comparably:

“This used to be the duty of the mother and father of the home. The issue that we have now is with the rights that have been given to our kids since when the mother and father are growing older the fields die. The children of the past generations would take over from the parents and proceed with ploughing the fields, as ... we never purchased food from the shops. We used to eat pumpkin from there. However, our youngsters now as we are ageing, they would prefer not to use the fields. They need to go play football. They put headphones in their ears. They reveal to us they need to eat rice and disclose to us that it was our time when we needed to plough and eat. This is the hour of the new age. ... they state, that is misuse.”

When solicited to clarify the young person’s lack of enthusiasm for farming, the participants revealed that there had been a change in the value that is put in land and its potential for food. They reported further that the more youthful age was languid and would in general look down on farming activities. They said that youth would like to get jobs in the urban areas and purchase food as opposed to producing it, and that even the people who were at home and jobless did not want any part in tending the land. One participant detailed:

“They are still young and fresh, however, they look down on [cultivating]. For instance, if we somehow do a survey on how many young people in our village are actually involved in farming, you will be surprised with how little the number is. Our youngsters look down on such a work.”

The participant proceeded to state:

“Something else they state is, ‘that was your time’. You see we used to get up around 3 am the point at which we were more youthful. We would yoke the cattle and head for the fields to plough. When we went to school we would have returned from the fields. We can’t do that to them now. On the off chance that they would prefer not to do it, at that point that is the finish of it since they have ‘rights’. That is the thing that has spoilt them. A child can decline to accomplish something unafraid of repercussion.”

A certain participant's contribution, which was made in response to a question regarding his lack of passion for working in the fields or garden, confirmed the idea that young people saw working the land as a sign of deprivation and something to be ashamed of. The young gentleman detailed:

“You get humiliated. For example, you may see your girlfriend strolling past and you would not need her to see you going into the field and getting filthy.”

A certain man detailed that it is not just the young ones who would prefer not to help in working the field yet in some cases the women are likewise hesitant:

“You are alone as a man. The women nowadays have made their hair pleasantly and can’t go to the fields to disturb their hairdo.”

However, other times during the focus group it seemed like women had an unfair amount of responsibility for working the land. Regardless of the obstacles mentioned above, several participants claimed that certain people were essentially too lazy to even consider farming their property, and that even with tools and assistance, these people would not consider working the land. Therefore, the main causes identified for the lack of investment in and usage of customary land were laziness, a lack of resources, a youth's lack of interest in farming the land, and a lack of a land title.

During data collection, the researcher encountered two cases that directly shed more light on customary tenure as a tool for rural development and food security. The section that followed discussed these case.

6.6.3 Observation

This section discussed the Makwarela case, Phiphidi case and one land case law observation. The discussion was pertinent to give a practical explanation on the ground on the issues that had to do with investing in customary and/or tribal land. The cases showed the conflicts between the government structures and traditional leaders and communities, the effect of non-co-operation and co-existence of municipalities and traditional communities and how this affected investment, food security and rural development. The case observation showed the effects of inheritance on investing in customary land. The researcher first discussed the Makwarela case and thereafter proceeded to discuss the Phiphidi case and lastly the case observation.

a) Makwarela Case

The researcher was advised by a certain participant through interviews that the Makwarela stadium which is under construction echoed some pertinent issues on customary tenure and investment. The researcher was then directed to certain knowledge holders on the site. The discussion of the case was relevant to illustrate the effects of side-lining and undermining customary tenure rights, traditional communities and authorities in projects executed on communal land. The researcher started by giving a background of the case. The stadium is situated in Limpopo Province, Vhembe district. The stadium was currently undergoing an upgrade. The participants indicated that the upgrade was under phase two. Some of the participants held the belief that the construction project was being hindered by African spiritual issues. A certain participant indicated that the contractor that was on site was not the contractor that was initially awarded the tender. The first awarded contractor had decided to leave the project on mutual grounds by the municipality. He had failed to execute the demands because he encountered many challenges.

i) How Was the Communal Land Allocated?

The researcher inquired on how the communal land was allocated. The majority of the participants stated that the land was customary land that originally belonged to the

rural Venda indigenous peoples. However, with modernisation, the land was now under the administration of the municipality. The participants further indicated that since the land is communal, the traditional leader and his council remained the custodians of the land on behalf of the people. They held the view that the municipality was solely responsible for administrative duties, for example service delivery. The traditional leaders similarly, in conjuncture with the municipalities were responsible for preserving culture, norms and practices.

The participants indicated the municipality owns the current project and it is the one that awarded the tender to the contractor to build the stadium. The participants held the view that in this regard, the municipality was obliged to have consulted with the traditional leaders and the community before commencing with the building of the stadium. The researcher further inquired on this issue, considering that the current project was an upgrade of the already existing stadium. The participants indicated that this was an ongoing undermining of culture, norms and customs by the government which continues to undermine customary tenure. They stated that this was the reason why the project was failing. The participants indicated that strange things would happen on site, sometimes there would be unexplainable mistakes and misunderstandings and all these issues defeated the project. Some of the participants even suggested that this whole confusion even extended to consulting engineers who would allegedly give wrong instructions that led to defective buildings. The researcher asked the participants if they knew the cause of all these problems. Most of the participants blamed the municipality for not consulting traditional elders and authorities, before constructing the stadium, thus undermining and militating customary tenure.

ii) Developments on the Land

The interviewed participants indicated that a sporting stadium is being built on the land. The building project is now towards phase two completion. The researcher observed that most of the infield work had already been completed. The athletics track was already complete; the soccer field was also complete. The researcher asked the participants their views concerning the development that was taking place on the communal land and its impact on rural development and food security. The participants indicated that in the process of building the stadium, it would benefit the

community through providing hired labour, equipment and accommodation. Also the participants indicated that the building of the stadium is bringing development in their area. One of the community members indicated that the stadium will attract people and investors from across the world. Another community member indicated that the community will benefit through running businesses like, selling sporting wear, accommodation and selling food during soccer matches. In a similar vein, a certain municipal official interviewed said:

“The building of the stadium has already started creating employment in the area. Remember this is a rural place with very few industries. Therefore, a lot of the people are not employed. Since we started upgrading the stadium, we have hired a lot of EPWP workers. We also created employment through hiring plant from the local communities. We are also making use of local service providers. All these measures are meant to ensure that the community benefits through employment creation. With this employment, families are now food secure and at the same time development is taking place in the area.”

One of the traditional leaders interviewed stated that, the building of the stadium is a welcome development. These kind of projects are critical for development. The stadium will bring in tourist in our land. People will come to watch soccer, do athletics and many other activities. Our children will also acquire employment through playing for the team that will be using the stadium. The building of the stadium has potential to attract other investors in the area. From these views, the researcher noted that the community was appreciative of the development project and also that the project had a positive impact on rural development and food security.

iii) Challenges Facing the Development Project

The interviewed participants indicated that the municipality did not consult the traditional leaders and community members before building the stadium. This was despite the fact that the stadium was located in a rural community under communal land. Therefore, the major conflict as observed by the researcher was the lack of collaboration and coordination between traditional communities and government structures, on projects taking place on communal land. There exists no nexus between

traditional communities and government structures for the good of the communal people. The majority of the interviewed participants indicated that the municipality disregarded customary tenure rights, thus, this conduct had negative implications on rural development and food security.

The majority of the participants interviewed stated that, had the municipality consulted and collaborated with the traditional leaders and the indigenous community, some of the challenges facing the development project could have been avoided. A certain community member said:

“With consultation, the municipality could have been either advised to build the stadium on a different land or a ritual could have been done to appease the ancestors before the construction project. However, this was not done and the stadium is being built on a community shrine. The ancestors are angry, thus, so many calamities are happening on the project.”

These participants indicated that the ancestors are angry as the stadium is being developed on a shrine. According to them, the ancestors need to be appeased and if the indigenous people continue being secluded, the project will suffer many setbacks. They even went further to state that even the contractor that was on site is facing serious challenges and was now out of time and on penalties. The participants narrated strange events that they alleged were occurring on the site.

A certain participant reported:

“There was a gentleman who was once employed here as a security guard. One day, he told us that around midnight, he saw people playing soccer in the field. He was surprised and attempted to take pictures and a video as evidence. Immediately his phone was snatched and smashed on the ground and broke beyond repair. The following morning, he resigned from work. He had only worked for two days.”

Another participant who was interviewed reported:

“According to the International Labour Organisation's (ILO) and the Indigenous and Tribal Peoples Convention (No. 169), indigenous people have a strong attachment to their land, for example the graves and sacred sites. These are the key areas. The Makwarela stadium was a sacred communal land of some sort because that is where they did their rituals even though it is not recognised as a sacred site. The land in the stadium also houses a national heritage tree. Whenever there is any development that wants to come, we cannot just move these people even by compensating with another place. That place would not have the same qualities. They do not have that heritage tree and this place was a deity and not chosen by human beings. The gods located it as their meeting place. In that regard, to just end up privatising the area after the commercialisation of the stadium deprives the community their connection with their deity.”

