

The recent ANC conference decision to limit traditional leaders' authority over communal land has resurfaced sometimes acrimonious debates about land, legitimacy, power and custodianship in rural parts of the country.

In this Working Paper, Sithandiwe Yeni explores resistance by people over land rights violations by traditional leadership. Her paper forms part of an ongoing MISTRA research project on 'Mediating Convergence and Divergence: Traditional Leadership and Customs in a Constitutional Democracy'. The research explores traditional authority in a constitutional democracy, pivoting on themes of leadership, land and law. The views expressed here are those of the author and aim to stimulate national debate on the role of traditional leadership in our society.

Traditional leadership, Violation of Land Rights and Resistance from Below in Makhasaneni village KwaZulu-Natal

Sithandiwe Yeni

National co-ordinator of Tshintsha Amakhaya, a civil society alliance for land and food justice in rural South Africa.

Abstract

This paper seeks to explore ways in which people living in communal areas under the authority of traditional leadership resist when their land rights are violated by traditional leaders who abuse their power when opportunities for profit arise. I argue that while rural citizens may show little or no interest in the accountability of traditional leaders in their advisory or ceremonial role in the community, when their land rights are threatened, they demand accountability and resist. Through 'everyday forms of resistance' characterised by subtle sabotage, avoidance and passive noncompliance (Scott 2008), rural citizens expose the limitations of traditional leaders in land

governance and question their role in advancing the interests of citizens. In response to this push back from the affected citizens, those in traditional leadership positions use coercion and apply divisive tactics to weaken resistance. In doing so, traditional leaders reveal the extent to which their existence is ultimately about the control over land and self-enrichment. In this paper, using the case of Makhasaneni, a village in northern KwaZulu-Natal near Melmoth, I will demonstrate both the violation of land rights by traditional leaders and the resistance from below by villagers.

Background

In 2011, Jindal mining company arrived unannounced to the villagers of Makhasaneni to establish whether the area had sufficient iron ore to justify mining. In the process, the villagers say, family graves, water streams and ploughing fields were destroyed and some livestock died from drinking chemical contaminated water. The villagers were outraged. Five years later in 2016, Jindal withdrew the application for a mining license and the villagers celebrated. The process, however, was bumpy, characterised by coercion, intimidation, divisions and resistance.

Rural resistance is not new: Mbeki (1964) informs us of peasant uprisings in Pondoland, Zululand, Basotoland and Sekhukhuneland between 1946 and 1962. These struggles were in essence about the land and the roles of traditional leaders. Ntsebeza (2005) adds that control over land was the main issue in rural struggles right up to the dismantling of apartheid in 1994. Even in post-apartheid, attempts by the government to secure the land rights of people in the former homelands have not been successful. Instead, contradictory laws that give power over land to traditional leaders have been proposed and passed (Claassens 2008).

The research into land rights violations and resistance in Makhasaneni was conducted between March and December 2015. I visited the community again between January and July in 2016. What brought me to Makhasaneni in March 2015 was hearing about the community struggle to stop a mining company that had started prospecting in this area. The intention was to establish how the mining company had obtained access to land in Makhasaneni, why and how people were resisting, and what the outcomes of their actions were.

I conducted semi-structured interviews with members of Makhasaneni Community Committee; the local headmen; officials at the provincial office of the department of Cooperative Governance and Traditional Affairs (COGTA), and lawyers representing the community. Attempts to meet with the chief

were not successful. However, I did speak with him briefly on the phone : he said he preferred not to be interviewed but didn't provide reasons for this. In addition, I drew on observation as a participant in workshops and community meetings I attended with the people of Makhasaneni.

In this paper, I contextualise communal land rights in KwaZulu-Natal (KZN) where land is held by the Ingonyama Trust, and look at some of the laws relating to this Trust. I pay attention to the two laws that were passed in parliament post-apartheid, to protect the rights of people living in communal land i.e. Ingonyama Trust Act of 1994 and (ii) Interim Protection on Informal Rights Act of 1996 (IPILRA). I then look at the roles of traditional leaders today and how they have positioned themselves in the recent large-scale land investment rush in rural areas, particularly mining. The main body of the paper looks closely at the case of Makhasaneni village, with a focus on the history of the area, livelihoods strategies, the arrival of Jindal, how the community resisted, and the push back from the traditional authorities.

