



Traditional Leadership in Democratic South Africa: Pitfalls and Prospects

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On 22 March 2016 Sikhosiphi ‘Bazooka’ Rhadebe, Chairperson of the Amadiba Crisis Committee (ACC), was shot and killed at his home in Lurholweni township on the Wild Coast in the Eastern Cape.¹ Members of the ACC see this as assassination following a ten-year battle against the establishment of titanium mine by the Australian mining firm Mineral Commodities Limited (MRC) in Xolobeni and escalating intimidation since the beginning of 2015.² The chief of the Amadiba Tribal Authority, Lunga Baleni, supports mining and is one of the directors of the Xolobeni Empowerment Company (Xolco), which holds a 26% empowerment shareholding in the proposed mining operation.³ He is at odds with the ACC, which counts among its members one of his subordinates, headwoman Cynthia Duduzile Baleni. The anti-mining activists concerned about the destruction of the coastal ecosystem and along with it eco-tourism and agriculture.

The murder of Rhadebe is the culmination of more than two decades of contradictions in rural South Africa that legislative and political interventions have only managed to push towards deadly confrontations. Firstly, for almost a decade after the advent of democracy in 1994, the roles and powers of customary leaders remained unclarified by successive governments, with the 1996 Constitution only recognising the institution of traditional leadership. Secondly, the land restitution process that began with the opening of land claim submissions in 1994 until 1998 proceeded in a context where the power, authority and roles

¹ ‘Statement by Amadiba Crisis Committee’, <http://www.politicsweb.co.za/politics/bazooka-rhadebe-brutally-murdered--amadiba-crisis->.

² Washinyira, Tariro, ‘We will die for our land, say angry Xolobeni residents as dune mining looms’, <http://mg.co.za/article/2016-02-12-we-will-die-for-our-land-say-angry-xolobeni-villagers-as-dune-mining-looms-1>.

³ Ibid.

of traditional leaders had been left undefined. This has created major problems to which we return below. Finally, at the same time the mining economy progressively shifted to 'traditional community' areas to which black people had been discarded under apartheid Bantustan policies with the discovery, among others, of platinum reserves parts of in Limpopo and the North West, coal and iron ore in parts of KwaZulu-Natal and titanium-bearing dunes on the Wild Coast.

The result of these developments has so far been that in many parts of the country contestations over land and authority in rural communities in the former bantustans have been growing: in the main, conservative customary authorities have been loudly clamouring for power claiming to speak on behalf of communities, but evacuating the very people from decision-making processes for their own financial gain while many ordinary people have been putting up resistance to the exploitation and destruction of their land with the support of some progressive customary leaders.

What we are seeing is that two decades of political decisions (and indecision) and legislative interventions are yielding suspect results. In the first section of this paper we tell part of the story of how South Africa has arrived at this state of affairs. In the second section, we lay out the laws that are part of the current toxic mix, drawing out some of their aims and the effects they have had on the ground.

I.

Commissioning neo-traditionalism

Chapter 12 of the 1996 Constitution of the Republic of South Africa recognises the institution of traditional leadership subject to customary law and to the Constitution. This is a result of negotiations at the Congress for a Democratic South Africa (CODESA). How this thin recognition came about is a story that is yet to be told.

It took until 2003 for this recognition of the institution to begin to be given any legislative substance. This came in the form of the **Traditional Leadership and Governance Framework Act (TLGFA)** in regard to governance, which would be followed shortly after by the **Communal Land Rights Act (CLRA) of 2004** regarding rural land. Critics have made various arguments in publications and seminars about why the TLGFA was passed in a rush ahead of the 2004 elections. These include that:

1. From the 1940s through the late 1980s, the African National Congress (ANC) had taken the position that it would do away with chieftaincy (seen as a relic from a time long past) when it took power. Its stance changed when it embraced the Congress of Traditional Leaders of South Africa (CONTRALESAs), then a progressive organisation opposing the formation of a new Bantustan in the Transvaal in about 1988. Having become a largely urban organisation over time, the ANC saw an opportunity to enter rural areas by aligning itself with chiefs. The ambiguity in its position on chiefs persisted until the early 2000s.⁴
2. The recognition of chiefs was in large measure so that the ANC could wrest political control of KwaZulu-Natal from the Inkatha Freedom Party by shaking loose the IFP's grip on chiefs in the province dating back to the days of the KwaZulu Bantustan.⁵