One of the community members, who was working on the project indicated that the development project was facing many spiritual challenges. The participant stated that the ancestors were not happy. The municipality had seriously undermined the community's culture and norms by disregarding the fact that the communal land upon which the stadium was being built belonged to the indigenous people of Venda. The participant gave an example of broken windows on the sitting bays of the stadium. The participant alleged that according to their understanding, the ancestors sent a strong wind to break the windows as a sign of their unhappiness. The following picture in figure 6.23 shows the broken windows.

Figure 6.23 The Picture Shows the Broken Windows



Source Picture captured by researcher during data capturing

Picture shows the broken windows.

This issue sparked debate among the participants. Some of the few participants argued that the windows broke because the contractor who did phase one had done a bad job, thus his leaving the project was justified. However, the majority of the participants blamed the municipality for angering the ancestors. They argued that all these problems were happening because traditional elders and authorities were not consulted before this project. According to them, all these alleged ills were caused by the ancestors who are trying to express their anger.

Be that as it may, it was later generally agreed by the participants that it is not possible to negate how the element of spirituality affects development. However, in doing so, the participants agreed that there is need to strike a balance from the developer's side to assess if there was really any defect on his part. This is because before they erected the structures, they did so through the consulting engineer's advice and guidance. In addition, one of the elderly participants reported,

“If it was only the windows incident we would say it was coincidence but if there is more than one incident to the extent of someone losing the project, it confirms that the spirituality issues are very much strong and should be considered when doing development projects especially in indigenous communities. We have seen huge Black mamba snakes on site, and we were told by the elders not to kill them as they are community snakes. There are also snakes in that

heritage tree. Only the locals see them, but no outsider has ever seen one in the tree. We have a place with the sound of flowing water, but we cannot see the water. Now the windows suddenly broke because of mysterious wind. The first contractor was struggling and decided to leave. Now the second contractor is pushing but also facing numerous challenges. He is now facing penalties as well. The project has over lived its lifespan. I believe all these issues cannot be coincidental but rather have a spiritual meaning.”

Generally, the participants stated that when undertaking development projects in indigenous areas, proper protocols must be followed, and indigenous people should be involved in every stage. They should be part of the development so that developers do not face challenges along the way. Indigenous peoples must be part of the development. They must feel like the owners of the development. Abandoning them invokes spiritual issues that affect the development.

iv) Implications of the Development Project on Rural Development and Food Security

The section discussed the implications of undermining customary tenure on rural development and food security based on the Makwarela case. The discussion above clearly demonstrated that the municipality neglected consulting the traditional leaders and the indigenous community despite the fact that the land upon which the development is taking place is communal land. Consequently, the development is taking place on a place alleged to be a shrine. This has caused the ancestors to be angry, thus the development project is facing many spiritual challenges. This has caused the project to delay completion.

The participants were asked to give their views on how these developments have impacted their community from development and how this had a bearing on their food security. A majority of the participants indicated that, if the municipality had not undermined customary tenure rights held by the community, thus, consulted the traditional leaders and the community, all these challenges could have been avoided. The undermining of customary tenure had resulted in delays in the development project and this has impacted them negatively since the municipality continue to pour resources in a failing project instead of channelling it towards service delivery. The

participants further stated that because of the development, they no longer have access to their ancestors. The ancestors were critical especially in drought seasons. They argued that when they wanted rain, they would go and consult their ancestors on the shrine to give them water. The development had destroyed their place of ancestral worship, something that has dire consequences on them being food secure. They lamented that who was going to intercede on their behalf for rain. Without rain, they would not be able to farm, thus, would become food insecure.

The participants also stated that the development project had exceeded its life expectancy. They also stated that some of the facilities were already dilapidated even before the stadium could be used. In this regard, they claimed that it was futile to regard the project as a development project. Some of the participants argued that had the development finished on time, it would have created employment and consequently the employed people and their families would have become food secure wherein the community would be developed. The participants indicated that they were not against development projects taking place. However, they insisted on the traditional leaders and the community being involved in development projects taking place on their land. They held the contention that the municipality or other development agents should not undermine customary tenure rights. The undermining of customary tenure, according to the participants would directly or indirectly affect the development and food security of the indigenous peoples.

On the contrary, a few of the participants argued that in some cases, for example this case, it was justified for the government to undermine customary tenure in favour of development. These participants argued that the process of consultation with the majority in most cases achieves nothing. These participants contended that ever since the development project started, a lot of people have been employed and their families now have food to eat. Also, the development was critical in ensuring that the Makwarela area is developed and attracts investors and new businesses. According to them, the alleged undermining was outweighed by the impending benefits of the development project. The case proved that the problem of underdevelopment and food insecurity is not hinged on people not investing in communal land, regardless of the alleged tenure insecurities, but rather on poor administration. Government structures

deliberately undermine traditional communities and authorities when investing in communal land.

b) Phiphidi Waterfall Case

During the interviews, most of the participants mentioned Phiphidi waterfall as one of the relevant examples on the challenges associated with customary land tenure, rural development and food security. The majority of the participants argued that the intended developments caused their suffering instead of development. In order to understand more on this issue, the researcher proceeded to ask more questions on the case. The researcher first asked the participants to describe the research area as well as their connection as a community with the research area.

i) What Was the Land Used for?

The participants discoursed that Phiphidi Waterfall is situated in rural Limpopo Province at the lower regions of the *Dzwaini*, South Africa's northernmost mountain range. They further stated that the area's seclusion from the remainder of South Africa has helped protect the traditional cultures and belief practices of its indigenous occupants. The researcher observed that the *VhaVenda* clans were broadly viewed as the native people groups of the area. Further, the researcher observed that they share a cosmology and culture that shape their society today, including initiation ceremonies for their young people, rich creative customs, and custodial duty regarding sacrosanct lands.

The participants stated that the Phiphidi communal lands were regarded as holy. The participants further discoursed that the Venda people believed that the land and water are home to the ancestral water spirits. Therefore, the land was not only home to the Venda people but a place to speak to their ancestors and pray for rain, health, peace and food. The participants stated that the land was regarded as the core of the Vhavenda culture and community. The Vhavenda people believed that the land should be respected and protected. In this regard, the participants discoursed that the indigenous Venda peoples believed that the land was sacred and if the land was destroyed, famine and diseases would result. Therefore, in a nutshell, the VhaVenda people used to reside on the lands and also used to use the lands and waters to speak to their ancestors.

The participants stated that among the *Vhavenda* clans, the Ramunangi were the recognised custodians of Phiphidi Waterfall and lands, a place that is fundamental to the tribe's connection with ancestral spirits. Phiphidi is situated inside a forested land on the Mutshindudi River and has a place with a group of close by sacrosanct lands that other *VhaVenda* tribes care for, including hallowed Lake Fundudzi and the Thathe Vondo sacred land. At Phiphidi, the participants indicated that the river, falls and encompassing lands are totally viewed as sacrosanct, and two explicit sites are viewed as generally holy: a rock over the waterfall, called *LanwaDzongolo*, and the pool beneath, *Guvhukuvhu*. Below in figure 6.24 is a picture of Phiphidi waterfall.

Figure 6.24 Phiphidi Waterfall



Source Google image

The picture shows the waterfall where the Vhavenda people perform their rituals.

The participants indicated that the community traditionally holds the belief that the waterfall and pool are inhabited by ancestral spirits who require sacrifices of grain and brew, which are made on *LanwaDzongolo*. These spirits get supplications from the people for rain, wellbeing, farming bounty and community peace. Customarily, these sacrifices were made consistently, with one essential and entangled yearly ritual that lasted many days. However, the participants stated that development pressures — especially the tourism and infrastructure — that started in recent decades undermine

Phiphidi Waterfall and the Ramunangi's capacity to access the lands and perform the rituals vital to their belief system and heritage. They further stated that the present difficulties are, to some degree, the inheritance of a tangled political history that incorporates tribal allegiance, colonisation, apartheid and democratisation.

ii) The Proposed Development

The elderly participants interviewed indicated that in 1980, the government proposed to develop the land into a tourist attraction centre. The government also constructed lodges and roads on the lands. The developments were intended to attract tourist. This was on paper a noble idea as it had capacity to create employment and rural development. The indigenous people would consequently, become food secure. The proposal was endorsed by the local tribal headman without the consent of the Ramunangi indigenous people. In verbatim a certain elderly participant reported:

“During the 1980s, the Venda Bantustan government chose to develop Phiphidi Waterfall as a tourist destination, building roads and installing public bathrooms and excursion areas, encompassed by a perimeter fence. This was completed with the endorsement of the local tribal headman, a solid supporter of economic development, who overlooked the protests of the Ramunangi. From that point forward, tourists have been allowed to openly meander the site — even the most sacred areas — leaving litter, stomping on vegetation, playing boisterous music.”

The participants weighed in and stated that the tourist conduct on the said lands is upsetting and disturbing the ancestral spirits. Of specific worry to the Ramunangi was that their consecrated site was much of the time utilised, in their words, as an "affection home" and the site is contaminated with condoms.

