

Towards land use management options: the KwaZulu-Natal traditional land narrative

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Dissertation accepted in fulfilment of the requirements for the degree *Master of Science in Environmental Sciences* at the North-West University

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Graduation May 2023

23526475

ACKNOWLEDGEMENTS

Throughout the writing of this dissertation, I have received a great deal of support and assistance.

First, I would like to thank my supervisors, Selna Cornelius and Jako Viviers, for their contribution, expertise, and assistance in formulating the study methodology and research objectives. Your insightful input into the methodology, structure, and content of the study provided a valuable foundation on how the study is conducted.

I would like to thank Gert Watson for his assistance away from the books and for providing me with the opportunity to pursue this study. Your vast experience and knowledge in the field of study and assistance with the local case studies are highly appreciated. Thank you for your generosity, mentorship, and friendship.

In addition, I would like to thank Johann van Heerden for providing essential assistance with the local case studies. Your expertise and experience combined with your passion for the subject are most appreciated and thank you for your valuable contribution to this study.

Lastly, I would like to thank my wife Mareli, for her unconditional support, extreme sacrifice, and immeasurable patience while I conducted this study. Through it all, you never complained or doubted, and always believed in me. Thank you for keeping me disciplined and motivated throughout this journey.

ABSTRACT

Despite multiple attempts by authorities, land use management on traditional land in KwaZulu-Natal remains ineffective in providing tenure security to occupants of the land. This study investigates feasible land use management options on traditional land through researching various permutations of allocation, demarcation, and the recording of land parcels in an attempt to more efficiently address tenure security within KwaZulu-Natal. The research method employs triangulation, by combining several qualitative approaches to validate its qualitative research findings. The empirical investigation reflected on numerous local and international case studies in identifying prospective land use management options on traditional land. Findings from the literature review and case studies were aggregated into a matrix depicting various options towards improved land use management on traditional land. The options identified may well be conducive to a combination of possible solutions for land use management on traditional land in KwaZulu-Natal.

Keywords: Land use management, traditional land, land tenure, land parcel boundaries, spatial planning

OPSOMMING

Ondanks veelvuldige pogings deur owerhede, bly grondgebruikbestuur op tradisionele grond in KwaZulu-Natal ondoeltreffend om verblyfsekerheid aan bewoners van die grond te verskaf. Hierdie studie het ten doel om opsies vir grondgebruikbestuur op tradisionele grond te ondersoek deur verskeie metodes van toekenning, afbakening en optekening van grond binne tradisionele grond na te vors in 'n poging om verblyfsekerheid binne KwaZulu-Natal se tradisionele grond aan te spreek. Hierdie studie gebruik triangulasie deur verskeie kwalitatiewe benaderings te kombineer om die kwalitatiewe navorsingsbevindinge van die studie te bekragtig. Tydens die empiriese ondersoek is verskeie plaaslike en internasionale gevallestudies gebruik om verskeie metodes van grondgebruikbestuur op tradisionele grond te identifiseer. Bevindinge uit die literatuuroorsig en gevallestudies is saamgevoeg in 'n matriks wat verskeie opsies vir verbeterde grondgebruikbestuur op tradisionele grond uitbeeld. Die opsies wat geïdentifiseer is, kan moontlik bevorderlik wees en lei tot 'n kombinasie na meer toepaslike grondgebruikbestuursopsies op tradisionele grond in KwaZulu-Natal.

Sleutelwoorde: Grondgebruikbestuur, tradisionele grond, grondbesit, grondgrense, ruimtelike beplanning

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Annexure A – Ethics Approval

CHAPTER 1: INTRODUCTION TO THE RESEARCH

This chapter serves as the introductory chapter for this study with the aim to provide background to the study through a problem statement and motivation for the research (section 1.1). The research aims and objectives for the study are also formulated in this chapter (sections 1.2 & 1.3) to delineate the study and provide guidance for each chapter.

Finally, the research structure (section 1.4) is summarised in a table including the chapter divisions with corresponding objectives and methods to illustrate how the aim of the study will ultimately be attained. The chapter concludes in section 1.7 by cataloguing the acronyms used throughout the study.

1.1 Introduction and problem statement

This proposed study investigated land use management options by referring to the allocation, demarcation and recording of land parcels to address land tenure on traditional land within the KwaZulu-Natal Province. To fully elucidate the problems pertaining to the aim of the study, it was essential to understand the factors that contributed to the status quo of land use management on traditional land in KwaZulu-Natal, specifically within the historical context of land use management in South Africa.

Palmer (1998:2) explains that South Africa has inherited an unusual dualistic land structure from its colonial past due to principles of indirect colonial rule that involved the twinning of 1) modernisation and 2) conservation of traditional or indigenous value systems. This was enacted by the Apartheid regime with the implementation of spatial segregation by instituting self-rule in those parts of the country known as homelands (Harrison *et al.*, 2008: 205). In order to rectify these historical imbalances brought about by apartheid and colonialism, the post-apartheid government embarked on a multi-faceted land reform programme. The programme aims to address unequal land-holding patterns and protect, secure and strengthen the land rights of historically disadvantaged people (Clark & Luwaya, 2017:4). Attempts are also being made to address the socio-spatial distortions of the Apartheid regime by means of the Spatial Planning and Land Use Management Act 16 of 2013 through the inclusion and integration of previously disadvantaged areas, a uniform approach to land use management within South Africa.

Further to this, the Constitution of South Africa (1996) adopted by the post-apartheid government, makes provisions to protect and strengthen land rights on traditional land. Section 25(6) states that “a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either

to tenure that is legally secure or comparable redress.” Additionally, section 25(9) asserts that the government is obligated to pass legislation to give effect to this provision, consequently resulting in an obligation on the post-apartheid government to constitutionally protect and strengthen land rights on traditional land. However, despite the constitutional imperatives of the state, various problems and challenges persist with land use management on traditional land.

The term traditional land is defined as land consisting of one relatively sizable land parcel where portions are allocated to the members of the traditional community by the owner, being the chief or leader (Coetzee, 2009:1). In the case of KwaZulu-Natal, for instance, various forms of authority are exercised on traditional land due to the KwaZulu Ingonyama Trust Act 3KZ of 1994. The Act implies that land, that previously formed part of the KwaZulule homeland, should be held in a trust by the Zulu king and administered by the Ingonyama trust board. The KwaZulu Ingonyama Trust Act 3KZ of 1994 has been subject to controversy for failing to protect the land rights of its people due to inadequate administration of land (Clark & Luwaya, 2017:10).

According to Ziqubu *et al.* (2001:15) and (Cousins & Hornby, 2006:4), the majority of communities in traditional and rural areas occupy and use land under a system of rights conveyed through oral tradition that is unrecorded and undocumented, resulting in a system where land parcels have no record or documentation. Consequently, the communities rely on indigenous knowledge systems (IKS) to allocate land rights and demarcate parcel boundaries. Due to the absence of documentation and recording of the parcel boundaries, the communities rely on memory and reference to artificial and natural features to determine the boundaries of parcels of land, resulting in uncertainty regarding the location of boundaries (Hull *et al.*, 2016:68). Without any formal boundary identification or demarcation, and due to unreliable record-keeping systems, tenure security becomes problematic.

The subject of secure tenure and land use management on traditional land is prolific within academic literature, with fervent solutions being offered. It is essential to address this subject as it consequently exacerbates other challenges on traditional land. Adams *et al.*, (1999:21) argue that a lack of appropriate guidance regarding land use management within traditional areas constrains economic development and limits employment opportunities. Equally, an ever-growing concern is present that the most productive agricultural land, as well as environmentally sensitive areas, will be consumed by rural sprawl as traditional areas are limited, with an expanding community and population (Forbes, 2011:14). In view of this, this study aims to investigate solutions to identify, demarcate, record land parcel boundaries and address land tenure on traditional land within the KwaZulu-Natal Province. Ultimately, its purpose is to provide comprehensive recommendations toward land use management options on traditional land based on the findings of this study.

1.2 Research aim

The study aims to:

Investigate solutions to allocate, demarcate and record land parcel boundaries with the aim to address land tenure on traditional land within the KwaZulu-Natal Province.

1.3 Research objectives

The following research objectives have been identified to guide the research so that it can meet its aim:

1. To provide an overview of the multiple directives relating to traditional land in South Africa.
2. To offer a perspective on land use management of traditional land in KwaZulu-Natal.
3. To consider international and local land use management options relating to traditional land.
4. To recommend options for informed decisions regarding land use management on traditional land in KwaZulu-Natal

1.4 Structure of the research

The structure of the research is depicted in **Table 1-1** below. The study is divided into four phases, each aligned with a research objective corresponding with the chapter division and methodology used to attain the research objective. The methodology used for each phase is discussed in further detail in chapter 2.

Table 1—1: Structure of the research

Research Aim					
Investigate solutions to allocate, demarcate and record land parcel boundaries with the aim to address land tenure on traditional land within the KwaZulu-Natal Province.					
Phase	Research Objectives	Chapter	Method	Description	
Phase 1	Introduction & Methodology.	Chapters 1 & 2	➤ Literature Review	Identifying research objectives and formulating research structure, design and methodology.	Literature review
Phase 2	1. To provide an overview of the multiple directives relating to traditional land in South Africa.	Chapter 3	➤ Literature Review ➤ Document Review	The current review of legislation and policies with regard to land use management on traditional land in South Africa.	

Research Aim					
Investigate solutions to allocate, demarcate and record land parcel boundaries with the aim to address land tenure on traditional land within the KwaZulu-Natal Province.					
Phase	Research Objectives	Chapter	Method	Description	
	2. To offer a perspective on land use management of traditional land in KwaZulu-Natal.	Chapter 4	<ul style="list-style-type: none"> ➤ Literature Review ➤ Document Review 	Review of literature relating to land use management on traditional land in KwaZulu-Natal.	
Phase 3	3. To consider international and local land use management options relating to traditional land.	Chapters 5 & 6	<ul style="list-style-type: none"> ➤ Case Study Approach ➤ Semi-Structured Interviews 	Multiple case study selections to investigate possible solutions to land use management on traditional land within KwaZulu-Natal	Empirical analysis
	Content Analysis & Coding Analysing of data from each chapter for coding analysis determining categories and themes for land use management on traditional land within KwaZulu-Natal.				
Phase 4	4, To recommend options for informed decisions regarding land use management on traditional land in KwaZulu-Natal	Chapter 7	<ul style="list-style-type: none"> ➤ Empirical analysis and findings through cross-tabulation of coded data. 	Analysing the empirical findings of chapters 5 & 6.	
		Chapter 8	<ul style="list-style-type: none"> ➤ Conclusions and Recommendations 	Conclusions and recommendations based on the findings of the study.	

Source: Own Construction (2020).

1.4.1 Phase 1: Introduction and methodology

Chapters 1 & 2: Introduction and methodology: These chapters provide an introductory section and the methodological approach adopted to undertake the study. The background and problem statement are formulated from a preliminary literature review expressing the study's necessity. The research aims and objectives are defined, and methodological approaches to the study are discussed. In conclusion to this phase, the study is defined, and research methods are explained to the reader to guide the research process.

1.4.2 Phase 2: Define and review

Chapter 3: Literature review, document review: This chapter focuses on a literature and document review aiming to provide an overview of the multiple directives of the South African government on traditional land in the country. Sources used in this chapter for the literature and document review include historical and current legislation, policies, and guidelines. Other sources include journal articles, dissertations, and books to support the document review.

Chapter 4: Literature review: This chapter focuses on a literature review aiming to offer a perspective on current land use management practices on traditional land within KwaZulu-Natal.

Sources for the literature review include journal articles, dissertations, books, internet sources and media statements.

In conclusion to this phase, the directives relating to traditional land are defined from the perspective of land use management options on traditional land. A content analysis is undertaken as part of the coding process to establish categories and themes on solutions and challenges to land use management on traditional land as obtained in this phase.

1.4.3 Phase 3: Investigate

Chapters 5 & 6: Multiple case studies, semi-structured interviews: This chapter forms part of the empirical research aiming to identify solutions and challenges of land use management on traditional land by investigating international and local case studies. Semi-structured interviews will aim to support the case study investigations.

In conclusion to this phase, case study findings form part of the coding process. The case study investigation will reveal more factors in terms of local and international solutions toward land use management on traditional land.

1.4.4 Phase 4: Analyse, conclude, and recommend

Chapter 7: Empirical analysis and findings: This chapter will include an analysis and conclusion of the coding process by triangulation between data obtained from the literature review, international case studies, and local case studies. Cross tabulation and data reduction in terms of categories and themes will be applied to the data obtained in phases two and three of the study to identify solutions toward land use management options on traditional land in KwaZulu-Natal.

Chapter 8: Conclusions & recommendations: This chapter provides recommendations in terms of solutions toward land use management options on traditional land in KwaZulu-Natal based on the conclusions obtained in chapter 7. In conclusion to this phase, the study findings are defined and discussed with recommendations. Areas of further studies are provided following the findings of this study.

1.5 Limitations to research

A number of factors ought to be considered as they may result in limitations to the research conducted. Firstly, the availability of interviewees was found to be indubitably challenging during the lockdown period as a result of the COVID-19 pandemic, with health concerns, access to the internet in rural areas and other COVID-19 restrictions playing a major part. Secondly, a limited

but manageable number of case studies were purposefully selected and included in the study with the aim to enable a comparative analysis. Access to the case studies and the availability of reliable data were determining factors in the case study selection. Access to international case study data and information may, subsequently, also be considered a limitation as some literature relevant to international case studies was in foreign languages. Interpretation of the data may, therefore, be impacted by unreliable translations to English. Furthermore, relevant literature and resources on international case studies were scarce.

1.6 Ethical considerations

This research project has been ethically approved by the North-West University's Faculty of Natural and Agricultural Sciences Ethics Committee (Ethics number: NWU-01245-21-A9). Please refer to **Annexure A** for the ethics approval letter. The study is categorised as “no risk”.

1.7 Acronyms

A list of acronyms referred to throughout the study is listed in **Table 1-2** below. The list is alphabetically catalogued for convenience.

Table 1—2: List of acronyms

Acronym	Definition
CCRO	Certificates of Customary rights of Occupancy
CLRA	Communal Land Rights Act 11 of 2004
CLS	Centre for Law and Society
CLTP	Communal Land Tenure Policy 2014
CPA	Communal Property Associations
DLA	Department of Land Affairs
DRDLR	Department of Rural Development and Land Reform
FOA	Food and Agriculture Organization of the United Nations
GIS	Geographic Information System
GPS	Global Positioning System

IDP	Integrated Development Plan
IKS	Indigenous knowledge Systems
IPILRA	Interim Protection of Informal Land Rights Act 31 of 1996
LARC	Land and Accountability Research Centre
NDP	National Development Plan 2030
NGO	Non-Government Organisation
PGIS	Participatory Geographical Information Systems
PPC	Parliamentary Portfolio Committee
PRM	Participatory Research Mapping
PTO	Permission to Occupy
PTPP	Public Traditional Private Partnership
PLUP	Participatory Land Use Planning
RDP	Reconstruction and Development Plan
SDF	Spatial Development Framework
SG	Surveyor General
SPLUMA	Spatial Planning and Land Use Management Act 16 of 2013
TLGFA	Traditional Leadership and Governance Framework Act 41 OF 2003
QMS	Quality Management System
UN	United Nations
USAID	United States Agency for International Development

Source: (Own Construction, 2022)

CHAPTER 2: METHODOLOGY

The research design (section 1.4) defines how the study is designed in terms of the methodology, objectives, and structure to ensure the aim of the study will be attained effectively. Furthermore, the research methodology is defined in correlation with the research design to illustrate the methods used in the study and why it is selected as a research method.

2.1 Research design

To give effect to the study's aim and achieve the research objectives, a research design is required that encompasses all the focus areas that are investigated. As outlined in section 1.2 of chapter 1, this study aims to explore and understand the meaning of a social or human problem, substantiating the employment of a qualitative methodology. The qualitative nature of this study validates a research design that comprises multiple methodological approaches, but more specifically triangulation, consisting of multiple qualitative approaches (Flick, 2018:23).

A research design comprises four dimensions that classify a study. Every study consists of these four dimensions unless it is a philosophical study, where only dimensions one and two are applicable (Mouton, 2001:143).

The four dimensions of a study are outlined in **Table 2-1**:

Table 2—1: Dimensions of a research design

Dimension	Example
Dimension 1	Empirical/non-empirical
Dimension 2	Primary / Secondary Data
Dimension 3	Textual / Numeric Data
Dimension 4	Degree of control of the researcher.

Source: (Mouton, 2001:143)

For this study, empirical and non-empirical approaches were followed. Furthermore, the study utilised existing data and secondary data in the form of textual-type data. The degree of control of study data by the researcher is classified as low control due to the textual nature of the data considered for the research.

Figure 2-1 illustrates the research design along with references to the primary sources consulted under each section that delivers a visual representation of the triangulation research approach followed in this study. **Figure 2-1** below is discussed in the following sections.

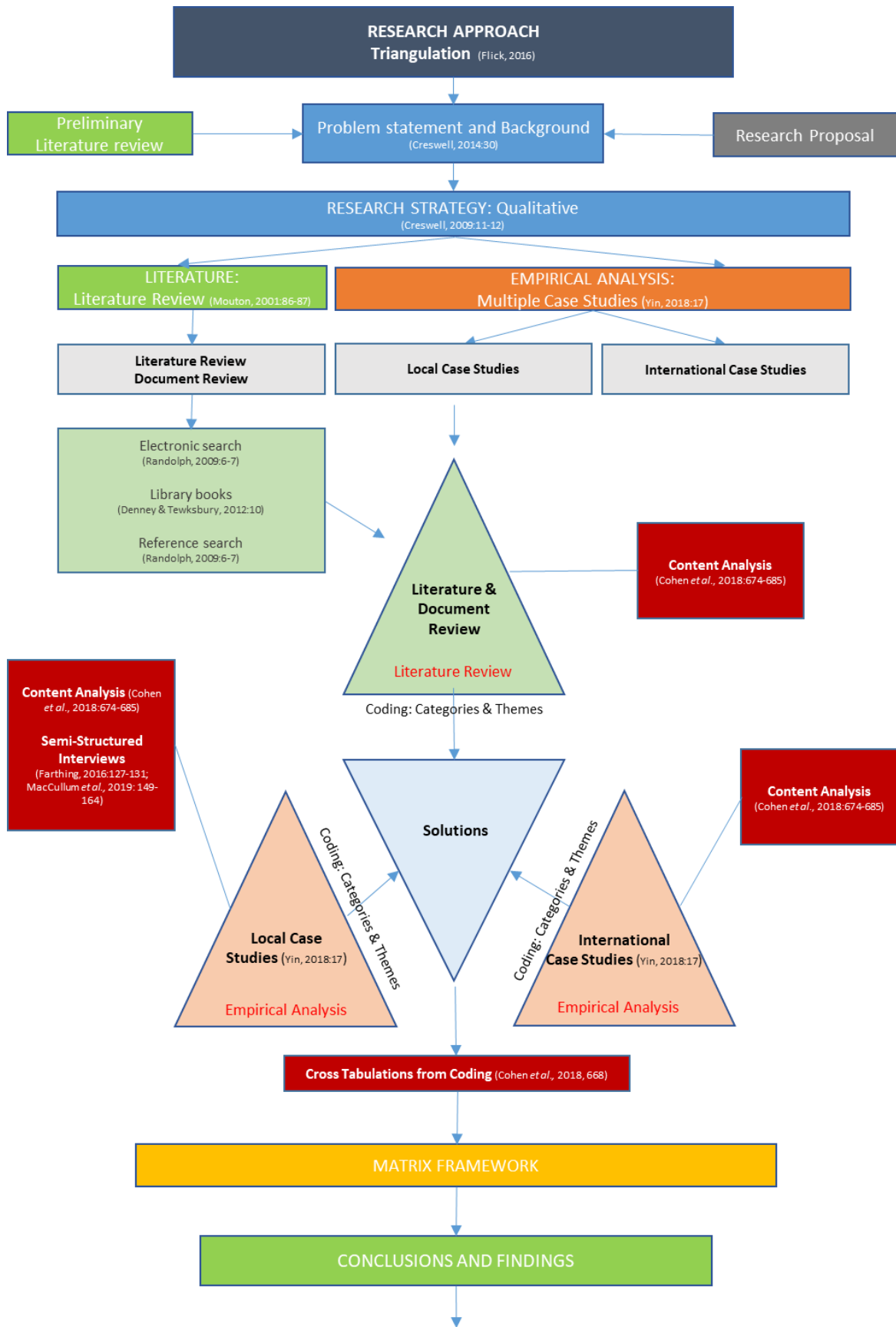


Figure 2-1: Research design

Source: Own Construction (2020)

2.2 Research approach

Applying a triangulation approach as a research strategy is an effective tool to validate the qualitative research findings of a study (Denzin, 1978:297). Triangulation is focused on combining several qualitative approaches to conduct a qualitative study, confirm findings or add additional knowledge to the research (Flick, 2018:24; Heale & Forbes, 2013:98). The qualitative research methodology suits the triangulation approach by being flexible in nature (Creswell, 2009:11-12).

Triangulation between the various qualitative approaches of this study, comprising international case studies, local case studies and a literature review, will ultimately culminate and conclude in the research findings (refer to **Figure 2-1**).

2.3 Research strategy

In employing the triangulation approach in this study, the qualitative methodology applied comprises three angles of data gathering and analysis; firstly, a literature study informed by a literature and document review, secondly an analysis of international case studies and thirdly, an analysis of local case studies in KwaZulu-Natal as part of the empirical investigation. These three perspectives on the data analysis are eventually combined to elucidate recommendations for land use management options on traditional land.

2.4 Literature review

As part of the triangulation approach, the literature study purposes to gather information on land use management options through the analysis of an existing body of knowledge (Mouton, 2001:86-87). This entails, inter alia, a document review of past and existing directives relating to traditional land in South Africa as well as the current land use management perspectives on traditional land in KwaZulu-Natal. In conducting the literature study, qualitative data were, therefore, 1) collected, 2) analysed and 3) reduced.

For the purpose of data collection, data sources that were consulted comprised literature publications, including articles, research journals, books and internet publications. The methods of data collection entailed electronic and reference searches on the internet to access published documents (Randolph, 2009:6-7). Further to this, library books and associated academic texts obtained from the university library or online library databases were also used (Denney & Tewksbury, 2012:10). The data analysis in the literature study, was conducted through a content analysis whereby data relating to the objective or aim of the study were summarised as a conclusion (Cohen et al., 2018: 674-685). The content analysis was undertaken to abstract current and historical perspectives on land use management options for traditional land, from

various international and national directives. A further process of data reduction, namely coding, was performed to organise the collected data with the aim to establish categories and themes within the literature data (Cohen et al., 2018: 668). Qualitative data from the literature study were, ultimately, used to compile a theoretical matrix (Xiao & Watson, 2019:98) as part of the threefold analysis applied in the triangulation approach.

2.5 Empirical investigation

As part of the triangulation approach employed in this research, the empirical investigation contributes toward two of the three angles of data analysis through the collection of data from international and local case studies. The purpose of the case studies is to investigate “real-world examples” of current possible solutions and challenges for land use management on traditional land. The case studies were further used to provide a practical perspective on the qualitative data abstracted from the literature (MacCallum *et al.*, 2019:49; Yin, 2018:7). According to Yin (2018:18) case study analysis is a preferred strategy when asking how and why questions, substantiating the use of this method in ultimately obtaining the research aim of providing recommendations towards options for informed decisions regarding land use management on traditional land in KwaZulu-Natal.

For the purpose of this empirical investigation, multiple case studies (Yin, 2014:61-62) in a local and international context were purposefully selected and investigated (Patton, 2002:230, 241). Similar to the literature study, qualitative data were abstracted from the selected case studies through a process of coding to establish categories and themes for the data analysis (Cohen *et al.*, 2018: 668). Case study data were gathered by means of a document analysis, observations as well as a desk-top study (Nayak & Singh, 2015:136). Additionally, geo-spatial imagery was used to collect web-based geo-spatial data in a raw format, allowing for an analysis of spatial planning and land use management (MacCallum *et al.*, 2019:67) in both the local and international case studies. A comparative analysis of these case studies was subsequently employed, comparing the research results between local and international case studies as part of the triangulation approach. The reasoning and motivation regarding the purposeful selection of specific international and local case studies are subsequently discussed in more detail.

2.6 Case study selection: local case studies

The selection of local case studies identified as part of the empirical investigation (chapter 5) of this study are discussed below. The case studies were selected in cognisance of the aim of this study and objectives as identified in chapter 1.

- **Nqutu socio-economic and housing survey**

The Nqutu social-economic and housing survey as a case study were selected due to the high prevalence of traditional land in the municipality as well as the nature of the project. Nqutu Local Municipality is made up of mainly traditional areas that comprise 95% of the Municipality and only 5% of formal title located in the town of Nqutu and Nondweni (Nqutu Local Municipality, 2017:2). The purpose of this project was to assess the housing backlog of the municipality while simultaneously providing a comprehensive profile of the area by capturing and collecting data of households. The project involved allocation, demarcating, and recording land parcels with information about the said land parcel.

- **Umzumbe B rural subsidised housing development**

The Umzumbe B rural subsidised housing development project as a case study was selected due to the unique process of identifying beneficiaries, locations and managing household information within the traditional context by private entities. The project entails the allocation, demarcation, and recording of land parcels with information about the said land parcel to determine beneficiaries and effectively construct 2000 dwelling houses within the traditional landscape.

- **Isithebe rural subsidised housing development**

The case study of the Isithebe rural subsidised housing development is similar to that of the Umzumbe B case study. The reason to add the Isithebe rural subsidised housing development as a case study is that it provides a different perspective in terms of the allocation, demarcation and recording of land parcels due to an unstructured traditional authority and historical difference due to the decentralisation of the apartheid government (van Heerden,2021). The other reason is that this case study is in a distinctly different landscape and location within the KwaZulu-Natal Province as illustrated in **Figure 5-1**. This will provide an improved view of land use management during such projects within the KwaZulu-Natal Province. The project entails the allocation, demarcation, and recording of land parcels with information about the said land parcel to determine beneficiaries and effectively construct 2000 dwelling houses within the traditional landscape.

- **Formulation of the Ulundi land use scheme 2020**

The formulation of the Ulundi land use scheme, 2020 was selected as a case study to provide insight into the current methods being utilised to include traditional land in the land use schemes as mandated by the Spatial Planning and Land Use Management Act 16 OF 2013 (SPLUMA) under section 24(2)(c).

2.7 Case study selection: international case studies

International case studies identified as part of chapter 6 of this study are subsequently discussed. The case studies are selected in cognisance of the aim and objectives of this study as identified in chapter 1. A total of three case studies have been selected each on a different continent, namely South America, Africa, and Asia, providing a wide overview of land use management options on traditional land in the international context. The selection of the case studies is discussed below.

- **Africa: United Republic of Tanzania**

Tanzania is progressively integrating customary and informal land tenure with statutory land tenure systems through the land formalisation processes since 2004 (Manganga *et al.*, 2016). This case study will exclusively investigate the formalization process of informal land tenure. The case study will also inform the objectives and aim of this study by investigating solutions within the African context of customary tenure and integration with formal land-use management.

- **South America: Nicaragua**

After 15 years of failing to provide land tenure for indigenous communities in accordance with their constitution, the government of Nicaragua was forced to provide indigenous land rights through land title (Larson & Cronkleton, 2011: 8). This case study investigates the processes followed in terms of the Participatory Research Mapping (PRM) approach that indigenous communities follow to demonstrate land rights in order to obtain indigenous territorial claims.

- **Asia: Cambodia**

Since 2009, Cambodia has been in the process of providing indigenous communities with legal titles to their traditional land (Keeton-Olsen, 2021). Even though Cambodia is only in the process of demarcating indigenous territorial land and providing legal title to their land, various land use management aspects in terms of allocation, demarcation, and recording of land parcels form part of the process of establishing territorial rights for indigenous communities. This case study was selected due to the approach of Participatory Land Use Planning (PLUP) on traditional land in Cambodia and provides a unique insight into the process.

A more detailed explanation of the specific methods used for the local and case study analysis is discussed in chapter 5 and 6.

2.8 Findings, conclusions, and recommendations

During the final stage of this research study, the qualitative data as abstracted from the literature study, local and international empirical investigations through coding were triangulated and analysed through cross-tabulation (Cohen et al., 2018: 668) and illustrated in the form of a theoretical matrix (Xiao & Watson, 2019:98) to present conclusions and planning recommendations with options for informed decisions regarding land use management on traditional land in KwaZulu-Natal

CHAPTER 3: OVERVIEW OF DIRECTIVES RELATED TO TRADITIONAL LAND IN SOUTH AFRICA

This chapter outlines the historical and current directives that pertain to traditional land in South Africa. Section 3.1 provides an introduction and background to traditional land directives. Sections 3.2 and 3.3 explore how historical directives shaped traditional areas and how it influences current land use management practices on traditional land. In section 3.2 the laws regarding traditional land before 1990 are discussed to provide the background of the colonial and Apartheid eras and their apparent legacy. Section 3.3 ensuing deliberates the directives implemented after 1990 relating to traditional land in more detail as it has not been repealed to date. This includes the transition phase from apartheid to democratic South Africa from 1990 to 1994 as well as from 1994 onwards. It explores how legislation developed in an attempt to redress past injustices and highlights the current opportunities, challenges, and shortcomings in the legislative framework concerning traditional land in South Africa.

This chapter gives effect to the first research objective of the study namely:

To provide an overview of the multiple directives relating to traditional land in South Africa.