Communal Land rights and the role of Ingonyama Trust in KwaZulu-Natal

Communal land rights in context

Most black people who live in communal areas in the former Bantustans have insecure land rights (Claassens, 2008). This is despite laws that have been passed by parliament to ensure security of tenure for people living in communal areas. While there are laws that seek to protect their land rights, the government has also proposed contradictory laws that concentrate all powers with traditional leaders, thus rendering the rights of ordinary citizens insecure. Some of the reasons for the contradictions are located in the history of colonial rule (Weinberg 2015).

Before recapping on what colonial administration entailed with regards to land in rural areas, it is crucial to unpack what communal land rights are all about. In simple terms, Cousins and Claassens (2004) describe the concept 'communal' to mean broadly the extent of community control over who can or cannot be allocated land for residential and cropping purposes. Primarily, the groups of people that make up a particular community are often interested in maintaining identity, coherence and securing their land-based livelihoods (Cousins and Claassens, 2004). While colonial interpretations of communal tenure tried to vest the decision-making powers over land to one individual - the chief- in practice the administration of communal land tends to be socially inclusive (Weinberg 2015). Social inclusivity means individuals and families have relative rights to some land ,be it agricultural or

residential. They negotiate access and control over common resources, which are shared by the larger community outside the individual or family households, such as rivers, mountains and grazing land (Cousins, 2008).

In some situations, decisions about land allocations are made by one family; at other times decision-making may include neighbours. There are also situations where the chief and headman play a crucial role in making decisions about land after discussion with relevant individuals or families. As observed by Hornby and Alcock (2004) in KwaZulu-Natal, in cases where the chief or headman made the decisions about land, it was never their decision alone. This shows that communal land tenure, as it is understood and practiced by people living in communal areas, is much broader than way in which the colonial governments defined it, namely centred around the control of chiefs (Weinberg 2015). This is in strong contrast to common law notions of tenure such as private property ownership, where individuals or institutions hold exclusive title deeds to a particular registered and surveyed piece of land.

The ways in which communal land tenure arrangements are understood, particularly by the state today, were influenced by a range of colonial and apartheid measures, largely characterised by land dispossession and insecure land rights for rural citizens. As explained by Weinberg (2015), both the British and Dutch colonial governments did not recognise indigenous systems of land as property rights. This is evidenced in infamous laws such as (i) the 1913 Land Act which dispossessed black people of their land and rendered their rights to land insecure, and (ii) 1927 Native Administration Act which distorted customary law by viewing it from the perspective of common law thus centring ownership in an individual (a chief) which gave traditional leaders power over land they never had before. . It is the same interpretation of communal land tenure that continues to confuse discussion around laws and policies that seek to provide security of tenure in communal areas today. But not only that: the unclear role of traditional leaders in democratic South Africa (Ntsebeza, 2004), coupled with the rise in large-scale land investments - particularly in the countryside, that is driving revaluation of land ownership (Borras et al 2011) have also contributed to the confusion. I will elaborate on this later in this paper.

In KwaZulu-Natal, communal land is held under Ingonyama Trust, a state institution established during the dying days of apartheid in 1994 under Ingonyama Trust Act. King Goodwill Zwelithini is the sole trustee of the trust which is managed by Ingonyama Trust board. The mandate of the trust is to hold

land for the benefit and social well-being of the communities living on the land¹. The land thus does not belong to the trust or the king. People living on this land have strong protection under Ingonyama Trust Act of 1994 which stipulates 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.'² This obliges the Trust not to enter into any land agreements such as leases that would marginalise people living on that land. In theory communal land rights are protected. However, this is not always the case in practice as I will show later in the paper .

Land reform, policy and the legislative set up

In the attempts to secure land rights for people living in communal areas, the democratic government has embarked on a land reform programme. Out of the three pillars of land reform i.e. restitution, redistribution and tenure reform, the last - which seeks to give security of tenure to people living in communal areas - has remained the most neglected (Hall 2009). Instead, the government has focussed on transferring private ownership of land to traditional authorities, who would presumably hold the land on behalf of the people living on it. This position according to Ntsebeza (2004) was initially welcomed by the KwaZulu-Natal House of Traditional Leaders and later by their counterparts in the Eastern Cape. Here, the suggestion was that the land belongs to traditional authorities and the title deed should be in their name.

Before getting into the different laws, let us refresh our minds about what the Constitution of South Africa says about land tenure as it relates to people living in communal areas. Section 25(6) of the Constitution stipulates that 'a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of parliament, either to tenure which is legally secure or to comparable redress.' According to Section 25 (9) of the Constitution, 'Parliament must enact the legislation referred to in subsection(6)³. In the view of Claassens (2008) the Constitution recognises the existing differences between practices and occupation on the land including legal vulnerability due to past discriminatory laws and practices. But has parliament enacted legislation to facilitate this?