The government proceeded to grant the Ramunangi access to the sacred lands of Phiphidi waterfall without paying the administration fee, however they have been not able to completely perform their yearly September ritual — which customarily lasted numerous days and required continuous access to the waterfall, pool and rock edge — in light of the fact that authorities have been reluctant to close the site to vacationers for over a day. This is notwithstanding the fact that Phiphidi is lawfully part of a tribal

land trust that recognises communal ownership of the property. A certain participant reported:

“The indigenous people of Ramunangi have been on a number of occasions trying to bring their concerns to their local tribal headman and to the provincial heritage and tourism authorities but have been over and over again rebuked or disregarded. The community is never consulted and our request to obtain copies of the development plan always go unanswered.”

The participants further discoursed that to exacerbate the situation, *LanwaDzongolo*, the sacred rock over the waterfall, was totally destroyed to quarry materials for a road leading to a new proximate hospital. The development additionally damaged the encompassing communal lands and dirtied the river, over which the new road currently runs. The participants indicated that once again the Ramunangi were not consulted in the issue, and got no assistance from their headman or the local government. The participants reported that the destruction at Phiphidi has been wrecking to the Ramunangi, whose elders dread that the prosperity of their community and the environment is undermined in light of their failure to appropriately perform their traditional rituals, and in this way preserve the protective power of the site.

iii) Implications of the Development Project on Rural Development and Food Security

The Phiphidi development project had both positive and negative implications on rural development and food security. The discussion will start with the negative implications then thereafter, discusses the positive implications. The case uncovered that government structures deliberately undermine traditional communities and authorities when investing in communal land. In such cases, traditional communities would not support the projects and do not feel to be part of such. As a result, the projects end up being encompassed by variety of predicaments – predicaments that are detrimental to the welfare, development and food security of the communities.

The researcher observed that that most of the developments and infrastructure at Phiphidi waterfall continued to lie idle. Even researchers who come to do research were not even using the guest rooms. This also applied even to tourists who come to

the place. The researcher observed that one of the main causes of such was the lack of coordination and coexistence between government structures (investors) and traditional communities. With proper coordination and collaboration tribal land may be effective to bring about development and food security in traditional communities. In this case, the development was not benefiting either the community or the government. The government used resources to develop the area but is not accruing any income from the development. Similarly, the indigenous peoples were vacated from their land but have not accrued any material benefit from the development. Therefore, in this regard, it is reasonable to argue that the community remains underdeveloped and food insecure.

The majority participants who discoursed negative implications of the alleged development on the communal land opined that the ills brought with the alleged development project have contributed to their lack of development, food insecurity and ill-health. One of the participants reported:

“The alleged development is depriving us our sacred land. Our ancestors are angry with us. That is why we now have no or little rain which is causing us to be food insecure. How can we develop without the ancestor’s blessings?”

These participants bemoaned the government for disrespecting their religious and communal land rights. A certain participant indicated:

“The custodial obligation of the Ramunangi people, be that as it may, is not legitimately perceived, which has restricted the Ramunangi capacity to protect their sacred land from the alleged development. In the past a rock over the cascade — one of the site’s most holy areas — was obliterated as part of a road building project, and for quite a long time, the Ramunangi have been denied full access to the land to perform their rituals and custodial duties.”

One of the elderly participants reported:

“It is not, at this point conceivable to respect the sacred land as it ought to be respected. Members of our clan have gotten sick. The

Earth is sick. We realise this is on the grounds that we have not had the option to direct our rituals appropriately in the most recent years. What we demand is basically that our sacrosanct land ought to be permitted to stay a place of unadulterated, immaculate nature.”

Extrapolating from the above quotes, the inability of the developer and traditional leader to consult and incorporate the indigenous community, has negatively affected the development. However, on the contrary, a few participants argued that the development was pertinent in ensuring that the communal area is developed and the people become food secure. These participants argued that with this development, the community has potential of materially benefiting from the communal land. One of the participants said:

“The traditional communities must bring their knowledge in culture, beliefs and traditions and act as custodians and tour guides on the sacred sites while the developers bring in capital to invest. The community would benefit through the creation of employment, infrastructure and a share of the proceeds that goes to the community trust while the investor also accumulates profits.”

Extrapolating from this quote, the researcher observed that communal land investments have the ability to bring rural development and food security to indigenous communal peoples. However, there is need for transparency, co-operation and coordination between government (investors), traditional leaders and community members. From both case, the problem is not on the development but lack of cooperation and consultation. In this regard, the government must be seen to uphold customary tenure and involve traditional communities and leaders in development projects, to ensure that indigenous peoples are developed and food secure.

c) Case Observation

The researcher followed a criminal court case on communal land conflict. The case was pertinent to observe how some indigenous knowledge systems, like inheritance, hinder investment in customary land. The observation was critical to examine some of the challenges engraved in indigenous knowledge systems that require transformation. The following were the brief facts of the case;

A husband died and was survived by his wife and two female children. The husband's young brother was customarily appointed to enter into a sorority union with the brother's surviving spouse. It was stated that the female children according to the African culture could not inherit their father's estate. As such, the young brother was to inherit the brother's estate together with the wife and children. The surviving wife refused to be married to the young brother and this created enmity and division in the family. Unfortunately, the wife later died a few years later and was survived by the two female children.

One of the children had already been married and the other one was in university. The family again decided that the children could not inherit the family land and properties because they were females and would carry the estate to benefit their husbands. The children refused to surrender the estate to their father's young brother. This resulted into a series of arguments and later culminated into assault. The matter was referred to civil court for litigation

The researcher followed the court case and had the privilege to interview some of the parties since they were also community members of the village under study. One of the interviewed sisters reported:

“Our indigenous knowledge systems continue to fail girl children just because they are female. That is against section 9 of the Constitution that prohibits unfair discrimination. We have a right to our father's land and assets. Customary laws should be developed to protect women and children. This is why people are reluctant to invest in such lands because they want to avoid this. Had our father built a home in the urban areas, we would not be going through all this trouble. We would simply register the estate, and have it transferred under our name at the Deeds office.”

When she was narrating her ordeal, the researcher could see her facial expression and the tone of her voice that she was angry and frustrated with customary tenuresystem and her family. She also clearly demonstrated that she had lost trust in the traditional authorities and everyone except the court. The case clearly demonstrated the lacunae in customary tenuresystem. It also proved the mismatch

between the law as contained in statutes and the law as people live it on the ground. Most of the communal people seemed ignorant of the law in this regard.

Some of the interviewed participants indicated that the girls were disrespectful and disregarded culture. They argued that it made no sense as to why girls should inherit family assets when they would eventually marry. According to them, the system was not meant to discriminate against female children but to avoid having all family assets being transferred to the future husband. They argued that if she divorces the husband, where would she go if she has already squandered the parent's estate with the husband. On the contrary, others disagreed and supported the female children. They stated that the uncles were avarice and should not be allowed to inherit the land and estate. They stated that the law does not permit such, but none of the participants was aware of which law they were referring to and what it says. The case attracted mixed feelings within the community.

The researcher also interviewed a family elder on the issue. The elder reported:

“Things have changed, and we should have known better. Our decision was based on the best interest of the children. We did not mean to offend the girls and had we known that it would be like this, we would have left them alone. We wanted their uncle to assume the fatherly role, take care of them and preserve their father's estate. When the mother was alive, we hoped she would be able to give birth to a male child with the uncle and produce an heir.”

The researcher observed the sincerity on his face and the calmness in his voice. The researcher was convinced that he was being candid. The decision was not based on cruel motives but genuine love and respect of culture. However, the manner in which the uncle handled the matter after the children refused to yield to the proposal left a lot to be desired. The researcher could observe throughout the trial that he was visibly angry and persistent. He looked greedy, selfish and arrogant. He appeared determined to take over the land and properties for himself. The researcher could not pursue the case up to completion because it kept on being postponed.

The case observation was pertinent to highlight the dangers associated with investing in customary land under customary land tenure. The case shows the insecurities and

weaknesses of customary tenure especially towards women and children. In that regard, the case calls for reforms to strengthen and secure customary tenure rights against any form of arbitrary deprivation of such rights. However, the case also proves the communal land rights holders continue to invest in such rights despite the alleged insecurities. In this case, the deceased husband and his wife had invested in the land before their death. Therefore, it was apparent that the issue on investment had nothing to do with the land tenure system.

6.7 Chapter Conclusion

The chapter answered the question on the role of traditional leaders in South African local governance. The data collected in this chapter established that the law is not clear on what role traditional leaders should play in governance and in this context rural development and food security. This finding is consistent to the gap that was uncovered in literature review on this aspect. The literature reviewed proved that the law is silent on the role of traditional leaders in local governance. The collected data emphasised that despite this gap, traditional leaders are not absolved from ensuring the good welfare of their people. Therefore, even if the law may be vague but they still have an obligation in terms of customary law and customs of the community concerned.

The gap identified justified the need to anchor the study on the Sankofa theory which emphasises the need to go back and resuscitate, recover, preserve and perpetuate what was lost, overlooked, sacrificed or deprived of and amass the best of what the past brings to them, so African people can accomplish the maximum capacity of the indigenous governance system. In this regard, the chapter also reinforced the need for Africa to be Afrocentric in approach and come up with its own solutions to solve African problems as anchored in the African Renaissance theory. However, this does not imply disregarding Eurocentric governance systems, however, there is need to adapt and take that which works and discard that which does not work in Africa.