Among other things, the TLGFA aims to set out a “statutory framework for leadership positions within the institution of traditional leadership” and to provide for “houses of traditional leaders”, “the functions and roles of traditional leaders” and “dispute resolution and the establishment of the Commission on Traditional Leadership Disputes and Claims”. (Houses of traditional leaders were established from 1994 in various provinces and the National House of Traditional Leaders Act, 2000 established the national house before it was replaced by a new Act by the same name in 2009). The Commission of Traditional Leadership Disputes and Claims followed in 2004, yet the functions and roles of traditional leaders are no clearer and remain a political hot potato.

The CLRA, on the other hand, which was struck down by the Constitutional Court in 2010, sought to give control over communal land to chiefs, undercutting all prior collective decision-making processes. This was the basis of the application to have it struck down by the Constitutional Court, which in the end struck it down on the procedure followed by Parliament to pass it into law rather than the substantive issues raised.⁶

⁴ van Kessel, Ineke, and Barbara Oomen. "One Chief, One Vote: The Revival of Traditional Authorities in Post-Apartheid South Africa." *African Affairs* 96 (1997), 565 and 568. Surprisingly, the questionable perception that chiefs bring the rural vote is evident even in public consultation processes around new legislation to this day as public hearings in rural areas are often about appeasing chiefs rather than getting meaningful participation from all citizens.

⁵ Ibid. See also Klopper, Sandra. "He is My King, but He is also My Child: Inkatha, the African National Congress and the Struggle for Control Over Zulu Cultural Symbols." *Oxford Art Journal* 19.1 (1996), 56-63.

⁶ <http://www.customcontested.co.za/laws-and-policies/communal-land-rights-act-clara/>.

Both the TLGFA and the CLRA need to be seen as following on the heels of the **Restitution of Land Rights Act 22 of 1994** and the **Communal Property Association Act of 1996**. The former sought to provide a mechanism for people who were deprived of their land under previously racially discriminatory laws going back to the 1913 Natives Land Act. The latter Act provides for the creation of Communal Property Associations (CPAs) to receive and hold the land that is returned to people who or whose forebears were dispossessed of their land. This mechanism has created much animosity over the years in rural areas as a result of many chiefs taking the view that the existence of land-holding CPAs and Trusts undermines their authority and that all land should vest in them as it did prior to colonial rule.

The view that chiefs held ultimate power and authority in African societies has progressively been shown to be erroneous: it is the internalisation of late nineteenth century writings about African societies as ‘tribes’ with chiefs at all-powerful sovereigns at the apex. This reading of African societies was part of colonial processes of indirect rule in which British authorities sought to rule African societies through gaining control of chiefs and making them do their bidding while maintaining the veneer of leaving the Africans to be ruled in their own historic ways. This kind of control of chiefs greatly intensified under apartheid, leading to chiefs largely losing legitimacy in Bantustans as they became instruments of the apartheid government, often imposed by the state because they would support its policies and actions, with no downward accountability to their people.⁷ It is this mess created over more than two hundred years of colonialism and apartheid that the Constitution and subsequent laws have been trying to rectify.

The TLGFA also created another mechanism, the Commission on Traditional Leadership Claims and Disputes, to try to cleanse the institution of traditional leadership of its colonial accretions by determining who is a legitimate customary leader and who owes their position to colonial and apartheid authorities. It received 1322 submissions claiming traditional leadership or disputing incumbents or other contenders’ claims. Its adjudication of who is a legitimate leader and who not has been extremely problematic: the Commission used

⁷ See, among others, Mamdani, Mahmood, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton: Princeton University Press, 1996.

a one-size-fits-all model to try and standardise the categories of traditional leadership available in the country as a whole.⁸

The attempt by the Commission to cleanse the institution of traditional leadership of its colonial accretions has exacerbated the problem: almost every determination the Commission has arrived at is being challenged either politically or in court. This has led to provinces establishing their own commissions, creating processes of contestation of positions of power the end of which is nowhere in sight. Significantly, in this adjudication of who leads the voices of rural citizens are completely absent.