3.1 Introduction: historical implications

It has been almost twenty-five years since former homelands were introduced into a unitary South Africa, yet the inheritance of colonial and apartheid legacies still linger in these areas (Claassens, 2011:175). Roughly a third of South Africa's population is living on former homelands also known as communal areas or traditional land due to the authority structure and forms of communal tenure (Weinberg, 2015:6). According to Clark and Luwayo (2017:3), most of the people residing in these areas do not have their full recognition of land rights realised due to the South African government failing to develop legislation and regulations that sufficiently encapsulate and integrates the nuances of traditional systems and living customary laws. Thus, living with insecure tenure.

Weinberg (2015:6) defines tenure security as the ability to legally and practically defend one's occupation, access, use and ownership of land from interference by other parties. Mutangudara (2007:177) states that without secure tenure a person will not only be unable to exercise their rights over land as stated above but runs the risk of possibly losing all rights over the land. People residing in traditional areas face pertinent challenges in terms of legal insecurity of tenure (Clark & Luwayo 2017:3) as they hold weak land claims over the land they occupy regardless of inhabiting the land for generations (FOA, 2012). This legal insecurity continues to exploit and dispossess the vulnerable marginalised people on traditional land to the equivalent of that of

former apartheid discriminatory laws (Clark & Luwayo 2017:3). Moreover, the socio-economic disadvantages and impact of tenure insecurity on traditional land have been exponential over the years (FOA,2012) as poverty remains deep and widespread (Noble *et al.*, 2014:1). As absolute poverty throughout South Africa slightly declined over the years, traditional areas have experienced persistent increases in poverty and deprivation and are burdened with the highest levels of poverty in the country (Noble *et al.*, 2014:1).

Pienaar (2011:110) links tenure insecurity in former homelands to the former Apartheid government that employed a complex legal framework aimed at the segregation and undermining of black people's land ownership. He further explains that Black people were perpetual tenants on land they occupied while white people were able to own land and have tenure security, resulting in a dualistic system whereby black people were only limited to their customary rights in homelands coupled with a permit-based system to occupy and use land. These rights were controlled and managed by the South African Development Trust during the Apartheid dispensation (Kariuki, 2004:7)

The Post-Apartheid government set the strengthening and protection of tenure security in former homelands as a key priority to address the negative consequences of directives implemented by the colonial and apartheid dispensations and promulgated legislation to give effect to the *Constitution of South Africa* (1996) and repealed discriminatory legislation (Budlender & Latsky, 1991:115).

Table 3—1: Multiple directives relating to traditional land in South Africa

Directives relating to Traditional Land	Year/Era		Impact
The Glen Gray Act of 1894	1894	Colonial	Effectively restricted the authority of traditional leaders.
The Black Lands Act 27 of 1913 (BLA)	1913		Provided for areas where occupation was restricted for black persons.
The Development Trust and Land Act 18 of 1936 (DTLA)	1936		Introduced measures to control land occupation.
The Group Areas Act 41 of 1950	1950	Apartheid	Segregate people across racial lines (Introduction of Homelands)
The Bantu Authorities Act of 68 of 1951	1951		Traditional leaders were provided with a better role related to land allocation.
Black areas land regulations (Proclamation R188, GG 2486, 11 July 1969)	1969		Traditional authorities played a role in the management of arable and residential land.
The Upgrading of Land Tenure Act 112 of 1991	1991	Trans	Provided ownership to <i>tribes</i> of the former homelands.
The KwaZulu Ingonyama Trust Act KZ4 of 1994	1994		Allowed the King to manage the land owned by the former KwaZulu homeland government.
The Constitution of the Republic of South Africa 1996	1996	Democratic	Introduced to serve as the supreme law of post-Apartheid South Africa.
The Interim Protection and Informal Land Rights Act 31 of 1996 (IPILRA)	1996		Intended as a temporary "holding measure" to protect people without recognised formal land rights.
Communal Property Associations Act 28 of 1996 (CPA)	1996		Provided ownership of land and title to be held under a group basis as a trust.
The Upgrading of Land Rights Act 112 of 1991 Amendment	1996		Provided communities with communal communities to pass a "tribal resolution" democratically under customary law.
The KwaZulu Ingonyama Trust Act KZ4 of 1994 Amendment	1997		Provided the establishment of the Ingonyama Trust Board to administer trust land.
The White Paper on South African Land Policy 1997	1997		Provided principles for land tenure, focussing on tenure security in former homelands
Land Survey Act 8 of 1997.	1997		Provided regulations on land demarcation.
The Land Rights Bill of 1998	1998		The Bill was deemed complex resulting in the introduction of a new bill.

Directives relating to Traditional Land	Year/Era	Impact
The Municipal Structures Act 11 of 1998	1998	Recognises traditional leaders in section 81 as advisories to the municipal council.
The Municipal Systems Act 32 of 2000	2000	The Integrated Development Plan (IDP) was introduced as a tool for cooperative governance. The Spatial Development Framework (SDF) was introduced as an integral sector plan to the IDP.
The White Paper on Spatial Planning and Land Use Management of 2001	2001	Focused on moving towards a rights-based system and away from Permission to Occupy (PTO's)
The Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA)	2003	Introduced in 2003 to govern structures of traditional governance.
The Communal Land Rights Act 11 of 2004 (CLRA) (Never Implemented)	2004	The controversial Act founded unconstitutional on 15 grounds and was not implemented.
The Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA)	2013	Introduced to establish a new uniform framework to regulate and govern planning permissions and approvals and to set parameters for developments and land uses. The Act recognised the essence of incorporating traditional land in Spatial Development Frameworks (SDF's), land use schemes and the participation of traditional leaders in decision-making processes in all spheres of government.
The Communal Land Tenure Policy 2014 (CLTP)	2014	Aims to transfer the outer boundaries of traditional land to traditional councils.

Source: Own Construction (2021).

3.2 Pre-1990 directives:

The first act promulgated to promote segregation in South Africa was the Glen Gray Act of 1894 that was introduced by Governor Cecil John Rhodes. It is widely considered the foundation on which ensuing apartheid policies were founded. It introduced a governance system in terms of a district councillors' approach of separate reserves in what was considered the vision of Rhode's communal tenure system. This effectively restricted the authority of traditional leaders (Ntsebeza 1999:83). The principle that Rhode's envisioned was that of "one man one lot" and the restriction on the alienation of land (Ntsebeza 1999:85).

The first act responsible for spatial segregation in South Africa was introduced during 1913 as the Black Land Act 27 of 1913. It provided for areas where occupation was restricted to black persons only and created scheduled areas for the occupation of African people. African people were not permitted to acquire land outside of these scheduled areas (Du Plessis, 2018:6). The BLA effectively restricted the areas where black people may live to a marginal seven percent of South Africa. As the areas grew overcrowded the Development Trust and Land Act 18 of 1936 (DTLA) was introduced to add an additional six percent of land that black people could occupy, by purchasing additional land to consolidate with the existing reserves. The additional six percent was held in trust and black people were able to purchase, hire or occupy this land (Ntsebeza,1999:85).

The DTLA introduced measures to control land occupation based on "Permission to Occupy" (PTO) systems. The PTO system allowed a person holding a permit to remain on the land until his/her death as well as elect a person for its inheritance. The right to occupation in terms of an issued PTO ought to be forfeited if the occupation was not executed within a year or if there was no beneficial use of the land for two years (Du Plessis, 2018:6). Du Plessis (2018:6) laments that the PTO system left land tenure as vulnerable in traditional areas where PTO holders may be

forcibly removed by the government with no consultation. In certain instances, the “Betterment Plan” that introduced development schemes on traditional land, resulted in people being forcibly removed, and their dwelling houses demolished without any recourse of law or compensation from the government. Ntsebeza (1999:85) contributes that PTO’s further constrained people living on traditional land as financial institutions did not recognise it as collateral.

The Group Areas Act 41 of 1950 then ensued to further segregate people across racial lines restricting black people to acquire, own or occupy land in South Africa. It regulated the alienation, acquisition and occupational rights on land and introduced the former homelands as rural reserves namely the four independent nation states Transkei, Ciskei, Venda and Bophuthatswana and the six self-governing territories namely KwaNdebele, Gazankulu, Lebowa, QwaQwa KaNgwane and KwaZulu. This was an effort to segregate the different ethnic groups of the population and enabling the established authorities with their own regulations and town planning rules.

It wasn't until to introduction of the Bantu Authorities Act of 68 of 1951 that traditional leaders would be provided with a more substantial role to play considering the allocation of land. Traditional leaders were provided to play their role in the process of construction and maintenance of transport infrastructure, water provision, the establishment of hospitals and clinics, and the process of improving agricultural productivity (Bikam & Chakwizira, 2014:145). In terms of the Black Areas Land Regulations (Proclamation R188, GG 2486, 11 July 1969 regulations 19 and 49), traditional authorities and traditional leaders had a role to play in the management of arable and residential land in terms of allocation to prospective occupiers. Occupation came to pass by obtaining permission from the “Bantu Affairs Commissioner” who, prior to granting permission, first had to obtain permission from the traditional authority.

The result of Apartheid reflected in about 17 000 statutory measures that had been issued to segregate people from one another and from land, with a variety of fourteen land control systems in South Africa. By the time Apartheid ended approximately 3,5 million people had been displaced by law while approximately 80% of the population of South Africa lived on 18% of the land (Badenhorst *et al.*, 2006:256).

3.3 Post-1990 directives

In this section, the directives implemented after 1990 relating to traditional land are discussed. This includes the gradual transition phase from apartheid to democratic South Africa from 1990 to 1994 and beyond. It explores directive development in an attempt to redress past injustices

and highlights the current opportunities, challenges, and shortcomings in the legislative framework regarding traditional land in South Africa.

During the transition phase prior to the new dispensation in 1994, the National Party introduced a land reform program to upgrade land utilisation, land distribution and land rights in the early 1990s. The Upgrading of Land Tenure Act 112 of 1991 emanated from the land reform program. It was introduced to provide ownership to traditional communities residing in the former homelands. Section 19 stipulates that “any *tribe* shall be capable of obtaining land in ownership and [...] of selling, exchanging, donating, letting, hypothecating, and otherwise disposing of it” with restrictions in place. According to Ntsebeza (2004:86), the possibility existed for people on communal land to finally obtain title deeds, although the National Land Committee criticised this due to overlapping land rights of formal rights and customary law. The Upgrading of Land Rights Act 112 of 1991 was amended in 1996 to provide communities in communal areas to pass a “tribal resolution” democratically under customary law.

Following the adoption of the Constitution in 1996, the government unsuccessfully attempted the introduction of directives (policy, legislation and guidelines) to purposefully regulate communal tenure in the former homelands. The first was the Land Rights Bill of 1998, whereafter the Minister of Land Affairs in 1999 criticised the bill as being complex and commenced with the drafting of an ensuing bill (Weinberg, 2015:13).

Thereafter, Parliament passed the Communal Land Rights Act 11 of 2004 (CLRA). It was perceived as controversial with several civil society groups questioning the validity of the Act under the Constitution (Cousins & Hull, 2011:8). It was legally challenged by four rural communities because the act undermined their tenure security due to the sweeping control traditional leaders and councils would have over the land (Weinberg, 2015:14) It was never implemented (Weinberg, 2015:14) and in the case of *Tongoane and Others, vs National Minister for Agriculture and Land Affairs and Others* (2009) the High Court declared fifteen fundamental provisions in the Act to be invalid and unconstitutional. This included, amongst others, the establishment and composition of land administration committees and the determination of rights by the Minister.

Directives since introduced and currently in effect are discussed below to elucidate the status of tenure arrangements on traditional land.

3.3.1 KwaZulu Ingonyama Trust Act KZ4 of 1994

In 1994 the Ingonyama Trust was established immediately before the Act's commencement to manage the land owned by the former KwaZulu Homeland government. The KwaZulu Ingonyama

Trust Act KZ4 of 1994 was enacted by the KwaZulu Legislative Assembly and came into effect on the 24th of April 1994, days before the first democratic election of South Africa. It was significantly amended during 1997 to establish the Ingonyama Trust Board that was provided with the duty to administer traditional land resorting under the Act.

Section 2(2) stipulates that land must “be administered for the benefit, material welfare and social well-being of the members of the *tribes* and communities” identified within the Act. The land registered in the Trust’s name vests in the Ingonyama also known as the King of the Zulu Monarch the late King Zwelithini, as the trustee on behalf of the communities identified in the Act. It totals approximately 2.8 million hectares of land that is managed by the Trust in KwaZulu-Natal. Section 2(4) determines that the Ingonyama may, subject to provisions of the Act and any other law deal with the land mentioned in section 2(3) following Zulu customary law.

Although the Act makes provisions for wide-ranging powers for the Trust regarding land management, it also makes various provisions that protect the people listed as beneficiaries of the trust (CLS 2015:1). Section 2(5) “The Ingonyama shall not encumber, pledge, lease, alienate or otherwise dispose of any the said land any real interest or real in the land” without written consent from the traditional authority or community authority”. Furthermore, section 2(8) of the Act prohibits the Ingonyama from infringing upon any existing rights or interests. It, therefore, legally protects people in terms of access, use and occupation of land that is held by the Trust. The people living on trust land have more rights than merely to occupy. This is according to the Ingonyama Trust in their Annual Report (2013:7) where Chairperson Ngwenya states that it is important to acknowledge that “communal land ownership consists more of than just land ownership”, referring to various rights to land uses for example, grazing.

However, the Ingonyama Trust has come under scrutiny for not protecting the land rights of people in the areas they administer despite the protective provisions contained in the Act. This is due to the long-term lease agreements with mining companies to mine on the land occupied and used by the local people (Timse, 2015). According to LARC (2016:17), certain lease agreements have been concluded without the consultation of the community that leads to the deprivation of land rights on Ingonyama land. The Trust, however, maintains they are within the law as it followed section 2(5) of the Act that obligates the trust to obtain written consent from traditional councils in terms of the development of land. It argued that only written consent obtained from the traditional council would suffice in terms of the Act to lease land for development and mining (Trust Board, 2015:2). This interpretation of the Act means that decision-making powers only vest in the traditional councils and undermine the customary consultation requirements within communal land systems. A distinct difference in access to land by outsiders based on the interest of the Trust is observed. For example, when an outsider being a person who seeks access to land the

traditional council approval is not enough to be granted access. (Cousins *et al.*, 2011:38) Communal Land systems use a broader system of participatory processes to grant access to people. However, the Trust continues to undermine these communal land systems to best suit their interest. (Clark & Luwayo, 2017:10). Their interest being revenue as the Parliamentary Portfolio Committee (PPC) on Rural Development and Land Reform has raised their concerns over the ongoing failure to reinvest revenue of the Trust back into the people living on the land. The PPC is mandated to hold the Ingonyama Trust accountable, however, a lack of transparency from the Trust makes this difficult (PPC:2015).

3.3.2 The Constitution of South Africa 1996

The *Constitution of South Africa* (1996) was adopted to serve as the supreme law of post-Apartheid South Africa by regulating and providing the standards for all laws and policies in the country. Section 2 states that any conduct or inconsistencies with the constitution will be deemed invalid and that all obligations imposed must be fulfilled. The Act obligates the State in section 7(2) to “respect, protect, promote and fulfil the rights in the Bill of Rights” that is discussed below.

Section 25(6) and 25(9) of the *Constitution of South Africa* (1996) sets the precedent for rights in traditional areas as it provides recognition to informal land rights and people living in communal areas. Section 25(6) states that “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure that is legally secure or comparable redress”. Section 25(9) states additionally state that “Parliament must enact the legislation referred to in subsection (6)”

The abovementioned referring to sections 25(6) and 25(9) of the *Constitution of South Africa* (1996) seeks to protect those whose tenure is legally insecure due to past racially discriminatory practices. The Act also compels Parliament to pass legislation to address insecure tenure as stated in section 25(9). The Act further obligates the State in section 7(2) to “respect, protect, promote and fulfil the rights in the Bill of Rights”. This includes the right to secure tenure for the people previously suffering from discriminatory laws due to the terms of the Apartheid directives. Liebenberg (2010:54-55) explains that these obligations provided to the State by section 7 are all interconnected but differ in practice.

The UN (2003:33) explains that the right to secure tenure, similar to any human right, imposes three obligations on the state namely; to respect, protect, and fulfil the human right. Furthermore, the obligation to fulfil consists of obligations to facilitate, promote and provide. In the context of secure tenure, the obligation to respect would refer to the State refraining from interfering directly or indirectly with the security of the tenure people have established for themselves. The obligation

to protect will consist of the State keeping any other parties from interfering with the security of people's tenure, and the obligation to fulfil would ultimately obligate the State to implement appropriate legislative and other measures to the realisation of the right to secure tenure. The State will fail in its obligation if it introduces legislation that weakens the right to tenure security of people and has since introduced the Interim Protection of Informal Land Rights Act 31 of 1996 also known as IPILRA. Despite this implementation, the State, nonetheless, requires implementation of protective legislation to fulfil the right to tenure security (Clark & Luwayo, 2017:7-8).

Chapter 12 of the constitution acknowledges and formally recognises traditional leadership and traditional authorities. Section 211(1) states that 'the institution, status, and role of traditional leadership is recognised, subject to the Constitution. Section 211(2) further states that "a traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs".

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

To give effect to sections 25(6) and (9) in the Constitution the Government promulgated the Interim Protection and Informal Land Rights Act 31 of 1996 (IPILRA) in 1996. The Act was intended as a temporary "holding measure" to protect residents without recognised formal land rights while additional directives were developed to regulate and protect informal land rights for example communal tenure (Claassens, 2000:250). Protection of informal land rights includes the (i) residents living on former homelands (ii) intertwined with the customary laws of that homeland. This includes the rights to access, use and occupation of land in the homeland for residential purposes or common resources for example arable land (LARC, 2016:71). Furthermore, LARC (2016:71) details who are considered vulnerable and protected under the Act; anyone who is a beneficiary of a trust arrangement that has been created in terms of law and passed by Parliament would qualify as holding informal land rights. This would include those living on Ingonyama Trust land in KwaZulu-Natal. Residents previously holding valid PTO certificates and beneficial occupiers who have continuously occupied the land since 1993 are also protected under the Act.

Section 2(1) is protective as it precludes the occupiers of land from being deprived of their "informal rights to land" unless the individual provides consent to being deprived of land or in the event government expropriates the land and pays compensation. Where land is held on a communal basis, an individual may be deprived of their rights provided certain requirements are dealt with. Firstly, the individual deprived of their informal rights must be paid compensation from the community that is disposing of the land (LARC, 2016:71). Secondly, section 2(4) stipulates

that the decision to dispose of the land must be taken by the majority of holders of such right' by being present or represented at a meeting where the deprivation is discussed. Furthermore, the Act provides due process protections for when any meeting regarding the consideration of deprivation of informal land rights. The affected individuals must be provided sufficient notice and granted the opportunity to attend and participate in such meetings (LARC, 2016:71).

Cousins and Hull (2011:5) allude to the limitations that the Act has as it comprises limited protection in terms of the deprivation of informal rights. They further argue that the IPILRA neglects to provide legal certainty regarding the nature of the informal land rights it seeks to protect and continue to argue that IPILRA has only secured rights in a few cases. It has been subject to copious suggestions by scholars regarding the possible interventions that may strengthen the Act. Claassens (2016: 29-30) suggests that regulations ought to be issued in terms of IPILRA as well as enforcement mechanisms to strengthen the legal and practical protection of informal rights. While the IPILRA was established as an interim act, the absence of ensuing decisive legislation forced the government to annually extend the Act in giving effect to section 25(6) of the Constitution and protect vulnerable occupiers of land comprising informal land rights (Cousins & Hull, 2011:4).

3.3.4 White Paper on South African Land Policy 1997

The *Constitution of South Africa* (1996) commands the government to enact legislation to give effect to section 25(9) to provide tenure security for people living in traditional areas. The White Paper on South African Land Policy of 1997 provides several principles concerning tenure security specifically focussing on tenure security in former homelands (Badenhorst *et al.*, 2006:256). The White Paper on South African land Policy 1997 refers to indigenous land tenure held under trust by the government where permits (PTO's) were formerly issued to black people living in the homelands (DLA, 1997:89-90).

The point of departure in the White Paper on South African Land Policy is to move toward a rights-based system and away from the permits issued under the Apartheid government (Du Plessis, 2011: 46). Du Plessis (2011:46), perceives the ultimate aim of the White Paper being a uniform lands rights system and to demolish a racially induced dualistic class system developed during Apartheid. The government recognised the unique character of traditional land rights, but strongly argues that land rights ought to vest in people and not the traditional authorities or other institutions. Rights vested in people would ultimately differentiate between individual, group or family rights. The argument is that where rights are held in a group, the holders of the rights ought to choose a land administration system and how to manage the land (Ntzebenza,2004:87). Furthermore, Du Plessis (2011:46) informs that arguments were offered for the White Paper to

allow people to choose a tenure system based on their circumstances including that of individual and group rights and or a combination of applicable land rights, provided it is aligned with the constitutional commitment to equality and basic human rights.

There was, however, a difficulty in interpreting and recognising secure land rights, especially regarding the private ownership paradigm versus the indigenous forms of land tenure. (Claassens & Cousins, 2008:9). Due to the domination of the private ownership paradigm and the rights being familiar in terms of secure tenure, the inclination is towards the paradigm of private ownership. The success of the private ownership paradigm is, nonetheless, questionable, and in the case of *Tongwane and Others, v National Minister for Agriculture and Land Affairs and Others* (2009) found the CLRA unconstitutional on 15 grounds, an Act that was meant to provide secure indigenous land rights.

3.3.5 Municipal Systems Act 32 of 2000

In terms of section 40(1) of the *Constitution of South Africa* (1996) the spheres of government being national, provincial and local must be autonomous. Section 41(1)(h) relating to constitutional principles and co-operative governance, requires that the spheres of government must “co-operate with one another in mutual trust and good faith”.

The integrated development planning (IDP) process was introduced under the Municipal Systems Act 32 of 2000 to facilitate sustainable development across all spheres of government. It was introduced as an instrument for spheres of government to achieve the goals set out by the Reconstruction and Development Plan (RDP). Traditional land had to be included in the IDP as it resorts in a demarcated municipal area of jurisdiction. The Municipal Systems Act 32 of 2000 additionally provides for the roles of traditional leaders in section 15 and the Municipal Structures Act 11 of 1998 recognises traditional leaders in section 81 as advisories to the municipal council. These directives affirm the necessity for a legal and fixed relationship between municipalities and traditional leaders.

3.3.6 Traditional Leadership and Governance Framework Act 41 of 2003

The Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA) was introduced in 2003 to govern the structures of traditional governance. The purpose of the Act was to create an overarching legislative framework incorporating other laws e.g., CLRA and Traditional Courts Bill. The Act is discussed in this research in view of the profound impact it vests on power relations within traditional areas. (Clark & Luwaya, 2017:14). In terms of the *Constitution of South Africa* (1996) traditional leaders do not have specific powers, however, the national legislature may promulgate legislation to provide powers in terms of the role of traditional leaders as an Institution.

This is only at a local level and only applies to matters relating to local communities (Du Plessis, 2018:3).

Section 3 of the Act defines traditional councils. Moreover, the TLGFA also acknowledges pre-existing traditional authorities that were created during the Apartheid dispensation as legal, although subject to specific requirements. The requirements include that at least 40% of the council must be elected and that one third of the council must comprise women. Section 4(1) of the TLGFA describes the functions of traditional councils that have an impact on planning. These functions include under section 4(1)(c) to “support municipalities in the identification of community needs” and section 4(1)(d) “facilitating the involvement of the traditional community in the development or amendment of the IDP of a municipality in whose are that community resides.”

Traditional leaders are granted power in terms of section 20 of the TLGFA and provide a list of areas where traditional authorities may obtain power in a role including the registration of births and deaths, administering justice and terms of land administration. The boundaries of traditional authorities are entrenched in section 28 of the TLGFA and mirror those created in terms of the Bantu Authorities Act 68 of 1951. The Act thus views former traditional authorities as traditional councils of the new democratic South Africa. Traditional authorities have been transformed into traditional councils by the Act under section 28(4). The TLGFA, unfortunately, came under heavy criticism as the Constitution of South Africa embodies democratic principles while the Act grants unelected traditional authorities more power and roles in communal areas without defining specifically their roles and functions (Ntsebeza, 1999:83).

3.3.7 Spatial Planning and Land Use Management Act 16 OF 2013 (SPLUMA)

Pre 1994, legislation was fragmented and divided amongst the various provinces and traditional areas. Post 1994 was met with the encounter to induce uniformity in legislation and to create an overarching integrated spatial planning policy for South Africa (Du Plessis, 2018:10). In terms of the *Constitution of South Africa (1996)* provisions are made for the development of an overarching framework for planning law. This includes sections 155 and 156 where powers and functions are assigned to spheres of government and specifically municipal powers in terms of spatial planning. Following the adoption of the Constitution, the White Paper on Local Government 1998 (DPACD, 1998) was the foundation of the new paradigm wherein the mandate of the constitution under sections 155 and 156 was facilitated, focusing on Integrated Development Plans (IDPs) (Du Plessis, 2018:10). From the White Paper several bills emanated; among them the Municipal Systems Act 32 of 2000 and the Municipal Structures Act 117 of 1998. The Municipal Systems Act 32 of 2000 integrated the Spatial Development Framework (SDF) as a sector plan in the IDP.

It was only after 2013, when SPLUMA was promulgated, that a uniform and integrated framework to regulate and govern strategic planning and to address land use control and management were established that were set as directives for the entire country (Clark & Luwayo, 2017:16). The importance of SPLUMA is accentuated by various authors, for instance, Dubazane and Nel (2016:225) reflecting on the importance of warranting equal rights to the entire country in terms of a healthy and safe environment led by uniform land use management (as held under communal was never subject to land use management systems). Clark & Luwayo (2017:16) highlights the importance of SPLUMA to repeal remaining Apartheid planning legislation (e.g., former provincial ordinances) that resulted in fragmented and segregated South Africa. The implementation of the National Development Plan 2030 (NDP) that was implemented in 2013 is another example accentuating the importance of a reformed planning system with an emphasis on future planning (National Planning Commission, 2013:251-252). Therefore, SPLUMA aimed to develop a comprehensive uniform and integrated system of planning that provides social and economic inclusion of people subject to past racially discriminatory laws and practices (Clark & Luwayo, 2017:16).

According to Du Plessis (2018:11), the introduction of SPLUMA brought fundamental changes to land use management and spatial planning. The first important fundamental change was that local municipalities and not the provincial government were granted the sole mandate for land use management resulting in municipalities as the 'authority of first instance' regarding land use matters in their areas of jurisdiction. The second fundamental change is the establishment of municipal planning tribunals (MPT) in municipalities to take decisions, free from intervention, on planning related matters and to assess selected land use applications. SPLUMA determines the establishment of appeal structures by municipalities in the event of appeals against MPT decisions. Thirdly, SPLUMA paved the way for single wall-to-wall land use schemes that include all properties within a municipality (including and, where applicable, traditional land).

SPLUMA consequently establishes a platform to also incorporate traditional land on municipal level. Land use management refers to the management of user rights on land being any new development or change in existing rights (Du Plessis 2018:12). As earlier alluded to, this function resorts under local government, within the norms and standards set in SPLUMA. Concerning traditional areas, they also resort under local government and section 24(2)(c) duly mandates that land use schemes must "include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme".

On a strategic level, provision is made in SPLUMA for the preparation of a municipal SDF. An SDF must, nonetheless, also be prepared by all spheres of government, guided by development

principles and norms and standards outlined in the Act (Du Plessis, 2018:11). As stated in section 12(1)(a) of SPLUMA the preparation of an SDF must “include previously disadvantaged areas, areas under traditional leadership, rural areas, informal settlements, slums and land holdings of state-owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere”. Traditional land must, therefore, also be included in strategic and forward planning directives (SDF) of the municipality. Municipalities may, as it is determined by the Act, also prepare their own spatial planning and land use management by-laws. Said, inter alia, assists municipalities to consider the management of areas not previously included in land use schemes, therefore, also traditional lands in their demarcated area of jurisdiction.

Traditional land is not merely recognised by SPLUMA, but the Act additionally facilitates the participation of traditional councils in land use management matters in municipalities. Section 23. (2) of SPLUMA reads “Subject to section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), a municipality, in the performance of its duties in terms of this chapter must allow the participation of a traditional council”.

Chapter 6 of SPLUMA refers to MPTs as responsible for the facilitation and enforcement of land use matters within the municipal area. This includes decisions on selected land use applications that fall within the municipality (there are instances whereby an assigned official is appointed by the council and may decide on unopposed applications of a less complicated nature). As it applies to the entire municipal area it will also include land under traditional authorities. Quite by contrast, traditional leaders’ part of a house or council of traditional leaders are, however, not allowed to be part of the MPTs under section 38(1)(b). This directive explains why traditional authorities often reject MPT decisions as is it perceived as undermining their authority. The latter, irrespective of the fact that the national government reiterated and numerous instances that land use decisions will be made in consultation with traditional authorities as the owners of the land and that traditional leaders must be represented in municipal planning tribunals (Motala, 2018). SPLUMA currently stipulates the powers of traditional councils regarding land use matters and planning in traditional areas in Regulation 19(1) and 2), as follows:

“19 (1) 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.

(2) 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.”

During July 2015 the traditional leaders lobby resisted the Act after being briefed by the Minister of Rural Development and Land Reform on land-related legislation. Traditional leaders demanded the suspension of the implementation of the Act due to a lack of consultation with them during the public participation process (Clark & Luwaya, 2017:16). Regulation 19 is deemed especially controversial as traditional leaders claim that municipal councils have power over the traditional institution and traditional land, while on the municipal council side, concerns are raised in view of the wide-ranging powers of traditional councils (Makinana, 2015). A substantial number of traditional councils, nonetheless, also do not comply with the Traditional Leadership and Governance Act 41 of 2003 and do not possess the legal capacity to exercise such powers as stipulated in Regulation 19. Also, according to the Constitution, traditional councils do not have governmental functions or powers. Only the institution, status and role of traditional leaders are recognised. It poses a predicament should traditional leaders be granted powers, as unelected and apartheid-driven traditional councils may perform land use management functions within a municipal area (Du Plessis, 2018:13).