Secondly, the chapter examined the implications of customary tenure on rural development and food security. Contrary to the contentions in literature review that customary tenure hinders rural development, food security and investment, the chapter revealed that customary tenure has the capacity to bring development and

food security to the communal people. Several reasons have been submitted why the participants hold this view. To mention a few, the participants indicated that the system is flexible, accessible, affordable and they are able to comprehend it. However, a few issues, for example, corruption and abuse of power by traditional authorities, lack of access to formal credit and investments and absence of due diligence when allocating land were raised against customary tenure.

In this regard, in sync with the Sankofa theory, which emphasises on the need to learn from the past IKS, the African Renaissance theory which requires African solutions to African problems and the Afrocentricity theory which promotes African centeredness, these findings promote the preserving of customary tenure as an effective tool for rural development and food security. However, the challenges identified with customary tenure justifies also underpinning the study with the adaptation theory which encourages adapting and fusing African solutions to Eurocentric solutions in a bid to realise a working formula. Therefore, this is critical contrary to the modernisation theory to demonstrate that it is not everything traditional (African) that should be disregarded in favour of Eurocentric modernised solutions.

Lastly, the chapter in answering the question on whether rural landholders would invest in land over which they have no official guarantee of continuous use rights, established there was no established connection between investment and land tenure. Despite all the claims that customary tenure limited or prevented investment, thus was a threat to food security and rural development, the chapter established that communal land holders and other investors were investing in the said land. Therefore, in sync with the theoretical framework underpinning the study, the chapter in this regard established that not everything that is African, in this regard customary tenure is bad, and thus, should be discarded in favour of Eurocentric ideologies. Such acknowledgment speaks to a move away from the supremacy of ownership that views individual title as “the be all and end all”.

Chapter Seven

Findings, Recommendations and Conclusions

“The advent of colonialism resulted in a cultural imperialism that has resulted in IKS suffering for decades from heavy propaganda which elevates Western cultural systems at the expense of local ones, thereby tearing into the social, economic and cultural fabric of local communities”.

~ Tom, 2020

7. INTRODUCTION

Continuing from the previous chapter that presented and interpreted empirical data, this chapter was to present the findings, conclusion and recommendations of the study. This study explored the efficacy of customary tenure as a tool for rural development and food security in Vhembe District, South Africa. This study was ignited by the notion predicated on the conjecture that customary tenure is an insufficient a tool to realise any meaningful rural development, along these lines a threat to food security. The assumption was established on the contention that customary tenure lacked security of tenure in light of the absence of clearly characterised and enforceable property rights and the absence of appropriate policy direction. Thus, the absence of individual property rights represents a gigantic danger to security of tenure which, thusly, comprises an encumbrance and disincentive to the investments required for accumulating production and proficiency on which social progress and agricultural development must be based.

The study was conceived to add to the body of knowledge through empirical evidence and literature regarding the effects of customary tenure on rural development and food security. To accomplish this, the study attended to the following questions:

- 1) Are traditional leaders a sector of local governance and what is their role towards rural development and food security?

- 2) Is there any legislation and/or policy that address customary tenure to facilitate food security and rural development?
- 3) What are the implications of customary land tenure?
- 4) Would rural landholders invest in land over which they have no official guarantee of continuous use rights?
- 5) What model can incorporate customary tenure and freehold for rural development and food security?

7.1 Findings

In responding to the research questions posed, the study on the efficacy of customary tenure as a tool for rural development and food security in Vhembe District, South Africa uncovered the following findings:

7.1.1 The Role of Traditional Leaders Towards Rural Development and Food Security as a Sector of Local Governance

The key finding was that the roles and functions of traditional leaders were contorted by colonial and apartheid systems. Indeed, even with the dawn of independence, and the adoption of the supposed neo-apartheid Constitution their roles and functions in governance stay muddled. This has caused struggle among them and government structures who seem to have assumed the roles that used to fall under the purview of traditional leaders. The law is not sure about what role traditional leaders should play in governance, rural development and food security. The TLGFA recognizes the function of traditional leaders under two authorities: the scope of applicable law and the relevant traditional community's customs. Section 20 of the Act includes “agriculture, land administration, welfare, safety and security, economic development, tourism, the management of natural resources, the dissemination of information relating to government policies and programmes; and education” *inter alia* other areas to which traditional leaders can be given a role.

Be that as it may, the TLGFA does not give considerable rights to traditional leaders or extend their rights. This is in spite of the government wrongly designing the sentiment that the Act improved their powers and functions – especially comparable

to land. No law has been passed giving traditional leaders such powers. The failure with respect to the government to eradicate this bogus position and plainly explain that traditional leaders do not have these powers, has created legal uncertainty permitting them to act without risk of punishment (Weinberg, 2015). Consequently, the study found that there is a need for another law to be sanctioned to close these lacunae brought about by the TLGFA.

However, in spite of this gap, traditional leaders are not pardoned from ensuring the good welfare of their people. Regardless of whether the law might be obscure, traditional leaders despite everything have a commitment as far as customary law and customs of the community concerned. In such manner, traditional leaders have an obligation to guarantee that the welfare of their people is taken care of. They are required by law and the constitution to develop and uphold customary law practices. They are a recognised authority in communal areas. Along these lines, they along with the government structures, have particular however interconnected and mutually dependent functions. In such manner, the key finding was that governance must be transformed to coordinate and consolidate the two institutions at a local level to promote rural development and food security. Decolonising the colonial and apartheid influenced governance system was recommended by the participants as key to build up a framework that is African focused and public good.

7.1.2 Legislation and/or Policy that Address Customary Tenure to Facilitate Food Security and Rural Development

The key finding was that there is a lacuna in law regulating communal land, concerning securing communal land rights. A few laws have been promulgated since the dawn of independence but no law appears to be sufficiently sufficient to safeguard against abuse of power by authorities to the impairment of the helpless greater part living in communal areas. There are occurrences where a portion of the traditional authorities' act in manners that are not supported by the law, for instance, since the striking down of the Communal Land Rights Act of 2004, there is no law that enables traditional leaders to allocate or direct land issues. In any case, they keep going about as though they have such powers. In certain communities, traditional leaders keep on going about as though they have the ability to oversee communal land, represent the community and take decisions about the communities with little or no consultation

(Sekgala, 2018). The law is not seen to bring such traditional leaders or councils to account (Sekgala, 2018).

On ground, because of insufficient and deficient laws administering communal land, underprivileged indigenous communities are trying to assert and hold onto their land rights while traditional leaders/councils are employing forces of land allocation far surpassing the sorts of powers held under customary law (Clark & Luwaya, 2017). It is fundamental that laws overseeing communal land uphold principles of democracy and transparency. In certain cases, community members oppose development on their land on the grounds that traditional leaders or local government authorities would have endorsed such without consulting the communities. The study findings indicate that the current laws are not sufficient to ensure secure tenure, thus, reviewing, rescinding and enacting new laws that thoroughly guarantee security of tenure to advance rural development and food security is inevitable. The study further established that the current laws are impotent with regards to characterising clear procedures and powers for all stakeholders. The study also established that it is critical to uphold African values, culture, practices, integrity and above all, secure tenure for all communal land. Secure tenure creates confidence and trust, exterminates resistance towards development, thus paves way for rural development and food security.

7.1.3 Implications of Customary Land Tenure

The key finding was that customary tenure has both positive and negative implications. Positively, the study found that small-scale farming in rural areas is effective and profitable, which is sufficient to mitigate or counteract urban and industrialization biases. Additionally, the study found that small-scale farming produces greater yields than large-scale capitalist farming on corporate farms because of the low transaction costs, particularly when purchasing communal land and supervising subsistence farm activities in communal areas. The study also established that customary tenure furnishes indigenous peoples with access to land, increase their economic base, give new surges of income from farming – or if very much developed from leasing and selling the land. The study also found out that customary tenure redresses land inequalities by giving indigenous people access to land. In this regard, the findings establish that customary tenure has the capacity to redress land inequalities that are prevalent in South Africa and to promote rural development and food security.

However, despite these positive findings, the study also established that there is a downside associated with customary land tenure. The major findings in this regard were that there is a long-term trend away from agriculture across Africa and that supporting these exits and the expansion of alternative livelihoods, including those in rural areas, has more logic and reason than investing in subsistence farming set up under customary tenure. Also, a few issues against customary tenure system were also raised. These included among others, corruption and abuse of the system by traditional authorities, lack of access to formal credit and investments and absence of due diligence when allocating land.

7.2 Conclusion

The study established that customary tenure is effective as a tool for rural development and food security. Customary tenure does not constrain or forestall investment, consequently is not a danger to food security and rural development. The study found no evidence of a connection between land tenure and investment. Investors and owners of communal land are contributing to the development of the aforementioned land. Land tenure is simply yet an administrative system, whether or not it is customary or freehold titling. What decides access to investment is good governance or management. In the event that the land tenure system is appropriately and satisfactorily managed, it draws in investment. Subsequently, the issue is not in the land tenure system itself, but on the governance issue.