The answer is not a simple 'yes' or 'no', because of the contradictory nature of the laws that have been passed to date. On the one hand there are laws that aim to protect the rights of people living in

¹See www.ingonyamatrust.org.za

² <http://www.gov.za/sites/www.gov.za/files/a9-97.pdf>.

³ <http://www.gov.za/documents/constitution/chapter-2-bill-rights#25>.

communal areas such as Ingonyama Trust Act explained above, and Interim Protection of Informal Land Rights Act (IPILRA) of 1996. The latter was passed by parliament to provide protection for people living in communal areas (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 until parliament passed another, permanent law, this has not been the case and IPILRA is renewed by parliament every year.⁴

On the other hand, alongside IPILRA and Ingonyama Trust Act, Parliament has passed laws that give powers to traditional leaders and threaten the rights of ordinary people living on communal land. Claassens (2008) makes reference to the Communal Land Rights Act of 1994. The core of the Act was the transfer of title deed from government to the community. It authorised traditional councils to represent rural communities as land administrators and to allocate land in communal areas. The Act was vigorously challenged by land-rights institutions and activists for denying security of tenure to millions of people living on communal lands. It was eventually struck down by the Constitutional Court in 2010.

Another example is the proposed Communal Land Tenure Policy of September 2014⁵(CLTP) which would inform the Communal Land Bill and proposes the transfer of 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 get institutional-use rights to parts of the land.

Scholars, land rights activists and civil society organisations have argued that transferring land to traditional leaders would render the rights of those living in communal areas insecure, thus defeating the purpose of tenure reform. Instead, as Cousins and Claassens (2008) suggest, tenure reform should focus on strengthening existing rights and land administration mechanisms that are derived from social relations under living customary law, which is not static, but stems from people's experiences and practices.

Alongside the absence of tenure-reform policies that give security of tenure to people living in communal areas, we have observed a growing influx of investors such as mining companies acquiring

⁴ <http://www.larc.uct.ac.za/larc-factsheets>

⁵ <http://www.drdir.gov.za/publications/land-tenure-summit-2014/file/2882>.

land while dispossessing villagers of their land and displacing land-based livelihoods. I return to this form of land dispossession and how it has been contested and resisted in Makhasaneni later in the paper.

Traditional leaders and mining deals in KwaZulu-Natal

Ntsebeza (2005) raises questions about the role of traditional leaders in democracy and suggests that this has been the most challenging task of government post 1994. During colonial and apartheid periods traditional leaders' roles combined land administration with local government functions, and - similar to the architects of their powers - they were authoritarian and undemocratic. For this reason, they were not popular amongst many rural communities and they were hated and feared (Ntsebeza, 2005). My view is that some traditional leaders still carry such characteristics today. Ntsebeza (2005) further argues that in current day South Africa, the legitimacy of traditional authorities is similar to colonial and apartheid South Africa. This is reflected in some of the laws as explained above, but also in the narratives of both the former State President Jacob Zuma and King Zwelithini. Speaking at the opening of the house of traditional leaders in 2014, President Zuma encouraged traditional leaders to get the best lawyers and to embark on land claims on behalf of the communities⁶. In 2017 the President told the house that land was a central issue for traditional leaders⁷. The king has also come out publicly to praise the potential role of mining in the development of the rural areas. Addressing rural residents from mining affected areas in the province in 2015, the king said traditional leaders should drive mining initiatives; mining companies must train them.⁸ All of this is said to be done for the benefit of people living in communal areas. However, in reality rural people are further marginalised as the case of Makhasaneni will demonstrate.

The Case of Makhasaneni

A 97-year old local headman, Mr Dlodla, was interviewed. He explained that as a young boy in the 1930s, his family and neighbours were forcibly removed from their homes in eMagogogweni near Melmoth by the colonial government, to make way for tree plantations. The residents were dumped in Makhasaneni village. In 1998 when the government opened the call for people to lodge land claims

⁶ <https://mg.co.za/article/2014-02-27-land-reform-laws-are-biased-says-zuma>

⁷ <https://www.gov.za/speeches/annual-official-opening-national-house-traditional-leaders-3-mar-2017-0000>

