

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, Prof Sonwabile Mnwana, explores the local histories that have shaped power and contestation over land on the platinum belt. His paper forms part of an ongoing MISTRA research project on 'Mediating Convergence and Divergence: Traditional Leadership and Customs in a Constitutional Democracy'. The final research report is due to be published towards the end of 2018. 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 a wider national debate on the role of traditional leadership in our contemporary society.

Chiefs, Land and Distributive Struggles on the Platinum Belt: A Case of Bakgatla-ba-Kgafela in the North West Province, South Africa

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Introduction

Recent studies have shown that, in South Africa, the post-apartheid state has – through several pieces of legislation – increased the power of local chiefs in rural areas, particularly in the former 'homeland' areas (Mnwana, 2016; Mnwana and Capps, 2015). This is producing new struggles on the platinum belt where mining expands largely on 'communal' land. This contribution argues that while many studies report land-related conflicts across Africa, there have been limited attempts to narrow the empirical focus into the historical processes that shape the structure of power at a local level and how these processes connect to distributive struggles.

Resilience of traditional authorities (chiefs) in post-colonial Africa has largely been attributed to chiefs' authority over customary land. There have been intense debates on whether communal (customary) land is better protected (legally secure) when left under the custodianship of chiefs, as opposed to the titling and privatisation of communal land (World Bank 1989). Here, privatisation comes attendant with the risks of promoting inequalities and land grabbing, while also falling short of rhetorical promises to legally empower the rural poor, encourage 'market-promotion' and advance sustainable economic growth through rural peasant agriculture (Boone, 2017). Scholars have also reported new forms of exclusion, inequalities, competition and intensified conflict over land, shaped by the increased scarcity, and consequently increased value, of land in different regions of Africa (Peters, 2004; Chimhowu & Woodhouse, 2006; Mnwana, 2015b). Chiefs are at the centre of these struggles because land struggles are also about meanings of property – particularly among the local political authorities regulating it and the social institutions that shape relations over it (Lund

2008). Power and legitimacy of property-governing authorities – mainly traditional authorities in this case – are mobilised and defined in terms of custom (Mamdani 1996). The dominant notion of ‘communal’ ownership of all land held under customary systems of tenure in Africa tends to enhance the chiefs’ power over land (Mnwana 2016). Moreover, this idea promotes the problematic perception that Africans on the countryside exist exclusively within, and act as, homogenous groups (or ‘communities’) and would be expected to respond to economic shifts (or even pursue development) as these collectives, under the authority and control of chiefs. The latter are often seen “as the most culturally appropriate guardians of community” and ‘assumed to embody communal norms’ (Grischow 2008, 64). As such, they are deemed suitable to act ‘as trustees’ in development projects (Ibid).

In post-apartheid South Africa, debates on the resurgence and resilience of chiefly power have grown over the past two decades. Among others, dominant arguments include questions on whether chieftaincy is a hindrance to democratic principles and progress, given that some of its elements still resonate with the character of the erstwhile colonial indirect-rule (Mamdani 1996, Ntsebeza 2005). To add to this is the ever-dominant question of political legitimacy – state and chiefs competing for power and legitimacy in the countryside (Kramer 2016). Anthropologists Comaroff and Comaroff (2009: 7) observe that, to a great extent, the ability of chiefs to survive in the post-apartheid era can be attributed to the increasing commoditisation of the politics of ethnic identity, culture and tradition. These authors describe this process as the ‘incorporation of identity, the rendering of ethicised populations into corporations of one kind or another’ (Comaroff & Comaroff 2009: 21). The Bakgatla, Bafokeng and other traditional communities who are involved in the mining industry in South Africa’s platinum belt fit well in this analysis. Manson and Mbenga (2012) have argued that struggles in South Africa’s former homeland areas, especially on the rural platinum belt, epitomise a revival of previously suppressed ethnic identities – thus “leading to forms of a better defined ethnic sense” (Manson and Mbenga, 2012: 109).