Further, the study established that traditional leaders have a role to play towards their communities being food secure and developed. Both traditional leaders and government structures, for instance municipalities have a mutually dependent and related role to play. Notwithstanding, there is requirement for dire law reform to define the role and functions of traditional leaders in local governance issues. Finally, the study unveiled that there is no legislation regulating communal land that is sufficient to redress the verifiable treacheries of colonisation and apartheid. There is need for law reform to redress colonial and apartheid wrongs, thus defining communal land rights from an African focal point. Customary tenurerights must be African centred, designed to meet African needs and must be seen to economically emancipate Africans from poverty, food insecurity and underdevelopment.

However, despite the positive implications of customary tenure on rural development and food security, there are some aspects of customary land tenure, as established in the study that require urgent development, improvement or review. Therefore, to improve the efficacy of customary tenure as a tool for rural development and food security in Vhembe District, Limpopo, South Africa, the study makes the following recommendations.

7.3 Recommendations

In light of the exploration findings and determinations reached above, a couple of strategy proposals are made as a major aspect of the study to improve the efficacy of customary tenure as a tool for rural development and food security in Vhembe District, Limpopo, South Africa. The study recommends the following:

7.3.1 Amending Laws and Policies Governing Customary Land Tenure.

The study established that several laws have been enacted since the dawn of democracy to redress the historical wrongs as intended by section 25(6) of the Constitution. However, communal land rights remain insecure to the present-day. The current laws are not adequate for guaranteeing secure tenure. Therefore, there is a need to review, repeal and enact new laws that comprehensively ensure security of tenure. In this regard, the study recommends that the legislature apart from enacting statute to uphold prevailing customary tenure rights, it should keep on setting up systems to maintain and execute these laws. There is moreover a prerequisite for an undeniably extraordinary update of land tenure, which prompts an intentional affirmation of and huge degree support for social tenure. This would incorporate more grounded laws securing rights holders, an adjudication system that grants new classes of verification to be considered in making sense of who holds rights, and new institutions for negotiating, recording and registering rights under social tenures.

Furthermore, the study recommends the legal recognition of socially implanted customary tenure rights. Customary tenure rights should be protected and recognised at law. In that regard, the legislature ought to follow a preservationist approach by recognising customary tenure frameworks that are socially implanted and that may offer more security than ownership through titling. Recognising existing customary tenure rights protects the vulnerable rural people who do not afford to buy land at

market value, a system usually hinged on formal titling. The proposed communal land committees should issue communal land holders with communal land allocation certificates. These certificates should serve to prove ownership and use rights on the land and should carry the same weight with title deeds issued in the Deeds registry office. To ensure accountability and transparency, all allocations should be registered and a registry that is accessible nationwide is paramount.

The proposition is in sync with the adaptation theory. By grounding the study in the adaptation theory, the aim is to ensure that customary tenure become better suited to promote socio-economic development and tenure security in the contemporary democratic dispensation. In this regard, the theory is used to mean the fusing of unregistered legitimate and legal African customary law land tenures with superseding legal system of property rights.

7.3.2 Impartial and Independent Land Committee

The study established that a majority of the participants held the general view that most traditional leaders are corrupt and abuse their power to allocate land for their personal benefit. Secondly, transferring ownership of customary land to traditional leaders denies land rights-holders of their property rights, rendering them subjects of the traditional leader rather than citizens of the country. Therefore, the study recommends that the state should grant administrative powers for land distribution to an autonomous land board committee to limit defilement related with land being assigned by one traditional leader who might be effectively controlled for personal gain. The land committee must be an odd number of five people and should be chaired by the traditional leader for the community concerned. The adoption of a land committee will ensure transparency, accountability, due diligence and democracy. All communal land applications should be submitted to this committee. The majority vote would then decide the fate of the application.

The recommendation aims to prevent traditional leaders from abusing their positions of authority for personal benefit and corruption. Secondly, the committee would offer a balance of authority and expertise to make sure that each land allotment results in the development of the community in question, ensuring food security. The study recommends the following committee members: the traditional leader of the concerned

community, a representative from the royal council elected as such by the council in every 5 years, an IKS community service officer, the office of the MEC and the councillor by virtue of holding such office. The recommendation is grounded partly in the modernisation theory. The theory is installed in the thought that “traditional societies” will develop as they embrace present day practices. In this regard, it is pertinent that customary tenure with regards to land allocation must borrow from modern practices of democracy and transparency.

However, this does not imply disregarding everything that is African. Therefore, to ensure a balance, the recommendation is also equally grounded in the Sankofa theory that emphasises on “the Need to Turn Back to Move Forward”. That is, to reach back and meet up on the sources and presence of indigenous knowledge systems and customary law in South Africa and amass the best of what the past brings to them, so African people can accomplish the maximum capacity of the land tenure system as they move forward. In essence, the study is recommending a fusion of African indigenous systems and modern Eurocentric governance systems to develop the efficacy of customary tenure towards rural development and food security.

7.3.3 Collaboration Between Traditional Leaders and Government Structures

The study established that the law is silent on the role of traditional leaders in local governance. Consequently, with regards to development projects in rural communities, traditional leaders are consistently side-lined and undermined by the government. However, even if the law may be vague, traditional leaders still have an obligation in terms of customary law and customs of the community concerned. Therefore, study recommends collaboration and co-existence between traditional leaders, communities and government structures, for example municipalities. This implies that humanism must influence governance. Governance must be focused on people.

Traditional leaders are required by law and the constitution to develop and uphold traditional laws and customs. In a same vein, government institutions are required by the constitution to support and develop local communities. Both institutions serve unique, related, and mutually reliant purposes. To support rural development and food security, governance must be reformed to integrate and rivet both institutions at the

local level. In order to create a governance system that is African-centered and serves the greater good, a serious commitment to decolonizing the colonial and apartheid-influenced governance system is required. Traditional leaders and communities would bring along indigenous knowledge while government structures would bring along due diligence and professional expertise.

7.3.4 Decolonisation of Local Governance

The study established that local governance is currently engraved on Eurocentric systems that continue to militate and undermine indigenous governance systems. Consequently, traditional leaders' role in local governance is vague. To close this gap, the study is grounded in the Afrocentricity theory. The theory emphasis on African centeredness. The main theme is established on the notion that African culture, history and existence must be observed through African lens and not through European lens. Therefore, there is requirement for a calm duty to decolonise the colonial and apartheid influenced governance system so as to build up a framework that is African focused and public good. In such manner, governance must be transformed to coordinate and consolidate the two institutions at a local level to promote rural development and food security.

However, by promoting african centeredness, the study does not imply consolidating customary tenure practices that are impotent towards rural development and food security. Therefore, to ensure that local governance is effective the study further recommends that traditional leaders should attend elementary leadership classes. The rationale is embedded on the fact that the requirements of the office of the traditional leader are not based on academic merit. The determinant factor is royal blood. The conundrum is that some of the traditional leaders are not educated, thus lack leadership skills and qualities. Secondly, some lack the basic ability to interpret, comprehend and apply customary law. Consequently, traditional courts and dispute resolution mechanisms remain inferior to formal statutory courts presided over by Magistrates and Judges who are sophisticated and learned. To promote trust in the system, all traditional leaders must be required to attend basic leadership and legal classes that are designed to capacitate them to preside over land issues.

7.3.5 Promoting Production on Communal Land

The study established that communal people and investors continue to invest in communal land, despite the fact that they have no official guarantee of continuous use rights. Therefore, the study suggests introducing small holder-oriented farming to foster rural development and food security in rural South Africa. This is due to the fact that communal land tenure solutions must take South Africa's food security into account. Since it is financially feasible and can build on the native skills and knowledge that smallholder landowners already possess, smallholder-oriented agricultural must be implemented. Long-term planning is basic to maintain a strategic distance from disrupted and disorganised settlement, which undermines the existence of natural and environmental resources.

All things considered, a shift in viewpoint that is shaped by the revival of non-capitalist peasant production models and resists giving in to the demands of globalized capitalism is necessary. The principle directing target must be the development of the historically deprived communal people. It is a charade to the democratic dispensation that communal south Africans experiences food insecurity and underdevelopment. A reconfiguration of the communal land tenure system in Vhembe district ought to be actualised in a way that enhance emancipation from poverty. The recommendation is engraved in the African Renaissance theory. African Renaissance is the idea that African people will conquer the difficulties confronting the African continent and will accomplish social, scientific, and financial restoration. Therefore, the recommendation is aimed at developing the indigenous people using the local available resources.

7.3.6 Classification of Communal Land to Promote Investments

The study established that communal people and government continue to invest in communal land. However, the study also established that the banking sector and other investors are critical towards investing in communal land. The argument is that customary tenure is insecure and lacks systematisation. To promote investments, rural development and food security, the study recommends that the state should empower the land committees to zone and classify communal land. Communal land must be classified according to use. Land must be separated between land for subsistence use and land for commercial purposes. All community members belonging to the particular

community must possess a legal right to apply for communal land for subsistence use. The application must be determined by the community's customary rules and traditions.