Decommissioning People's Participation

The absence of the voices of rural citizens from processes that determine how they are going to be governed has been nowhere more deafening than in the attempt to ram through the **Traditional Courts Bill (TCB)**, another piece of legislation that would likely have had devastating effects in rural areas. Introduced to Parliament in 2008, the TCB sought to bring uniformity to the system of 'traditional' courts that operates in the former Bantustans. Yet it demonstrated major problems that many activists, civil society organisations and chapter 9 institutions repeatedly pointed out. Among others, these included that the Bill would:

- “entrench the controversial boundaries set in place by the Bantu Authorities Act (BAA) of 1951;
- allow traditional courts to strip people of customary entitlements such as land rights;
- do nothing to stop the practice of women being represented by men in customary courts with very serious implications especially for widows who are commonly not allowed to appear before such courts; and
- create a segregated legal system, subjecting rural citizens to traditional leaders who, in many cases, were complicit in forced removals in order to gain power.”⁹

Following fierce opposition, the TCB was withdrawn from Parliament. However, to the shock of many, it was reintroduced in Parliament in 2012 in exactly the same form as in

⁸ Buthelezi, Mbongiseni and Dineo Skosana, 'The Saliency of Chiefs in Post-apartheid South Africa: Reflections on the Nhlapo Commission,' in *Chiefship in Africa*, eds. Jean and John Comaroff, Chicago University Press, forthcoming.

⁹ <http://www.customcontested.co.za/government-insults-rural-citizens-traditional-courts/>.

2008. It met opposition once again and so lingered in Parliament without making progress towards being passed until the end of 2013. The attempt to pass it into law was suddenly ratcheted up as the country moved towards the 2014 elections, much like the TLGFA was passed into law in 2003. This led commentators to view traditional leadership laws as government's sweetener to chiefs to either buy their favour for the ruling party, or to keep them from criticising the party and giving their support to other parties at election time in an erroneous view that chiefs bring the rural vote. The Bill was opposed in the provinces and eventually lapsed after many attempts to manipulate public participation processes to make a premeditated outcome look like rural people had supported a Bill that would be oppressive to them.¹⁰

The TCB has now been replaced with the **Traditional and Khoi-San Leadership Bill (TKLB)**, which is currently before Parliament. The Bill demonstrates many of the same problems of previous legislation, such as the Communal Land Rights Act of 2004 that was struck down by the Constitutional Court in 2010. The TKLB gives chiefs jurisdiction over defined geographic areas (unlike Khoi-San leaders who are given authority over people no matter where they live). This will lock people into the very 'tribal authority' areas created by the Black Authorities Act of 1951.¹¹

Once again, at the same time as efforts to legislate the power and authority of traditional leaders over people, the state has taken a turn towards giving restitution land to traditional authorities rather than giving control of their restitution land to ordinary people. **The Restitution of Land Rights Amendment Act of 2014** reopened the land claims process that had closed in 1998. The political explanation was that this reopening of land claims was to give the opportunity to claim back their land to people who had missed the cut-off date of 31 December 1998. The law is currently being challenged in court. However, the new Communal Land Policy that was being developed at the same time was a move to give control of land in the former bantustans to chiefs. We say more about the policy in Section II below.

Ultimately, the lag in clarifying the powers and roles of chiefs in democratic South Africa has given chiefly lobbies time to mobilise and campaign for recognition. Since the early 2000s the state has been progressively moving to accommodate the chiefs through the laws discussed above. Mining has had a particularly deleterious effect and intensified the

¹⁰ <http://www.customcontested.co.za/government-insults-rural-citizens-traditional-courts/>.