Applied customary law still functions under the archaic prescripts of Apartheid and, unfortunately, does not necessarily reflect current and real customary law in its present form, and how the practices have changed since 1994. In terms of customary law decisions should be multi-layered with different levels of community engagement, instead, now, the traditional authority may make decisions without community engagement or participation (Du Plessis, 2018:13). Without proper guidelines on how decisions ought to be made in terms of customary law, it creates the opportunity for traditional councils to define customary law founded on their own terms. The resultant effect is the allocation of land made largely by traditional councils, founded on their perceptions of customary rights, often undermining true traditional practices in rural areas (LARC). Regulations to SPLUMA (19(1) & 19(2)) seemingly are also unsuccessful in addressing the accountability of traditional councils in terms of the functions and powers set out in the service level agreements and their responsibility in providing land allocations without due respect and within the confines of acceptable norms of customary law. People in traditional areas are, accordingly, remaining subject to traditional councils in terms of land use management in traditional areas (Clark & Luwaya,2017:17).

3.3.8 Communal Land Tenure Policy 2014

The Communal Land Tenure Policy 2014 (CLTP) was introduced in September 2014 by the former Department of Rural Development and Land Reform (DRLDLR). It, similar to the CLRA, aims to transfer the outer boundaries of traditional land to traditional councils. Essentially the policy also referred to as the “wagon wheel” provides for the Communal Property Associations (CPA) to own land and title under a group basis as a trust with inputs from its members as per the Communal Property Associations Act 28 of 1996 and common trust law. However, Clark and Luwaya (2017:12) argue that this would effectively bring an end to the institution of CPA’s as the departments draft policy on CPA’s states that no new CPA’s may be established in areas where traditional councils exist. Traditional Councils exist “wall to wall” in former homelands and no area in former Homelands exists where no traditional council is present.

The CLTP does allow for communal land to be transferred to traditional councils, resulting in traditional councils having full ownership of land and individuals that occupy the land being granted institutional use rights. However, provided the ownership vested in traditional councils, the institutional rights granted to individuals may be undermined by the rights held by traditional councils (Clark & Luwaya, 2017:12). Most importantly, the CLTP provides full control of land use management on communal land to traditional councils, including developments of communal property and designation of areas for grazing, forestry, and agricultural activity. This includes the management of investment projects on communal land in terms of common resources, including mining activities. The above arguments raised concerns in various spheres that the scheme does not include the rights of individuals and households as per their institutional rights and ultimately their right to hold traditional councils accountable (Clark & Luwaya, 2017:12).

3.4 Summary

The aspects of land use management that are tabled for further analysis, are aligned with the main aim of the study: to investigate solutions to allocate, demarcate and record land parcel boundaries with the aim to address land tenure on traditional land within the KwaZulu-Natal Province. These aspects are defined as follows:

- Land allocation - includes identification of land and land use.
- Land demarcation – systems employed to define boundaries of land parcels.
- Recording of land parcels – systems employed to record information of land.

The above discussed directives reflect the former and current legislative framework for land use management on traditional land in South Africa. It is perceived, and have similar concerns been raised by numerous scholars that, notwithstanding the many practical difficulties, it appears

troublesome and does not necessarily favour those who reside on the land in duly securing tenure. In concluding this chapter, a summative table is deducted from the content analysis (Cohen *et al.*, 2018: 674-685) as outlined in section 2.4. The table illustrates the different challenges, opportunities, and solutions toward land use management on traditional land, especially from a legislative and management perspective. In further disseminating the content analysis, (i) opportunities and (ii) challenges are provided and **Table 3-2** illustrates the content analysis and coding observations in so far as directives related to traditional land in South Africa are concerned.

Table 3—2: Summative table of content analysis and coding observations of directives on traditional land in South Africa.

Source	Information	Significance	Coding Phrase
General Observations			
Weinberg (2015:6)	A third of South Africa's population is living in former homelands/ traditional land under communal tenure.	Challenge/ Opportunity	Substantial communal population
Clark & Luwayo (2017:3)	People residing in traditional areas face critical challenges regarding legal insecurity of tenure.	Challenge	Insecure tenure
	Tenure insecurity continues to exploit and dispossess the vulnerable marginalised people on traditional land.	Challenge	Exploitation
Observations from Directives			
Ntsebeza (2004:86)	National Land Committee criticised the attainment of title deeds by people on communal land due to overlapping land rights of formal rights and customary law.	Possible Solution / Challenge	Title Deeds / overlapping rights
Weinberg (2015:13)	Post-1994 directives mostly failed in regulating communal tenure in the former homelands.	Challenge	Governance
KwaZulu Ingonyama Trust Act KZ4 of 1994	Section 2(3): Approximately 2.8 million hectares of land are managed by the Ingonyama Trust in KwaZulu-Natal.	Challenge/ Opportunity	Substantial communal population
	Section 2(5): "The Ingonyama shall not encumber, pledge, lease, alienate or otherwise dispose of any the said land any real interest or real in the land" without written consent from the traditional authority or community authority".	Opportunity	Protection
Claassens (2000:250)	IPILRA was intended as a temporary measure to protect people without recognised land rights while more comprehensive legislation was developed (e.g., communal tenure).	Opportunity	

Source	Information	Significance	Coding Phrase
Ingonyama Trust in their Annual Report (2013:7)	“Communal Land Ownership consists more of than just land ownership”, and may include various other rights to land e.g., grazing.	Challenge	Unique land uses
LARC (2016:17)	Some of these lease agreements are concluded without the consultation with the community that leads to the deprivation of land rights on Ingonyama land.	Challenge / Opportunity	Public engagement
Clark & Luwayo (2017:10) and PPC (2015)	The Trust continues to undermine these communal land systems to best suit their interest. Concerns were raised over the ongoing failure to reinvest revenue of the Trust back into the people living on the land.	Challenge	Corruption/ Protection
Claassens, (2016:5), Cousins and Hull (2011:5)	Protection in terms of IPLARA is “routinely ignored and undermined”.	Challenge	
Development Trust and Land Act 18 of 1936	The Development Trust and Land Act 18 of 1936 introduced measures to control land occupation based on PTO systems.	Possible Solution	PTO (Permission to Occupy)
Du Plessis (2018:6)	The PTO system left land tenure vulnerable in traditional areas where PTO holders may be forcibly removed by the government with no consultation.	Challenge	Insecure tenure
Ntsebeza (1999:85)	PTO’s further restricted people living on traditional land as financial institutions do not recognise it as collateral.	Challenge	Investment
KwaZulu Ingonyama Trust Act KZ4 of 1994	Section 2(2): Stipulates that the land must “be administered for the benefit, material welfare and social well-being of the members of the <i>tribes</i> and communities” identified within the Act.	Opportunity	Ingonyama Trust
PPC (2015)	The PPC is mandated to hold the Ingonyama Trust Accountable, However, a lack of transparency from the Trust makes this difficult	Challenge	Transparency
<i>The Constitution of South Africa</i> (1996)	Section 25(6): “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 that is legally secure or comparable redress”. Section 25(9): “Parliament must enact the legislation referred to in subsection (6)”	Opportunity	Redress

Source	Information	Significance	Coding Phrase
MSA (2000)	Section 41(1)(h): Spheres of government must “co-operate with one another in mutual trust and good faith”.	Opportunity	Cooperative governance
	Traditional areas must be incorporated in the IDP if present in a municipal area.	Opportunity	Integration / Cooperative governance
	Section 15: Roles of traditional leaders.	Opportunity	
Municipal Structures Act (1998)	Section 81: Recognises traditional leaders as advisors to the municipal council.	Opportunity	
SPLUMA (2013)	Section 23(2): Municipalities in conducting their business must allow for the participation of a traditional council.	Opportunity	Integration
Motala 2018)	Land use decisions will be made in consultation with traditional authorities as the owners of the land Traditional leaders must be represented in municipal planning tribunals.	Opportunity	
Clark & Luwayo (2017:16)	SPLUMA aimed to develop a comprehensive uniform planning system that provides social and economic inclusion of people subject to past racially discriminatory laws and practices.	Opportunity	
SPLUMA (2013)	Section 24(2)(c): Traditional areas must resort under local government and land use schemes must include areas under traditional leadership, not previously subject to a land use scheme.	Opportunity	Municipal consent
	Chapter 6: Municipal Planning Tribunals established to be responsible for the facilitation and enforcement of all land use matters within the municipal area.	Challenge	
	Section 38(1)(b): Traditional leaders part of a House or Council of Traditional Leaders are not allowed to be part of a municipal planning tribunal.	Challenge	
	Section 12(1)(a): Preparation of an SDF must include areas under traditional leadership and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere.	Opportunity	Spatial integration

Source: Own Construction (2021)

Table 3 -1 above suggests that several opportunities may stem from directives relating to land use management on traditional land. With the several identified several opportunities, the content analysis also identified challenges that accompany the opportunities. The summative table will

form part of the broader study in chapters 4,5 & 6 where other solutions, opportunities and challenges will be identified in synthesising options towards land use management on traditional land within KwaZulu-Natal. The next chapter (4) will explore the current perspective of land use management within the context of the province.

CHAPTER 4: PERSPECTIVE OF LAND USE MANAGEMENT ON TRADITIONAL LAND WITHIN KWAZULU-NATAL

This chapter commences by introducing the traditional land use management system through comparing it with formal systems outside of traditional areas in section 4.1. The chapter further describes the historical view of traditional land within KwaZulu-Natal in section 4.2, elaborating on how history formed the current traditional systems in terms of land use management. In section 4.3 the chapter explores the relevant concepts of indigenous knowledge systems (IKS), land administration and other aspects related to land use management within the traditional context and describes the current practices on traditional land in terms of land allocation, demarcation of land, and recording of land information. Section 4.4 investigates proposed solutions toward land use management systems in traditional areas by examining literature that provides insight into different approaches to land administration within traditional areas. Finally, in section 4.5 the chapter is concluded by a summary of the content analysis (Cohen *et al.*, 2018: 674-685) employed in the preceding sections, with the aim to give effect to the second research objective of the study being:

2. To offer a perspective on land use management of traditional land in KwaZulu-Natal.

4.1 Introduction: a complex land use management system

Van Wyk (2012:12) describes land use management as a tool to regulate land development and land uses. Effective land use management has the purpose to ensure sustainable development and provide basic infrastructure while simultaneously ensuring a healthy and safe environment for residents (Healey, 1997:221; Pelling and Wisner, 2009:19; Todes *et al.*, 2010:415; Van Wyk & Oranje, 2014:10). Land use management consists of various activities including the allocation, changing, and creation of land use rights on a land parcel where the process of such activities generally involves public consultation or participation through designated formal procedures (Van Wyk, 2012:41).

Land use management in South Africa operates in a dualistic system where one system follows the western form of development control in formal urban areas introduced by colonists and the other in mostly rural areas where land management is exercised by customary principles implemented through traditional leadership under a traditional authority (Dubazane & Nel, 2016).

According to Riba (2010:3), land surveying in South Africa commenced in 1658, only five years after the first European settlement in South Africa was established by Jan van Riebeeck. Up until 1657, natural features were used as boundaries of land parcels and were represented graphically.

With the first formal cadastral survey of a land parcel being on the banks of the Liesbeek river, South Africa adopted a European approach to land administration. Formal surveying from 1657 included the use of theodolites and diagrams and had to be accompanied by numerical data.

In 1813 the British Occupation introduced the Cradock Proclamation (Perpetual Quitrent Proclamation) that prevented any sale of land that had not formally been surveyed and registered (McLachlan, 2019:115-118). According to McLachlan (2019:103) since the Cradock Proclamation, for land to be registered in South Africa, it must be surveyed by a registered professional land surveyor. Riba (2010:3) explains that once land has been surveyed, a registered professional land surveyor and conveyancer work together to record the land information (for example ownership and ownership rights to the land) into a public register kept by the Registrar of Deeds. Land use rights are currently controlled by the land use schemes as stipulated in section 4(c) of SPLUMA. In terms of the Alienation of Land Act 68 of 1981, where the state has transferred land to a juristic person, that person has the right to trade that immovable property at market value. Section 1(xiii & xviii) of the Alienation of Land Act 68 of 1981 defines that where land has not been transferred, the land remains the property of the state.

According to Zevenbergen (2002:53), South African formal land administration executed through land surveying is amongst the best systems in the world. This may be attributed to the country's parcel-based land administration and cadastral systems being extremely accurate. Through this system, boundaries are formally surveyed with secure boundary coordinates that are recorded in a national database (Riba, 2010:3).

The South African cadastral system functions to define, delineate and record ownership rights. The accuracy of defining, delineating, and recording ownership rights in South Africa has enabled the development of a formal cadastral information system. This forms the basis for land use management in South Africa in terms of governing demarcation, land administration, development planning, taxation on land, and land valuation (Riba, 2010:4; Marais, 1998:176-180).

Section 24(1) and 25(2)(b) in SPLUMA mandates the inclusion of land use schemes where different land use zones are allocated within each municipality. The use of land use zones has been continuously criticised and questioned in South Africa due to its exclusionary and segregationist effects (Silver, 1997; Fischel, 2004:317-320; Talen, 2012:7). This, especially whilst South Africa is aiming at inclusionary development with the use of land use schemes due to the effects of Apartheid.

Subsequently, in terms of multiple or mixed uses, the difficulty in accommodating land use rights is revealed to be more difficult in a conventional system where the allocation of land use rights or

zonings is allocated to an individual property defined by formal surveyed boundaries. On the other hand, such properties do not exist within traditional land, where land use schemes are ineffective and inappropriate, resulting in a requirement for an alternative system of land use management (Dubazane & Nel, 2016:224).

Ultimately, land administration in municipal areas in KwaZulu-Natal is influenced by multiple systems. The first system is the local municipality where the municipality operates in terms of SPLUMA, mainly reserved for urban areas. The Ingonyama Trust is the second system where the leasing of land for mining and commercial development takes place, involving local municipalities in some instances. The third system involves traditional systems or customary law that has been in effect since the 1800s, where the land administration systems of traditional leadership and local government operate independently resulting in difficulties for local government to provide basic service delivery or planning thereof, because land allocation and lease of land occur without the knowledge of the municipality (Dubazane & Nel, 2016:229).

This creates a parallel system due to poor communication between the local government and traditional leadership structures. In some instances, the only formal platforms of engagement between the two structures, are the council meetings and IDP forums (Dubazane & Nel, 2016:229-230). According to Mautjana and Moambe (2014:65), the public participation process during these meetings is “window dressing”, meaning that decisions have already been made by the local government and communities are only asked to ratify decisions.

In terms of traditional land, the South African cadastral system only applies to the demarcation of a sizable land parcel being owned by a traditional authority wherein IKS is used regarding land administration (Coetzee, 2009:1). Occupiers in these areas occupy and use land under customary law conveyed through oral tradition where formal cadastre is not used for record-keeping purposes. Thus, resulting in land where the occupiers are not formally recognised as legal holders of rights to the land (Ziquba *et al.*, 2001:4; Cousins & Hornby, 2006:14).

Instead of formal land surveying, IKS is used to identify and demarcate property boundaries. These boundaries in traditional areas with their land uses are rarely recorded by the traditional authorities. Instead, the community uses artificial or natural features as a reference to define parcel boundaries and relies on memory as a recording tool. This often creates confusion in terms of property boundaries and results in insecure tenure and land disputes within traditional areas (Ziquba *et al.*, 2001:2; Cousins & Hornby, 2006:4).

As customary law is promoted and recognised in the constitutional court, it is important to understand that it is a legal practice (Dubazane & Nel, 2016:229). Upon a closer examination of

living customary law, one will notice that the layered character of land administration on traditional land, is evident. Decision-making processes differ from common law land administration and occur on different levels based on the social organisation (Du Plessis, 2018:29). This is accentuated by the *Tongoane and Others, v National Minister for Agriculture and Land Affairs and Others* (2009) judgement where the court described that different degrees of control are required on various levels of socio-political organisation in terms of customary land tenure. Decisions on land use under customary law, therefore, occur on different levels of society and the community has rights in terms of public participation and decision-making under their relevant corresponding levels (Delius,2008: 228).

Customary law and common law differ in their approach to land use management concepts, for instance, “land” and “property”. Common law relies on land being formally demarcated and recorded in deeds, resulting in land that may be alienated at will. Land under common law is regulated through development policies and regulations, whereas land under customary law acknowledges the value of land in terms of social, cultural, and ritual functions (Dubazane & Nel, 2016:222).

Land use management under customary law is intricate and exceedingly complex compared to the processes under common law. For the purpose of this study IKS under customary law relating to the process of land allocation and use, the process and methods of parcel demarcation, and recording mechanisms of land parcels on traditional land are investigated. **Figure 4-1** provides a flow-diagram illustrating the structure of the literature review in terms of this study’s perspective on land use management of traditional land.

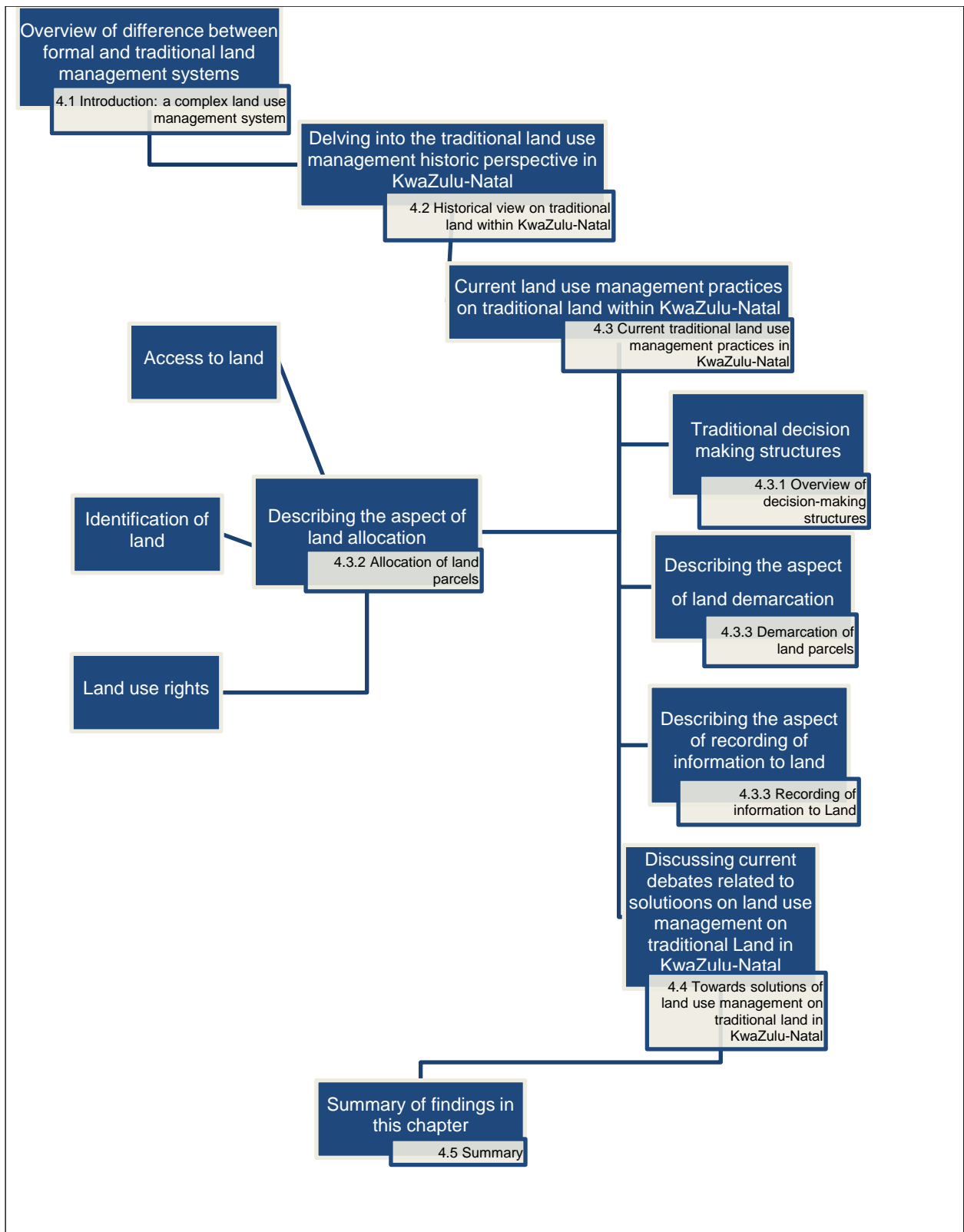


Figure 4-1: Diagram outlining the structure of the literature review in terms of the traditional perspective on land use management of traditional land.

Source: Own Construction (2020)

Firstly, a historical perspective on traditional land in KwaZulu-Natal. provides insight into the historical progression of land use management processes and how occupiers in traditional areas think, organise, and manage land under customary law. Thereafter, current traditional land use practices in terms of allocation, demarcation and recording of land structures, are investigated. Finally, this chapter outlines alternative options towards land use management of traditional land as it is currently captured in literature. Consequently, the chapter aims to provide a perspective on land use management of traditional land within the context of KwaZulu-Natal.

4.2 Historical view on traditional land within KwaZulu-Natal

Traditional leadership, a form of indigenous governance, has played an important role in terms of land administration in traditional areas in KwaZulu-Natal (Lutabingwa, *et al.*, 2006:74; Khunou, 2013:295). Lutz and Linder (2014:12) describe traditional leadership as “an institution that includes political, socio-political and politico-religious structures that are rooted in the pre-colonial period rather than in the formations of colonial and post-colonial states”.

Bennett (2004:371) explains that in pre-colonial times, indigenous people had abundant land in Southern Africa, where farming and herding were the main economic activities. The economic activities were mainly influenced by environmental factors, for instance, topography, rainfall, soil, and the availability of water. Consequently, in KwaZulu-Natal, land use and political influence were mainly limited to individual homesteads. This system of independent homesteads resulted in a relatively decentralised political structure, where every individual homestead had abundant resources to make a sufficient living (Bennett, 2004:371). In these pre-colonial times, a management system was adopted that may be described as a “participatory democracy”, where a group of individual homesteads participated as a collective community in decision-making and important matters relating to them, through a general assembly comprising of adult men (Rugege, 2003:172). Ashton (1967: 216) states that even though these assemblies claimed to encourage freedom of speech and the opinions of the traditional communities, some authors (Schapera, 1955:86) argue this to be more of a theory than practice. The fear of the chief and his powers outweighed the opinions and attitudes of the traditional community, resulting in them rather following his commands than enforcing their own demands (Schapera, 1955:86).

Cousins (2008:110) expands on this concept of “participatory democracy” and “communal decision-making”, by explaining that in the communal land rights system of pre-colonial South Africa, land tenure was perceived as a “system of complementary interests held simultaneously” and was considered both individual and communal. During pre-colonial South Africa, the concept of “property ownership” was quixotic since indigenous property law had a greater sense of obligation and liability towards family and one another than proprietary rights (Bennet, 2004:371).

Subsequently, property ownership during pre-colonial South Africa was encapsulated by social coherence that made no provision for private property rights (Cousins, 2008:60).

Therefore, property management in traditional areas was subject to customary law and not in terms of private ownership, creating a conflict in land use management systems. Since African customary law had insufficient capacity to develop at its own pace and according to its own principles due to the interference of colonialism, the colonial occupation was able to introduce a free market system in South Africa, resulting in African customary law (specifically in terms of property law), being officially replaced by common law (Du Plessis, 2011:50; Bennet, 2004:373). The implementation and vocabulary of common law made it almost impossible to define African customary law and, resultantly, land tenure. This was especially due to the ongoing struggle prior to the concept of “ownership” was introduced, the land was either considered communal or belonged to no one in particular (Du Plessis, 2011:51-53) Furthermore, before “ownership” was implemented, merely resources in use were protected (Bennet, 2004:373). This conveys that when these resources were in use, other people would be denied access to them for short periods of time (Du Plessis, 2011:50). The transfer from an itinerant lifestyle (pre-colonisation) to a more colonised lifestyle resulted in the need for long-term protection of rights. As a consequence, the colonisation and cultivation of people and land resulted in resources becoming scarce (Bennett, 2004:375). Bennet (2004:375) argues that it was obvious that protection and regulation of the right of access to resources became a serious demand This ultimately led to the control of land becoming a financial asset and with that, the rights to control land, became a rivalry (Chanock: 1985:231).

Further to these preceding developments in the control of land, the introduction of commerce into South African trade with colonisation, resulted in an exchange value being added to a commodity, resulting in ownership as a means to secure property (Bennet, 2004:375). Ownership provided people with the entitlement to buy or sell a property at free will – vastly different from the pre-colonial era (Allot, 1961:99). In pre-colonial times different interests in one property were controlled by different stakeholders and the interest was ever-changing and flexible (Allot, 1961:100).

To colonists, “land ownership” and its vocabulary was a universal postulation and only applicable to “civilized societies”. Even in areas where property rights were never defined nor practised, colonists expected land ownership to be allocated (Chanock:1985:232). The fact that the indigenous groups had no concept of property or land ownership, led to all “unowned” land being expropriated by the colonialist government (Bennet, 2004:375). Additionally, colonists attempted to reserve some sort of “communal” land tenure for their own benefit (Cousins, 2008:111).

Attempts were made to bridle the dilemma that traditional land tenure and its discordance with land ownership caused (Chanock,1985:232). To achieve this, some academics stated that land ownership was communal and prevalent to all and that decisions in terms of land accessibility and usage ought to be made by communities acting as corporate entities (Bennet, 2004:377). Although some attempts were made to solve the dilemma, equally opposing attempts were made to undermine traditional leadership.

Throughout the 19th century further attempts were made to undermine and break down chiefly powers and traditional leadership by introducing white magistrates to replace chiefs in traditional areas (Delius,2008: 221). Delius (2008: 221) explains that this was achieved, *inter alia*, through the lack of recognition of customary law within the formal structures of South Africa.

According to Cousins (2010:62), the introduction of the Apartheid laws in 1950 (as discussed in section 3.2 and **Figure 3-1**) reduced the chiefly powers and traditional leadership even further by selecting and appointing traditional leaders that would suit the government's needs of advancing the vision of the Apartheid government policies. This included the replacement of customary systems/law in terms of land tenure that were managed by chiefs with government regulation that worked on a system of quitrent where PTO was imposed by the state (Cousins, 2010:56). This allowed the government to control land use matters indirectly on traditional land where the chiefs were influenced by the government and not the people (Du Plessis, 2018:6).

Ultimately, colonialism and Apartheid broke down the institution of traditional leadership. Although traditional leaders were able to serve as the authority over the community, they were also agents of the government to serve the government's interest (Du Plessis, 2018:3). With this, traditional institutions transformed into traditional authorities that controlled access to land and labour. This resulted in little to no accountability of traditional leaders because traditional communities no longer relied on the traditional methods to hold them accountable if they believed the leader did not serve their needs (Du Plessis, 2018:3). This led to some leaders becoming oppressive and dictating, resulting in them losing their credibility with the community (Rugege, 2003:173).

In conclusion, colonial and Apartheid governments presented significant doubt in terms of the applicability of customary law. As Okoth-Ogendo (2008:96-98) explains, the colonial and Apartheid governments are guilty of five juridical fallacies. The first is that they did not recognise customary law as law. Secondly, they believed that customary law "conferred no property in land". In the third instance, they believed land should only be regulated by the sovereign. Fourthly, they presumed that traditional communities have no "juristic personality" and lastly, they assumed that "indigenous and social governance institutions were incapable of, or unsuitable as, agents for the allocation of land and the management and resolution of disputes relating to land" (Okoth-

Ogendo, 2008:98). Consequently, these beliefs have resulted in a distorted, misinterpreted, and misinformed perspective of customary law, land, and rights (Du Plessis, 2011:54).

In the next section, the current practices in terms of land use management on traditional land are discussed to provide an enhanced perspective of customary law and practices within KwaZulu-Natal.

4.3 Current traditional land use management practices in KwaZulu-Natal

According to (Hull *et al.*, 2016:68) land use management on traditional land in KwaZulu-Natal is conducted through a concept called “indigenous knowledge systems” (IKS) also known as traditional knowledge systems (Twarog & Kapoor, 2004). Masango (2010:74) defines this concept as the knowledge that is common to a group of people that identify themselves as indigenous to a specific geographical area and may include cultural identity (Department of Science and Technology, 2015:57). This indigenous knowledge is fostered through past experiences, traditional practices, and by means of observations of such practices through the sharing of communities across generations (Hull *et al.*, 2016:69). These knowledge systems are significant as they provide traditional continuity in solving problems in traditional areas through experience (Gorjestani, 2004:265). Owusu-Ansah and Mji (2013:2) elaborate on the importance of indigenous knowledge systems, as it represents cultural pride amongst communities that empower the cultural systems. However, these knowledge systems are often overlooked by governments, where formal systems are used, as it is rarely recorded in any form besides memory or word of mouth (Owusu-Ansah & Mji, 2013:2). This creates vulnerabilities for communities operating in traditional areas where people are often financially exploited due to lack of knowledge (Masango, 2010:74).

IKS are essential for decision-making purposes (Owusu-Ansah & Mji, 2013:3) and play an integral part in land administration and social relations on traditional land. According to Bennet (2004:381), social relations are linked with land structures meaning that social status determines certain access to rights on traditional land. Social relations are described as an “inverted pyramid” by Okoth-Ogendo (2002:2). He explains that the community forms the base of the pyramid, lineage forms the middle, and the family forms the top and is directly linked to access to land and certain land use rights (Okoth-Ogendo 2002:2). Chanock (1985:232) elucidates that social relations in traditional communities are more important than the relationship with the land itself, if one is seeking access to land in traditional areas. The social relations are not only limited by present-day relations but also by the connection with the past in terms of ancestry, as ancestors are regarded as being attached to the land (Okoth-Ogendo, 1989:11). This results in the alienation of

land to outsiders within the traditional context remain limited, due to a transgenerational obligation that must be preserved by the traditional leaders who control the land (Okoth-Ogendo, 1989:11).