However, land partitioned for commercial use must be accessible even to outside investors. The beneficiaries must be issued with communal lease rights for a term decided by the land committee (as discussed above). The commercial enterprises must benefit the local people, for example through the creation of employment, infrastructure development, business opportunities, rentals etcetera. Commercial land remains community land and the beneficiaries only enjoy land use rights. The beneficiaries only own the developments on the land. All commercial land may only be used for the purposes to which it was granted for as stated on the lease agreement. All lease returns must be paid to the land committee and are to be used for the benefit of the said community. The recommendation provides the land users with secure tenure, an aspect that will promote investment.

The communal commercial land must be allocated as per capacity. The land committee is prescribed to research the budgetary status of the imminent applicants. The applicants must demonstrate that they have the ability to take part in business endeavour. It is additionally recommended that the communal land allocations must be at first done on a temporary premise, for instance, a 5-year lease period. The land Committee will at that point use the underlying temporary time frame to regulate and screen whether the dispensed land is in effect completely used. When fulfilled the land Committee will at that point issue in any event a 50-year lease or a 99-year lease whichever is legitimate in the conditions. The lessee must be allowed to access loans using the land as security so as to promote investment. During the temporary time frame the lessee may likewise be permitted to mortgage the land. Nonetheless, there is need to impose a limitation on the sum to be mortgaged and furthermore a time span inside which the loan must be paid. The period conceded ought not surpass the lease time frame.

The recommendation is grounded in the adaptation theory. The purpose of the study was to uncover wisdom from the African creeds, behaviour, religious belief systems, rituals and tradition that speak to the land issue today. The intelligence uncovered will be absorbed along with non-clashing components of formal tenure concepts to build

a tenure system that guarantees rural tenure security, in this manner promoting investment, access to formal credit and therefore food security. The theory is not planned for disparaging everything European, except is fixated on building a framework that promotes land rights, rural development and food security.

7.3.7 Creation of an IKS Department within the Municipal office

The study established that there is no nexus between traditional leaders and government structures (municipalities) in local governance. Government structures continue to undermine and side-line traditional leaders and communities. However, despite the alleged gap, both institutions have interconnected and interdependent functions in local governance. Their primary objective is to guarantee effective service delivery, rural development and food security to the indigenous local communities. Therefore, to close the gap, the study recommends the creation of an IKS department within the Municipal office. The office should be responsible for community development projects and should work hand in glove with the councillors of the said community together with the traditional leaders of the communities within the municipal region.

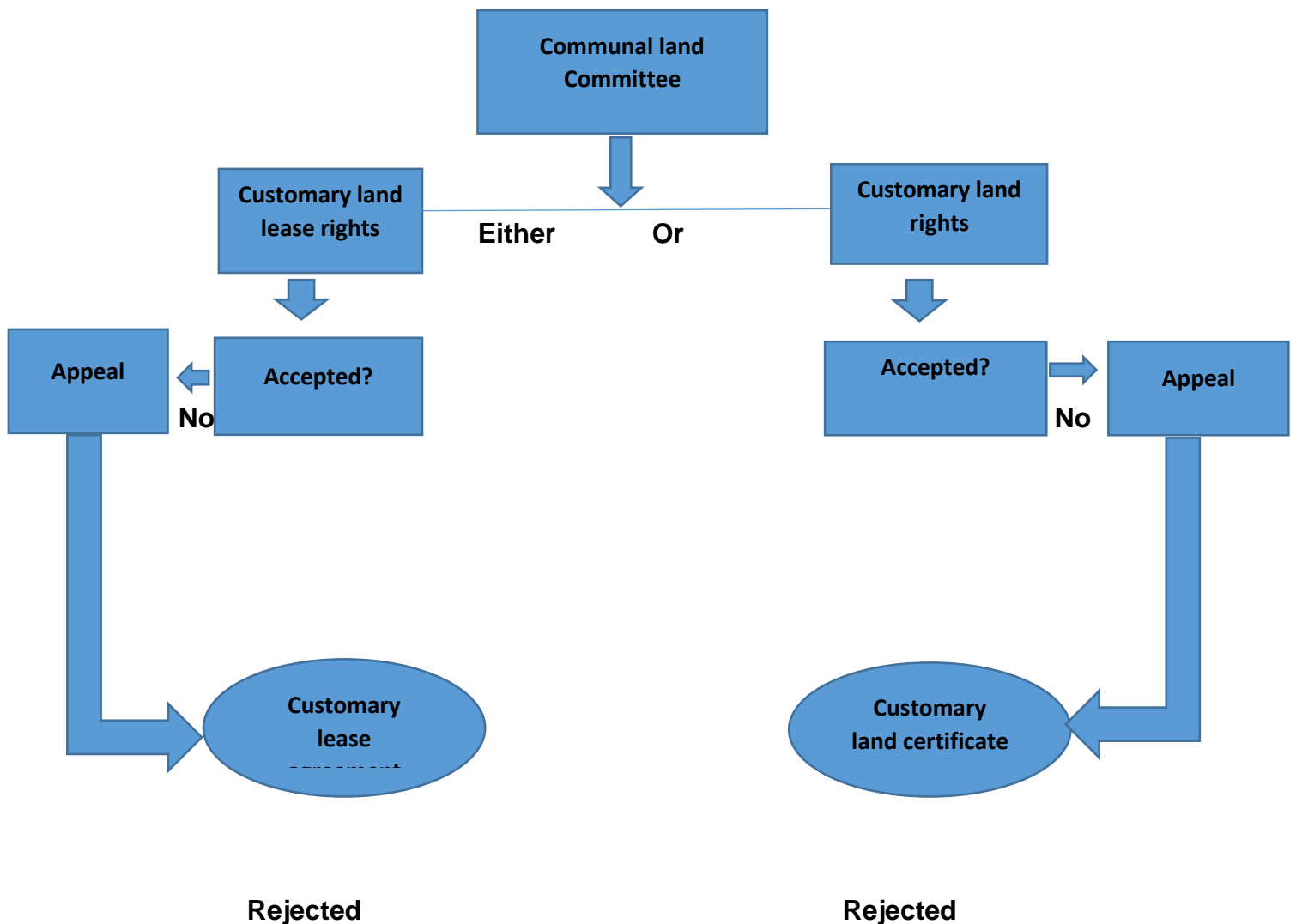
The IKS office will serve to bridge the gap between traditional leaders and government structures. The IKS practitioner holds expert knowledge in Indigenous Knowledge Systems, thus would be able to advise the municipality accordingly on such issues when it comes to community project developments. The office will break the impasse between the two institutions thus will promote collaboration and co-existence between both parties. This would be pertinent to promote development projects in communal areas. The IKS practitioner should facilitate community workshops and engagements, consistently engage traditional authorities, facilitate traditional leader's leadership workshops and record community concerns and needs. The engagements and workshops should then be used to direct municipal development projects by providing the communities with well-informed needs. The recommendation as guided by the adaptation and Sankofa theory promotes the fusion of indigenous governance systems and modern governance systems in promoting rural development and food security.

7.4 Proposed Model to Promote the Efficacy of Customary Tenure as A Tool for Rural Development and Food Security

In South Africa, a wide range of interested parties have vigorously contested the value and position of customary tenure as a land reform mechanism, a tool for rural development, and a means of ensuring food security. The idea that customary tenure is an inadequate tool for achieving any significant rural development and, therefore, a threat to food security is at the heart of the discussion. As a result, the lack of private property rights poses a serious danger to security of tenure, which in turn hinders and deters investments needed to build up productivity and efficiency, which are the foundation for progression and agricultural development. Therefore, the aim of the study was to examine the effectiveness of the South African customary tenure system as a tool for rural development and food security.

The study findings established that despite all the claims that customary tenure limited or prevented investment, thus was a threat to food security and rural development, communal land holders and other investors were investing in the said land. However, several negative issues were raised pertaining to customary tenure despite the evident investments taking place. Therefore, the proposed model was developed from the study recommendations to promote the efficacy of customary tenure as a tool for rural development and food security.

Figure 7.1: Model



As can be noted from the suggested model, the researcher in promoting the efficacy of customary tenure as a tool for rural development and food security recommends the following:

a) Communal Land Committee

As one of the recommendations, the study recommended that the state should grant administrative powers for land distribution to an autonomous land board committee to limit defilement related with land being assigned by one traditional leader who might be effectively controlled for personal gain. Therefore, the model recommends that all communal land applications should be handled by the communal land committee. The land Committee should hold the land in trust for the benefit of the community concerned for the purpose of promoting their economic and social development. The

committee should allocate land for the following uses: commercial, industrial, residential, civic and agricultural.