¹¹ <http://www.customcontested.co.za/democracy-loses-out-as-new-bill-tightens-chiefs-iron-grip/>.

scramble for power by some traditional authorities who want to control revenue from mining for their own gain. We turn now to an examination of how these laws and policies meet the reality of people's lives and create situations so untenable that members of rural communities end up burning down chiefs' homes.¹²

II.

Mining: The New Frontier in the Contest for Control of the Countryside

The ongoing fight against the operation of the Jindal mining company by the people of Makhasaneni village in KZN. The Bakgatla Ba Kgafela Communal Property Association (CPA) vs BaKgatlal baKgafela Tribal Authority court case which dealt with the existence of a provisional CPA and its ability to hold land in North West. King Zwelithini's encouragement of traditional leaders in KZN to take a leading role in mining deals. Xolobeni. These are some of the many examples that help us get a better sense of what some of the existing and proposed laws mean for rural citizens. These include laws that recognise and protect the customary land rights of rural citizens. It also includes laws that privilege traditional leaders while undermining ordinary inhabitants. We try to make sense of and provide an explanation for why these laws and policies fail to provide tenure security in rural areas.

In doing this we zoom in on the politics of land use i.e. the tension between land being used for the livelihoods of rural people and land as a source of profit for business. Here we show that when there are opportunities for capital accumulation, some traditional leaders abuse their power to advance the interest of business while compromising the livelihoods of community inhabitants. In some cases these leaders use coercion. In the process they disregard the laws that aim to protect the customary land rights of rural citizens. Rather than help, the situation is further complicated when the government proposes bills and policies that advance the powers of traditional leaders at the expense of the customary land rights of ordinary rural citizens.

Evidence is drawn from two provinces: (i) KwaZulu-Natal on land administered by the Ingonyama Trust and (ii) North West in the mineral rich platinum belt.¹³ Before going

¹² <http://www.customcontested.co.za/back-to-the-bad-old-days/>.

¹³ The authors were previously researchers at the then Rural Women's Action Research Programme (RWAR) at the Centre for Law and Society (CLS) and conducted research in Makhasaneni and Somkhele in Mtubatuba on

into detail about these cases let us remind ourselves of what the Constitution says about land rights and then proceed to look at the laws, bills and other policies in question and what these entail in brief.

Constitution: 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 which is legally secure or to comparable redress. Section 25 (9): Parliament must enact the legislation referred to in subsection¹⁴

Below we look at those laws/policies that are meant to protect customary land rights and those that advance the powers of traditional leaders.

- 1. Interim Protection of Informal Land Rights Act (IPILRA) of 1996** passed by parliament to provide protection for people living in the former Bantustans most of whom were affected by forced removals and do not have documents to prove their land rights. Informal rights to land include the right to use, live on or access the land. This implies that IPILRA protects people’s rights to their household fields, plots, and common natural resources such as grazing land and rivers. While IPILRA was meant to be a temporary law while parliament passed another permanent law, this has not been the case and IPILRA is renewed by parliament every year.¹⁵
- 2. Ingonyama Trust Act of 1994** enacted by the KwaZulu Legislative Assembly and amended in 1997. It provides for the establishment of the Ingonyama Trust Board to administer the land in accordance with the Act.¹⁶ The land vests in King Zwelithini as the sole trustee, and is to be administered on behalf of various communities living on that land. The land rights of people living on this land have strong protection as the Act states that “The Ingonyama shall not encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the prior written consent of the traditional authority or community authority concerned”¹⁷. This obliges the Trust not to enter into any land agreements such as leases that would marginalise people living on that land.

the violation of customary land rights and were involved in the work around the Bakgatla Ba Kgafela CPA court case.

¹⁴ <http://www.gov.za/documents/constitution/chapter-2-bill-rights#25>.

¹⁵ Communal Land Tenure Policy and IPILRA fact sheet- <http://www.cls.uct.ac.za/publications/factsheets/>.

¹⁶ http://www.cls.uct.ac.za/usr/lrg/downloads/FactsheetIngonyama_Final_Feb2015.pdf.

¹⁷ <http://www.gov.za/sites/www.gov.za/files/a9-97.pdf>.