Traditional leaders are considered to communicate with the ancestors directly, giving them certain powers over the land (Bennet, 2004:382). These powers include the allotment of land, regulation of resources, and confiscation of land in certain circumstances. Bennet (2004:382) further elaborates that some traditional leaders perceive themselves as owners of the land, granting them the power to sell or rent out mineral rights on traditional land. However, Bennet asserts that this is a result of the misinterpretation by traditional leaders of the principle of traditional leadership, where traditional leaders must govern in a way that has the community's best interest at heart.

To understand how the allocation, demarcation and recording of land parcels operate on traditional land within KwaZulu-Natal, it is important to understand the decision-making structures that comprise the foundation of these practices. The following section will explore these structures.

4.3.1 Overview of decision-making structures

Alcock and Hornby (2004:11) describe the structure of traditional governance as not strictly hierarchical, although various levels of authority within the system exist. They further explain that specific responsibilities over geographically defined spaces accompany each level of authority of decision. The *Ibandla* (referred to as a group of men who are considered to be old enough to be wise) always decides on issues of common concern within the traditional perspective. The *Ibandla* is represented at each level of authority (refer to **Figure 4-2**) formed by the community (Alcock & Hornby, 2004:11).

Figure 4-2 represents a generic model generated to illustrate the decision-making structures on traditional land within KwaZulu-Natal. The solid lines and arrows represent the direct line of authority, whereas alternative accountability is represented by the dotted lines and arrows.

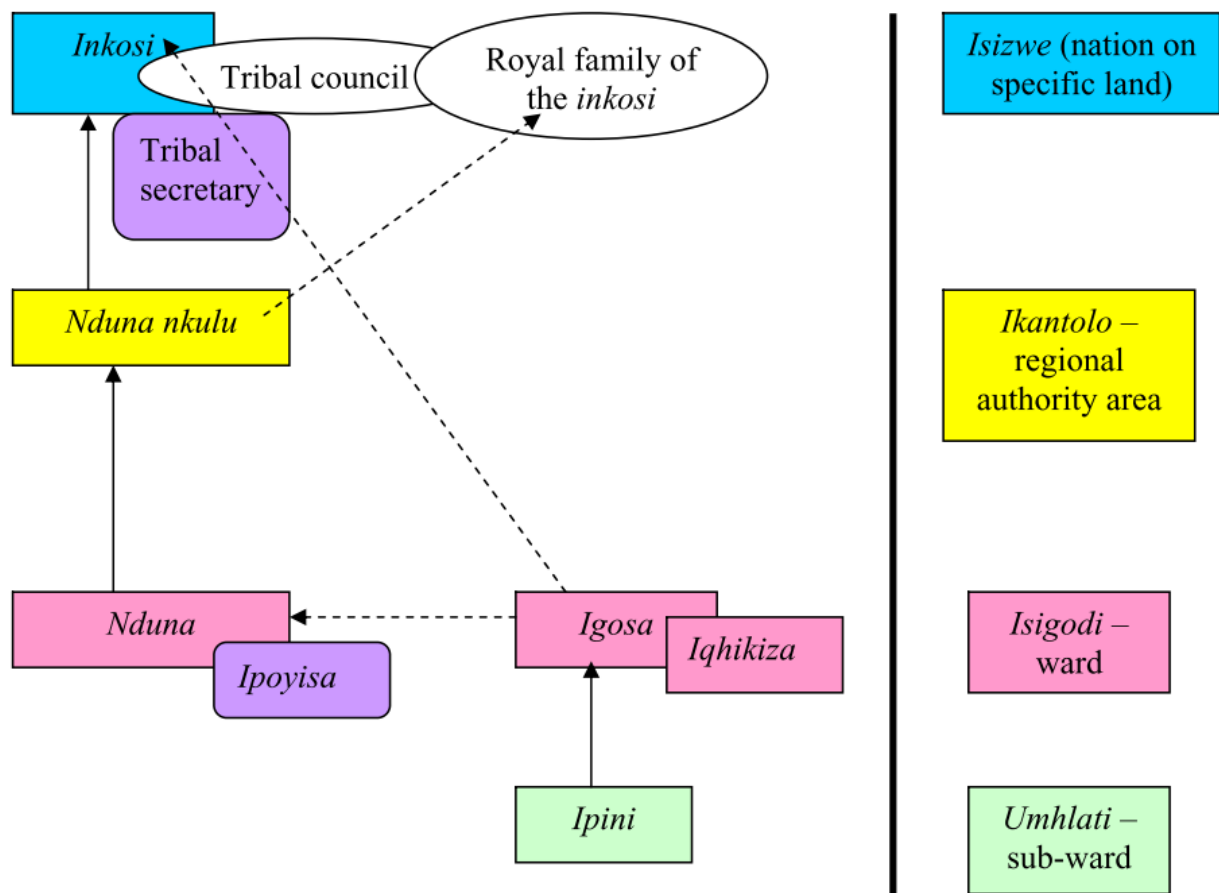


Figure 4-2: Structure of decision-making authority on traditional land within KwaZulu-Natal

Source: Alcock & Hornby (2004:13)

As observed in **Figure 4-2** above, the *Inkosi* is the recognised highest decision-maker of the traditional community, with jurisdiction covering the entire *Isizwe* or traditional nation. This gives him the highest status of an individual in the community. The *Inkosi* functions parallel to the royal family and is provided with a traditional secretary to oversee his administrative duties as well as those of his traditional council (Alcock & Hornby, 2004:11).

On the second level of the structure displayed in **Figure 4-2**, is the *Nduna inkulu*, otherwise known as the chief headman, with jurisdiction over the *Inkantolo*, or regional authority area, covered by the traditional court. According to Alcock and Hornby (2004:11), the *Nduna inkulu* has the responsibility to serve the *iNduna* in matters relating to the administration of justice, for example, mediating disputes, adjudicating conflicts, prosecuting people and serving as a witness in the magistrate's court (Alcock & Hornby, 2004:11).

Land issues on traditional land are mainly the responsibility of the third level of governance, governing a geographical area known as *Isigodis* or traditional wards. This third level of the

decision-making structure (see **Figure 4-2**) is known as the Iziduna or headman with the assistance of the *Ipoyisa* or traditional policeman, *Amagosa* or leaders of men and *Amaghikza*, their female equivalents (Alcock & Hornby, 2004:11). These traditional wards (*Isigodis*) are then further divided into sub-wards or *Imihlati*, where the *Amapini*, or *Igosa's* deputy, regulates the behaviour of young men (Alcock & Hornby, 2004:11). In conclusion, as previously mentioned, the *Ibandla* is represented at each level of authority (refer to **Figure 4-2**) formed by the community (Alcock & Hornby, 2004:11).

In understanding the structures of authority and decision-making on traditional land within KwaZulu-Natal it is essential to examine the practical application of these decisions in terms of land use management. The first aspect to investigate is the allocation of land parcels.

4.3.2 Allocation of land parcels

The allocation of land in this context is defined as the simultaneous occurrence of 1) allocation/access to land, 2) the identification of land, and 3) land use rights on traditional land, comprehensively discussed in the following sections. Land use rights refer to the designated purpose of land that includes, but is not limited to, the erection of homesteads, commercial use, environmental use, as well as agricultural use, for instance, grazing or cultivation of crops (Dubazane & Nel, 2016:228). Land use rights should also include the access and use of resources on land, for example, water, wood, and clay. The allocation of rights described above is informed by (IKS) or indigenous land rights systems (Dubazane & Nel, 2016:228) or, in some cases, formal municipal systems (refer to section 4.1).

4.3.2.1 Access to land

The first aspect to investigate is access to land in traditional areas within KwaZulu-Natal. Land in traditional areas under customary law is seldomly sold but rather held for the benefit of the traditional area communally (Ndlela *et al.*, 2010:3). In traditional areas, the land is not considered a financial asset (Kingwell, 2008:185; Okoth-Ogendo, 2008:100). Access to land must, therefore, rather be viewed in the context of social relations in terms of membership of a family, lineage, or community where members acquire land based on their status (Bennett 2004:382; Okoth-Ogendo 2008:100). This means that access to and control of land is dependent on an individual's place within the social order of the community (Du Plessis 2011:57). Access to land also differs in terms of gender according to Whitehead and Tsikata (2003:77), due to men having a better position on the social hierarchy, but Hull *et al.*, (2016:73) found that this gender gap to be small in KwaZulu-Natal. Access to land is further influenced by resource management on the land acquired, that

has specific and defined rules, for instance, rights to the land being maintained on a production basis (Cousins, 2008:112-113).

The land in traditional areas is almost always reserved for members of the community, however, in some instances where municipalities or outsiders require access to land in traditional areas for development or other purposes, they have to negotiate terms (King & McCusker, 2007:9). To access land, different land uses have different allocation processes (Alcock & Hornby, 2004:22). For instance, for commercial uses the applicant would approach the *Nduna* that will write letters to the *Inkosi* and his council. After consideration, the letters may be referred to the traditional authority or the Department of Agriculture, Land Reform & Rural Development for review, whereafter demarcation will follow (Alcock & Hornby, 2004:23). For tourism-related uses, the application would require a “tribal resolution” to operate, that will also include a fee (Alcock & Hornby, 2004:22). Bennet (2004:384), however, explains that allocation fees were traditionally not required but were recently included as a gesture of payment of gratitude.

With areas being densified and the scarcity of land increasing, the role of the *Inkosi* in allocating land, is diminishing. Nevertheless, he still fulfils an integral part in the confirmation of the transfer of land (Bennet, 2004:384). Physical access to land is another aspect to consider in the allocation of land in traditional areas. This includes the identification of land for development, discussed in the next section.

4.3.2.2 Identification of land

The concept of identification of land refers to the physical availability of land and the decision-making context of selecting land parcels for land development. Hull *et al.*, (2016:74) explain that in some areas, for example, Ulundi, traditional councils choose which land parcels an applicant may use for development, whereas in other areas in KwaZulu-Natal, the applicant may choose the land parcel for development. In both instances the traditional council will have to approve the location by physical inspection, whereafter a community meeting will ensue at the specified location for a site handover with the applicant providing drinks (Hull *et al.*, 2016:74). This is where the *Nduna* introduces the applicant to the community and neighbours, who, in turn, must grant their consent for the proposed application (Hull *et al.*, 2016:74).

If it is accepted, the formalities of demarcation with land rights and community rules are provided to the applicant (Hull *et al.*, 2016:74). In terms of the above, land use rights are discussed in the next section.

4.3.2.3 Land use rights on traditional land

As part of the allocation of land in traditional areas, it is essential to understand what land use rights are linked to the land that has been identified through the preceding processes of access to and identification of land. Land use rights include, *inter alia*, resource management on land, individual rights of occupants, and various land uses applicable under indigenous systems. First, it should be comprehended that in traditional areas, community members have access to various resources simultaneously, resulting in unique land uses on traditional land (Dubazane & Nel, 2016:268). The allocation of these various land uses with their functions, is conducted through IKS (Nkosi,2016:19).

With the allocation of land in traditional areas, land is not merely allocated for the use of a homestead, but also for other land uses, for instance, grazing and agricultural use, resulting in two land parcels with one allocated for residential use and the other for agricultural use (Bennet, 2004:383). Okoth-Ogendo (2002:2) affirms that these decisions are made in terms of membership in the community, as alluded to in section 4.3.1. The regulation and management of resources in traditional areas fall under the responsibility of the *Nkosi* that must decide how it is used. As mentioned in section 3.3.1 traditional land must “be administered for the benefit, material welfare and social well-being of the members of the *tribes* and communities” under the KwaZulu Ingonyama Trust Act KZ4 of 1994. According to Bennet (2004,382), this results in land use rights decisions mainly being made in terms of community welfare, where human needs supersede environmental concerns due to overpopulation and poverty. These human needs, therefore, drive decision-making without any environmental considerations, as there are no coherent environmental policies under communal law.

As for the occupants of the land, certain rights apply in terms of the usage of land. The occupant on a piece of land has the right to avail (Bennet, 2004:388), meaning that they have the right to benefit not only from building a homestead, but also have access to certain resources, for instance, grazing or arable land, in most cases under commonage (Bennet, 2004:391,398). Restrictions on the right to avail, are set in terms of the location of the allocated parcel and affiliation with the ward (Bennet, 2004:391). Other rights include exclusive rights to the land and protection from trespassing. Specific restrictions exist where cultivation is primarily limited to domestic consumption only (Bennet, 2004:392). However, under commonage, no person has exclusive rights on the land (Bennet, 2004:398). Access to commonage is also defined by the social hierarchy, as discussed in section 4.3.1 (Okoth-Ogendo 2002:2).

Moreover, the rights of the occupiers of land may also be revoked (Bennet, 2004;399). Due to the land being held communally under the *Ingonyama Trust*, land cannot be inherited; as such, land

use rights may also not be inherited, and die with the original landowner (Bennet, 2004;402). This also means that traditional land cannot be alienated by sale. Alienation of traditional land and, subsequently the land use rights, is also protected under the Upgrading of Land Tenure Rights Act under sections 2(1),3(1), and 19(2). This fact that prevents the alienation by sale corroborates the academics (Kingwell, 2008:185; Okoth-Ogendo, 2008:100; Bennett 2004:382; Okoth-Ogendo 2008:100) notion that land in traditional areas is not viewed as a financial asset but must be viewed as a social function (Alcock & Hornby, 2004:24).

Land use rights and access to land use options on traditional land are, therefore, limited and managed by the *Nkosi* and the traditional council (Alcock & Hornby, 2004:22-24). One such limitation is the size of the area that one person may have exclusive rights over, for example, an application for expansive farming enterprises. It is understood that access to such extensive areas for any one person is not to the benefit of the nation (Alcock & Hornby, 2004:22-24) and, therefore, these types of land requests will be denied. However, access and land use rights have been provided to mining companies to operate on traditional land with a lease agreement that would incur a fee (Dladla, 2016; Yeni, 2015). Where access to land is required for public purposes, the *Nkosi* will almost always grant the request due to the benefit it would bring to the nation. Land use rights under such category will incur no fee to the applicant and include, *inter alia*, the development of roads, clinics, schools and community halls (Alcock & Hornby, 2004:23).

According to Alcock and Hornby (2004:23), a particularly important and unique land use in traditional areas is commonage, that is available to everyone within the traditional community and includes the grazing of livestock and use of natural resources. Commonage has two restrictions in terms of use. The one restriction relates to the ability to own livestock in terms of wealth. If not wealthy enough, the person will not be able to use commonage. The second restriction refers to the type of land use, denoting that no person may buy or build on commonage. Certain areas within the traditional area, under *Isigodis* or sub-wards, have allocated areas set aside for grazing during specific times of the year (Alcock & Hornby, 2004:23). Inter-traditional grazing has, however, caused sundry problems in traditional areas, to such a degree that legal battles have ensued in the Magistrates and High Courts due to the absence of inter-traditional arbiters (Alcock & Hornby, 2004:24). Other uses of commonage include the cutting of thatched grass and the use of firewood, that is available to everyone in the traditional community, but restricted under certain conditions, for instance, the time of year, availability and environmental conditions (Alcock & Hornby, 2004:24). In instances when arable land is managed as a collective, certain rules must be upheld as per agreements, negotiating between grazing, planting and harvesting on land. In instances where such agreements are broken, the *Nduna* will deploy the *Ipoiyisa* or traditional

police to impound livestock or fine persons in breach of the agreement (Alcock & Hornby, 2004:24).

It is this aspect of land use rights and the allocation of land in traditional areas, that is in direct conflict with SPLUMA as discussed in section 3.3.7. While SPLUMA requires that traditional leaders should be consulted in the formulation of land use schemes and SDFs, it excludes them from making any decisions in terms of section 38(1)(b) of SPLUMA regarding land use management and the allocation of land use rights. Even though the municipality's jurisdiction covers the entire municipal area, it is restricted from making decisions on traditional land; however, in terms of section 5(1) of SPLUMA, the municipality has to incorporate traditional areas.

Following the allocation of land parcels, the next step in the land administration process in traditional areas is the demarcation of the land parcels, subsequently discussed.

4.3.3 Demarcation of land parcels

After the allocation of land, the land in question, with regards to access, identification and land use, must be demarcated to delimit the applicable area. The demarcation process relates to the identification of boundaries and occurs on the day after the allocation process has been completed (Hull *et al.*, 2016:74). The demarcation process is conducted through the *Nduna* or headman and a traditional representative, who demarcates the area that has been allocated (Hull *et al.*, 2016:75). The demarcation of boundaries must be conducted in the presence of the neighbours to the land parcel and the *Ibandla*, a local group of men considered to be wise or old enough (Clark & Luwayo, 2017:10). Boundaries are determined by natural features or artificial features, for example, rocks or a type of fence (Hull *et al.*, 2016:68).

In some cases, boundary disputes occur when one neighbour is discontented with another neighbour due to boundary-related issues. Typically, there are three types of boundary disputes on traditional land; 1) boundary disagreements, 2) denial of a right of way, and 3) overlapping land use rights (Hull *et al.*, 2016:75). In some instances, the sub-headman defines the boundaries, but the applicant physically demarcates them. The applicant would then, either by mistake or purposefully, erect the fence where it encroaches on adjacent land, leading to conflict between neighbours (Hull *et al.*, 2016:76). In other instances, due to incorrect fencing of land, access may be denied to a neighbour's homestead or *iMuzi* by the narrowing or closing of a passage without consultation or the consent from the neighbour. This results in denial of right-of-way disputes (Hull *et al.*, 2016:75). Overlapping land use rights are also a significant problem facing occupants of traditional land. This occurs when an applicant has been allocated land legally under customary law, but later another person approaches the applicant with claims that they have certain land

use rights on the specified land parcel. The cause of such overlapping rights may be attributed to various reasons, most commonly being where agricultural areas are allocated for both agricultural and residential uses (Hull *et al.*, 2016:75).

When a dispute arises regarding the demarcation of land parcels, various traditional areas deal with disputes differently. In some areas, disputes are presented to the *Nduna* first (Alcock & Hornby, 2004:27). The *Nduna* will then visit the site and determine where the original boundary was located, by referring to recordings and eyewitnesses that were present on the day of the allocation and demarcation. If no agreement can be established between the affected parties, the headman takes the dispute to the *Nkosi* and traditional council, where the final decision is made (Hull *et al.*, 2016:76; Alcock & Hornby, 2004:27). In the event that the *Nkosi's* decision at the traditional council is not acted upon, the *Ipoyisa* or traditional police will enact the breakdown or forcible rectifications necessary in terms of the traditional council and *Nkosi's* decision. Some disputes may end up in the magistrate's court, but to no avail, as the *Nkosi* and traditional council's decision will stand, as land rights on traditional land are conferred by the *Nkosi* (Hull *et al.*, 2016:76). In other traditional areas, the *Induna* will visit the land parcel with the *Ibandla* to determine the original boundary as demarcated, the day after allocation (Alcock & Hornby, 2004:27).

4.3.4 Recording of land parcels

In KwaZulu-Natal, there are mainly two methods of recording and keeping records of the allocation and demarcation of land parcels on traditional land. The first method follows indigenous knowledge systems, where the memory of those who attended the demarcation and allocation, will be relied upon to serve as a record (Hull *et al.*, 2016:68). The second method of recording makes use of PTO certificates and associated proofs of payment made in terms of the allocation of the PTO (Hull *et al.*, 2016:74). Although PTOs were used in the Apartheid era and subsequently abolished in 1994, it is still being used on traditional land today to serve as proof of rights to the land (Cousins *et al.*, 2007).

After the allocation process and demarcation of the land parcel with the public engagement, the PTO is issued by the *Nduna* or the headman, whereafter a required fee is payable by the applicant to the headman (for the application) and to the traditional authority (for the allocated land parcel). This is due to a contractual agreement between the municipality and the traditional authority, stipulating that the traditional authority should obtain and provide a PTO certificate containing the applicant's information, site information and description, as well as information relating to the allocation agreement. After the headman has issued the PTO, a copy is retained at the traditional

authority’s office to serve as proof of this new member being part of the community (Hull *et al.*, 2016:74).

Ultimately, according to Dubazane and Nel (2016:228), PTO systems currently serve as a tool to support the administration of land in traditional areas while providing access to land and livelihoods for the occupants of rural communities within KwaZulu-Natal. The current system, however, limits tenure security due to a lack of or absence of consistency in terms of land administration practices. There are, consequently, growing debates about land use management options on traditional land in KwaZulu-Natal, discussed in the following section.

4.4 Towards solutions of land use management on traditional in KwaZulu-Natal

From the deliberations in chapters 2 & 3, it is evident that sundry challenges exist in the current land use management landscape of traditional areas. Nevertheless, several opportunities were also identified within the preceding literature content to address these challenges. The main challenge is the incorporation of traditional land use management systems within the formal land use management systems as mandated by Section 24(2)(c) of SPLUMA, discussed in section 3.3.7 of this study. In an attempt to address these challenges, many authors have voiced their opinions vehemently on how to address insecure land tenure through land use management solutions. The incorporation of traditional land use management systems within formal land use management systems may ultimately lead to improved tenure security in traditional areas, but schools of thought on this matter are mainly divided into two ideologically opposed factions (Riba, 2010:12). The one faction supports the formalisation of land by upgrading land tenure to individual rights, while the other faction opposes this entirely and advocates for the ideals of communal/traditional land use management. However, between these two opposing ideologies, various possible solutions lie on a continuum, some leaning more toward formalisation and others toward retaining communal tenure systems (Riba, 2010:12). A representation of these ideologies on a continuum, is illustrated in **Figure 4-3** below.

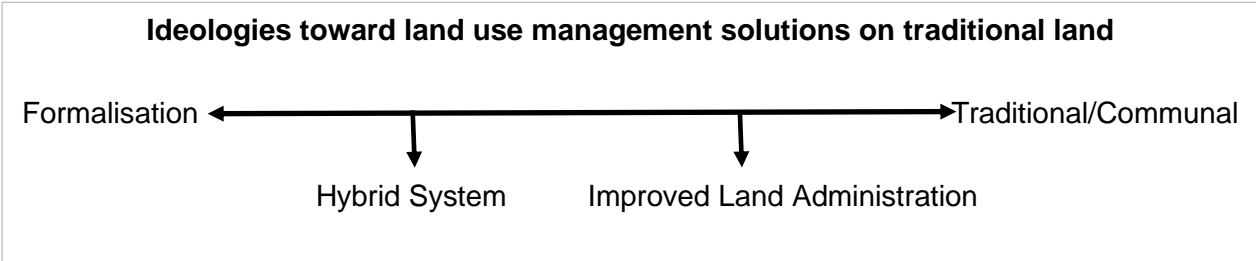


Figure 4-3: Ideologies toward land use management solutions on traditional land

Source: Own Construction (2021)

The above-mentioned ideologies, illustrated in **Figure 4-3**, are discussed in the ensuing sections in the order from formalisation toward more traditional/communal land use systems.

4.4.1 Formalisation

The ideology of formalisation of informal property rights to address insecure land tenure is heavily debated amongst academics and practitioners. Although this is not a novel ideology, it gained considerable popularity due to the work of Hernando De Soto (Clark & Luwayo, 2017:23). Formalisation refers to the conversion of informal property rights to formal property rights through formal demarcation and recording of title deeds (De Soto, 2000:44-46). The main drivers for the formalisation of traditional land are; to address climate change, natural resource management, disaster management, urbanisation, rural sprawl, secure tenure, and extending cadastre to informal and traditional areas (Forbes, 2011:14; Bennett *et al.*, 2010:4; Burns *et al.*, 2006:10; Hull & Whittal, 2013:347). Despite these drivers for formalisation, support for the ideology may still mainly be attributed to economic reasons. The ideology suggests that formalising informal property rights, enables the property owners to enjoy the economic benefits of the property as an investment (Nyamu-Musembi, 2007:1457-1478). According to Bruce (2012:32-33), property rights as a commodity should be used to access credit, due to the transferability of the property, and ultimately provide the rights holder with security to access a loan. Formalisation, thereby, converts informal land rights into capital that may benefit both the economy and the property rights holder through incentives to invest.

Classical economists, for instance, Mill, Smith and Ricardo, believe that secure property rights are essential to underpinning economic growth (Bruce,2012:33). This is the reason why western economies have strived for private ownership and formal land tenure systems; due to the capability of formal property rights to create economic growth (Clark & Luwayo, 2017:24). According to Riba (2010:12), freehold rights may provide the current informal parcels with economic viability, stability, and resilience. Cousins *et al.* (2005:4), argue that the deficiency in formal property rights also restricts basic service delivery and access to infrastructure. Another argument for formalising informal property rights is protecting the environment, as the ecology in communal and rural areas is often dilapidated and in poor condition. Formalisation would, ultimately, prevent the degeneration of valuable land for tourism, agricultural, and environmental protection (Riba, 2002:12)

The process of formalisation on traditional land includes the formal surveying of land parcels and registration of freehold title deeds. The surveying and capturing of cadastre on traditional land will have to take the existing tenure into account to be effective and sustainable (Burns *et al.*, 2006:141-142; Williamson *et al.*, 2010:13). This will require the existing IKS and boundaries to be

considered in the formalisation process. Therefore, a sensitive approach to the status quo of land allocation in terms of customary rights and IKS is required to avoid institutional multiplicity (Törhönen, 2004; van Leeuwen, 2014:299). As for title deeds, Louw (2013) claims that it should be relatively easy to convert PTO certificates into freehold title deeds, where necessary. The introduction of title deeds further enables the valuation of land, that is not currently valued under customary law (Alcock & Hornby, 2004:26). Secure tenure will also limit the potential of land grabs in rural areas; land grabbing refers to the contentious issue of large-scale acquisition of land by companies, traditional institutions and other entities (Borras *et al.*, 2011:209).

As alluded to, not all academics and practitioners are convinced by the ideology of formalisation, as several academics and economists have criticised De Soto's theories. In the case of traditional land, the primary argument brought against De Soto's ideas is his deficient conception of informality (Nyamu-Musembi, 2007:1460-1462). Informality, in De Soto's theory, refers to any "claims and arrangements which operate outside the constraints and protections provided by national law" (Bruce,2012:32). Therefore, it fails to "recognise that a range of sub-state actors from traditional kingdoms down to villages and squatter communities manage their land through their own normative systems of varying complexity and rigour. The fact that those systems are not validated by national law does not deprive them of objective reality" (Bruce,2012:35). Ultimately, the formalisation theory of De Soto considers communal land tenure as informal tenure systems, while in reality, they are merely a sub-national alternative formality that coexists with the formality of the national state (Bruce,2012:35).

De Soto's key argument for the formalisation of land rights as a means to enable access to credit and ultimately improve economic conditions has also received criticism with several publications discrediting this argument (Nyamu-Musembi, 2007:1465-1467). One publication in *The Economist*, found that commercial lending to the poor remained biased in terms of income, even if formal titles are held (*The Economist*, 2006:11-12). Nyamu-Musembi (2007:1466) reiterates that "poor people with a title deed are no more likely to obtain loans from commercial banks than those without". Nyamu-Musembi (2007:1469-1470) asserts that several authors have raised their concern about the theory of formalisation, as it fails to acknowledge the possible detrimental effects and consequences the approach may cause to poor households which may well leave them worse off than before. Cousins *et al.* (2005:4-5) argue that formalisation brings about some opportunities and unforeseen risks to the poor by suddenly being exposed to market forces they have previously been protected from through informality.

Examples of these effects of formal title are highlighted by Chimhawu & Woodhouse (2006:263), elaborating that poor people are more prone to make distress sales due to the opportunity of obtaining desperately required money that may plunge them into even deeper poverty. It is

evident that the statement of Nyamu-Musembi (2007:1469) that “any redefinition of property rights produces winners and losers” bears reference.

From the preceding debate, it may be derived that, in the South African context, De Soto’s theories may not be comprehensive enough to address the unique characteristics of communal areas. In some instances, it may be beneficial but may also yield unforeseen and unintended consequences to occupants on traditional land it aims to benefit. However, communal systems were historically found to be truly resilient (Bruce,2012:31-56; Nyamu-Musembi, 2007:1457-1478). In instances where formalisation has been implemented on communal land, the communal system resurfaced when the formal systems did not address the needs of occupants on traditional land, resulting in a hybrid system where elements from both formal and communal systems co-exist (Benjaminsen *et al.*,2008:28-35).

4.4.2 Hybrid system

As mentioned above, the hybrid system is another ideology that has emerged concerning solutions towards insecure land tenure on traditional land. This system incorporates both formalisation and communal land use management in one system. According to Dubazane and Nel (2016:231), the western style of land use management, being formal in nature, is not feasible for communal or traditional areas due to the complexity of land uses under communal tenure. They further argue that the current method of zoning under SPLUMA cannot accommodate these extensively spatial distributed land uses (Dubazane & Nel, 2016:231). This results in a need for a more innovative system, incorporating and accommodating traditional customs, culture, and rural livelihoods in cooperation with traditional authorities, municipalities, and communities (Barry & Porter, 2012:182). Such a system will be required to be mutually acceptable by all role players and definitive in terms of roles, processes, decision-making powers, and responsibilities (Dubazane & Nel, 2016:231).