The communal land committee must constitute of the traditional leader of the community concerned, a representative from the office of the MEC, a representative from the traditional royal council who is elected by the council members after every five years, an IKS community service officer from the municipality and the councillor of the community concerned. The Committee promotes transparency, accountability and due diligence. It cures the alleged defects of non-democracy allegedly associated with customary law and also curbs chances of traditional leaders being influenced by the need for personal gain.

b) Customary Land Rights

As one of the recommendations, the study recommended zoning and classification of communal land to promote outside investments but at the same time promote indigenous people's tribal identity. In this regard, the model recommends the allocation of customary land rights to origins of the community concerned. The determination of the application should be informed by the customary laws and customs of the community. The applicants should only be required to pay the administration (*nduvho*). The land should continue to be accessed free of charge. This is essential to ensure continued tribal identity and easy access to land by the historically disadvantaged Black people resident in communal areas.

c) Communal Land Lease Rights

As one of the recommendations, the study recommended zoning and classification of communal land to promote outside investments. Therefore, the model recommends allocation of communal land lease rights to both origins of the community concerned and outsiders who are willing to invest in the land. Thus, the land should be accessed for commercial, industrial, residential, civic and agricultural purposes. This will improve the adequate and relevant use of communal land for purposes sufficient for development. With increased production and adequate use of communal land, comes creation of employment, built infrastructure and market creation.

d) Customary Land Certificate

The study recommended the legal recognition of socially implanted customary tenure rights. Furthermore, the study recommended that customary tenure rights should be protected and recognised at law. Against this background, the model recommends that a customary land certificate should be issued to all successful applicants concerning customary land rights. The certificate must be legally recognised and should serve as adequate proof of ownership for the developments on the land.

The holder should be allowed to use the developments on the said land to access loans and formal credit. The certificate should stand as *prima facie* proof of occupation and the holder and all people who have access to the said land through the holder may not be arbitrarily deprived of such land. All removals from the said land should follow the dictates of section 25 of the Constitution concerning deprivations and expropriations. This would be pertinent to ensure tenure security. The land committee should keep a customary land registry where it records all customary land allocations to eradicate double land allocations.

e) Customary Lease Agreement

The study recommended the classification of communal land to promote investments. The study also recommended the legal protection of customary tenure rights to attract investors in communal land. In this regard, the model recommends that a lease agreement should be entered into between the applicant and the land Committee. If the application is granted, the applicant should be issued a lease agreement that details the terms and duration of the lease. The applicant enjoys all the benefits due to land tenants in the Republic of South Africa.

However, the lease agreement may be terminated on grounds of non-performance or poor performance. The lease agreement should be properly filed to avoid double allocations and to ensure transparency and accountability. Customary land holders should be allowed to convert their land rights to leasehold rights and to also apply for land under the lease agreements even though they maybe holders of customary land rights in the same community. The determining factor should be ability to invest in the land to ensure development and food security.

f) Appeals and Rejections

The study recommended the appointment of an independent and impartial land committee to promote transparency and accountability. Against this backdrop, the model recommends that the land Committee must furnish the applicant with written reasons for rejecting the communal land application. The applicant has a right to appeal against the decision to the same Committee and state reasons for such appeal. The applicant may raise points of law to show that the Committee misdirected itself in rejecting the application. The applicant may also use the reasons to correct and rectify the anomalies raised by the Committee as a basis for rejecting the application. The Committee will seat on the appeal and decide whether to uphold the appeal or further reject the application. The applicant may only refer the matter to a competent court of law if this basis of such referral is legally provided for by the law, for example unfair discrimination, extortion, corruption to mention a few.

In conclusion, if the model is properly implemented and enforced, customary tenure would be sufficient a tool to bring about rural development and food security. The model preserves African values, systems and traditions but at the same time recommends modern systems that can be adapted and fused together with African systems in order to develop rural people and ensure they are food secure. The idea is not to eradicate and disregard everything European but to create solutions that are African centered and are relevant to solve African problems in an African way.

7.5 Knowledge Gap

According to Dries (2013), a knowledge gap “is a discrepancy between what is known and what should be known. This can be achieved through tackling previous studies to identify what is missing in either methodology, theory and literature in general”. A knowledge gap is critical to determine how the evidence falls short, to maximally enlighten researchers, funders, and policy makers on the types of questions that should be addressed and the types of studies expected to resolve these questions (Dries, 2013). It is argued that South Africa still carries scars and bruises of colonisation and apartheid (Ramphela, 2017). The historical injustices of the past continue to affect indigenous South Africans, particularly those residing in former homelands, popularly termed ‘communal areas’. Consequently, a third of South Africa’s indigenous population still reside in poverty-stricken communal areas (Sihlangu & Odeku, 2021).

All this is attributed to colonial and apartheid laws that segregated Africans and condemned them to poverty in these communal areas. They caused huge inequalities and rendered Africans' land rights precarious. The dawn of independence and the adoption of the 1996 Constitution resulted in South Africa adopting and promulgating policies and laws to seek to correct the historical injustices. Section 25 of the Constitution of the Republic of South Africa was enacted to pave way for the land reform program. More so, the provision provides for land redistribution, restitution and tenure in the land reform program. Against this background, the study examined the effectiveness of the South African customary tenure system as a tool for rural development and food security.

Several studies have been done on the land tenure concept. These among others included the effects of insecure tenure (Moll, 1988; Cousins, 2010; Udry, 2011), the status of customary tenure in South Africa (Hull & Whittal, 2018; Farran, 2019), tenure security (Aliber & Popoola, 2018; Cowling, Hornby & Oettlé, 2017), the incapacity and ineffectiveness of customary tenure and so on (de Satgé & Phuhlisani, 2020; De Satgé, 2020; John & Kabote, 2017). However, contrary to the existing studies, this study examined the efficacy of customary tenure as a tool for rural development and food security in South Africa. In doing this, the study identified the following gaps:

- i) There is little and/or no existing literature to specifically give practical solutions on how customary tenure may operate in equivalence to common law tenure.
- ii) There is also a gap in that there is little and/or no literature to direct how customary tenure may contribute towards achieving rural development, food security and economic emancipation in South Africa.
- iii) The long-standing cultural land beliefs and practices of indigenous Africans are continuously undermined through law and policies and do not find expression in written laws (customary).

The gaps were closed through gathering data (empirical evidence) and literature reviewed from diverse fields to cross pollinate the position of law, indigenous knowledge systems, food (in)security and land governance experts. The study established how and whether customary tenure should be evolved to operate in

equivalence to common law land tenure and on how it could contribute to rural development and food security in South Africa.

In addition, the study identified that most studies on customary tenure, rural development and food security have either been in the anthropology studies (Peters, 2007; Peters, 2013; Curry, 1997), legal studies (Nara, Lengoiboni & Zevenbergen, 2020; Dembitzer, 2014; Petrescu, Hartel & Petrescu-Mag, 2020), public administration and local government studies (Munro-Faure, Groppo, Herrera, Lindsay, Mathieu & Palmer, 2002; Nixon, 2009; Baataar, Bagah & Mohammed, 2020) or African Studies (Swartley, 2018; Bottazzi, Goguen & Rist, 2016; Seleti & Tlhompho, 2014). Against this background, the researcher identified that most of these studies are limited and grounded to their respective disciplines and suggest findings that are limited to the particular discipline's philosophy and theoretical framework at the exclusion of other facets. This was identified as a limitation and gap by the researcher.

To close this gap, the study undertook an interdisciplinary, intradisciplinary and multidisciplinary approach. The study fused the legal discipline, public administration and local government discipline, African Studies and Indigenous Knowledge Systems discipline and the Anthropology discipline to learn from the findings of various disciplines to ensure that a suitable model is informed from all perspectives. This is envisaged to hatch a model and policy that resonates with all stakeholders' aspirations. To bridge the gaps identified above, a proposed multi-stakeholder model is proposed to communicate to and address the issues raised in various research disciplines in a broad manner unlike the previous studies.

Lastly, the study made a methodological and theoretical contribution. The researcher identified that legal studies mostly use the doctrinal approach to collect data (Langbroek, van den Bos, Thomas, Milo & van Rossum, 2017; Unger, 2015). The doctrinal approach is only limited to secondary evidence and does not contribute to new findings emanating from the affected people's views. On the contrary, most non-legal studies prefer collecting empirical data through the qualitative and/or quantitative methods (Ajagbe, Sholanke, Isiavwe & Oke, 2015; Ahmad, Wasim, Irfan, Gogoi, Srivastava & Farheen, 2019). The qualitative approach may be influenced by the researcher's background and personal life experiences. The researcher identified that if not meticulously resolved as it stands, this becomes a gap and/or limitation. To cure

these potential discrepancies, the study employed two different approaches (designs); qualitative research approach and the Black letter law approach (doctrinal approach). The first approach guaranteed a deep inquiry and understanding of the social phenomenon underpinning customary tenure discourse. The second approach, the doctrinal approach was essential to attaining a full and rigorous comprehension of laws governing customary land tenure. The combination of these two methodological approaches enhances and smoothens multi-disciplinary, intradisciplinary and interdisciplinary studies.

Regarding the theoretical contribution, the researcher identified that several studies as discussed above have either focused on customary tenure, food security or rural development as distinct disciplines (Peters, 2013; Nara, Lengoiboni & Zevenbergen, 2020). To close this gap, the study contributed to the theory, philosophy and practice of developing customary tenure for rural development and sustainable food (in)security both in the present and future (Venter, 1999). Furthermore, the study identified that several studies have focused mainly on the differences between customary tenure and statutory land tenure, particularly on the extent to which customary law is insufficient, inferior and unpalatable to common law and statutory law (Willy, 2011; Coetzee, 2002; Obeng-Odoom, 2012). To close this gap, the study developed a new body of literature that will integrate customary tenure and statutory land tenure in the body of knowledge to promote rural development and food security.