⁸ <http://www.news24.com/SouthAfrica/News/Amakhosi-must-drive-mining-initiatives-on-tribal-land-King-Zwelithini-20150826>

under the land restitution programme, many members of Makhasaneni did so. Mr Dlodla has been a headman of Makhasaneni under the leadership of chief Thandazani Zulu of Entembeni traditional council for about fifteen years. While reflecting on the painful experience of being forcibly removed, he speaks fondly of his current home Makhasaneni and promises that he will not be forcibly removed again. Mr Dlodla further explains that Makhasaneni is a home to approximately 600 households, who combine land-based livelihood strategies such as crop production, livestock keeping (cattle, goats and chickens) medicinal plants and water harvesting, with remittances, social grants, engaging in informal business and wage employment in the nearby sugarcane farms. Most of the residents are descendants of the likes of Mr Dlodla who were forcibly removed from the nearby farms around Melmoth. As a traditional leader, farmer and an elder, Mr Dlodla sees himself as a local historian who knows the area like the back of his hand. He knows where the village boundaries start and end and which households belongs to whom in Makhasaneni. As is the case with most communal areas, land in Makhasaneni is accessed and managed under communal tenure arrangements and the land rights of people are recognised and protected by the Constitution, IPILRA and Ingonyama Trust Act. When there are disputes over crop fields, damages caused by unaccompanied cattle or goats, Mr D is the first port of call and sees it as his duty to resolve conflict between families. While the people of Makhasaneni know of their chief, it is Mr Dlodla they have a closer relationship with and understand his role as it pertains to the day-to-day social relationships in Makhasaneni.

Jindal Africa (pty) Ltd and the violation of land rights

Jindal arrived in Makhasaneni in November 2011 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. Explaining what happened, Mama Ndlela, a resident of Makhaseni, said, 'I saw cars arriving and people started drilling in my crop field, we were told they were building a mine.' Land rights activist Mr Mavuso added, that '...They were called geologists, they said there is wealth underneath and we will all be evicted.'

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 dry. In the interview with Mr Mavuso, who has been one of the key members of the Makhasaneni community fighting against the establishment of a mine in the area, he explained that

the families whose fields and family graves were destroyed went to Mr Dlodla to report this and to seek answers.

To everyone's surprise, Mr Dlodla knew nothing about Jindal as the chief never mentioned it to him. Contrary to what the law stipulates, nobody was consulted prior to the arrival of Jindal. In the view of Claassens (2000), in most cases people who live on communal land, with no clear, legally-enforceable rights to the land, are often ignored when it comes to decision-making processes pertaining to the land. This leads to decisions being taken that violate their land rights or even dispossess them of land which they may have occupied for centuries.

Dlodla explains that as a member of the traditional council and as the local leader of Makhasaneni, at the interface between the community and the chief, he should be informed of business activities pertaining to his area of jurisdiction. A community meeting was convened, and a decision was taken to halt the operations of the mine while clarity was sought from the chief. The headman then facilitated the convening of another community meeting in which the chief was invited to come and explain the activities of Jindal on the community's land. The meeting was held in December 2011 during the summer holidays when family members working far away from Makhasaneni were also present.

At the meeting, the members of the community confronted their chief, Mr Zulu, about the matter and he admitted to having given permission to Jindal Africa to conduct prospecting activities. The chief apologised for his actions (including not consulting with the community). However, he insisted that Jindal be given a chance to continue with its prospecting activities.

His actions were a clear disregard of IPILRA and the Ingonyama Trust Act which stipulate that people should give prior written consent for such activities on their land. From the sequence of events, starting from the arrival of Jindal right up to the community meeting with the chief, one might conclude that the chief was deliberate in his efforts to bypass the headman and the community in making the decision to give Jindal access to the land. I will reflect on this later in the paper. His actions certainly seem to have served the interests of the the mining company - and most likely himself - rather than the community's interests. In attesting to this, Claassens (2000) suggests that tensions over land arise when there are opportunities for investment in the land. Questions of whether or not people want the investment, and how the benefits should be distributed within the community, come into play. A common method of exploitation in the past has been that the investments have been mainly paid to to the chief , rather than directly to the communities affected(Claassens 2000).The weeks and months that followed the community meeting with chief saw the establishment of

Makhasaneni Community Committee (MCC); the arrival of the chief's brothers; intimidation of activists; intervention by lawyers and ultimately the withdrawal of the mining licence application by Jindal.

Resistance and accountability from below: the establishment and functioning of the Makhasaneni Community Committee (MCC)

MCC was established in early 2012 by members of the community concerned about the arrival of Jindal. Initially the committee was made up of thirty members, with two members per ward out of the fifteen wards that make up Makhasaneni. The idea behind this setup was to see to it that all wards were equally represented in the committee. By 2015 the number had dropped by half as some members were expelled while others voluntarily left. When asked in one of the committee meetings why they did not recruit new representatives to replace those expelled, members concurred that no new members volunteered to join the committee. The secretary of the committee further explained that being a member of the committee had become risky at that time as negative rumours had been started about the committee being against the chief. , He thought that could have led to people choosing to be bystanders with the hope that they would benefit if the committee won the fight. The committee would be the first stop in Makhasaneni for anyone that wanted to discuss any matters pertaining to Jindal. Before elaborating on the experiences of the committee, let us first look at the reasons why the people of Makhasaneni were opposed to mining in their area.