All these processes are strongly rooted in the ability of chiefs, through collusion with the state (and capital, at times), to successfully position themselves as custodians and trustees of communal land (Mnwana 2016). But the resilience of traditional leadership remains less understood from a micro level, particularly how regional and local land, as well as political histories, shaped the status and influence of certain powerful chiefdoms in South Africa. This chapter attempts to narrow this gap by drawing on empirical findings from detailed case study (mainly archives and oral histories) of the Bakgatla-ba-Kgafela traditional authority in the North-West to demonstrate some less-reported historical processes that led to enhance the power of chiefs over rural land and how such processes connect to contemporary distributive struggles over land and mining revenues.

Chiefs in post-apartheid South Africa

One of the ‘holy cows’ at the centre of South Africa’s political landscape is the institution of traditional authority (chiefs of various ranks). This has become increasingly evident in the manner in which the leaders of the major political parties have been competing for the attention of traditional leaders and the latter competing for state recognition (visa-versa).

Chiefs in South Africa currently enjoy an advantageous position, especially on the platinum belt where they control and distribute vast mining revenues and act as custodians of community property (including land and mining wealth) and agents of rural development (Mnwana, 2015a).

Roughly, two processes are often attributed to chiefly control over land and mineral wealth: The first critical process is the attempt by the ruling African National Congress (ANC)-led government to redefine residents in rural areas, through legislation, as subjects of 'traditional communities' (or 'tribes') under chiefs. The ruling ANC have since the early 2000s introduced and passed laws that not only gave chiefs a secured position in the post-apartheid political scene, but significantly enhanced their powers over rural land and local governance. This move came after almost a decade of doubt and oscillation by the ANC, since it came into power in 1994, about what the roles and functions of traditional leaders would be under the new democratic dispensation. Some argue that the ANC's shift towards recognising and empowering chiefs was mainly threatened by the dominance of the historically-entrenched Inkatha Freedom Party (a party largely linked to Zulu 'tribal' identity) over chiefs and local politics in KwaZulu-Natal (van Kessel and Barbara Oomen, 1997). However, it is becoming increasingly evident that politicians believe that chiefs in post-apartheid South Africa have a significant role in controlling and mobilising rural votes. For Beinart (2014):

The ANC has come to see chiefs as able to deliver a block rural vote. The movement has consistently gained its highest percentage vote in rural provinces such as Limpopo and Mpumalanga, as well as parts of the Eastern Cape, not in the cities.

It remains highly contested and unclear whether chiefs really have the ability to deliver rural votes and whether the good fortunes of the ruling ANC and its domination in the former homeland areas have a direct connection to the party's close ties with and placation of local chiefs (Beinart, 2014; Buthelezi and Yeni, 2016). What remains clear, however, is that the post-apartheid government has increased the powers of chiefs and legitimised their mediation of mine-community relationships and control over land (Mnwana, 2016). The Traditional Leadership and Governance Framework Act of 2003 (Act 41 of 2003, or the TLGFA)¹ re-enacts traditional (tribal) authorities to preside over precisely the same geographic areas that were defined by the apartheid government (Claassens, 2011, p. 14; Mnwana, 2014b). Among other things, the Act enables chiefs and their traditional councils to be granted powers over the administration and control of communal land and natural resources, economic development, health, and welfare, and to administer justice.² As such, not only does this Act impose the former colonial tribal authority's demarcations on rural citizens, it also promotes a controversial governance role for chiefs. Other controversial laws that have so far been successfully resisted by rural citizens include the Communal Land Rights Act³ of 2004 (Act 11 of 2004),⁴ the Traditional Courts⁵ Bill [B-2008, B-2012 and B-2017⁶], and the Traditional and Khoi-San

¹ RSA, Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003). Pretoria: Government Printers.

² See Section 20 of the Traditional Leadership and Governance Framework Act of 2003 (Act 41 of 2003, or the TLGFA).

³ RSA, Communal Land Rights Act of 2004 (Act 11 of 2004) Pretoria: Government Printers.

⁴ Rural communities successfully opposed this Act on the basis that it undermined their private property rights enshrined in the Constitution and unfairly leveraged the powers of the traditional councils over vast areas of

Leadership Bill, [B-2015]. Rural communities and civil society organisations have strongly resisted these laws mainly because they give traditional authorities disproportionate and illegitimate powers and because of the poor consultative and top-down nature with which the state introduces them. However, the government has, in most instances, gone ahead regardless of the limited participation and marginalisation of rural citizens who are directly affected by these laws. Communities have, at times, sought relief from the courts of law: this is often an arduous and expensive exercise, which does not always yield success. There have been a few remarkable successes for rural communities in resisting some of these policies. For instance, in 2010, the Constitutional Court struck down the Communal Land Rights Act⁷.