In a hybrid system, the land use management framework must be developed by both the municipality and traditional leaders to provide proper integration and ensure stakeholder satisfaction (Dubazane & Nel, 2016:232). Such a framework must include both traditional land use systems and procedures and formal land use systems and procedures, intertwined to provide a comprehensive land use management system as mandated by SPLUMA. An example of how a hybrid system would function is that in the event of a traditional area being declared a township, traditional leadership would still be able to exercise its traditional administrative mandate with negotiations with the local municipality (Alcock & Hornby, 2004:23). The common pool resource management system is another model to consider in developing a land use management system that merges traditional areas and related land use management concepts with formal land use

management systems (Agrawal, 2003; Ostrom, 2008:8; Ostrom *et al.*, 2002). In the current land use management landscape, both the customary and western systems are troublesome. The implications of traditional land use management systems have a detrimental effect on municipal financial stability and service provision (Du Plessis, 2018:17; Dubazane & Nel, 2016:232). Moreover, the communication between the two entities that regulate their respective systems seems to be lacking, resulting in each system functioning in isolation (Dubazane & Nel, 2016:232).

In conclusion, an applicable hybrid system is yet to be developed in KwaZulu-Natal. This may be attributed to the local specific characteristics and applicability of relevant traditional systems. It is suggested that the hybrid system focuses on inclusivity, communication, and participation from all stakeholders with a particular emphasis on traditional-specific contexts (Dubazane & Nel, 2016:232-233). In the absence of a hybrid system, institutions have identified other means of working with traditional land use matters, discussed in the next section.

4.4.3 Improved land administration

One of the more neglected approaches is the ideology of improved land administration. This is where current communal tenure and indigenous land use management systems are improved to provide more secure tenure under communal rule. As Ziqube *et al.* (2001:5) explain, effective land administration is the fundamental basis upon which secure tenure is built. However, what constitutes effective land administration is not yet defined in terms of the traditional land environment. Hence, the empirical chapters (5 & 6) in this study investigate current practices in KwaZulu-Natal that seek alternative methods to land allocation, land demarcation and recording of land parcels that may be used to improve land administration on traditional land without following the formalisation path. This aims to build on current communal land tenure systems, discussed in the following section.

4.4.4 Communal system

Communal systems refer to the traditional systems discussed in section 4.3 of this study, being the current land use management practices on traditional land within KwaZulu-Natal. Academics and practitioners who favour the preservation of these systems also use economic arguments in support of their view, similar to those in favour of formalisation. The main argument is the threat that tenure reform may pose to the local economy. These concerns include those of Chimhawu & Woodhouse (2006:263), as mentioned in section 4.4.1, that the poor may sell their land to institutions and occupants already in the formal economy to receive the necessary income, resulting in the poor becoming poorer. This may lead to mass dispossession and increasing land grabs for informal settlement establishments (Riba, 2010:13). Other arguments highlight the

benefits of communal land tenure. The advantages of communal land tenure are said to provide the poor with easy access to land and shelter. It is also argued that the social structures of traditional communities, provide a necessary safety net for the poor in terms of communal resource sharing and a sense of community (Riba, 2010:13).

On grassroots level, the residents living in traditional areas are fundamentally opposed to the idea of formalisation or any change to their current land administration system. A study by (Alcock & Hornby, 2004) conducted into land administration practices in KwaZulu-Natal found that the traditional communities view land formalisation as a means of losing land altogether. This study explained that residents living in township areas do not respect traditional leaders and will ultimately undermine their practices if traditional areas were to be formalised (Alcock & Hornby, 2004:23).

Arguments against the continued application of the communal land tenure system include arguments for formalisation, as discussed in section 4.4.1. It is also of concern that the current void in terms of directives relating to land tenure on traditional land provides a breeding ground for corrupt activities and abuses of power by traditional authorities and local government (Manona, 2012:2-3). This includes the unofficial allocation of land and duplicate allocations by entities, resulting in tenure rights being violated in terms of IPILRA, as discussed in section 3.3.3. This refers to cases where the occupants of the land rightfully obtained the property through IKS (Manona, 2012:3). This argument is accentuated by Ntsebeza (1999:83) arguing that, since traditional leaders are not elected and decisions are mainly taken by men, it creates the opportunity for abuses of power. (Ntsebeza, 1999:83) further claims that this directly influences land allocation, gender equality, and democratic local governance.

4.5 Summary

Chapter 4 provides valuable insights into the role of customary law and IKS in land use management on traditional land within KwaZulu-Natal. For the purpose of further analysis in this study, a summary of codes deducted from the content analysis (Cohen *et al.*, 2018: 674-685) employed in this chapter (as stipulated in section 2.3.3), is tabled below, illustrating the different challenges, opportunities, and solutions toward land use management on traditional land, identified within this chapter.

The aspects of land use management that are tabled for further analysis, are aligned with the main aim of the study: to investigate solutions to allocate, demarcate and record land parcel boundaries with the aim to address land tenure on traditional land within the KwaZulu-Natal Province. These aspects are defined as follows:

- Land allocation - includes identification of land and land use.
- Land demarcation – systems employed to define boundaries of land parcels.
- Recording of land parcels – systems employed to record information of land.

Analysis in terms of opportunities and challenges posed by the various solutions towards land use management on traditional land are also considered to provide a comprehensive overview of the subject. **Table 4-1** provides a summary of the content analysis and coding observations in terms of the literature review of land use management on traditional land within KwaZulu-Natal.

Table 4—1: Summative table of content analysis and coding observations in terms of the literature review of land use management on traditional land within KwaZulu-Natal.

Source	Information	Significance	Coding Phrase
Observations from the literature review and content analysis.			
Zevenbergen (2002:53)	South African formal land administration executed through land surveying is amongst the best systems in the world.	Solution / Opportunity	Land surveying / Effectivity
Riba (2010:3)	South Africa has an extremely accurate parcel-based land administration and cadastre systems.	Opportunity	Accuracy
Riba (2010:3)	In the formal system, boundaries are formally surveyed with secure boundary coordinates and recorded in a national database.	Solution	Public register
Riba (2010:4)	Once land has been surveyed, a registered professional land surveyor and conveyancer work together to record the land information,		
Riba (2010:3)	Until 1657, natural features were used as boundaries of land parcels being represented graphically.	Solution	Natural features (for boundaries)
Riba (2010:3)	Formal surveying from 1657 included the use of theodolites, and diagrams had to be accompanied by numerical data.	Solution	Diagrams
Riba (2010:3)	For land to be registered in South Africa, it must be surveyed by a registered professional land surveyor.	Challenge	Land registration
Riba (2010:3)	Land use rights to land are controlled by the land use schemes in terms of SPLUMA.	Solution / Opportunity	Land use scheme/ Land regulation / Land use zones
Riba (2010:4)	The accuracy of defining, delineating, and recording ownership rights in South Africa has enabled the development of a formal cadastral information system.	Opportunity	Cadastral information system
Riba (2010:4)	The formal cadastral information system forms the basis for land use management in South Africa in terms of governing demarcation, land administration, development planning, taxation on land, and land valuation.	Opportunity / Solution	Cadastral information system / Land regulation /

Source	Information	Significance	Coding Phrase
Observations from the literature review and content analysis.			
			Taxation on land / Land valuation
Healey (1997:221), Pelling & Wisner (2009:19), Todes <i>et al.</i> (2010:415), Van Wyk & Oranje, (2014:10)	Effective land use management must ensure sustainable development and provide basic infrastructure while simultaneously ensuring a healthy and safe environment for residents.	Opportunity	Sustainable development / Basic service delivery / healthy and safe environment
Van Wyk (2012:41)	Land use management consists of various activities including the allocation, changing, and creation of land use rights on a land parcel. Such activities generally involve public consultation or participation through designated formal procedures.	Solution	Public participation
Silver (1997), Fischel (2004:317-320), Talen (2012:7)	The use of land use zones has been continuously criticised and questioned in South Africa due to its exclusionary and segregationist effects.	Challenge	Exclusionary / Segregationally
Dubazane & Nel (2016:224)	Land use schemes are ineffective and inappropriate in traditional areas, resulting in an alternative system of land use management that is required.	Challenge	Ineffective / Unique land uses
Ziquba <i>et al.</i> (2001:2), Cousins & Hornby, 2006:4)	Traditional land demarcation is rarely recorded by traditional authorities.	Challenge	Undocumented
Ziquba <i>et al.</i> (2001:2), Cousins & Hornby, 2006:4)	traditional communities use artificial or natural features as a reference to define parcel boundaries and rely on memory as a recording tool.	Opportunity	Natural features/ Artificial features / Memory
Ziquba <i>et al.</i> (2001:2), Cousins & Hornby, 2006:4)	This often creates confusion in terms of property boundaries and results in insecure tenure and land disputes within traditional areas	Challenge	Boundary Disputes / Insecure tenure
Dubazane & Nel (2016:229)	The land administration systems of traditional leadership and local government operate independently, resulting in difficulties for local government to provide basic service delivery or planning thereof because land allocation and lease of land occur without the municipality's knowledge.	Challenge	Basic service delivery

Source	Information	Significance	Coding Phrase
Observations from the literature review and content analysis.			
Dubazane & Nel (2016:229-230)	This creates a parallel system due to poor communication between the local government and traditional leadership structures.	Challenge	Communication
Owusu-Ansah & Mji (2013:2)	IKS are important as it represents cultural pride amongst communities that empower the cultural systems.	Opportunity	Cultural preservation
Masango (2010:74)	Communities operating in traditional areas are often financially exploited due to a lack of knowledge	Challenge	Vulnerability / Exploitation
Okoth-Ogendo (1989:11)	Alienation of land from outsiders within traditional context remains limited, due to a transgenerational obligation that must be preserved by the ones who control the land	Challenge/ Solution	Restricted access
King & McCusker (2007:9)	The land is almost always reserved for members of the community.		
King & McCusker (2007:9)	In some instances where municipalities or outsiders require access to land in traditional areas for development or other purposes, they would have to negotiate terms.	Solution	Full access
Du Plessis (2011:57)	Access to and control of land is dependent on an individual's place in the social order of the community.	Solution	Social access
Bennett (2004:382), Okoth-Ogendo (2008:100)	Access to land must be viewed in the context of social relations in terms of membership being of a family, lineage, or community where members acquire land based on their status	Solution	
Kingwell (2008:185), Okoth-Ogendo (2008:100)	In traditional areas, land is not viewed as a financial asset.	Solution	Financial based
Whitehead & Tsikata, (2003:77), Hull <i>et al.</i> (2016:73)	Access to land differs in terms of gender due to men having a better position on the social hierarchy but found that this gap is small in KwaZulu-Natal.	Solution / Challenge / Opportunity	Gender-based access / Gender equality / Gender Inequality
Alcock & Hornby (2004:22)	To access land in traditional areas, different land uses have different allocation processes	Solution	Land use-based Allocation
Hull <i>et al.</i> (2016:74)	Ulundi traditional councils choose which land parcels an applicant may use for development, whereas in other areas in KwaZulu-Natal, the applicant may choose his land parcel for development. In both instances, the traditional council will have to approve the location by physical inspection, whereafter a community meeting will ensue at the specified location for a site handover with the applicant providing drinks	Solution	Physical inspection / Public participation

Source	Information	Significance	Coding Phrase
Observations from the literature review and content analysis.			
Hull <i>et al.</i> (2016:68)	Recording methods in terms of IKS where the memory of those who attended the demarcation and allocation will be relied upon to serve as a record.	Solution	Memory
Hull <i>et al.</i> (2016:74)	The other form of recording is making use of PTO certificates and associated proof of payments made in terms of the allocation of the PTO.	Solution	PTO / Proof of payments
Hull <i>et al.</i> (2016:74)	PTO certificate containing applicants' information, site information and description, and information related to the allocation agreement. After the headman has issued the PTO, a copy is retained with the traditional authority office to serve as proof of a member being part of the community.	Solution / Opportunity	PTO / Documented
Forbes (2011:14) Bennett <i>et al.</i> (2010:4) Burns <i>et al.</i> (2006:10), Hull & Whittal, (2013:347)	The main drivers for the formalisation of traditional land are to address climate change, natural resource management, disaster management, urbanisation, rural sprawl, secure tenure, and extending cadastral to informal areas and traditional areas.	Opportunity	Climate change mitigation/ preservation of natural resources/ disaster management Resilience/ Urbanisation/ Prevent rural sprawl/ Tenure security.
De Soto (2000:44-46)	Formalisation refers to converting informal property rights to formal property rights through formal demarcation and recording of title deeds.	Solution	Formal land surveying/ title deeds
Nyamu-Musembi (2007:1457-1478)	The ideology suggests that by formalising informal property rights, the property owners would have access to enjoy economic benefits with the property as an investment.	Opportunity	Economic opportunities/ Investments/ Economic growth
Bruce (2012:32-33)	Property rights as a commodity ought to be used to access credit due to the transferability of the property and ultimately provide the rights holder with security to access a loan.		
Bruce (2012:32-33)	Classical economists believe that secure property rights are essential to underpinning economic growth		
Clark & Luwayo (2017:24)	Western economies have strived for private ownership and formal land tenure systems due to the capability of formal property rights to create economic growth.		
Riba (2010:12)	Freehold rights may provide the current informal parcels with economic viability, stability and resilience.	Opportunity	Economic stability/

Source	Information	Significance	Coding Phrase
Observations from the literature review and content analysis.			
			Resilience/ Economic viability
Cousins <i>et al.</i> (2005:4)	The lack of formal property rights restricts basic service delivery and access to infrastructure.	Opportunity	Service delivery/ Access to infrastructure.
Riba (2002:12)	Formalisation protects the environment, as ecology in communal and rural areas is often dilapidated and in poor condition. Formalisation would ultimately prevent the degeneration of valuable land for tourism, agriculture, and environmental protection.	Opportunity	Environmental protection/ Tourism protection/ Agricultural protection
Burns <i>et al.</i> , (2006:141-142), Williamson <i>et al.</i> (2010:13)	The surveying and capturing of cadastral on traditional land would have to consider the existing tenure to be effective and sustainable. This will require the existing IKS and boundaries to be taken into account in the formalisation process.	Opportunity	Integration
Louw (2013)	Title deeds ought to be relatively easy to convert PTO certificates into freehold title deeds where necessary	Solution	PTO/ Title Deeds
Alcock & Hornby (2004:26)	With the introduction of title deeds comes the valuation of land that is not currently valued under customary law.	Opportunity	Valuation of land
Borras <i>et al.</i> (2011:209)	Secure tenure will prevent the potential of land grabs in rural areas that refer to land acquisition by companies, traditional institutions and other entities.	Opportunity	Prevent land grabs
Benjaminsen <i>et al.</i> (2008:28-35)	Communal systems were found to be truly resilient.	Opportunity	Resilience
Dubazane & Nel (2016:231)	The current method of zoning under SPLUMA cannot accommodate these land use spread over space	Solution/ Challenge	Land use zones
Dubazane & Nel (2016:232)	The implications of traditional land use management systems have a detrimental effect on municipal financial stability and service provision.	Challenge /	Service provision
Dubazane & Nel (2016:232)	The lack of communication between the traditional authorities and municipalities that regulate their respective systems seems to be lacking, resulting in each system functioning in isolation.	Challenge	Communication
Riba (2010:13)	The advantages of communal land tenure are said to provide the poor with easy access to land and shelter. It is also argued that the social structures provide a necessary safety net for the poor in terms of communal resource sharing and a sense of community.	Opportunity	Easy access to land for the poor

Source	Information	Significance	Coding Phrase
Observations from the literature review and content analysis.			
Manona (2012:2-3)	The current vacuum in terms of directives regarding land tenure on traditional land provides a breeding ground for corrupt activities and abuses of power by traditional authorities and local government.	Challenge	Corruption
Ntsebeza (1999:83)	Since traditional leaders are not elected and decisions are mainly taken by men, it creates the opportunity for abuses of power.	Challenge	Abuse of power
Ntsebeza (1999:83)	Non-elected traditional leaders have a direct influence on the allocation of land, gender equality and democratic local governance	Challenge	Gender inequality

Source: Own Construction (2021)

From **Table 4-1**, it is evident that multiple systems provide a variety of unique approaches in terms of land use management options on traditional land in KwaZulu-Natal. These options present challenges and opportunities that will form part of a further analysis in the ensuing chapters of this study, where more solutions, opportunities and challenges will be identified to synthesise options towards land use management on traditional land within KwaZulu-Natal. The next chapter (5) will explore local case studies where alternative efforts have been made in terms of land allocation, land demarcation, and recording of land parcels in KwaZulu-Natal traditional areas.

CHAPTER 5: EMPIRICAL INVESTIGATION: LOCAL CASE STUDIES

The empirical investigation in terms of the collection of data from local case studies contributes toward one of the three angles of data analysis as part of the triangulation approach employed in this study (see **Figure 2-1**). The purpose of the inclusion of case studies is to investigate “real-world examples” of current possible solutions and challenges towards land use management on traditional land. The local case studies provide a practical perspective on the qualitative data abstracted from the literature (MacCallum *et al.*, 2019:49; Yin, 2018:7). For the purpose of this chapter, multiple case studies (Yin, 2014:61-62) in a local context were purposefully selected and investigated (Patton, 2002:230, 241). Similar to the literature review, qualitative data were abstracted from the selected case studies through a process of coding to establish categories and themes for the data analysis (Cohen *et al.*, 2018: 668). Case study data were gathered by means of a document analysis, observations as well as a desk-top study (Nayak & Singh, 2015:136), supplemented by semi-structured interviews (Farthing, 2016:127-131; MacCullum *et al.*, 2019:149-164). The data derived from the investigation into local case studies are subsequently used to inform a comparative analysis, comparing the research results between local (chapter 5) and international case studies (chapter 6), as part of the triangulation approach employed. The reasoning behind and motivation for the purposeful selection of specific local case studies are discussed in section 2.6 of this document.

This chapter provides an investigation into land use management options employed on traditional land in the local context of KwaZulu-Natal. The chapter commences with an introduction followed by a background to the case studies in section 5.2, where the importance and relevance of the case studies are discussed individually. Essentially, land use management options are discussed in section 5.3 in terms of the allocation of land, demarcation of land, and various recording mechanisms.

Finally, section 5.4 concludes with a content analysis (Cohen *et al.*, 2018: 674-685) and summary of the findings in this chapter, to give effect to the third research objective of the study being:

3. To consider international and local land use management options relating to traditional land.

5.1 Introduction: Investigation into local land use management solutions on traditional land

The investigation into local case studies aims to provide an improved understanding of the current land use management options considered on traditional land within the KwaZulu-Natal context.

This section aims to identify alternative methods of land use management in terms of allocation, demarcation, and recording of land parcel information. Thus, case studies were carefully selected to investigate alternative approaches, mainly driven by the private sector, wherein unique solutions could be identified. This also includes opportunities and challenges perceived in this context. Four unique case studies have been identified to comprehensively analyse current land use management options on traditional land in KwaZulu-Natal. These case studies were selected in various locations extended through KwaZulu-Natal to capture different environments in the traditional land context. The case studies identified are listed as follows:

- Nqutu socio-economic and housing survey
- Isithebe rural subsidised housing development
- Umzumbe B rural subsidised housing development
- Formulation of the Ulundi land use scheme 2020

All the local case studies are located on traditional land managed by the Ingonyama Trust. **Figure 5-1** subsequently illustrates the location of the selected case studies in the KwaZulu-Natal traditional land context. As mentioned in the introduction of this chapter, semi-structured interviews (Farthing, 2016:127-131; MacCullum *et al.*, 2019:149-164) were conducted to provide further insight into the case studies. Ethical clearance was obtained for these interviews (see section 1.6) as the contact with human participants is limited to semi-structured interviews with purposefully selected professional experts. This is in line with the NWU Ethics Human Risk Level Descriptors stipulating that “the participants are adults and not considered to be a vulnerable research population” and interviews are conducted “with officials and practitioners in their official capacity”. Further to this, the research collected information that would “generally not be regarded as sensitive, such as opinions/perceptions rather than personal information.” The following experts were, therefore, purposefully selected and interviewed, based on their various expertise and local experience relating to the selected case studies:

Gert Watson (Director of K2M Environmental (Pty) Ltd. was involved in the Nqutu socio-economic and housing survey as a subcontractor for Mabune Consulting to assist in the preparation of the surveys and data analysis. He was also part of the Isithebe rural subsidised housing project and Umzumbe B rural subsidised housing development as the assigned agent to conduct the town planning applications. Gert Watson was also involved in the formulation of the Ulundi land use scheme in partnership with Mabune Consulting.

Johann van Heerden is a civil engineer that has been working in the field of rural housing provision for the last twelve years across KwaZulu-Natal. His role also encompasses that of project coordinator and chairman of meetings pertaining to technical and social aspects of the

construction phase of rural housing projects. His experience and knowledge in the field of rural housing environments are immense. Furthermore, he has been actively dealing with multiple traditional leaders over the last decade and amassed valuable hands-on knowledge of Indigenous knowledge systems. Johan van Heerden is actively involved in the roles mentioned above in the Umzumbe B and Isithebe rural subsidised housing developments.

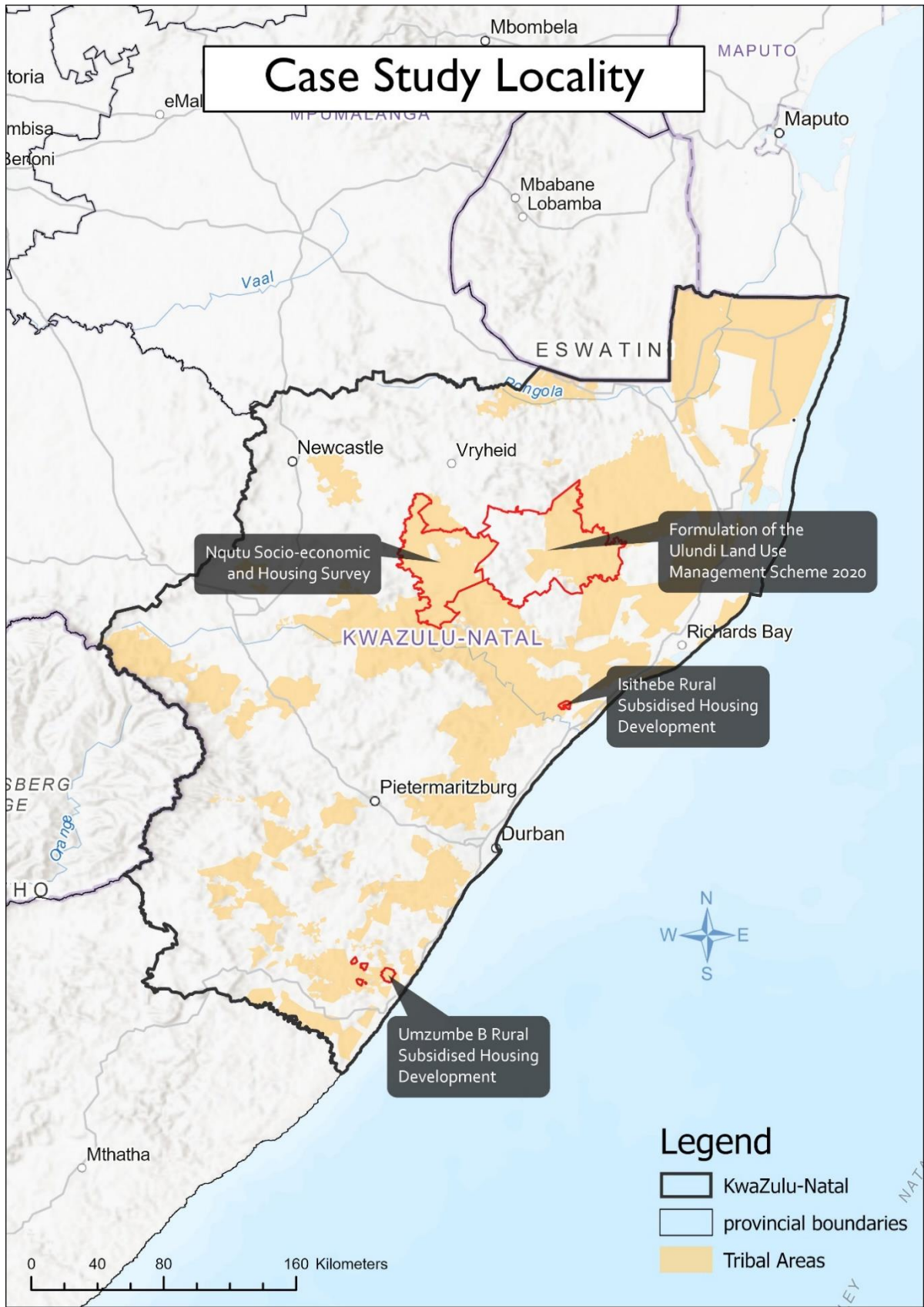


Figure 5-1: Locality of local case studies

Source: Own Construction, (2021)

5.2 Background to the local case studies

In ensuring proper consideration and comprehension of the local context for the selected case studies, this section provides a brief background to all the case studies.

5.2.1 Nqutu socio-economic and housing survey

The project aims to identify the socio-economic and housing status quo of the municipal area to assist the municipality in identifying areas in need of housing delivery (Mabune Consulting, 2017:4). This required a survey to be conducted in terms of socio-economic and housing status in the municipality (Mabune Consulting, 2017:9).

The challenge, however, is due to the dominant traditional character of the municipal area, 95% of the Municipality does not have demarcation or any information in terms of land parcels (Watson, 2021). This resulted in difficulties in surveying information as required in the project's terms of reference. For this case study, only the housing survey component would apply to the purpose of this study. The housing survey comprised obtaining information in terms of land use, dwelling type, access to water, access to electricity, and access to sewage within the entire municipality (Mabune Consulting, 2018:45-60). This case study is investigated in terms of how the survey was conducted, to identify possible solutions for the allocation, demarcation and recording of land parcels. Ultimately more than 31000 land parcels were identified, demarcated, and recorded as part of this project.

5.2.2 Umzumbe B rural subsidised housing development

The Umzumbe B rural housing development forms part of the KwaZulu-Natal Human Settlements Program to provide housing for the poor while systematically reducing the housing backlog of the ever-increasing rural housing demand. The project is located within the Umzumbe Local Municipality and consists of providing 2000 households with RDP dwelling houses throughout the rural landscape. The project area is located on four traditional authority areas namely Qwabe, Ndelu, Nyavini and Cele that constitutes the Ingonyama Trust land holding of the demarcated uMzumbe Cluster B project area. The project area comprises approximately 7467.9 Ha and is situated in relatively mountainous areas; most still holding pristine natural character despite being inhabited by rural settlements of the various traditional areas (Bigen WBHO Housing, 2014:7-10). This totals approximately 5.93% of the Municipality and an inhabitant count of 14 470 residents (Statistics South Africa, 2011).

5.2.3 Isithebe rural subsidised housing development

The Isithebe rural subsidised housing development also forms part of the KwaZulu-Natal Human Settlements Program, as alluded to in section 5.2.2. The project area is located within the Mandeni Local Municipality, including only one traditional authority area: the Mathonsi traditional authority. This project also comprised the provision of 2000 new dwelling houses for residents in the traditional area in need of housing (Bigen Africa, 2017:1; Bigen Africa, 2014:3).

Isithebe is a unique case study in terms of the traditional land narrative, as the decentralisation policy applied during the Apartheid regime, resulted in the Isithebe Industrial Node located adjacent to the project area in Mandeni. The influence of the industrial node on the structures of traditional leadership in the area is immense and extends to the implementation of this project (van Heerden, 2021).

5.2.4 Formulation of the Ulundi land use scheme 2020

The Ulundi Local Municipality consists of eight traditional authorities as sparsely scattered settlements surrounding the main town of Ulundi (Mabune Consulting, 2019:3). The investigation regarding this case study, entailed an examination of the allocation, and demarcation of land use parcels throughout the process of integrating traditional areas into land use schemes.

5.3 Land use management practices in the local case studies

Each of the case studies is discussed below in terms of their respective methods of allocation, demarcation and recording of land parcels in an attempt to identify possible solutions toward land use management options on traditional land, specifically within the context of KwaZulu-Natal.

It is essential to understand the unique character of each case study, as it provides various unique and context-specific aspects that differ from other selected case studies, as explained in the background of the case studies.

5.3.1 Allocation practices in the local case studies

The main objective of all the case studies was to identify built-up structures within their respective project areas. For the Nqutu socio-economic and housing survey, identifying built-up areas on traditional land, primarily relied on the use of remote sensing using Geographic Information Systems (GIS) Software. This included the interpretation of aerial photography from different sources and timelines. The other method used was physically inspecting the areas and correlating them with the information obtained through remote sensing. This was conducted through a

physical survey and fieldwork, where information was edited if inaccuracies were observed (Watson, 2021).

The Umzumbe B rural subsidised housing project identified land parcels in terms of beneficiaries. These beneficiaries were determined by using existing data from the community to identify the poorest of the poor residing within the project area. These beneficiaries are identified to benefit first in the provision of housing, where each *iMuzi* (homestead) will only receive one dwelling house to ensure that the majority of the community in the project area benefits. The process involved a collaboration between traditional authorities, the implementation agent, and the Department of Human Settlements (Bigen Africa, 2017:11). The traditional authorities, in consultation with the *Nkosi* and related community leaders, identified residents within the community that are the most vulnerable in terms of income, age, disability, and child-headed households. The traditional authority provided this list to the Department of Human Settlements that verified and identified selected beneficiaries that are most in need of a dwelling house. The Department of Human Settlements then provided the identified information to the implementation agent to establish where these beneficiaries are located within the project area and to determine the feasibility of the development of dwelling houses in terms of floodlines, steep slopes, and other factors. Subsequently, the physical identification of land parcels was determined by first locating the beneficiary through field surveying of the existing structures within the project area and saving a Global Positioning System (GPS) point location of the beneficiary's current structure (Watson, 2021).