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Appendix 1: Letter of Information

RESEARCH ETHICS COMMITTEE

LETTER OF INFORMATION

Title of the Research Study: EXPLORING THE EFFICACY OF CUSTOMARY TENUREAS A TOOL FOR RURAL DEVELOPMENT AND FOOD SECURITY IN VHEMBE DISTRICT OF SOUTH AFRICA: AN IKS PERSPECTIVE.

Principal Investigator/s/ researcher: MAWERE JOSHUA

PROMOTER: Adv. Dr P.E Matshidze

CO - PROMOTER: Dr S.L Kugara

CO - PROMOTER: Dr T.S Madzivhandila

Brief Introduction and Purpose of the Study:

I am Mawere Joshua. I am studying for PhD in African Studies at the University of Venda. My thesis title is “EXPLORING THE EFFICACY OF CUSTOMARY TENUREAS A TOOL FOR RURAL DEVELOPMENT AND FOOD SECURITY IN VHEMBE DISTRICT OF SOUTH AFRICA: AN IKS PERSPECTIVE.” During your participation, your voices will be recorded and where possible pictures on some of the demonstration will be captured.

Outline of the Procedures:

I will be asking you questions and expecting you to respond to the question asked, in a case where I will be in need of more clarity, I will ask further questions. Please feel free to respond in any way. Participation in this research is voluntarily and you have the right to withdraw participation at any time. You may be sometimes asked to answer questions that are in this interview guide or some may be probed from that. We will also have focus group discussion wherein you will also be asked to participate fully but voluntarily. In most cases our discussions and interviews may take one to two hours during our meetings. Every visit will be communicated in time for you to prepare yourself for availability. Follow-up visits will be there and will be communicated in time.

Risks or Discomforts to the Participant: If you feel uncomfortable about the continuation of this procedures you are allowed to withdraw from this research project.

Benefits: This research will benefit the University of Venda all, especially the department of African Studies.

Reason/s why the Participant May Be Withdrawn from the Study: there will not be no reasons expected from the participant if he or she does not want to continue with the research.

Remuneration: No Remuneration

Costs of the Study: (*Will the participant be expected to cover any costs towards the study?*) **NO**

Confidentiality: All information obtained in this research activities will be kept private and confidential and will only be used for the purpose of this study only. Pseudo names will be used instead of their real name.

(Research-related Injury: (*What will happen should there be a research-related injury or adverse reaction? Will there be any compensation?*) **No compensation reserved for the injury that is related to this research project**

Persons to Contact in the Event of Any Problems or Queries:

Adv. Dr P.E Matshidze pfarelo.matshidze@univen.ac.za;

[Dr S. L Kugara \(stewart.kugara@univen.ac.za\)](mailto:stewart.kugara@univen.ac.za) and

[Dr T. Madzivhandila \(tmadzivhandila@gmail.com\)](mailto:tmadzivhandila@gmail.com).

Please contact the researcher (072 444 1875), my supervisors (0159628131) or the University Research Ethics Committee Secretariat on 015 962 9058. Complaints can be reported to the Director: Research and Innovation, Prof GE Ekosse on 015 962 8313 or Georges Ivo.Ekosse@univen.ac.za

General:

Potential participants must be assured that participation is voluntary and the approximate number of participants to be included should be disclosed. A copy of the

information letter should be issued to participants. The information letter and consent form must be translated and provided in the primary spoken language of the research population

Appendix 2: Semi-structured Interview Questions

EXPLORING THE EFFICACY OF CUSTOMARY TENURE AS A TOOL FOR RURAL DEVELOPMENT AND FOOD SECURITY IN VHEMBE DISTRICT OF SOUTH AFRICA: AN IKS PERSPECTIVE.”

Semi-structured Interview Guide Questions

The following questions will be asked:

- 1) Are traditional leaders a sector of local governance and what is their role towards rural development and food security?
- 2) Is there any legislation and/or policy that address customary tenure to facilitate food security and rural development?
- 3) What are the implications of customary land tenure?
- 4) Would rural landholders invest into land over which they have no official assurance of persistent use rights?
- 5) What model can incorporate customary tenure and statutory land tenure for rural development and food security?

Appendix 3: Consent form

RESEARCH ETHICS COMMITTEE

UNIVEN Informed Consent

Appendix B

LETTER OF INFORMATION

.....
Signature.....

Date.....

Full Name of Witness (If applicable)

.....
Signature.....
Full Name of Legal Guardian (If applicable)

Date

.....
Signature.....

Date.....

Please note the following:

Research details must be provided in a clear, simple and culturally appropriate manner and prospective participants should be helped to arrive at an informed decision by use of appropriate language (grade 10 level- use Flesch Reading Ease Scores on Microsoft Word), selecting of a non-threatening environment for interaction and the availability of peer counseling (Department of Health, 2004)

If the potential participant is unable to read/illiterate, then a right thumb print is required and an impartial witness, who is literate and knows the participant e.g. parent, sibling, friend, pastor, etc. should verify in writing, duly signed that informed verbal consent was obtained (Department of Health, 2004).

If anyone makes a mistake completing this document e.g. a wrong date or spelling mistake, a new document has to be completed. The incomplete original document has to be kept in the participant's file and not thrown away, and copies thereof must be issued to the participant.

Appendix 4: Letter from Editor



JUDICIAL SERVICE COMMISSION
Chitungwiza Magistrate's Court
Mangwende Drive
Makoni Shopping Centre
P.O Box 80 Seke

01 November 2022

Sir/Madam

This serves to confirm that I read, edited and formatted the research thesis titled "Exploring the efficacy of customary land tenure as a tool for rural development and food security in the Vhembe district of South Africa: An Iks Perspective" by Mawere Joshua (Student Number 11605754).

Regards



Anxious Mbalanga

Judicial Service Commission

Magazine/Newsletter

Focal Department Journalist

+263 771 859 545

Email: eagle.mbalanga@gmail.com

Appendix 5: Turnitin Report

Exploring The Efficacy of Customary Tenure as A Tool for Rural Development and Food Security in Vhembe District of South Africa: An IKS Perspective

ORIGINALITY REPORT

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SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

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1	www.parliament.gov.za Internet Source	1%
2	J. Mawere, P. E. Matshidze, S. L. Kugara, T. S. Madzivhandila. "The Efficacy of Preserving Communal Tenure in South Africa", The Oriental Anthropologist: A Bi-annual International Journal of the Science of Man, 2021 Publication	1%
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Appendix 6: Ethics Certificate

ETHICS APPROVAL CERTIFICATE

RESEARCH AND INNOVATION
OFFICE OF THE DIRECTOR

NAME OF RESEARCHER/INVESTIGATOR:

Mr J Mawere

STUDENT NO:

11605754

PROJECT TITLE: Exploring the Efficacy of Customary Land Tenure as A Tool for Rural Development and Food Security in Vhembe District of South Africa: An IKS Perspective.

ETHICAL CLEARANCE NO: **FHSSE/22/AS/03/2208**

SUPERVISORS/ CO-RESEARCHERS/ CO-INVESTIGATORS

NAME	INSTITUTION & DEPARTMENT	ROLE
Adv. Dr PE Matshidze	UNIVEN, African Studies	Supervisor
Dr SL Kugara	UNIVEN, African Studies	Co - Supervisor
T Madzivhandila	UNIVEN, African Studies	Co - Supervisor
Mr J Mawere	UNIVEN, African Studies	Investigator – Student

Type: **Doctoral Research**

Risk: **Minimal risk to humans, animals, or environment (Category 2)**

Approval Period: **August 2022 – August 2025**

The Research Ethics Social Sciences Committee (RESSC) hereby approves your project as indicated above.

General Conditions

While this ethics approval is subject to all declarations, undertakings and agreements incorporated and signed in the application form, please note the following.

- The project leader (principal investigator) must report in the prescribed format to the REC:
 - Annually (or as otherwise requested) on the progress of the project, and upon completion of the project
 - Within 48hrs in case of any adverse event (or any matter that interrupts sound ethical principles) during the course of the project.
 - Annually a number of projects may be randomly selected for an external audit.
- The approval applies strictly to the protocol as stipulated in the application form. Would any changes to the protocol be deemed necessary during the course of the project, the project leader must apply for approval of these changes at the REC. Would there be deviation from the project protocol without the necessary approval of such changes, the ethics approval is immediately and automatically forfeited.
- The date of approval indicates the first date that the project may be started. Would the project have to continue after the expiry date; a new application must be made to the REC and new approval received before or on the expiry date.
- In the interest of ethical responsibility, the REC retains the right to:
 - Request access to any information or data at any time during the course or after completion of the project.
 - To ask further questions; Seek additional information; Require further modification or monitor the conduct of your research or the informed consent process.
 - withdraw or postpone approval if:
 - Any unethical principles or practices of the project are revealed or suspected.
 - It becomes apparent that any relevant information was withheld from the REC or that information has been false or misrepresented.
 - The required annual report and reporting of adverse events was not done timely and accurately,
 - New institutional rules, national legislation or international conventions A it necessary

ISSUED BY:

UNIVERSITY OF VENDA, RESEARCH ETHICS COMMITTEE

Date Considered: July 2022

Name of the RESSC Chairperson of the Committee: Prof TS Mashau

Signature




UNIVERSITY OF VENDA
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