3. **The proposed Communal Land Tenure Policy of September 2014¹⁸(CLTP)** which would inform the Communal Land Bill proposes transferring land in the former Bantustans to Traditional Councils. The Department of Rural Development and Land Reform (DRDLR) further suggests that Traditional Councils obtain title deeds for this land while individuals and families occupying the land would get institutional use rights to parts of the land¹⁹. The obvious implication of this policy is that the control of land would rest solely in the hands of traditional leaders. While institutional use rights would be in place for the individuals and families, this would be subject to the powers (ownership) given to traditional councils. The policy is explicit about the fact that the traditional council would be in charge of development- related projects such as mining.

4. **The Traditional and Khoisan Leadership Bill of 2015 (TKLB)** gives National and Provincial government the authority to give powers to traditional leaders and councils. This is stipulated in clause 25 (1) which reads as follows: “ A department within the national or provincial sphere of government, as the case may be, may, through legislative or other measures, provide a role for a kingship or queenship council, principal traditional council, Khoi-San leaders in respect of any functional area of such department. Provided that such role may not include any decision-making power.”²⁰ While such roles are not clearly defined the bill is silent on the issue of community participation and giving consent when it comes to matters that would compromise the security of tenure of people living under the leadership of traditional leaders.

5. **Communal Property Association (CPA) Act 28 of 1996** which stipulates how government should register CPAs and provides for two types of CPAs i.e. permanent and provisional. The Act empowers the government to register permanent CPAs once certain requirements are met. These include that the majority of the land claim

¹⁸ <http://www.drddl.gov.za/publications/land-tenure-summit-2014/file/2882>.

¹⁹ Communal Land Tenure Policy and IPILRA fact sheet- <http://www.cls.uct.ac.za/publications/factsheets/>.

²⁰ <http://www.gov.za/documents/traditional-and-khoi-san-leadership-bill-25-sep-2015-0000>.

beneficiaries agree to the establishment of a CPA and the adoption of a constitution.²¹ CPAs are defined by Weinberg (2015) as “land holding institutions that were established so that groups of people could come together to form a legal entity to acquire, hold and manage property received through the restitution and land reform programmes.”²²

In the next section a detailed account of example cases is provided.

A. What is happening in Makhasaneni?

Since 2011, members of the Makhasaneni community (located near Melmoth in Northern KwaZulu-Natal) have been resisting the unannounced activities of a mining company, Jindal Africa (Pty) Ltd. Jindal arrived in Makhasaneni and began prospecting in people’s fields without consulting the community or the people who depended on the produce grown on the fields destroyed in the process.

Jindal sought to establish whether the area has sufficiently high levels of iron ore to justify mining. After the prospecting began, a number of cattle and goats died from poisoned water. Ancient family graves were damaged, crop fields were destroyed and water streams became poisonous and ultimately ran dry. The members of the community confronted the local chief, Thandazani Zulu, about the matter and he admitted to giving permission to Jindal Africa allowing the company to conduct prospecting activities. The chief apologized for his actions (including not consulting with the community) during a meeting with the members of Makhasaneni community, however he insisted that Jindal be given a chance to continue with the prospecting activities. This is a clear disregard of IPILRA and the Ingonyama Trust Act which stipulates that people should give prior written consent for such activities to take place on their land.

Villagers have managed to stop Jindal by raising their concerns with the company and chief Zulu. Prospecting is currently on hold. But while the destruction has been paused, there have been incidents of intimidation by the brothers of chief Zulu of the members of the Makhasaneni community. The brothers are employed by Jindal Africa in the offices based in Melmoth. The situation was best described by a land activist and member of the Makhasaneni

²¹ http://www.cls.uct.ac.za/usr/lrg/downloads/CLS_BakgatlaCPACase_Factsheet_May2015.pdf.