This identification process (as discussed in the preceding paragraph) is followed by all rural (traditional areas) subsidised housing projects within the KwaZulu-Natal Province. However, the Isithebe rural subsidised housing project did not have a *Nkosi* to assist during this process. This resulted in a significant administrative challenge as most of the inhabitants could not be identified as community members of the traditional area. With the adjacent Isithebe industrial node that was established as part of the Apartheid decentralisation strategy, and the absence of traditional authorities/leadership, an influx of non-traditional members entered the area claiming to be part of the traditional community to benefit from the housing programmes. Thus, contributing to the challenge of identifying traditional community members. Moreover, corruption, intimidation, and a sense of no control/rules in the area further illustrated that traditional authorities/leaders are necessary and play a pivotal role in containing the rule of law in traditional areas (van Heerden, 2021). Van Heerden (2021) further explained that identifying beneficiaries becomes increasingly more difficult without the influence and support of traditional authorities/leaders. Upon enquiry whether municipalities ought to assist in matters relating to traditional areas, van Heerden (2021) said that even with traditional authorities, the relationships between local municipalities and

traditional authorities remain divided due to legislative conflicts as discussed in chapter 3. In some instances, agreements and satisfactory relationships result in effective collaboration between traditional authorities and municipalities, for example, in the case of Umzumbe Local Municipality and its traditional authorities, discussed in the previous paragraph.

Identification of land parcels for the formulation of the Ulundi land use scheme mainly consisted of using existing data of traditional areas with their proclaimed boundaries and *Isigodis* (subwards). This is conducted on a broader level and does not include individual *iMuzi's* (homesteads) (Watson, 2021). Watson (2021) further explains that traditional master plans are used in incorporating the broad spatial proposals into the land use schemes and that the identification of smaller land parcels, including those of *iMuzi's* (homesteads) within traditional areas, are subject to IKS and the related processes, as discussed in chapter 4 of this study.

Identifying existing built-up areas through the methods discussed above presents some challenges. The first challenge refers to using remote sensing and interpretation of aerial photography of traditional areas. The fact that these areas change continuously and rapidly through the adding and removing of structures, makes aerial photography unreliable and inefficient as it always captures historical development patterns. Outdated aerial photography, therefore, adds to the challenge of providing context for the status quo in reality. It is for this reason that aerial interpretations were confirmed as part of the physical surveying and fieldwork in the Nqutu socio-economic and housing survey, as aerial imagery may be misleading in the identification of current land uses in “the real world”. Providing updated aerial photography for the purpose of remote sensing is an expensive and time-consuming process due to the extensive nature of traditional areas (Watson, 2021).

Further to the preceding identification process, the land use allocation in the local case studies also does not conform to the general and commonly known zonings in land use schemes used by municipalities. Instead, traditional land uses are used, but they differ considerably from the zonings and land uses generally provided for in land use schemes. For instance, in the case of the Nqutu socio-economic and housing survey that included a land use survey, different land use definitions were used for the Nqutu town “formal” town area and for that of the rural traditional area. Another example is the difference between the reference to “residential” land uses in a general land use scheme as opposed to those in traditional areas. In traditional areas in KwaZulu-Natal, dwellings or homesteads are referred to as *iMuzi's*, that includes a dwelling house or dwelling houses occupied by relatives within an area that also accommodates additional uses for animal enclosures and subsistence agriculture. In general land use schemes in terms of residential land uses are subject to strict restrictions limiting the use of the parcel to only residential purposes as a primary right and limiting the extent of the use *inter alia*, density and

extent. The same principle applies to commercial activities (including shops) and other land uses that are defined differently in traditional areas due to specific characteristics of these land uses that diverge from the “formal” land use definitions generally included in municipal land use schemes.

Table 5—1: Examples of traditional land use descriptions

Land Use	Description
<i>IMuzi</i>	Means land, buildings and structures used for the accommodation of an extended traditional family, who has been allocated the land by means of customary law to a traditional community and may include areas for the cultivation of trees and crops, a kraal for livestock and an enclosure for poultry.
Royal Residence (<i>Isigodlo</i>)	Means a traditional palace for <i>Inkosi</i> and is used for the purposes of residential, administrative and cultural festivities in traditional community areas.
Traditional Court (<i>Inkantolo YeNkosi</i>)	Means a customary institution or structure, which is constituted and functions in terms of customary law and custom, for purposes of resolving disputes
Traditional Health Practice	Means the performance of a function, activity, process, or service based on a traditional philosophy that includes the utilisation of traditional medicine or traditional practice.

Source: Sivest (2021:23-30)

These traditional land use definitions/descriptions (as included in **Table 5-1**) are used as a reference for all projects that involve land uses within traditional areas. It serves as a guideline in an attempt to standardise land use allocation in traditional areas, also including rural subsidised housing projects.

These divergent definitions of land uses naturally present a challenge in terms of integrating traditional areas with their unique land uses into the Municipal land use schemes (Watson, 2021). Watson (2021) further elaborates by referring to the powers of traditional authorities in terms of land use allocation and IKS. He explains that, due to the complexities in the allocation of land use rights in traditional areas, individual land use rights cannot be granted to land parcels within traditional areas, in terms of the land use schemes managed by the various local municipalities. Instead, traditional areas are subject to spatial overlay zones or designated traditional zones declaring that these areas are subject to IKS in allocating land use rights (Mabune Consulting, 2020:50; Watson,2021).

5.3.2 Demarcation practices in the local case studies

Demarcation practices for the Nqutu socio-economic and housing survey were simultaneously conducted during the identification of built-up structures, as discussed in the previous section. Using aerial photography and GIS software, polygons were drawn on the aerial photos to demarcate a perceived entity for each particular traditional land parcel/land use.

The same methods were used for demarcating land parcels perceived as separate entities or land uses that were identified in terms of the beneficiary GPS points as part of the rural subsidised housing projects, discussed in the previous section. In the case of the latter, aerial photography is used, in conjunction with the GPS point of the beneficiary, to capture the *iMuzi* that qualifies for a dwelling house. Surrounding *iMuzi*'s and land uses that are not or used to be beneficiaries are also captured for the purpose of a settlement plan, that has to be submitted with the application for consent by the implementation agent. The settlement plan indicates the location of the beneficiaries relative to the settlement plan and other noticeable physical characteristics, for example, flood lines, river buffer areas, and topographic features (Watson, 2021). It is essential to produce a settlement plan for the contractor building the subsidised dwelling houses to enable the preparation of a construction programme, facilitating an efficient and timeously construction process. The settlement plan also provides the contractor with insight into complex sites to be prioritised for solutions due to their challenging physical characteristics (van Heerden, 2021).

In the case of the Ulundi land use scheme, Watson (2021) affirmed that demarcation was merely applied broadly in terms of the traditional authority area. This was because individual land use rights could not be granted to members of the traditional area, as the decision-making powers were in the hands of the Ingonyama Trust and their mandate to administer the land in terms of IKS. Furthermore, an attempt to use the same methodology as discussed in terms of rural subsidised housing developments to demarcate all separate entities and land uses of traditional areas in the case of Ulundi Local Municipality, would require immense resources and time that was not provided for in the scope and budget of formulating the land use scheme. Upon enquiry whether the existing settlement plans in terms of rural subsidised housing developments and other projects, for instance, the Nqutu socio-economic and housing survey, ought to be incorporated into the municipal land use schemes, Watson (2021) replied that if that was implemented, it would have enormous repercussions. This is due to the complex relationships between traditional authorities and local municipalities in general, but other factors also contribute to these repercussions. Watson (2021) explained that traditional leaders and community members would view the inclusion of settlement plans in municipal land use schemes as an undermining of their IKS. This may be attributed to the fact that individual land use rights are vested in agreements with the traditional authority in terms of indigenous knowledge systems,

and that these settlement plans are merely an indication of demarcated boundaries of perceived land parcels/land uses in the traditional areas, and not a definitive method of illustrating the correct or complete land information.

This ties in with the challenges of determining boundaries by using aerial photography. In all instances where aerial photography is used to determine boundaries of *iMuzi*'s, the main drawback is that these traditional land uses are dynamic in terms of size and use. Van Heerden (2021) explains that an *iMuzi* is a family entity that expands over time as the family grows. For example, when a child reaches adulthood, they generally build their own homes within the same *iMuzi*, resulting in the expansion of the homestead and subsequent land use. Polygamy is also a contributing factor in the expansion of *iMuzi*'s, where the Department of Human Settlements provides an additional top structure for each additional wife, if she qualifies for the subsidy in terms of the housing code (Mabune Consulting, 2019:63). Another contributing factor to the changing and dynamic land uses is that the community bury their relatives within the *iMuzi*, as it is perceived as ancestral land (van Heerden, 2021). This also results in the increasing expansion of *iMuzi*'s. This changing and dynamic nature of traditional land uses present the main challenge in demarcating boundaries from aerial photography, as it represents the past and status quo and does not consider future expansion. Due to a deficiency in updated aerial photography, what is captured will in any case not accurately reflect the reality or the status quo on the ground.

Figure 5-2 provides an example of the demarcation of the traditional land uses (*iMuzi*) from aerial photography on GIS, as conducted during the Nqutu socio-economic and housing survey as well as the rural subsidised housing case studies, discussed above. It is apparent that the *iMuzis*/homesteads are located far from each other and that there is no apparent connection between them. Thus, using already captured structures and the corresponding polygons as a reference only is not suitable for the demarcation of traditional land uses. In some cases, as observed from the rural subsidised housing projects, one such polygon may contain multiple *iMuzis* when physically surveyed on the ground (van Heerden, 2021). In these cases, expansion has occurred on one or both *iMuzis* that resulted in the merging of households, and this will most probably result in boundary disputes.



Figure 5-2: Example of *iMuzis* as captured on GIS from aerial photography

Source: Mabune Consulting (2019:64)

Considering the aerial photography as portrayed in **Figure 5.3** illustrates the visual reflection of *iMuzis* on the ground. As illustrated, multiple structures are present that may contain multiple related households, as explained in section 5.3.2.



Figure 5-3: Illustration of *iMuzis* on ground level

Source: Mabune Consulting (2019:64)

Although demarcation in terms of aerial photography is inaccurate and does not reflect the current status quo on the ground, it is still an immensely effective tool, especially in terms of time and cost, for practitioners to demarcate traditional land efficiently (Watson, 2021). Land demarcation, as discussed in the preceding paragraphs, has been demonstrated to be effective enough for selective purposes and to achieve the required results in terms of the local case studies (Watson, 2021; van Heerden, 2021). The recording of these demarcated land parcels in the local case studies is discussed in the next section.

5.3.3 Recording practices in the local case studies

The recording of land parcels for the Nqutu socio-economic and housing survey occurred in conjunction with the identification and demarcation of the land parcels. All the recordings were captured digitally by using GIS software. Once the parcel was identified, a polygon was drawn on GIS by using aerial photography. This was the first recording mechanism used during this project. The next recording mechanism used was that of field surveyors that captured data pertaining to the said polygon on the ground, through physical observations during site visits. The physical observation data added referred to the level of water, electricity, and sewage provision with additional information on the associated traditional land use and structure type. These additional data were added using field devices that sent the information back to the GIS systems. Polygons could also be added, removed, or amended during the field survey by the surveyors if any data did not correspond with the data provided for the survey. The data captured was then saved as a shapefile, thereby geographically containing all the information about the various traditional land parcels (Watson, 2021).

According to van Heerden (2021), location is the most important aspect to consider with the recording of information on traditional land for rural subsidised housing projects. He elaborated by saying that the location determines the authority of jurisdiction and provides vital information for the subsidised housing contractors. The first instance any form of recording takes place in rural subsidised housing projects, is during the search for beneficiaries, as discussed in section 5.3.1, where the information regarding traditional community members most in need of housing, is determined and recorded on paper. This data, however, does not contain geographical information and, therefore, survey teams are subsequently deployed to locate the beneficiaries by linking a GPS point to the *iMuzi* of the beneficiary. Once the point has been identified, the demarcation of the *iMuzi* may commence, as discussed in section 5.3.2 (refer to **Figure 5.2**). These demarcated *iMuzi*'s are then recorded as shapefiles in a GIS system, used to produce settlement plans in support of the application for consent to build the subsidised dwelling houses (Watson, 2021).

During the project's construction phase, the contractor uses survey teams to visit the beneficiary parcels to confirm information from the beneficiary and assess the construction possibilities on the parcel. The information for each site visited for construction is recorded in a digital quality management system (QMS), as a GPS point with related information. This information contains beneficiary information, including photos, stages of construction, on-site issues, and the current status of the subject dwelling house. This QMS system is used as a system to track all information related to the beneficiary's dwelling house. All this data relating to rural subsidised housing within KwaZulu-Natal is currently being documented or available in a digital QMS system, as described above. The final step in the recording of beneficiary information on traditional land, is in the form of "happy letters", which refers to a letter signed by the beneficiary stating that they are satisfied with the dwelling house that was built and that handover has successfully taken place. This is then deemed as a completed provision of a subsidy dwelling house by the Department of Human Settlements and kept for record purposes (van Heerden, 2021).

Van Heerden (2021), however, mentions that the records lose validity over time due to several factors. One of them is that beneficiaries may sell their dwelling houses. This is a prevalent occurrence regarding subsidised housing within traditional areas. This may be ascribed to financial difficulties or merely selling with the option to buy/build another dwelling house. Another contributing factor is that the beneficiaries rarely live within the provided subsidised dwelling houses. This may be ascribed to the fact that many beneficiaries are working in the cities and, in some cases, other provinces while rarely visiting the dwelling house at all. One should remember that these traditional areas are ancestrally bonded, and that community members will rarely leave their *iMuzi* (homestead) to someone other than family. They will, however, sell or lease their subsidy dwelling house. Ownership of the dwelling house is, therefore, inclined to change, and so does the validity of the recorded data for the subsidy dwelling house as this information is not continuously updated.

It is apparent that the recording practices and information required on traditional land (as discussed above), have many similarities with the formal recording of land and property information in municipalities facilitated by, for example, title deeds and surveyor general (SG) diagrams, containing the owners' and parcel related information. Recording information for traditional land, is merely kept in a different format comprising digital GIS data, QMS data, and happy letters. This poses the same question again, of whether it is possible to use the existing data captured in the settlement plans to facilitate the incorporation of traditional areas within municipal land use schemes. Although the data is recorded, incorporating such data in land use schemes will be perceived as an undermining of the rights of the Ingonyama Trust, traditional authorities, and the traditional community (Watson, 2021).

5.4 Summary

It is evident from the preceding discussions that the local case studies reflect the rural character and unique land administration processes used on traditional land in lieu of formal land administration methods in KwaZulu-Natal. These unique land administration processes present various options towards land use management on traditional land, with associated challenges and opportunities.

For the purpose of further analysis in this study, a summative table comprising the codes deducted through the content analysis (Cohen *et al.*, 2018: 674-685) of the local case studies, as stipulated in section 2.4, is subsequently provided. **Table 5-2** illustrates the different challenges, opportunities, and solutions towards land use management on traditional land, identified within this chapter. The options of land use management that are analysed are in line with the study's aim, which is to investigate solutions to allocate, demarcate, record land parcel boundaries and address land tenure on traditional land within the KwaZulu-Natal Province. The aspects are defined as follows:

- Land allocation - includes identification of land and land use.
- Land demarcation – systems employed to define boundaries of land parcels.
- Recording of land parcels – systems employed to record information of land.

Table 5—2: Summative table of content analysis and coding observations in terms of the local case studies and land use practices on traditional land within KwaZulu-Natal.

Source	Information	Significance	Coding Phrase
Observations from the local case studies.			
Watson (2021)	For the Nqutu Socio-Economic and Housing Survey, the identification of built-up areas on traditional land primarily relied on the use of remote sensing using GIS Software.	Solution	GIS remote sensing
Watson (2021)	This included the interpretation of aerial photography from different sources and timelines.	Solution	Aerial photography
Watson (2021)	The other method used was physically inspecting the areas and correlating them with the information obtained through remote sensing. This was conducted during the physical survey and fieldwork, where information may be edited if inaccuracies were observed	Solution	Physical inspection
Bigen Africa (2017:11)	These beneficiaries are determined by using existing data from the community to identify the poorest of the poor residing within the project area that will benefit first, where each <i>iMuzi</i> (homestead) will only get one dwelling house	Solution	Community knowledge

Source	Information	Significance	Coding Phrase
Observations from the local case studies.			
	to ensure that the majority of the project area community benefit.		
Bigen Africa (2017:11)	The process involves a collaboration between traditional authorities, the implementation agent, and the Department of Human Settlements.	Solution	Public Traditional Private Partnership (PTPP)
Watson (2021)	The physical identification of land parcels is determined by first locating the beneficiary by field surveying the existing structures within the project area and saving a GPS point location of the beneficiary's current structure.	Solution	GPS point
Van Heerden (2021)	The Isithebe rural subsidised housing project did not have a Nkosi during this process resulting in a significant administrative problem.	Challenge	Leadership
Van Heerden (2021)	Identifying beneficiaries becomes increasingly more difficult without the influence of traditional authorities.		
Van Heerden (2021)	Corruption, intimidation, and a sense of no rules in the area merely support the fact that traditional authorities are necessary and play a pivotal role in containing the rule of law in traditional areas.	Challenge	Leadership/ Corruption/ Intimidation
Van Heerden (2021)	Even with traditional authorities, the relationships between local municipalities and traditional authorities remain divided.	Challenge	Traditional-municipal cooperation
Van Heerden (2021)	In some instances, agreements and satisfactory relationships result in effective collaborations between traditional authorities and municipalities, for example, in the case of Umzumbe Local Municipality and its traditional authorities.	Opportunity	Traditional-municipal cooperation
Watson (2021)	Identification of land parcels for the formulation of the Ulundi land use scheme mainly consisted of using existing data of traditional areas with their proclaimed boundaries and <i>Isigodis</i> .	Solution	Community knowledge
Watson (2021)	The fact that these areas change rapidly by the adding and removing of structures makes aerial photography unreliable and inefficient as it always captures historical development patterns.	Challenge	Reliability
	Outdated aerial photography adds to the challenge of providing the context of the status quo on the ground.		
	Areas may resemble one thing on aerial imagery while reflecting something different on the ground.		
Watson (2021)	Providing updated aerial photography for the purpose of remote sensing is an expensive and time-consuming	Challenge	Availability

Source	Information	Significance	Coding Phrase
Observations from the local case studies.			
	process due to the vastness of traditional areas (Watson, 2021).		
Watson (2021)	Different land use definitions were used for the Nqutu town “formal” town area and that of the rural traditional area.	Challenge	Unique land uses
	The same goes for shops, and other land uses that are defined differently due to specific characteristics that differ from the “formal” land use definitions in Municipal land use schemes		
Mabune Consulting (2020:50), Watson (2021)	Traditional areas are subject to spatial overlay zones or designated traditional zones declaring that these areas are subject to IKS in allocating land use rights	Solution	Overlay zone
Watson (2021)	Using aerial photography and GIS Software, polygons were drawn on the aerial photos to indicate containment of a perceived entity of certain land use definition.	Solution	Digital demarcation
Watson (2021)	An attempt to demarcate all separate entities and land uses of traditional areas, for instance, in the case of Ulundi Local Municipality with the same methodology as discussed in terms of rural subsidised housing developments, would require immense resources and time that is not provided in the scope and budget of formulating land use schemes.	Challenge	Time consuming, Budget
Van Heerden (2021)	In all instances where aerial photography is used to determine boundaries of <i>iMuzi</i> 's, the main problem is that these traditional land uses are dynamic in terms of size and use.	Challenge	Dynamic boundaries
Watson (2021)	This presents the main challenge with determining boundaries from aerial photography as it represents the past and does not take into consideration of future expansion. Due to the lack of updated aerial photography, what is captured in any case will not accurately reflect what is on the ground.	Challenge	Accuracy, Updated data, Reliability
Watson (2021)	It is apparent that these homesteads are located far from each other and that no connection between them is observed. Thus, using already captured structures as a reference is not suitable.	Challenge	Existing reference
Van Heerden (2021)	In some cases, as observed from the rural subsidised housing projects, one such polygon may contain multiple <i>iMuzi</i> s when physically surveyed on the ground. In these cases, expansion has happened on one or both <i>iMuzi</i> s	Challenge	Double <i>iMuzi</i> 's

Source	Information	Significance	Coding Phrase
Observations from the local case studies.			
	that resulted in the merging of households. This is where boundary disputes occur.		
Watson (2021)	Although demarcation in terms of aerial photography is inaccurate and does not reflect the current status quo on the ground, it is still an immensely effective tool to internally demarcate traditional land efficiently in terms of time and cost	Challenge	Accuracy, Reliability
		Opportunity	Time-effective, Cost effective
Watson (2021)	Recording took place digitally using GIS software. Once the parcel had been identified, a polygon was drawn on GIS software, using aerial photography as a reference. Field surveyors captured data pertaining to the said polygon on the ground. The data added was referring to the level of water, electricity, and sewage provision with the associated land use category and structure type. This data was added using field devices that reverted the information to the GIS systems. The data captured was then saved as a shapefile containing all the information about the land parcel geographically.	Solution	GIS recording
Van Heerden (2021)	The first instance any recording takes place on the projects is during the search for beneficiaries, as discussed in section 5.3.1 where the information regarding people in the community most in need of dwelling houses is determined and recorded on paper.	Solution	Paper survey
Van Heerden (2021)	This information, however, does not contain geographical information and teams are deployed to find the location of the beneficiaries by linking a GPS point to the <i>IMuzi</i> of the beneficiary.	Solution	GPS point
Van Heerden (2021)	The information for each site visited for construction is recorded in a digital QMS as a GPS point with related information.	Solution	Digital quality management system (QMS)
Van Heerden (2021)	The final part of the recording information regarding beneficiaries is in the form of "happy letters which refers to a letter signed by the beneficiary stating that they are satisfied with the dwelling house that is built and that handover has taken place. This is deemed as a completed subsidy dwelling house provided by the Department of Human Settlements and kept for record purposes.	Solution	Happy letters
Van Heerden (2021)	Records lose validity over time due to several factors. They will, however, sell or rent their subsidy dwelling house ownership of the dwelling house may easily change, and so does the validity of the recorded data for	Challenge	Validity

Source	Information	Significance	Coding Phrase
Observations from the local case studies.			
	the subsidy dwelling house because this information is not updated.		
Watson (2021)	These demarcated <i>iMuzi</i> 's (homesteads) are recorded as shapefiles in a GIS used to produce settlement plans for the application for consent to build the subsidised dwelling houses.	Solution	Mapping

Source: Own Construction (2021)

In comparing the summative **Table 5-2** with **Table 4-1** it is evident that several other methods of identification, demarcation and recording of land parcels within traditional areas, with unique challenges and opportunities, exist, that are not currently published in literature documents. The preceding local case study analysis ultimately informs the analysis of options towards land use management on traditional land, as the second of a three-part analysis constituting the triangulation methodological approach of the study. International case studies are subsequently discussed in chapter 6, as the third and last remaining analysis in the triangulation approach.

CHAPTER 6: EMPIRICAL INVESTIGATION: INTERNATIONAL CASE STUDIES

The empirical investigation in terms of international case studies contributes to the third and final of the three angles of data analysis as part of the triangulation methodological approach employed in this study. The purpose of this international case study analysis is to investigate “real-world examples” of current possible solutions towards and challenges of land use management on traditional land outside the South African context. The international case studies provide a further practical perspective on the qualitative data abstracted from the literature (MacCallum *et al.*, 2019:49; Yin, 2018:7). For the purpose of this chapter, multiple case studies (Yin, 2014:61-62) in an international context were purposefully selected and investigated (Patton, 2002:230, 241). Similar to the literature study, qualitative data were abstracted from the selected case studies through a process of coding to establish categories and themes for the data analysis (Cohen *et al.*, 2018: 668). Case study data were gathered by means of a document analysis as well as a desk-top study (Nayak & Singh, 2015:136). The data derived from the investigation into international case studies are ultimately used to inform a comparative analysis, comparing the research results between local and international case studies as part of the triangulation approach employed in this study. The reasoning behind and motivation for the purposeful selection of specific international case studies are discussed in section 2.7 of this document.

This chapter investigates international trends in land use management on traditional land. The chapter commences with an introduction to the international traditional land context followed by a background to each of the international case studies in section 6.2, where the importance and relevance of the respective case studies are discussed. Essentially, land use management options are discussed in section 6.3 in terms of the allocation of land, demarcation of land, and various recording mechanisms. Finally, section 6.4 concludes with a content analysis (Cohen *et al.*, 2018: 674-685) and summary of the findings in this chapter, to give effect to the third research objective of the study being:

3. To consider international and local land use management options relating to traditional land.

6.1 Introduction: Investigation into international land use management solutions on traditional land

The status quo in terms of tenure security on traditional land differs immensely throughout the world. In some countries, for example, Bolivia, Nicaragua, Brazil and Peru indigenous groups are yet to obtain rights in respect of their traditional territory, let alone tenure security within their

territory (McCall, 2014: 99). Other countries, for instance, South Africa, have proclaimed traditional areas denoting that land use management within these areas differ significantly from non-traditional areas and should, therefore, be discussed separately (refer to chapter 4).

This necessitated a unique approach in the selection of international case studies, as few other countries in the world share the same status quo as South Africa, regarding the proclamation of traditional land and the provision of alternative systems of land use management to investigate. The purpose of investigating international case studies is to compare different approaches toward land use management options on traditional land with the land use management options as identified in the local case studies to identify possible alternative solutions. Therefore, as explained in section 2.5.2, each selected international case study is located on a different continent, to provide the widest range of context and variables contained in each. The selected international case studies, consequently, provide a global overview of the options and trends toward land use management on traditional land. A background into each selected international case study is provided in the following section, describing each country's history and status of land use management to understand the context in terms of the evaluation of the case studies. **Figure 6-1** illustrates the location of the selected case studies in the international context, comprising South America, Africa, and Asia.

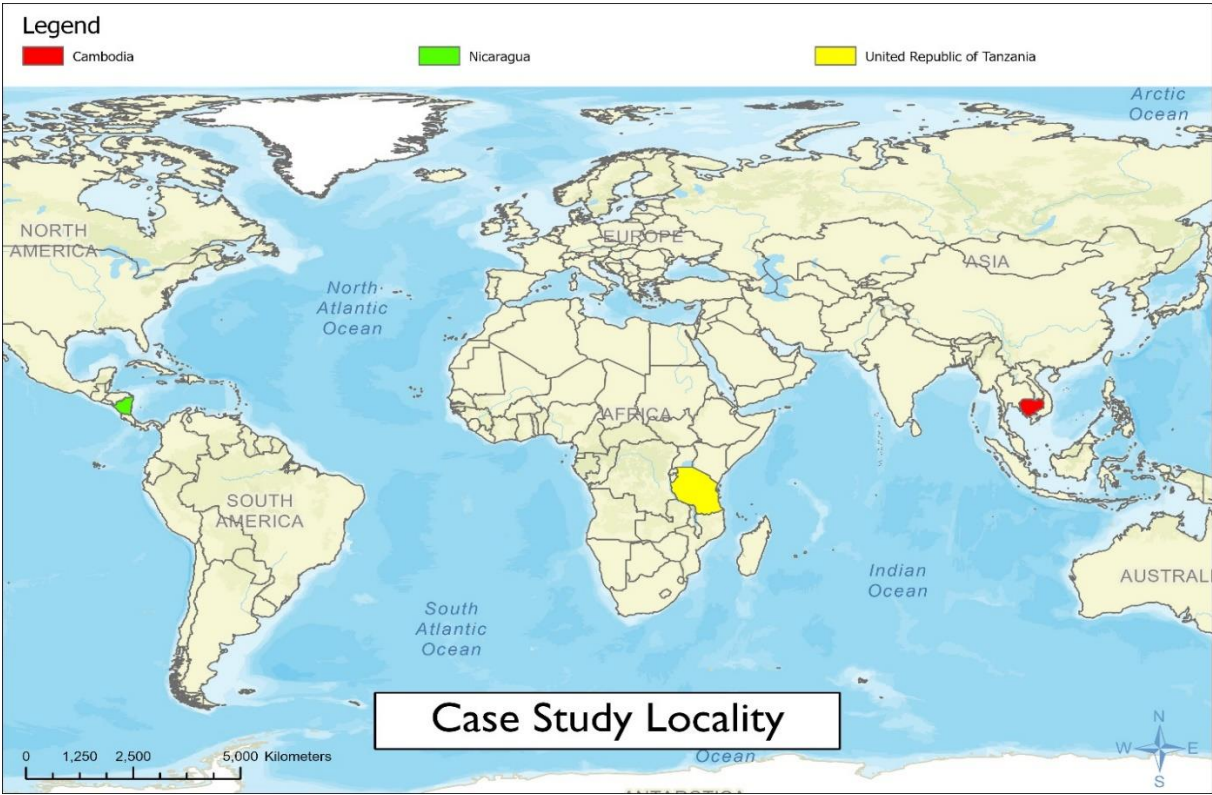


Figure 6-1: Locality of international case studies

Source: Own Construction, (2022)

6.2 Background to the international case studies

To ensure proper contextualisation of the selected case studies, a brief background on all the international case studies is provided in the subsequent section.

6.2.1 Africa: United Republic of Tanzania

For most of Tanzania's post-independence history, the government was openly hostile toward the informality of land tenure within the country (Collin et al., 2015:4). In the early 1990's, more than 30 African countries commenced with comprehensive land reform programmes with the purpose of integrating informal land, comprising informal settlements and customary land, into a modern system of land administration (Alden Wily, 2003:2; Sundet, 2005:2). This resulted in two new legislative documents for Tanzania: the first, in the form of the 1999 Land Act, proposed a new system to provide individual land tenure for informal landowners. The Act aimed to establish a formal framework for land administration and management, ultimately to formalise informal land tenure in the country (Collin et al., 2015:4).

The second was the Village Land Act of 1999, that embraced customary land tenure. However, under these new laws, the classification of the land dictates the allocation of authority and responsibility for land administration. Three categories of land were identified as being village, general, and reserved land. Around 70% of Tanzania is classified as village land. The Village Land Act governs villages under two types of tenure being: 1) granted rights of occupancy and, 2) customary rights of occupancy. Both tenure types provide the same rights to land owners but differ in the validity period. The granted rights of occupancy had a validity period of 99 years, whereas the customary right of occupancy is permanent and perpetual (USAID, 2008,6).