The community members of Makhasaneni were outraged by people from elsewhere coming to impose a mine upon them in their home. . The headman explained that they did not want a mine in Makhasaneni because their goats and cows died from contaminated water due to drilling during prospecting. This is how he expressed his sentiments: 'Firstly we saw no use in welcoming something that brings us death and secondly people would be moved from here to an unknown place. And they would remove ancestral remains from the graves and bury them elsewhere and that worried all of us, and this is how we view the mine.' From the headman's explanation one gathers that to people of Makhasaneni, mining is a form of destruction that displaces their land-based livelihoods, threatens their land-rights security and disturbs deceased family members in their graves. Land in this case is believed to belong to both to the living and the deceased, and this the people of Makhasaneni believe should be respected at all times. Respect for the deceased means not removing them from their graves. For the activists like Mavuso, graves represent hope and strength for the remaining family

members and he sees it as his responsibility to ensure that his father, who was buried in his homestead next to the crop fields, remains there eternally. Mavuso further explained that in his father's dying days he told his son that he depended on him to ensure that he would not be moved from his grave because of mining, and that's where Mavuso got his strength to challenge the mining company from.

At the committee meeting I attended in May 2015, one member explained that they visited a village near Mtubatuba where there is already an established mine and asked if people were happy with the mine. They said no because the mine had polluted their water, relocated them without compensation, and they had lost their livestock, crop fields and the houses they had built over the years. Instead the mining company built them smaller houses that were cracking and dangerous to live in. They were promised jobs but most of the community members were still unemployed. It was all these experiences that made the community reject mining in Makhasaneni.

A member of the committee, Mr Skhakhane, explained that when the mining company arrived they were told they would be moved from their place, which really frightened them. He asked 'Who would agree to leave such a wealthy place? This area is our beacon. Our mothers produce tons of maize, legumes, sweet potatoes. All kinds of foods are found here. Now if we move, where will our cattle graze?' From these reasons it is clear that for the people of Makhasaneni, holding on to the land means holding on to their means of social reproduction and identity. Moving them to make way for mining would be similar to the forced removals that Mr Dlodla experienced as the colonial government made way for tree plantations - a second round of dispossession, as Claassens and Boyle (2015) put it.

Accountability: meaning and practice

'We are not saying we do not want the chief, we just want him to be accountable to us on matters relating to our land' (Interview with a member of MCC)

But what does accountability mean in Makhasaneni? When the committee was established, its position on Jindal was clear, so any committee member who changed their position to support the mine would be expelled unreservedly. Following the community meeting in which the chief was confronted, the headman reported to the committee that the chief told his traditional council in a meeting that he was bullied and intimidated in Makhasaneni. The headman felt he was no longer welcome in the traditional council and proposed that the people of Makhasaneni should apologise so as to clear the air. The committee agreed as they did not want things to go sour. They wanted the

discussions between themselves, Jindal and the chief to be transparent and conducted in good spirit. In my view the chief had already demonstrated his abuse of power when he did not consult the community right from the start. To claim that he was intimidated in the community seems to have been a tactic to manipulate the situation by shifting the blame to the community. . The committee was still optimistic and believed a democratic process was still possible.

A community meeting with the chief was then scheduled by the headman. The chief proposed to come in August 2012 to accept the apology. He came with the mining company staff members, his brothers, the princes or *abantwana* as they are called in Makhasaneni and members of his traditional council. In his speech to accept the apology the chief said people should accept the mine, as it was going to bring lots of jobs especially for women. People applauded. Then one of his delegation proposed that people should vote by a show of hands in favour or against the mine. Reflecting on what transpired on this day, one committee member suggested that after having been in trouble for confronting the chief when he came to the community to explain about the arrival of Jindal, they were scared to challenge him again. In a community that has certain ideas about chiefs, where the line between respect and fear is sometimes blurry, to suggest that voting should be done by a show of hands is clear manipulation. Out of the total number of people present, fifty-five said yes while fifteen said no. It should be noted that while the meeting was in Makhasaneni, not all who attended the meeting and voted were from Makhasaneni. There was no space provided for people to ask questions, no information on what exactly Jindal was planning to do, how, for how long and with what outcomes. While IPILRA and Ingonyama Trust Act do not stipulate the exact procedure for consultation processes and producing written consent, voting by a show of hands from random community members who did not represent the number of households in Makhasaneni was far from accountability. In the view of one committee member, that entire process was a way to sell the community.