²² <http://www.plaas.org.za/plaas-publication/ruralstatusrep-bk3-weinberg>.

community speaking at a workshop on land rights organized by the Land and Accountability Research Centre (then the Rural Women's Action Research Programme) at the University of Cape Town in October 2015. He stated that:

“We are witnessing a perverse form of development brought by government, big business and mining companies. The community has nicknamed it ‘Tsunami’ because as soon as it arrives we have to flee. It approaches in a wave of destruction! We go to sleep peacefully and wake up to mining construction on our fields and grazing land. We are aware that certain government officials, mining companies and chiefs collude without care for our physical and environmental wellbeing.”

On the issue of intimidation he added that:

“Those who raise questions and attempt to resist face the risk of legal action and sometimes death. Our traditional leaders claim ownership of our land. What should we do? Should we run away? Does all the land we live in belong to the chiefs? Do we not have ownership rights to this land? How are we going to fight this form of development?”

The last questions raised by this community member are very well answered in both IPILRA and Ingonyama Trust Act which recognises people living on the land as the rightful owners as the Constitution requires. However their experience with the arrival of Jindal raises doubts and suggests that their land rights are only protected when there are no business opportunities on the land. This then raises the question: if it is so easy for traditional leaders to disregard the laws that protect the land rights of people, what would happen should the policies and proposed bills that give them power (explained in the previous section) become laws? The observation here is that the government is using land to keep traditional leaders in control as their constituencies make up for a substantive number of rural votes. If traditional leaders get control over land then they would know they have real power. This is on top of the fact that traditional leaders provide a gateway to business opportunities such as mining in rural areas where people do not always understand their land rights and cannot provide documentation as proof.

As matters currently stand the people of Makhasaneni do not want mining to take place on their land as this would mean another form of land dispossession. They were firstly

forcibly removed from the nearby farms during the 1960s and dumped in Makhasaneni, an area they have now become fond of as one member explained at the workshop:

“We were first moved during the apartheid years from our rich fertile land to the dry area we now call home. We nonetheless made do with it and have built our lives there. We have planting fields and livestock. When they had initially moved us they did not know the land had the iron most desired in the West. Now they want us to move again. Where are they going to move us now? ... We still do not want the mine in Makhasaneni. We did not want it yesterday, we do not want it today and we will not want it in the future!”

B. The Bakgatla Ba Kgafela CPA court case

In 2005 the community of Bakgatla successfully lodged a land restitution claim in accordance with the constitution. They opted for a CPA as the legal entity to hold their land and applied to have it registered. Unfortunately this is where the trouble began. The traditional council and traditional leader, Chief Nyalala Pilane, were unhappy about the decision to form a CPA, as they wanted the community to create a trust instead.²³ One important feature of CPAs is that they operate according to democratic principles such as inclusive decision-making processes. It seems traditional leaders view CPAs as entities that take power and control over land away from them and this is contrary to the popular perception, asserted by traditional leaders, that they ‘own’ the land. The then Minister of Agriculture and Land Affairs Lulu Xingwana intervened and suggested that the community register a provisional CPA in terms of section 5 (4) of the CPA Act for 12 months. This was done in 2007 despite evidence showing that the CPA could be registered permanently. There was no further communication from the department with regards to helping the community convert the provisional CPA into a permanent one despite several attempts by the provisional CPA to register permanently.

In 2012 it came to the attention of the CPA that Chief Nyalala Pilane had authorised the building of a shopping centre on the land that it owned. This he did without consulting the rightful owners of the land. Here again we observe how chiefs abuse their power where there are opportunities for business, as was the case with Chief Zulu in Makhasaneni. The CPA tried to stop the construction of the shopping centre by applying for an interdict in the Land Claims Court. The chief argued that the provisional CPA was only valid for 12 months, which meant it no longer existed since the department never registered it permanently. The

²³ http://www.cls.uct.ac.za/usr/lrg/downloads/CLS_BakgatlaCPACase_Factsheet_May2015.pdf.

Bakgatla ba Kgafela CPA applied to the Land Claims Court for an order stating that the CPA had complied with the requirements to have it permanently registered and should be recognised as such. They won.

The traditional council appealed to the Supreme Court of Appeal and won as the court found the CPA had ceased to exist since the 12 months had long gone. The problem with the Supreme Court of Appeal's judgement was that it failed to explain what this meant for the land that had been transferred to the CPA in other words who owned it? The matter was then taken to the Constitutional Court in 2015 which ruled in favour of the CPA.