The formalisation of property rights in Tanzania commenced in 2004 (Manganga et al., 2016). The government of Tanzania launched the Residential Licence Programme in 2005 in an attempt to encourage people to register their properties (Briggs, 2011). This involved the process of legally recognising the titles of owners on traditional and informal land (Manganga et al., 2016:34). The process was aimed to target existing owners living with secure tenancy or ownership rights, that have not been formally surveyed by the Tanzanian government. To obtain a formal land title, occupants must demonstrate that they own the land either through usufructuary rights or being in possession of a land purchase recognised by the village authority (Briggs, 2011).

Therefore, in this case study, the investigation converges on the process of demonstrating ownership through usufructuary rights and village land purchases in Tanzania as part of the formalisation process of informal land tenure. This investigation focuses on the allocation,

demarcation, and recording of land parcels as part of the “demonstrating of rights” process as well as the post-demonstration process of land titling in Tanzania.

6.2.2 South America: Nicaragua

The indigenous communities of Nicaragua received formal rights to the lands they have traditionally used and occupied in the 1987 Nicaraguan Constitution, whereafter the Autonomy law was passed in the same year, creating the North and South Autonomous regions (Macdonald & Ayana, 1995; Larson & Cronkleton, 2011: 8).

It took another 15 years and an international court case for the National Assembly to pass the Common Lands Law in 2002. This, after the court found that the Nicaraguan Government violated the American Convention of Human Rights and failed to guarantee indigenous rights as enshrined in the Constitution (Larson & Cronkleton, 2011: 8). As a result, the court ordered the Nicaraguan government to adopt relevant legislative and administrative measures necessary to create an effective system for the demarcation and titling of indigenous land as per their traditional customs, values and laws (Anaya & Grossman 2002:13; Finley-Brooks & Offen, 2009:354). Despite copious and varying approaches throughout several political eras in attempting to redistribute and formalise property rights in Nicaragua, land conflicts continue (Broegaard, 2006:1).

Indigenous communities have responded by demonstrating (proving) their territorial claims in an attempt to evince their rights to the land and to provide a basis for negotiating any use or current exploitation. This pioneering effort consists of community members undertaking a unique land tenure initiative. This includes broad claims, based on applicable legal norms, supported by anthropological and geographical research (Macdonald & Ayana, 1995).

Within Nicaragua, indigenous territories comprise multiple communities, posing a challenge to this initiative (Larson & Cronkleton, 2011: 6). The basis of the initiative is to provide tenure security that rests on three expected outcomes of land titling, namely: 1) the demarcation of property boundaries with associated land use rights, 2) the availability of information of the property and recorded information, and 3) the title issuing entity that ensures the enforcement of those rights (Broegaard, 2005:846).

The process followed to obtain this objective is called Participatory Research Mapping (PRM) or, more precisely, Participatory Geographical Information Systems (PGIS). Various other countries across South America have applied this method with moderate success (McCall, 2014: 99). PRM or PGIS encompasses the preparation, design, and implementation of the mapping process with the involvement of the community to control and apply mapping outputs (McCall, 2014: 94). The

process is comprehensively discussed in section 6.3 and forms the focus of the investigation regarding this specific international case study.

6.2.3 Asia: Cambodia

Merely two years after Cambodia agreed to the U.N.'s declaration on indigenous rights in 2007, which granted indigenous groups authority over their land under traditional leadership to administer and manage as they please, the government enshrined the rights of indigenous groups into law (Keeton-Olsen, 2021). However, the process of obtaining the rights is an arduous endeavour (Keeton-Olsen, 2021).

Indigenous communities live without any land titles and must provide proof that the community has occupied the land long-term before they may apply for land titling. Between 2009 and 2021, only 33 indigenous communities were granted land titles out of approximately 455 indigenous communities in Cambodia. Before indigenous communities may commence with the surveying process, an individual indigenous community has to gain recognition from its provincial authorities and Cambodia's Rural Development Ministry, and then register legally with the Interior Ministry (Keeton-Olsen, 2021).

The investigation of the case study in Cambodia focuses specifically on the allocation, demarcation and recording of land as part of the process after recognition has been obtained by indigenous communities at Cambodia's Rural Development Ministry and the Interior Ministry. This process entails, *inter alia*, sending detailed maps to the Land Ministry, where they 1) confirm the demarcation of the area to ensure that it doesn't overlap with other land uses or rights and 2) finally issue the title (Keeton-Olsen, 2021). Cambodian indigenous communities have used various methods to comply with the requirements before submitting the maps to the Land Ministry, especially Participatory Land Use Planning (PLUP), that will also be described in more detail in section 6.3.

6.3 Land use management practices in terms of international case studies

The international case studies precedingly discussed differ from those in the South African local context. Even though the international case studies comprise a broad approach to land administration, they still present an opportunity to identify different options towards land use management on traditional land. The international case studies are individually discussed in the following section in terms of allocation, demarcation, and recording of land parcels within each scenario.

6.3.1 Investigation into the formalisation process in Tanzania

As part of the first stage of formalisation of informal tenure in Tanzania in 2004, the land was identified for title registration. Using satellite imagery and aerial photography, land parcels were visually identified. This was followed by land officers on the ground that conducted physical site visits to establish ownership and manually map out parcel boundaries. The owners identified for these land parcels in informal settlements were granted residential licenses that recorded their ownership status. This only followed a year later when residential licenses were issued to residents (Collin et al., 2015:6).

Stage one of the formalisation process involving village land consists of state-directed resurveying of village boundaries. Stage two of the formalisation process is the establishment of a land use plan whereby land is mapped according to land uses as identified during the surveying by land officers (Manganga *et al.*, 2016:29). Upon completion of the preceding steps, the final stage entails the issuing of Certificates of Customary Rights of Occupancy (CCRO) that recognises individual rights on village land for every parcel that has proof of land purchase from a village authority (Manganga *et al.*, 2016:4; Briggs, 2011).

The issuing of residential licences provided residents with the opportunity to obtain tenure security quite cheaply. This was also inexpensive for the government as it negated the formal land surveying process (Collin et al., 2015:2).

6.3.2 Investigation into the process of PRM in Nicaragua

As discussed in section 6.2.2, PRM is used as a method to demonstrate traditional patterns of land use and occupancy for indigenous communities to obtain rights to their land (Macdonald & Ayana, 1995). The process involves various steps in mapping the indigenous community.

The first step is to consult with the indigenous community and establish the opportunities and challenges of the mapping process. It is important that all members of the community are consulted as indigenous knowledge is spread amongst all ages in the community. During this process, a basic community map is drawn based on the information on territorial claims provided by the community (Di Gessa, 2008:31). The next step is for the community to use indigenous knowledge to indicate important land uses on the preliminary territorial map (Di Gessa, 2008:31). The first information being indicated on the map is the obvious, information-based land uses with location indicators for households, garden plots, and culturally modified landscapes. Other land uses include spiritually significant land, landmarks, and land associated with natural resources used by the indigenous community (Macdonald & Ayana, 1995; Di Gessa, 2008:32).

The third stage is the physical verification of information on-site. With the support of anthropologists, community members, and professionals using GPS devices, the identified land uses are verified, and their locations are plotted with coordinates (Macdonald & Ayana, 1995). The GPS coordinates are used to determine the boundaries of the parcels by connecting the corner boundaries of each land parcel on GIS. Community members form part of the GPS plotting where neighbours agree to the boundaries identified to mitigate any future boundary disputes. This stage is also known as the digitisation of maps (Di Gessa, 2008:33). This is where PGIS forms part of the participatory research method. By employing PGIS, the community is continuously engaged in consultation during the mapping process, even at the digitisation stage (Di Gessa, 2008:33). This also forms part of the process of recording information obtained through indigenous knowledge on digital platforms. After the maps have been completed through the digitisation process, each community member is granted a boundary certificate that indicates where their parcel boundary is located by using aerial photography. This scaled map indicates where the boundary lies in terms of natural and physical features, to navigate boundaries efficiently (Di Gessa, 2008:33).

This method empowers the community and provides more secure tenure (Di Gessa, 2008:33). These mapping technologies are inexpensive, user-friendly, yet sophisticated tools that communities may use to better administer their land. Even though the map created is merely a document for discussion and does not hold any legal status, in an attempt to evince territorial claims with the government, the information is crucial in improving land administration on traditional land (Macdonald & Ayana, 1995).

6.3.3 Investigation into the PLUP process in Cambodia

Similar to Nicaragua, Cambodia employs participatory methods to create maps in an attempt to demonstrate territorial rights in terms of indigenous lands. In Cambodia, the emphasis lies in a broader spectrum of PLUP where territorial integrity is mapped in terms of land uses.

The process of demonstrating territorial rights is assisted through Non-Government Organisations (NGOs) (Keeton-Olsen, 2021). First, the community engages in discussing the territorial area to be mapped. This forms the demarcated territory of the indigenous communities (Adler *et al.*, 2009:6). As part of the requirements for the recognition of the territorial claims, a detailed land use map must be submitted to the Land Ministry (Keeton-Olsen, 2021). Following the outer boundary determination in consultation with the indigenous community, the next step involves the mapping of designated land uses. These land uses are mapped using GPS points of various land uses that are obtained through consultation with indigenous communities, and physical site-visits

to land use by NGOs. These land uses include agricultural lands, homes, and areas of cultural significance and are recorded with GPS Points on the Maps (Keeton-Olsen, 2021).

It is not specified whether the land uses are demarcated within the broad territorial map. The process of PLUP in Cambodia ultimately does not provide individual land tenure within traditional areas, instead, it merely provides a land title for the entire indigenous territory (Adler *et al.*, 2009:8-9). Therefore, it is assumed that only GPS points are used to depict homes and other land uses on the land use map. Ultimately, the process of PLUP and PRM is similar but differs noticeably in terms of the detailed capturing of the land use data and information.

6.4 Summary

The international case studies investigated in this chapter, provide unique options toward land use management on traditional land. These options offer an alternative perspective to those of the local case studies outlined in chapter 5.

For the purpose of further analysis in this study, a summative table comprising the codes deducted through the content analysis (Cohen *et al.*, 2018: 674-685) of the international case studies, as stipulated in section 2.4, is subsequently provided. **Table 5-2** illustrates the different challenges, opportunities, and solutions towards land use management on traditional land, identified within this chapter. The options of land use management that are analysed are in line with the study's aim, which is to investigate solutions to allocate, demarcate, record land parcel boundaries and address land tenure on traditional land within the KwaZulu-Natal Province. The aspects are defined as follows:

- Land allocation - includes identification of land and land use.
- Land demarcation – systems employed to define boundaries of land parcels.
- Recording of land parcels – systems employed to record information of land.

Table 6—1: Summative table of content analysis and coding observations in terms of the international case studies and related land use practices on traditional land.

Source	Information	Significance	Coding Phrase
Observations from international case studies.			
Collin et al. (2015:6)	Using satellite imagery and aerial photography, land parcels were visually identified.	Solution	Aerial photography
Collin et al. (2015:6)	Followed by land officers on the ground to establish ownership and manually map out parcel boundaries.	Solution	Physical inspection

Source	Information	Significance	Coding Phrase
Observations from international case studies.			
Collin et al. (2015:6)	The owners identified for these land parcels in informal settlements were granted residential licenses that recorded their ownership status	Solution	Residential licences
Manganga <i>et al.</i> (2016:29)	Stage two of the formalisation process is establishing a land use plan whereby land is mapped according to land uses as identified during the surveying with land officers.	Solution	Mapping/ land use zoning
(Manganga <i>et al.</i> (2016:4), Briggs (2011).	Thereby, issuing CCRO that recognises individual rights on village land on every parcel that has proof of land purchase from a village authority.	Solution	Certificates of Customary Rights of Occupancy (CCRO)
Collin et al. (2015:2)	The issuing of residential licences provided residents with the opportunity to obtain tenure security quite cheaply. This was also cheap for the government as it negated the process of formal land surveying.	Opportunity	Cost effective
Di Gessa (2008:31)	First, the community engaged in discussing the territorial area to be mapped. This forms the demarcated territory of the indigenous communities. It is vital that all members of the community are consulted as indigenous knowledge is spread amongst all ages in the community.	Solution	Public participation/ Community knowledge
Di Gessa (2008:31), Adler <i>et al.</i> (2009:6)	During this process, a basic community map is drawn based on the information provided by the community on territorial claims. The next step is for the community to use indigenous knowledge to indicate important land uses on the preliminary territorial map.	Solution	Mapping/ Community knowledge
Macdonald & Ayana (1995), Di Gessa (2008:32)	The first information being indicated on the map is the obvious, substance-based land uses with location indicators for households, garden plots, and culturally modified landscapes. Other land use includes spiritually significant land, landmarks, and land associated with natural resources used by the indigenous community	Solution	Land use zoning
Macdonald & Ayana (1995)	With the support of anthropologists, community members, and professionals using GPS devices, the identified land uses are verified, and their locations are plotted with coordinates (Macdonald & Ayana, 1995).	Solution	GPS points
Di Gessa (2008:33)	The GPS coordinates are used to determine the boundaries of the parcels by connecting the corner boundaries of each land parcel on GIS.	Solution	GPS demarcation
Di Gessa (2008:33)	Community members form part of the GPS plotting where neighbours agree to the boundaries identified to mitigate any future boundary disputes. The community is always	Solution	Public participation

Source	Information	Significance	Coding Phrase
Observations from international case studies.			
	engaged in consultation with the mapping process, even at the digitisation stage.		
Di Gessa (2008:33)	After the maps have been completed through the digitisation process, each community member is granted a boundary certificate that indicates where his land parcel boundary is located concerning aerial photography.	Solution	Boundary certificate
Macdonald & Ayana (1995)	These mapping technologies are inexpensive, user-friendly, yet sophisticated tools that communities may use to better administer their land.	Opportunity	Cost effective/User friendly
Keeton-Olsen (2021)	As part of the requirements for the recognition of territorial claims, a detailed land use map must be submitted to the Land Ministry. Following the outer boundary determination with the consultation of the indigenous community, the next step involves mapping designated land uses.	Solution	Mapping/Land use zoning/ Community knowledge/Public participation
	These land uses are mapped using GPS points of various land uses that are obtained through engaging consultation with indigenous communities and physical visits to land use by NGOs. These land uses include agricultural lands, homes, and areas of cultural significance and are recorded with GPS Points on the Maps		
Adler <i>et al.</i> (2009:8-9)	The process of PLUP in Cambodia does not provide individual land tenure within traditional areas, instead, it only provides a land title for the entire indigenous territory. Therefore, it is assumed that only GPS points are used to depict homes and other land uses on the land use map.	Solution	No demarcation/ Land use zoning

Source: Own Construction (2021)

From the summative **Table 6-1** above, it is evident that the international case studies provide several unique methods for allocating, demarcating, and recording land parcels on traditional land. The international case studies will inform the analysis of options towards land use management on traditional land as the final part of the three-part analysis comprising the triangulation analysis of the study. The results of the content analysis and coding process as employed in chapters 4-6 of this study, are analysed and presented in the findings of the ensuing chapter 7.

CHAPTER 7: EMPIRICAL ANALYSIS AND FINDINGS

This chapter analyses the data obtained throughout the study, summarising the empirical analysis and findings, to ultimately inform the conclusions and recommendations presented in chapter 8. Section 7.1 provides an introduction describing the methodology utilised, indicating how the data should be interpreted. Sections 7.2 & 7.3 discuss the content of the analysis and findings in terms of the possible solutions, opportunities, and challenges. Lastly, in section 7.4 the theoretical matrix is provided and discussed in terms of how it should be interpreted.

This chapter is a prelude to the final chapter and aims to assist in obtaining the last objective of this study being:

4. To recommend options for informed decisions regarding land use management on traditional land in KwaZulu-Natal

7.1 Introduction

The empirical analysis in this chapter is conducted through analysing and cross-tabulating the results derived from the content analysis and coding observations (Cohen et al., 2018:668) as contained in chapters 3,4,5 & 6 of this study. This is reflected in the triangulation of results derived through a literature study, local case studies and international case studies in terms of the allocation, demarcation and recording of parcels on traditional land. Three primary indicators were observed as part of the coding process namely: 1) solutions, 2) opportunities, and 3) challenges, continuously captured as such in the summative tables of the preceding chapters (see **Tables 3-2, 4-1, 5-2 & 6-1**). Four main themes were also identified that categorise the broad types of approaches applicable to each solution derived from the literature review: 1) formalisation, 2) hybrid systems, 3) improved land administration, and 4) communal/indigenous systems.

In order to ultimately triangulate the data as obtained from the preceding chapters, and illustrate the analysis and findings, a matrix is constructed that depicts the various types of solutions identified during the content-analysis and coding process (Cohen *et al.*, 2018:668), cross-tabulated with the four main themes as described above. Opportunities are identified under the themes, and challenges specifically relating to the said solution are depicted in the matrix as indicated by **Table 7-1**.

The possible solutions, challenges and opportunities captured in **Table 7-1** are discussed below.

7.2 Possible solutions explained

In order to fully comprehend what exactly the possible solutions entail, each solution is defined under the category of investigation as it was continuously encountered in the study namely: 1) land allocation, 2) land demarcation, and 3) recording of land parcels. These categories of investigation are correspondingly reflected in column 1 of the matrix (see **Table 7-1**).

7.2.1 Land allocation

Possible solutions resorting under this category, are listed in the matrix and were colour-coded to reflect the various stages of the land allocation process as identified in the local and international case studies. This colour-coded classification comprises:

- Green: Reflecting the identification of land stage
- Orange: Indicating the provision of access stage
- Blue: The stage during which Land Use Rights are allocated

The range of possible solutions identified under the category of land allocation, are subsequently elucidated:

- (a) Aerial photography: This refers to the process of using aerial photography, captured by aircraft, to identify land parcels on the ground.
- (b) Community knowledge: Refers to the indigenous knowledge of the community residing on traditional land.
- (c) Full access: The provision of access to land without any social requirement.
- (d) Gender-based access: The provision of access to land based on gender.
- (e) GIS remote sensing: Similar to aerial photography but derived from satellite imagery and utilised on a digital platform.
- (f) Land use-based access: The provision of access to land based on unique approaches in terms of different land uses. For example, business and residential access requirements differ.
- (g) Land use zoning: The management of land uses through zoning, based on formal land use schemes of the municipal authority.

- (h) Overlay zone: A broad-based zone defining a vast homogenous area with the same characteristics and development parameters.
- (i) Physical inspection: The practice of physically visiting a location to investigate (not desktop-oriented)
- (j) Public participation: The process of informing the public of possible development while providing a platform for feedback/comment to ensure public engagement and prevent future disputes.
- (k) Public Traditional Private Partnership (PTPP): The direct partnership or participation between the public sector, traditional, and private sectors. For example: Department of Human Settlements - traditional authority – private contractor.
- (l) Restricted access: The provision of access to land based on certain requirements. For example: Access to land may only be granted to persons who are part of the traditional community.
- (m) Social access: The provision of access to land based on social status within a community.

7.2.2 Land demarcation

Possible solutions resorting under the second category of land demarcation, are listed in the matrix and are subsequently explained:

- (a) Artificial features: The use of artificial demarcation methods to indicate the demarcation of boundaries, for example, fences.
- (b) Digital demarcation: The use of digital software as a means to demarcate boundaries, for example, the use of GIS.
- (c) GPS demarcation: Refers to the informal process of digital demarcation of boundaries based on GPS coordinates captured during physical inspections on each corner of a land parcel and linking it with digital software. Does not include formal surveying (land surveying)
- (d) Land surveying: Refers to the formal land surveying methods conducted by a registered professional land surveyor.
- (e) Natural features: The use of the natural environment as a reference to demarcate areas, for example, streams, rocks, and trees.

- (f) No demarcation: When no demarcation method is utilised or present.

7.2.3 Recording of land parcels

Possible solutions resorting under the third category of the recording of land parcels, are listed in the matrix and are subsequently clarified:

- (a) Boundary certificate: A certificate that serves as a confirmation of a demarcated boundary of an area.
- (b) Cadastral information system: A database used to store all formal cadastral information, for example, diagrams.
- (c) Certificates of Customary Rights of Occupancy (CCRO): Certificate confirming the right of occupancy on customary land.
- (d) Diagram: A formal piece of paper depicting a demarcated area with coordinates as a reference to the location of a land parcel, also known as an SG Diagram.
- (e) GIS recording: The method of digitally recording demarcated boundaries as shapefiles/geodatabases.
- (f) GPS point: The method of digitally recording a point feature of significance in terms of a coordinate system.
- (g) Happy letters: A letter stating that a beneficiary is satisfied with his home built by the Department of Human Settlements. Serves as proof of address.
- (h) Mapping: The illustration of recorded features on a map depicting where a feature is located.
- (i) Memory: The use of a person's memory as a recording method.
- (j) Paper survey: A physical survey that was conducted to obtain and record information.
- (k) Proof of payments: Refers to the proof of payment made to the traditional authority as part of the allocation process. Used as proof of occupancy.
- (l) Permission to Occupy (PTO): A user right of a personal nature, allowing the user either use or occupation rights over a certain rural, non-surveyed piece of land.
- (m) Public register: A register containing all the information regarding registered title deeds.

- (n) Residential license: A licence issued to an occupant with rights and conditions recognising informal tenure in informal settlements or traditional land.
- (o) Title deeds: A legal document containing information and property rights, with conditions recognising ownership in the form of formal tenure.
- (p) Quality Management System (QMS): A digital management system containing information pertaining to a dwelling house/land parcel that is constantly updated through physical surveying. Information contained includes geographical coordinates (GPS Points), photos, documents, and associated occupiers' information.

7.3 Opportunities & challenges

As alluded to in chapters 5 and 6, various challenges and opportunities for land use management on traditional land were identified as part of the preceding content analysis and coding process. These identified opportunities and challenges are reflected in the matrix of **Table 7-1** and discussed below.

7.3.1 Opportunities

The identified opportunities are categorised in **Table 7-1** under the identified themes, depicting the four primary approaches to land use management on traditional land, identified in the literature review and empirical analysis, namely: 1) formalisation, 2) hybrid systems, 3) improved land administration, and 4) communal/ indigenous systems. The opportunities identified are not directly related to the possible solutions referred to in section 7.2 but reflect the broad opportunities that each identified theme/approach provides. This, in turn, provides a perspective on the various opportunities that each possible solution present.

7.3.2 Challenges

The challenges identified directly correspond with the solutions identified in terms of: 1) land allocation, 2) land demarcation, and 3) recording of land use parcels, as stipulated in **Table 7-1**. In some instances, a deduction was made that a challenge may apply to another solution, even though it was not directly identified as such in the content analysis. In addition, some cross-cutting challenges are identified as they are applicable to all the possible solutions, and indicated below:

- (a) Vast communal areas: A significant challenge to any solution due to the cumbersome implementation thereof. Only the severity of the challenge varies and, therefore, cognisance should be taken in terms of the level of influence of the challenges individually.

- (b) Leadership: Any possible solution will be reliant on traditional leadership within a traditional area. Refer to case study 5.3.2 (Isithebe rural subsidised housing development). The leadership role is essential in any land use management matter on traditional land.
- (c) Service provision: Any land that is not formally surveyed poses a significant challenge for service provision within traditional areas, especially in terms of land uses, as infrastructure requirements are linked to the use of the land parcel.
- (d) Municipal consent: Under SPLUMA, all land development decisions must be made either by the municipality or the municipal planning tribunal. Traditional leadership is not permitted to form part of a municipal planning tribunal. This poses a particular challenge to traditional authorities and traditional land.
- (e) Existing reference: No reference to any other land use/boundary/recording is available to serve as a measure to condone any other land use/ boundary/ or recording. This creates isolated parcels in traditional land, making land administration challenging to implement.

7.4 Cross-tabulation analysis

Cross-tabulating the possible solutions with the four identified themes or approaches, provides an indication of which approach to land use management on traditional land may capture the proposed solution most effectively. It also provides an indication of the effect the possible solution might have in terms of emerging opportunities. The matrix further depicts all the corresponding challenges identified in terms of each solution, creating a multifunctional matrix that comprises various options toward land use management on traditional land.

The matrix illustrating the above cross-tabulation analysis is subsequently depicted in **Table 7-1**

Table 7—1: Matrix summarising solutions towards land use management options on traditional land in KwaZulu-Natal.

Category of investigation	Possible Solutions	Themes Identified				Challenges
		Formalisation	Hybrid System	Improved land Administration	Indigenous Systems	
1. Allocation of land	Aerial photography			X		Reliability, Availability, Updated data
	GIS remote sensing			X		Reliability, Availability, Updated data
	Physical inspection			X	X	Substantial communal population, Double <i>IMuzi's</i>
	Community knowledge			X	X	Accuracy, Reliability, Availability
	Public traditional private partnership		X	X		Communication, Corruption
	Full access	X				Corruption, Restricted access, Intimidation
	Land use-based access		X	X	X	Exclusionary, Corruption, Gender inequality
	Restricted access			X	X	Public engagement, Exclusionary, Corruption
	Social access			X	X	Exclusionary, Corruption, Protection, Intimidation
	Gender-based access			X	X	Gender inequality, Exclusionary, Abuse of power
	Land use zoning	X				Exclusionary, Budget, Ineffective, Unique land uses
	Overlay zone	X	X			Segregationally
Public participation	X	X	X	X	Abuse of power, Transparency	
2. Land demarcation	Land surveying	X				Substantial communal population, dynamic boundaries
	Digital demarcation		X	X		Boundary disputes, dynamic boundaries, Accuracy
	GPS demarcation		X	X		Boundary disputes, Time Consuming, Double <i>IMuzi's</i>
	No demarcation		X	X		Boundary disputes, Exploitation, Accuracy
	Artificial features				X	Boundary disputes, Exploitation, Accuracy
	Natural features				X	Boundary disputes, Undocumented, Exploitation, Accuracy
3. Land recording	Title deeds	X				Overlapping rights
	Public register	X				Overlapping rights
	Diagram	X				Time consuming, Budget
	Cadastral information system	X				Time consuming, Budget
	Residential license	X	X			Governance
	CCRO	X	X			Governance
	Mapping		X	X		Investment, Insecure tenure, Land registration
	GIS recording		X	X		Investment, Insecure tenure, Land registration
	Boundary certificate		X	X		Investment, Insecure tenure, Land registration
	QMS system			X		Investment, Insecure tenure, Land registration
	GPS point			X		Investment, Insecure tenure, Land registration
	Permission to Occupy (PTO)		X	X		Investment, Corruption, Insecure tenure, Vulnerability, Validity
	Happy letters			X		Investment, Corruption, Insecure tenure, Vulnerability, Validity
	Paper survey			X		Investment, Insecure tenure, Land registration, Vulnerability
	Proof of payments				X	Exploitation, Corruption, Insecure tenure, Vulnerability
Memory				X	Undocumented, Investment, Insecure tenure, Vulnerability	

Category of investigation	Possible Solutions	Themes Identified				Challenges
		Formalisation	Hybrid System	Improved land Administration	Indigenous Systems	
	OPPORTUNITIES	Accuracy, Basic service delivery, Climate change mitigation, Disaster management, Economic growth, Economic opportunities, Effectivity, Gender equality, Healthy and safe environment, Investments, Land use regulation, Land use schemes, Preservation of natural resources, Prevent rural sprawl, Protection, Redress, Resilience, Spatial integration, Sustainable development, Taxation on land, Tenure security, Urbanisation, Valuation of land	Basic service delivery, Cost Effective, Documented, Cooperative governance, Healthy and safe environment, Gender equality, Public engagement, Spatial integration, Sustainable development, Time effective. Traditional-municipal cooperation, User friendly	Cultural preservation, sustainable Development	Cultural preservation, Easy access to land for the poor, Ingonyama Trust,	<p>Green = Identification Orange = Access Blue = Land Use Rights</p>

Source: Own Construction (2021)

CHAPTER 8: CONCLUSIONS & RECOMMENDATIONS

Conclusions and recommendations were formulated based on the four research objectives identified in section 1.3 of this study and are comprehensively discussed in this chapter. An extensive discussion of each conclusion correlates with the corresponding research objective to illustrate a specific connection with the purpose of the research. Subsequent to each conclusion, a corresponding recommendation is provided, highlighted in a separate text box. These recommendations aim to provide practical solutions and proposals addressing the challenges as identified according to each research objective.

Finally, it is reiterated that this research project has been ethically approved by the North-West University's Faculty for Natural and Agricultural Sciences Ethics Committee (Ethics number: NWU-01245-21-A9). Please refer to **Annexure A** for the ethics approval letter. The study is categorised as “no risk”.

8.1 Research objective 1: To provide an overview of the multiple directives relating to traditional land in South Africa.

8.1.1 Conflict between the concept of ownership and communal living

The influence colonialism had on communal traditional land systems stemmed from western concepts of ownership and property. The concept of ownership was as unknown to indigenous groups as the concept of communal systems was to colonists (Chanock, 1985:232). For the colonists, everything must have a monetary value for the purpose of trade, thereby also attaching ownership to land properties. For the indigenous groups, ownership was not a concept they were familiar with, as they used all resources for the benefit of the traditional community. Instead of attaching a monetary value to items or property, indigenous groups added social value to community members, thereby allowing a person of higher social value or rank to enjoy better resource benefits than those with lower social value. This created a conflict between the colonists and indigenous groups regarding land and property. Colonists refused to acknowledge these indigenous customs and insisted that the concept of ownership was the only way to regulate land. As a result, the colonialist government commenced with expropriating any land that lacked apparent ownership. This context initiated the commencement of legislative measures leading to land expropriation measures on land regarded as unowned or communal, leaving little land reserved for indigenous groups as a measure to benefit the colonist. Limited regulation of communal systems remained with the indigenous groups (Cousins, 2008:111).