At this meeting, one of the brothers of the chief announced that he was representing the committee of *abantwana* in Ntembeni, and was going to establish a trust to be in charge of the mine. He also said that the pending land claims of forty commercial farms around Melmoth should be withdrawn, and the trust would take over and lodge one consolidated land claim on behalf of everyone. In terms of community representation on the trust, two people from Makhasaneni were to be elected. The trust would also be in charge of the mine. All of this came as a shock to the people of Makhasaneni . No solid decisions were taken at this meeting about the establishment of the trust. However the seed was planted.

'Who were these brothers? Did you know them before? Did they also live in Makhasaneni? What was their function?' These were the questions I asked during the focus group meeting as the story was being explained to me. Mama Ngidi responded to say Chief Zulu and headman Dlodla were the only traditional leaders known to the people of eMakhasaneni. With the arrival of Jindal, the community of Makhasaneni came to know of the brothers of the chief. 'We started discussing this issue of the mine with our chief who we knew, and suddenly abantwana appeared claiming to be the chief's committee. They want to do whatever they want in our place. When we tell them we are not happy about what Jindal wants to do in Makhasaneni, they tell us the land belongs to them' she explained. Another member of the committee, Dubazane, added that 'We have a problem with chieftaincy because they told us as the people of Makhasaneni we have no right to the land, the land belongs to the Zulu kingdom.' To claim that the people of Makhasaneni had no right to their land and that it belonged to the king is again a disregard of the IPILRA and Ingonyama Trust act; this exposes the extent to which some traditional leaders are in it for self-enrichment and not accountable to the citizens whose interests they claim to advance.

Strategies and tactics of resistance

I sat in many meetings with the MCC where they discussed various strategies and tactics for protecting their land. These meetings took between two and three hours and never started before the headman arrived. The headman would begin by giving announcements or raising any issue that emanated from the weekly meetings with the chief and other members of the traditional council. The chair of the meeting would then open the floor to all the members for comments and questions. If there had been other meetings or tasks that the members participated in, they would also get a chance to report on these. Top of the agenda were always the issues relating to Jindal. The members would debate, agree and disagree on certain points until they found common ground, allocated tasks and responsibilities and then closed. I was fascinated by the diverse nature of the group. There were young and old members, women and men, some came in their smart shirts while others came bare footed with worn out jeans. Despite their gender and or class differences, these people were driven by one thing and one thing only, namely. to stop the mine from taking their land away from them. My appreciation for Mavuso was great. He was well spoken, bilingual, understood the law and could break it down in simplest ways to the committee. He understood the weaknesses of the traditional council as he previously was a member. While the people of Makhasaneni in general, and the committee in particular, appreciated him and spoke highly of his role as a thinker in their struggle, he never took decisions unilaterally.

The day after the meeting where people voted by a show of hands in favour of the mine, Jindal made their way back to Makhasaneni. On the afternoon of the meeting which left committee members disheartened by the voting process, they met and agreed they would stop Jindal cars from entering. Two committee members, Mavuso and Dubazane, were up early and waited on the street. Indeed, they stopped the car and pleaded with the people not to resume the work until at least there was a memorandum of agreement. Jindal understood that there were already tensions in the area due to lack of consultation. Given that they wanted to work in a politically stable environment, it mattered to them to cooperate with the people of Makhasaneni to a certain extent. They agreed and proposed that the committee draft the memorandum stipulating their terms and conditions. Some of the conditions were: 80% of the employees should come from Makhasaneni, Jindal must show them where they were planning to dig before they do, pay R5000 for each hole to the relevant family and not use their water.

A meeting was then called with the mining representatives. They came in their numbers to 'accept' the agreement. The paper was signed. The mine then started working around November 2012. Soon after that disputes between Jindal and MCC started, and again the MCC stopped them from operating. The cause of the dispute was that the committee found out that Jindal was paying R2500 per hole to the chief. Jindal refused to stop operating but continued saying the chair of the committee allowed them to do so. The community called a special meeting to find out about this and decided to expel the chair on the spot. The chair of the committee was no longer serving their interests and the committee suspected that he had received a bribe from Jindal. While this dispute with Jindal was carrying on, the workers went on strike as Jindal had not paid them. People also discovered that their livestock had died and that the community's water had been used. This reflected a total disregard of the conditions put forward by the committee in that memorandum of understanding. Another meeting was called by Jindal to try and resolve the matter and the committee told them that members y demanded compensation for the damages (graves, water, livestock). Jindal reported the committee members to the chief and opened a case against them. The committee then told Jindal to stop working until the case was resolved. This was yet another delaying tactic. By this time, the committee had found out that Jindal's prospecting licence was about to expire and so the idea was to delay them until the licence expired.