What this case demonstrates is that many traditional leaders disregard the ability of rural people to choose how they want to manage their land. This is despite the CPA Act which gives people the right to make such choices. The observation here is that traditional leaders are more interested in the control of land and the possible financial gains it is likely to bring them than they are with the wellbeing of the people they lead. There is also a clearly visible bias towards traditional leaders by government departments. It was because of Chief Nyalala Pilane's dissatisfaction with the choice of the community to establish a CPA that drove the then minister Lulu Xingwana to intervene and instruct the department to register a provisional CPA instead of a permanent one. Added to this is the administrative mismanagement by the department of the CPA registration process. The case of the Bakgatla ba Kgafela is not an isolated incident, this is a problem across the country.

Favouring traditional leaders over ordinary rural citizens by developing policies that favour transferring land titles to chiefs is in contradiction of and inconsistent with the Constitution which promises land to those who lost it.

C. King Zwelithini on the role of traditional leaders in mining

In 2015 many mining-affected communities in KwaZulu-Natal expressed their dissatisfaction with the penetration of mining in their villages and the role played by the traditional leaders in this regard. In Mtubatuba the people of Somkhele blocked coal trucks and threw the coal all over the road to express their frustration with the lack of fair compensation for being relocated. Many people got arrested for demonstrating in the streets. They complained about not being allowed to engage with the mine management which only engaged with the traditional council on behalf of the community. In KwaDlangezwa community members

marched to the chief's house, again to express their anger and dissatisfaction over not benefiting from mining. A few newspapers reported of similar stories in Fuleni and also Makhasaneni. At the heart of these stories is the question of who does the land belong to, in other words when mining companies come for the first time where do they go to get permission to use the land?

The Ingonyama Trust board was in the spotlight as the "owner" of the land and the body that issues surface leases to mining companies. As a response to this outcry the Ingonyama Trust organized an imbizo in September which brought together traditional leaders, government departments, mining companies and affected communities. Community members raised their concerns about the lack of transparency, consultation and broken promises by mining companies. People spoke of dying livestock as there were no more grazing fields, cracking houses due to mine blasting, lack of employment, displaced livelihoods and traditional leaders benefiting financially from mining. King Zwelithini had one message for everybody to take home, and the message was that traditional leaders must drive mining initiatives to ensure that people benefit from them.

The king's position is that mining is crucial for rural development despite all the concerns raised by the people living in areas where mining is taking place or is being proposed. The underlying message here is that the land belongs to the traditional leaders with the king as the most supreme power. It is the same reasoning behind King Zwelithini's idea of lodging a land claim that extends beyond KwaZulu-Natal on behalf of the 'Zulu nation' instead of communities lodging land claims individually and establishing CPAs.

The state president has a similar position to that of King Zwelithini as he recently reiterated his appeal to traditional leaders to claim land on behalf of the people they lead. He said this during the opening of the National House of Traditional Leaders in February 2016. The undertone of this appeal is that land should be in the hands of traditional leaders. This feeds into the existing and problematic general belief that land belongs to traditional leaders.

Concluding remarks

In policy and legislation, government continues to work with problematic assumptions that traditional leaders are generally benign people who consult and engage openly with the inhabitants of the areas they lead in a way that is democratic and inclusive of women, men

and youth. However, the few examples described in this paper show that this is not the case. Worrying power dynamics are always at play: traditional leaders tend to make decisions on their own when there are business opportunities, and in cases where they get confronted by those they claim to represent, they use coercion. There is an urgent need to rethink the underlying that inform the state's legislative processes in order to restart the process of moving towards a more just South Africa. The thuggery that has become prevalent in rural South Africa, especially in mining areas, urgently needs to be stopped before violence escalates. Vested economic interests seem to have bought political influence to a point where it will take many more Sikhosiphi Rhadebes for the the work of in North West grassroots movements and civil society organisations to gain sufficient political support to begin to turn the tide. More needs to be done urgently.