8.1.2 Insecure tenure as a result of colonialism and Apartheid

It was found throughout the study that the actual culprit in the origin of insecure tenure on traditional land, is the heritage of colonialism and the legislative measures that ultimately led to Apartheid and its segregationist directives. This was mainly due to colonists refusing to acknowledge communal tenure and forcing the concept of ownership on traditional land, as discussed in section 8.1.1. With the enactment of the Glen Gray Act of 1894, legislative measures commenced that would ultimately form the foundation of Apartheid South Africa. As new laws followed in the footsteps of the Glen Grey Act of 1894, the Apartheid government increasingly aimed to preserve communal systems while simultaneously striving to control traditional leadership to their benefit. This was ultimately an attempt to govern traditional land to further benefit the Apartheid regime. Not only did Apartheid undermine traditional systems but it also ensured that indigenous people would not be able to obtain ownership of land, even though the concept of ownership was the only form of land regulation the colonists accepted and used as an excuse to expropriate land. An example is the introduction of the Permission to Occupy (PTOs) that provided informal land tenure on a communal system controlled by western influence. Apartheid resulted in traditional systems that were broken and corrupted by western influence. The challenge of dismantling the damage incurred by the Apartheid legislative measures and rebuilding traditional systems was immense for the post-Apartheid South African government, and in 1996 new hope was provided through the promulgation of the new Constitution of South Africa.

8.1.3 Failure to include traditional systems, customary law, and communal tenure in planning legislation

With the dawn of democracy in South Africa in 1994, the new government had the task of formulating a new constitution that would form the foundation of all directives to follow. The result was a uniform constitution that repealed all Apartheid-related measures that would result in segregation and racial bias. The *Constitution of South Africa* (1996) ultimately mandated that new legislation should be enacted that would reflect these values in practice. However, the government failed to effectively include traditional systems and their functions in planning legislation in post-Apartheid South Africa. The same is true for addressing communal tenure in these traditional systems, as the government is still to provide a communal tenure act that protects communal land tenure in South Africa. As a result, insecure tenure on traditional land is regulated through interim acts known as the Interim Protection of Informal Land Rights Act 31 of 1996 (IPIIRA).

The failure to address these concepts in legislation post-1994 crept into all other legislation that influences traditional systems and communal land tenure. One example of this is the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) that is the most recent planning Act, enacted more than 20 years after Apartheid. SPLUMA still fails to acknowledge communal land tenure and traditional systems within the spatial planning context and its directives. Official customary law still functions under the concept of what Apartheid made customary law to be, and not according to current living customary law on the ground and how the practices are changing (Du Plessis, 2018:13). The post-apartheid government has ultimately failed to address problems that the Apartheid government intentionally created in the traditional sphere of South Africa. Currently, there are no secure tenure rights on traditional land, and traditional systems and customary rights are continually undermined by formal rights that originated with the private ownership paradigm.

Recommendation

The most critical aspect in terms of legislation that requires attention, is those communal rights that require protection through legislative measures other than that of the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA). This includes embracing customary rights and integrating customary rights, communal tenure, and traditional systems within the current formal paradigm of land use rights. This will, of course, mean that all legislation must stem from a foundation act directly addressing the principal key aims of protecting communal land rights and communal tenure.

This must result in policy reform and the formulation of the Communal Land Rights Act (CLRA) that should secure land tenure rights on traditional land through law. This Act should subsequently be reflected in all legislation, especially the Spatial Planning and Land Use Management Act 16 of 2013.

8.2 Research objective 2: To offer a perspective on land use management of traditional land in KwaZulu-Natal.

8.2.1 Change in the purpose of traditional land use management

Land use management on traditional land is regulated differently on all fronts as opposed to formal land use management in South Africa. As previously discussed in section 8.1, the main difference between the formal and communal measures is the concepts of ownership and communal living. It should be noted that indigenous groups never really required the use of ownership because pre-colonial indigenous groups were nomadic, resulting in indigenous groups not being bound to

one place for too long. However, there were large agri-settlements and clans that are linked to specific land through the ancestors. Thus, the creation and use of the communal system were justified as it suited their needs. As for colonists, ownership had monetary value, provided sustainability, and suited their needs as they settled in one place for exceedingly long periods of time, creating colonies.

These differences are bound through all land use measures applicable to colonists and indigenous groups, creating two different land use management systems for two diverse sets of needs. Traditional land use management is entirely managed and controlled through traditional leadership and its delegated social ranks, as explicated in chapter 4. The allocation of land is primarily based on social status and role within the community. As with land use measures, consultation with various leadership roles within the traditional area may influence the decisions regarding what resources are to be associated with a homestead and the extent of land to be used in respect of these land uses. Demarcation of land is never cast in stone as demarcated boundaries constantly come into dispute due to the lack of proper record-keeping practices. In most cases, the allocation, demarcation and recording of land parcels are implemented through indigenous knowledge systems (IKS) as was conducted in pre-colonial times. None of these measures posed any problems for a nomadic community as these measures suited their needs. However, through the land expropriation implemented by colonists and the Apartheid directives, indigenous communities are no longer nomadic and transitioned to settling in one place, for an extended period of time. This, consequently, changed the purpose of traditional land use management and resulted in a conflict between traditional historic systems that suited the nomadic ideals of indigenous communities and their new purpose of settling.

Recommendation
Although the purpose of land use management on traditional land has changed, it must be acknowledged that IKS are a cultural heritage treasure that requires protection. It is recommended that provisions should be made that in future, with any changes in legislation or land use measures, that these systems should be protected and integrated into legislation and land use measures in a culturally sensitive manner that will protect the cultural significance of these traditional areas and the Indigenous knowledge systems.

8.2.2 Disparate expectations of land use management on traditional land

It should be acknowledged that various forms of land use management exist within the South African land use management environment and that it is critical to understand this historical perspective. Therefore, formal land use management cannot be compared to traditional land use

management systems as they differ in their fundamental purpose. The main difference between the land use management measures is that of the intended tenure type, as discussed in the previous sections. Formal land use planning measures do not cater for communal land tenure and rightfully are not designed to accommodate this, due to its initial purpose. The purpose of formal land use measures is for private ownership rights to be protected and managed, whereas communal tenure is intended for the use of the community in any way the traditional authority sees fit. Another difference is in the governmental regulation of the respective formal and traditional land uses. Two diverse forms of land use management regulated by two different forms of governance are bound to present problems when one is forced upon the other. Therefore, attempting to enforce formal land use measures in traditional areas will result in difficulties due to a magnitude of problems.

It is recognised that traditional land use measures are insufficient to formally secure tenure on traditional land, but to implement formal land use measures without recognising traditional systems in legislation is a mistake. Without the integration of traditional areas, leadership, and systems within planning legislation, alternative measures to provide secure tenure on traditional land must be pursued. It should also not be assumed that formal land use management practices may not be applied or adapted to inform land use management on traditional land, as this study will aim to demonstrate in the ensuing sections.

Recommendation
As discussed above, it is recommended that the integration of traditional land, leadership, and systems within planning legislation is the first step to explore formal land use measures on traditional land. The question of whether it will be applicable or feasible cannot be determined before a full integration is completed and implemented in practice. It was highlighted in the conclusions on the directives applicable to traditional land, that insufficient directives exist to protect and manage traditional land. This ties in with the recommendation regarding policy reform of traditional land and leadership, focusing on formulating legislation that may be integrated with planning legislation and vice versa.

8.2.3 Importance of traditional leadership in land use planning on traditional land.

Traditional leadership plays a vital societal role in traditional areas as it acts as an entity of governance only applicable to the community it serves. Without traditional leadership, the entire traditional system will not be able to function as they serve as the official regulator of customary law and order. It may be observed from this study that traditional leaders act as a governing

authority that regulates customary law in traditional areas in the same way that the police functions in formal areas. Crime and safety concerns are minimal in traditional areas as there are firm systems in place due to the traditional leadership. In the context of land use management, IKS are used by traditional leaders to enact the societal rules applicable to the traditional land. This includes the allocation, demarcation and recording of land parcels on traditional land. It is, therefore, essential for traditional leadership to take the lead on land use management within their own communities as the community acknowledges them as their leaders and as the associated delegated authority.

With the requirement to secure tenure on traditional land due to the change in the purpose of traditional land use management systems, as discussed in section 8.2.1, measures must be put in place to ensure land use management reform in traditional areas. Although these areas are partly regulated through legislation, the applicability of laws concerning land use planning on traditional land specifically remains disputed by traditional leadership. This may be attributed to the fact that formal and informal rights, and how it is regulated within the traditional systems, are not conveyed through SPLUMA. As a result, land use matters relating to secure tenure for residents of traditional areas remain a conundrum for the post-apartheid government, mainly due to the ignorance of traditional systems and functions. Decision-makers without any perspective on or knowledge of traditional purpose, systems and function will always attempt to enforce a first-world solution to a third-world problem that would fundamentally fail for reasons unbeknown to them.

Recommendation

It is recommended that traditional leadership must play an integral role in the decision-making relating to land use matters on traditional land, especially in terms of the allocation, demarcation, and record-keeping of land parcels within the traditional areas. This will ensure that the leadership directly associated with the relevant area is constantly part of the decision-making processes that will allow them to exercise their authority more efficiently and better manage the traditional communities. It is essential that, notwithstanding the type of land use management measure implemented on traditional land, the traditional leadership is educated in terms of reformed land use management systems and their applicability. This may include training in formal legislation and traditional systems that may lead to innovation in land use management implementation on traditional land. The same applies to the education of policymakers, academics, and politicians that are unfamiliar with the traditional systems, purpose, and functions, to ensure that an integrated approach is adopted in reforming land use management on traditional land.

8.2.4 Various perspectives regarding land use management options on traditional land

The research in this study established that various perspectives on land use management principles for traditional land are debated among academics and practitioners, particularly to address informal land rights identified in traditional areas. These principles are based on the perspective in favour of land use management on traditional land and how this school of thought may influence the outcome of these land use management principles to secure tenure on traditional land. These principles should be categorised as the primary ideologies of land use management on traditional land and are as follows:

- Formalisation – Formal land use management options
- Hybrid System – Combination of formal and traditional land use management options
- Improved Land Administration – Improvement of communal land use management options
- Communal – Only use communal land use management options

These four ideologies are based on research abstracted from the literature review in this study. Through investigating land use management options on traditional land in literature, the broad range of perspectives regarding land use management on traditional land within KwaZulu-Natal is better understood. **Table 7-1** in section 7.4 of this study summarises the broad spectrum of perspectives on land use management and what it should entail on traditional land. The potential adverse effects and expected positive outcomes of the possible solutions, if implemented, are also illustrated in this matrix. These broad and varying perspectives complicate decision-making regarding which traditional land use management options to consider, and therefore, substantiating the purpose of this study. Research objective three subsequently explores the applied ideologies in practice to elucidate the possible solutions, opportunities, and challenges of each.

8.3 Research objective 3: To consider international and local land use management options relating to traditional land.

8.3.1 Improved land administration trends within local case studies

Throughout the case study investigations of both local and international cases, the concept or ideology of improved land administration as a solution towards land use management on traditional land has been identified ample times. It is, however, significant that this concept was identified in all local case studies, suggesting that land use management on traditional land in KwaZulu-Natal is already evolving. The concept entails the improvement of existing traditional options in an attempt to augment existing measures by protecting the cultural significance of IKS

whilst enhancing the land use administration on traditional land. Conversely, it was discovered that this concept is primarily driven by private institutions or companies as a record-keeping mitigation measure, due to insufficient access to existing records on land use management in traditional areas, thereby simultaneously creating their own records as a result of them implementing innovative solutions to obtain it. Unbeknown to them, these innovative solutions provide possible options towards land use management in traditional areas, that should be incorporated by traditional leaders and government entities.

Recommendation
Although improved land administration does not yield the same sought-after opportunities in Table 7-1 as the opportunities created by formalisation, it should not be disregarded as a powerful option towards land use management on traditional land. It is therefore recommended that more improved land administrative measures be implemented as it enables the protection of cultural significant heritage and allows for ease of implementation. Improved land administration options are, therefore, encouraged by this study.

8.3.2 Formalisation and hybrid trends in international case studies

The investigation into the international case studies has resulted in the concept of the formalisation of informal land rights and the use of hybrid approaches as options towards land use management on traditional land. Formalisation of land refers to implementing formal land use management measures on informal land to achieve the outcomes of formal ownership. These measures should yield substantial benefits but are usually difficult to implement due to the enormous cost implications. The hybrid approach denotes a midway between formalisation, improved land administration and communal systems. The hybrid trends indicate innovation solutions that are not formally recognised but ought to be utilised by traditional leadership, private institutions, and governments.

Recommendation

Formalisation may yield several social opportunities, although challenging to implement on traditional land. It is not recommended that formalisation take place on traditional land as it will destroy traditional systems and functions. As previously mentioned, traditional leadership forms the foundation of traditional living. Without traditional authorities managing the traditional communities, traditional areas will collapse into the lawlessness of informal settlements where no leadership or authority governs. In view of this, it is further recommended that informal settlements may well be governed by their own authority, for example, in the case of traditional leadership. Therefore, it is paramount that traditional areas stay traditional areas and not succumb to the failures of formalisation of traditional areas.

De Soto's key argument for the formalisation of land use rights to enable access to financial credit and ultimately improve economic conditions, is flawed in terms of traditional land in the KwaZulu-Natal context as he argues that communities with informal tenure cannot alienate land. In fact, he fails to realise that residents within traditional areas are able to alienate buildings, resulting in a sense of ownership in traditional areas. Thus, the argument for formalisation is not applicable to traditional land in KwaZulu-Natal.

It is recommended that hybrid approaches be utilised instead of formalisation as they present a midway between the dilemma of traditional areas being in a position of transitioning from having historical communal purpose to a formal individual, yet communal purpose.

8.3.3 Use of technology as an emerging alternative method of land use management

Throughout the investigation of local and international case studies, it was evident that the use of new technology in alternative land use management options emerged, primarily associated with hybrid and improved land administrative concepts. The use of Geographical Information Systems (GIS) in land use management has provided a prodigious scope of innovative options for land use management solutions, including the allocation, demarcation and recording of land parcels on traditional land. These options are further explored in section 8.4 of this study. Once again, these technological advances are predominantly utilised by private organisations or companies and not by traditional authorities or governments.

8.3.4 Possibility of Public-Private-Traditional Partnerships (PPTP)

Some of the case studies revealed the possibility of public-private-traditional partnerships for land use management where each uses the other resources for their own mandate and ultimately

everyone's benefit. It was revealed that in cases where such partnerships exist, collaboration in terms of other challenges ensues.

Recommendation

It is recommended that possibilities of Public-Private-Traditional Partnerships should be explored in terms of policy reform and other legislative policies. As mentioned in the preceding sections, the private sector utilises modern technological tools to assist with their work and this ought to be shared with traditional authorities and governments. It will further encourage partnership and collaboration between entities ultimately to the benefit of each roleplayer and will ensure relationship building between active roleplayers that may lead to innovative solutions on all aspects relating to traditional land.

8.4 Research objective 4: To recommend options for informed decisions regarding land use management on traditional land in KwaZulu-Natal

8.4.1 Allocation of Land

Throughout the study, various options towards land use management on traditional land were explored. One of the cross-cutting land use management aspects is the allocation of land that includes the identification, access, and land use rights of parcels within traditional land. These options identified were categorised as themes or concepts toward land use management options on traditional land. **Table 7-1** illustrates the research findings regarding land use management options, themes, opportunities, and challenges for each option. The allocation of land is the first step in the land use management process on traditional land as it entails the identification of land, access to land, as well as the proposed land use associated with the land. It is concluded that, in terms of allocation of land, the concept of formalisation will not result in an effective method as various challenges towards the implementation thereof would require sundry resources, time, and money. Although the benefit of formalisation is evident, many other options exist with alternatives for implementation, for example, hybrid and improved land administration, that requires minimal resources to implement effectively. As communal measures are problematic in this instance, it would be beneficial to preserve some of the cultural integrity of the communal system through improved land administration. This may yield some required benefits of formalisation, through the hybrid system. Merely leaving the land use management system intact under current communal systems will not yield any solution to providing improved tenure on traditional land.

Recommendation

The following is recommended in terms of land allocation on traditional land.

- a) **Public-Traditional-Private Partnerships** to identify land parcels on traditional land. The results from utilising resources as part of associated projects, for example, rural subsidised housing projects, demonstrated that in partnership, the identification of land parcels should be promoted and used to the benefit of all parties involved. The method provides a reliable foundation to support later stages of land use management, typically the demarcation process and recording of land parcels. Methods recommended include the use of aerial photography, GIS remote sensing, physical inspections as well as community knowledge.
- b) Consideration of **Cultural access** as opposed to land use-based access, social access, restricted access, and full access to traditional land. Although not included as an option in **Table 7-1**, considering the problem identified with access and the social implications thereof, it is recommended that due to the cultural significance associated with traditional land, the option of cultural access should be explored. Cultural access must be based on cultural principles formulated in consultation with various stakeholders to ensure social considerations, for instance, gender bias and corruption based on political influence is negated in terms of access to traditional land. This would protect traditional communities from abuse of power identified in terms of mining activities and other occupancies. Cultural access should aim to ensure traditional customs and that cultural preservation takes precedence.
- c) Make use of **Overlay zones** in formal land use management schemes to incorporate unique land uses of traditional areas. An overlay zone aims to provide expression, in a spatial planning context, to the local needs and values of the communities concerned; and promote particular types of development, urban form, landscape character, environmental features or heritage values. Overlay zones are currently utilised in some cases in land use management schemes, but it is rarely accompanied by any internal mechanisms for provision. Overlay zones are the easiest way to incorporate traditional land uses within the formal land use schemes as it presents itself with its own internal scheme in a LUS. This concept is similar to that of an estate development that is regulated with its own Homeowners Association and architectural guidelines, essentially being classified as an overlay zone.

Recommendation

By incorporating comprehensive overlay zones (independent traditional land use scheme within a formal LUS) integration with SPLUMA is also possible. It is acknowledged that, in order to formulate a traditional land use scheme (overlay zone), proper land use management in terms of demarcation and recording of land parcels, is required.

- d) **Public participation**, as a basic measure to agglomerate all land use measures with transparency between all spheres of importance, including public, private, government and traditional interested and affected parties. Public participation is currently conducted in terms of all concepts, including communal laws, improved land administration, hybrid, and formal land use options. It is therefore recommended that the public participation form part of all land use options irrespective of the allocation, demarcation, or record-keeping purposes.

8.4.2 Demarcation of land

The research has indicated that communal land parcel demarcation practices currently undertaken through indigenous knowledge systems are unreliable and unsatisfactory to use as a measure to record land boundaries. It was also found that formal land surveying as part of the formalisation process would require a wide array of resources, being labour-intensive, time-consuming, and extremely costly. Through examining alternatives and investigating the nature of land parcels on traditional land, the conclusion is made that a fixed boundary would not be feasible to implement as traditional land boundaries. This is due to the fact that traditional land boundaries are considered to be flexible or dynamic, constantly changing and never fixed in one place. As families expand in the homesteads, the parcel boundaries and land use change over time as resources are used in the vicinity of the property. A member of the family rarely moves to another homestead, especially men, as boys who reach adulthood will erect their own dwelling on the same homestead and expand the influence of the family homestead. Therefore, the following recommendations are made in terms of the demarcation of land parcels.

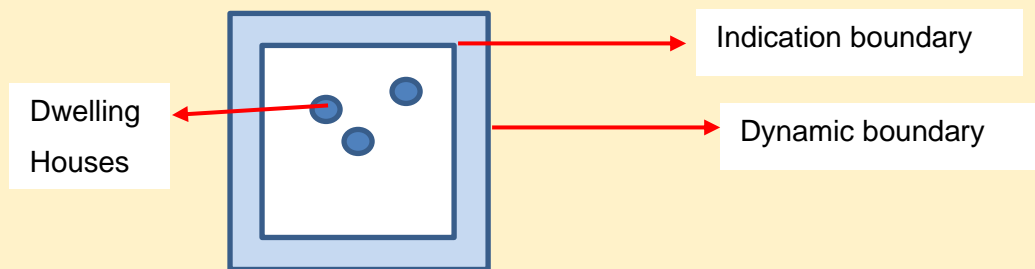
Recommendation

The following is recommended in terms of land demarcation on traditional land.

- a) **Digital demarcation** as the main tool for demarcating land parcels on traditional land, should be utilised to create efficient and fast demarcation information and provide an easy transition to recording of land parcels. Digital demarcation, as utilised with Geographic Information Systems (GIS) and the incorporation of traditional systems and customary law, will create a readily available information foundation wherein all land use informants may function. This includes participatory research mapping and participatory land use processes integrated with customary law. It is essential to note that public-private-traditional partnerships are fundamental to the success of digital demarcation.
- b) **GPS demarcation** should be utilised to assist with accuracy in conjunction with the digital demarcation methods. This, in conjunction with recommendations in terms of physical inspections as part of the identification process, should be accomplished.
- c) Possibility of a **radial demarcation** buffer should be explored as a conceivable alternative to rectangular demarcation. Resulting from the case study investigation, it was noticed that GPS points are used as location-based datasets capturing homesteads and associated information. The possibility of creating a buffer zone surrounding such a point should be used as an interim measure or permanent method for establishing boundaries of homesteads. Although such a method is less accurate than other methods it possesses significant potential in terms of efficiency and ease of establishing. Such radial buffers ought to be adjusted accordingly and assessed on a regular basis for improved record-keeping purposes.
- d) Incorporation of indication and **dynamic boundaries** on traditional land should be explored. Dynamic boundaries are not listed in **Table 7-1** due to the concept being completely new and unfamiliar. It is recommended that dynamic boundaries be explored due to nature of traditional land dynamics and the influence of rapid change within the homesteads. Therefore, it is proposed that an indication boundary be established through methods of incorporating the identification of land as discussed in section 8.4.1, whereafter dynamic boundaries are incorporated. The illustration below is an example of the dynamic boundary that serves as a buffer around an indication boundary in case the homestead expands. When the homestead boundary reaches the dynamic boundary edge, the dynamic boundary becomes the indication boundary, and a new dynamic boundary is created as a buffer around this.

Recommendation

Thus, creating a systematic dynamic boundary that may anticipate any boundary disputes and mitigate them accordingly. This concept should be managed through a GIS system in accordance with the recommendation in section 8.4.1. This concept may also be applied in terms of the proposed radial demarcation, as an alternative as discussed in point c) under this section.



Note: Homestead boundaries do not touch in most cases due to the sparse settlement patterns of traditional land. See **figure 5-2** for reference to the settlement typology affiliated with traditional land homesteads.

- e) Consideration of **disputable zones** as an area between two homesteads that may or may not change due to traditional homestead dynamics. This is another recommendation that is unfamiliar and ought to be explored in conjunction with the dynamic boundaries discussed in section d). Due to homesteads being sparsely located in traditional areas, the opportunity presents itself to classify the areas between homesteads as disputable zones when dynamic boundaries intercept one another. The disputable zone will function as a mediation zone where traditional authorities may mediate, resolve, and decide on the disputable zone area through a public participation process. When a disputable zone is resolved, the boundary may then be formally surveyed, pegged, and finalised as part of a formalisation process. Thus, a formalisation process should be initiated over a long period of time while preserving traditional systems, leadership, and tenure. This provides a timed release of formalisation that is managed by traditional authorities and provides future adaptability and resilience for traditional needs and perceived policy reform in traditional areas. This may also lead to complete formal independent traditional areas that is managed in a formal manner under traditional leadership.

8.4.3 Recording of land parcels

The most critical aspect of land use management is the recording of land use parcels. Although communal tenure differs from that of formal land rights in the South African context, the notion of record-keeping is paramount to protecting both formal and informal rights. The study has concluded that formal title under traditional land is not recommended as traditional land is considered communal and cannot be alienated from one owner to another. It may be argued that formal title deeds should be applied with restrictive conditions imposed to prevent the alienation of or transfer of the land without the consent of the traditional authority. However, due to the flexibility and dynamics of traditional land, formal title deeds will not be able to be associated with fixed demarcated boundaries as these boundaries are dynamic. It is also argued that current measures, including the Permission to Occupy (PTO), are insufficient in keeping a record of land parcel information. Therefore, alternative forms of record-keeping and managing information pertaining to land parcels must be considered.

Recommendation

The following is recommended in terms of the recording of parcels on traditional land:

- a) **Digital capturing** and storing of land parcel information is encouraged as the study concluded that technology is the most reliable and accessible instrument for recording information. This ties in with the importance of Geographic Information Systems (GIS) as it is utilised as the most effective alternative to formal and informal identification, demarcation and recording method for land parcel information.
- b) **Public-Private-Traditional partnerships** is of utmost importance as private institutions provide valuable information, skills, and knowledge contributing to traditional data collection. All information obtained from private, public, and traditional entities is recommended to be recorded digitally and should be made available to all interested and affected parties. It is suggested that a government entity manage the data obtained and upskill traditional authorities to eventually manage their own data. This will enable government, private and traditional spheres to collectively work together in terms of land use management on traditional land.
- c) Traditional authorities do not currently have any reason to manage land use to the extent that is required for secure tenure on traditional land. Creating a reason for traditional authorities to manage land, may lead to enhanced focus from traditional authorities in this respect.

Recommendation

The introduction of printable **Digital certificates** derived from the information obtained in respect of each parcel of land, may act as a communal tenure certificate managed by traditional authorities and recognised by formal institutions. As traditional community members may sell and lease the physical property, for example, structures on their respective homesteads, additional support should be encouraged to reform the traditional authority. This should include the immovable property related to the land parcel, including the structure but not the land itself, that will be valued and recorded on the certificate to act as collateral for loans from the traditional authority. Structures may be sold and traded with consent from the traditional authority, with the traditional authority acting as its own bank, thereby leading to reformed traditional land management. This should include the immovable property related to the land parcel, including the structure but not the land itself, that will be valued and recorded on the certificate to act as collateral for loans from the traditional authority. Structures may be sold and traded with consent from the traditional authority, with the traditional authority acting as its own bank, thereby leading to reformed traditional land management.

8.5 Final Conclusions and recommendations for future research

Land use management on traditional land is a complicated concept to grasp, considering the varying perspectives and dynamics of traditional systems and customary law. The study has highlighted the impacts of colonialism and Apartheid on the traditional land systems in South Africa and the historical imbalances inherited by the post-Apartheid Government. It is imperative that the historical perspective of traditional authorities is understood to grasp the modern-day nuances of traditional authorities and associated functions, systems, and culture. The study has further highlighted the importance of cultural preservation and the heritage of Indigenous knowledge Systems (IKS), functions, and customary law. Insecure tenure remains a problem in traditional areas, and various options were investigated to act as possible options towards land use management on traditional land. The study concluded that various options towards land use management on traditional land are available. The cross-tabulation matrix as captured in **Table 7-1** indicates multiple options that are themed and categorised with their associated opportunities and challenges. In theory, all the available options explored should be incorporated in conjunction with one another to attain a certain aim but not without challenges. In conclusion, the study has provided a framework worth exploring for policy reform and land use management options on traditional land.

It is recommended that further studies be conducted in terms of policy reform options for traditional areas. The study has also revealed various unique and unfamiliar options that should be further explored, including the applicability of dynamic zones, disputable zones, digital certificates, and radial boundaries as options to consider for land use management purposes on traditional land.

The study has also revealed a largely unanswered question which could be carried forward for further study which is: is rural customary land tenure necessarily a bad thing to begin with? This should include a more in-depth investigation into land administration laws. Specifically, the theories of the social tenure domain model, principal agent theory, systems theory, land governance theories, theory of social justice, tragedy of commons, theories of environmental, ecological and ecosystems sustainability, rights-based land advocacy theories, property rights and development theories and, inter alia, reviewing critically the work of de Soto. Such An investigation could answer issues on the third spaces, concepts of ubuntu-nising traditional land uses and rights, and the decolonial debate on rural land use management and planning.

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ETHICS APPROVAL LETTER OF STUDY

Based on the review by the **Faculty of Natural and Agricultural Sciences Ethics Committee (FNASREC)**, the Committee hereby clears your study as no ethical risk. This implies that the FNASREC grants permission that, provided the general conditions specified below are met, the study may be initiated, using the ethics number below.

Study title: Towards land use management options: the KwaZulu-Natal tribal land narrative.

Study Leader/Supervisor: Ms S Cornelius

Student: RH Janse Van Rensburg

Ethics number:

N	W	U	-	0	1	2	4	5	-	2	1	-	A	9
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Institution

Study Number

Year

Status

Status: S = Submission; R = Re-Submission; P = Provisional Authorisation; A = Authorisation

Application type: Single

Risk Category:

No Risk

Commencement date: 01/02/2021

Expiry date: 31/01/2024

General conditions:

The following general terms and conditions apply:

- *The commencement date indicates the date when the study may be started.*
- *In the interest of ethical responsibility, the NWU-SCRE and FNASREC reserves the right to:*
 - *request access to any information or data at any time during the course or after completion of the study;*
 - *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 study are revealed or suspected;*
 - * *it becomes apparent that any relevant information was withheld from the FNASREC or that information has been false or misrepresented;*
 - * *submission of the annual (or otherwise stipulated) monitoring report, the required amendments, or reporting of adverse events or incidents was not done in a timely manner and accurately; and / or*
 - * *new institutional rules, national legislation or international conventions deem it necessary.*
- *FNASREC can be contacted for further information or any report templates via Roelof.Burger@nwu.ac.za 018 299 4269*

The FNASREC would like to remain at your service as scientist and researcher, and wishes you well with your study. Please do not hesitate to contact the FNASREC or the NWU-SCRE for any further enquiries or requests for assistance.

Yours sincerely,

Prof Roelof Burger

Chairperson Faculty of Natural and Agricultural Sciences Ethics Committee (FNASREC)