A community meeting was called by the traditional council to address the issue. Abantwana were present and told the members of the MCC that they had no right to stop the mine or charge them for any damages. MCC members left the meeting furious.

Jindal then invited Dubazane and Mavuso to a meeting in Durban again to seek suitable solutions to the problem. Jindal wanted to be given a chance to finish with the prospecting so that they could continue with the process to obtain a full mining licence. By this time, the committee had decided to go back to their original position which was a clear 'no' to mining. They were no longer interested in the negotiations; they were no longer intimidated by the chief and certainly not his brothers. During the meeting in Durban, abantwana asked if Dubazane and Mavuso were the ones that intimidated the chief in the first community meeting where the chief admitted to having given Jindal access to their land. Before they could answer one of the abantwana ordered them to go and tell the people of Makhasaneni that they have no right to stop the meeting. They are not educated.

It is interesting that abantwana had taken over from the chief, who was not part of this meeting. In fact, abantwana had taken over the negotiations also from Jindal, and their style was that of intimidation, arrogance and undermining the people of Makhasaneni. There is a strong case for seeing these events as the epitome of unaccountability. Abantwana then asked Dubazane and Mavuso to select five people to be part of the steering committee that would oversee the work of Jindal in all affected communities. They refused and said they would first go back to Makhasaneni and consult the committee. Again, the meeting ended on a bad note. While these negotiations were happening, the chief was arrested for other crimes, and distanced himself from the mine issue. In the week that followed, one of the abantwana was appointed by Jindal, including a former employee of COGTA. According to the members of the MCC this was the beginning of a war⁹.

Push back from abantwana: intimidation of activists

Abantwana started a campaign against activists, using the newspaper *Bayede*¹⁰ to write stories that discredited Mavuso's actions, calling him a spy, acting on behalf of white land owners, who was out

⁹ The term 'war' was used figuratively, to express that things had become tougher, but not implying a war in the sense of engaging the army.

¹⁰ *Bayede* describes itself on its website (www.bayedenews.com) as a 'weekly isiNguni publication targeting a niche market, interested in a critical approach to policy formulation and implementation, politics, cultural heritage, current affairs, and rural and economic development'. It targets people living in rural KwaZulu-Natal, but it is also available in the big cities.

to dethrone the king.¹¹ Mavuso saw this as a way to divide the community of Makhasaneni and turn it against in order to shift the focus from the corrupt and manipulative ways of the traditional council. He expressed his regard for the king and stated very clearly that his primary objective was to protect the community's land rights and nothing to do with dethroning the king. 'Land is everything to us, we are trying to show not only the chief, even the king, that we are the land owners here', he explained.

It seems the mine in Makhasaneni was never about creating jobs for that community as the chief once explained in the meeting. Rather, from the actions of abantwana, it clearly was about their personal benefits as one of them had become an employee of Jindal. In a space of one month, there were already four articles about Mavuso, which led to some people calling to warn him that there were rumours that he was going to be killed. . This sort of targeting of key activists is a common tactic for those in power, such as the traditional leaders, as was the case with the killing of the chairperson of Amadiba Crisis Committee in 2016. Amadiba Crisis Committee (ACC) was formed in 2007 by villagers of Xolobeni in Pondoland to fight mining titanium in their area.

Discussing the issue of intimidation, one member of the MCC explained that she received a call from a relative who was a hitman, bought to kill seven of the committee. Mavuso was on top of the list. The hitman did not know that his relative was amongst the seven targeted as the instruction was 'including the three women' and names were not provided. The hitmen did not proceed with the task. She added that 'we are not scared of dying, we even sleep with doors unlocked. If they kill us it will be known that we died for fighting the mine. We do not want the mine'.

Mavuso added that 'those who raise questions and attempt to resist face the risk of death. Our traditional leaders claim ownership of our land. What should we do? Should we run away? Does all the land we live on 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 question raised by this community leader are very well answered in both IPILRA and Ingonyama Trust Act which recognises people living on the land as rightful owners, as the Constitution requires. However, the community's experience with the arrival of Jindal raises doubts and suggests that land rights are only protected when there are no business opportunities for the land.

It was during this time of articles published in *Bayede* that I started to work with the community of Makhasaneni. An organisation called Land and Accountability Research Centre, a research and

¹¹ <http://www.customcontested.co.za/bayedede-newspaper-traditional-leaders-and-mining-deals-in-kwazulu-natal/>

advocacy unit with the objective of challenging traditional leadership laws that threaten democracy, went to Makhasaneni at the request of a few members of the committee who had attended a land-rights workshop convened by LARC. The kind of support LARC could provide included getting lawyers to look into the issues of intimidation and violation of rights in order to help stop Jindal from obtaining a mining licence. The community committee requested that we link them up with journalists who would write about their experiences, as exposure provided them with some form of security. During that time, their story was published in the *Mail and Guardian*¹² and *City Press* newspapers. The appointed lawyers wrote to *Bayede* and demanded that they publish an article apologising to Mavuso for putting his life at risk. *Bayede* never published such an article, however they did stop publishing untrue stories about Mavuso.

Abantwana persisted in their attempts to bring the mine to Makhasaneni by force. The headman shared that abantwana visited his home in his absence, demanded that his wife accept a letter on his behalf, and threatened to assault her daughter, who also was a member of the committee. The wife refused to accept the letter. Mavuso went into hiding for three weeks as the threats to kill him increased. Dubazane was confronted by one of the abantwana who told him he was not scared of the people of Makhasaneni and he would do the killing himself. The last attempt by abantwana was done through COGTA.

In August 2015 COGTA visited Makhasaneni together with abantwana and the entire membership of the traditional council, except the chief who had distanced himself from the matter for quite some time. The purpose of the visit was to re-define the boundaries in the area. The headman had been informed about the visit and so had convened a community meeting to inform people. I was also informed by the committee members who asked me to establish from COGTA what this process was about. In my interview with the official from COGTA, he explained that their mandate was to create a database of all the wards and their headmen and store this information in their GPS¹³. The actual identification of boundaries was the work of the traditional authorities. The members of MCC saw this as yet another attempt by abantwana to take their land. In re-defining the boundaries, they would deliberately push Mr Dlodla out and put a different headman to be in charge of the particular land that they were targeting. This trick did not succeed.

On the day that COGTA arrived, the community members gathered on the hill called Kwesezulu. They expected the meeting to take place on the hill, but when COGTA and the members of the traditional

¹² <https://mg.co.za/article/2016-05-03-Choose-Between-Mining-and-Bloodshed>

¹³ Global Positioning System

council, including abantwana arrived, they gathered at a different spot. A few members of the traditional council drove up the hill and requested that the headman come down with them as COGTA and abantwana were ready to start with the day. The crowd shouted it refusal, saying COGTA and abantwana must come up if they wanted the headman. One community member said that they were not going to allow their headman to be separated from them. COGTA accepted that the headman was not going to come and left. Mr Dlodla remained the headman of Makhasaneni.

Conclusion

The case of Makhasaneni demonstrates the problems that are created by the ongoing lack of clarification about the roles of traditional leaders broadly, and in particular about these leaders' control over land.. By resisting mining on their land, the people of Makhasaneni are challenging unaccountable traditional leaders and the dominant profit-driven development model, supported by the state. It is neoliberal in nature and characterised by land dispossession, the displacement of land-based livelihoods and an inability to absorb the labour of those dispossessed. The people of Makhasaneni have nicknamed it *Tsunami* because as soon as it arrives they have to flee. It approaches in a wave of destruction. They go to sleep peacefully and wake up to mining construction on their fields and grazing land. Mavuso said they were aware that certain government officials, mining companies and chiefs collude with each other with no regard for the physical, social and environmental wellbeing of the people. This raises serious questions about how we think about land reform and rural development going forward.

In June 2016 the community of Makhasaneni discovered that Jindal had withdrawn its application for a mining license. In a letter to its stakeholders, the company cited the global decline in the price of iron ore as the reason for its withdrawal. The villagers however believe it was due to their sustained efforts to drive Jindal off their land. While land struggles in post-apartheid, rural South Africa have been due to the discovery of minerals, the resistance demonstrated by the people of Makhasaneni mimics that of peasants in Zululand, back in the 1960s, who resisted the so-called betterment schemes and land rehabilitation which would have removed them removed from their homes (Mbeki 1964).

The ability of rural people to resist the dominance of traditional authorities is unquestionable. While the withdrawal of Jindal was a victory for the people of Makhasaneni, the struggle for recognition of land rights continues. The people living in the former homelands remain vulnerable until parliament

enacts a law to give them security of tenure on communal land. Until their rights to the land they occupy are recognised, they will remain under threat.

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