The laws highlighted above epitomise a paradox of state-led 'retribalisation' of African people in a democratic dispensation (Mnwana, 2016). The post-apartheid laws regulating and governing traditional leadership and mining reform have been criticised for promoting exclusion and corruption by using 'distorted constructs of custom' to 'impose contested identities', thereby 'undermining [rural residents'] capacity to protect their land and ... mineral rights' (Claassens and Matlala, 2014, p. 116).

The second critical process is the post-1994 state redistribution through the minerals policy reform. In an attempt to redress past injustices, the post-apartheid government has introduced some radical legislative measures in the mining sector, particularly with regard to the historical racial exclusion of Africans from mine-ownership structures, and the relationships between the mining companies and local communities (Mnwana and Capps, 2015). The Minerals and Petroleum Resources Development Act of 2002 (Act 28 of 2002, or the MPRDA) is the key piece of legislation in this regard. Through this legislation, the state has promoted a range of measures, including black economic empowerment (BEE) mine-community partnerships, continued royalty payments, and social labour plans as requirements for mining companies (Mnwana, 2015b). Communities that previously received royalty payments for mineral rights on their land have been encouraged by the state to convert their royalties into equity shares (Mnwana, 2014a). Several communities on the platinum belt have converted their royalty payments into equity stakes and entered into other complex deals with mining companies who operate on their land. Local chiefs, as assumed custodians of communal resources, have become mediators of mineral-led development and mining deals. As such, chiefs control mining revenues and they also champion mining-led community development. Such a

communal land. See *Tongoane and Others v Minister for Agriculture and Land Affairs and Others* (CCT 100/09) [2010] ZACC 10 (11 May 2010).

⁵ RSA, Traditional Courts Bill (B15 - 2008), published in Government Gazette No. 30902 of 27 March 2008). <http://www.justice.gov.za/legislation/tradcourts/B15-2008.pdf> Accessed 12 April 2012.

⁶ <http://www.justice.gov.za/legislation/bills/2017-TraditionalCourtsBill.pdf>

⁷ Rural communities successfully opposed this Act on the basis that it undermined their private property rights enshrined in the Constitution and unfairly leveraged the powers of the traditional councils over vast areas of communal land. See *Tongoane and Others v Minister for Agriculture and Land Affairs and Others* (CCT 100/09) [2010] ZACC 10 (11 May 2010).

phenomenon renders the state's attempt to redistribute the country's mineral wealth to local communities and historically-disadvantaged social categories highly problematic.

The model of mediation and control of mining revenues by the local elite – mainly chiefs – has produced significant tensions and conflict in the villages that host mining operations on the platinum belt. Not only have distributive struggles over mining revenues led to unrelenting chieftaincy disputes among the local elite in the North-West and Limpopo provinces, but ordinary villagers have laid strong claims over some of the mineral-rich farms where large mining operations occur. They assert that these farms were bought by their forefathers as private properties and should never have become 'tribal' land in the first place. As such, they dispute and resist the role of local chiefs as signatories of the mining deals and assumed custodians of mining revenues on behalf of local communities (Mnwana and Capps, 2015; Mnwana, 2016). The mounting resistance to local chiefs is also rooted in the lack of transparency in their corporate dealings and serious allegations of corruption that are levelled against them by ordinary community members (Mnwana, 2014b). The lack of tangible benefits epitomises this challenge. Moreover, mining, especially in rural areas, tends to exacerbate conflict and power struggles (Mnwana, 2015a). So far, research has also shown that these transformations have not led to economic benefits for the ordinary residents since most benefits that accrue from the community BEE equity deals tend to be captured by the local elite who occupy high positions in the traditional authority structures (Mnwana, 2015a; Mnwana, Mtero and Hay, 2016).

Although the processes highlighted above are fairly well-reported it is not accurate to suggest that upsurge of chiefly power over land and landed-resources is a purely post-apartheid phenomenon. The following section details the historical processes that conjured up the powerful position of the Bakgatla chieftaincy in the North-West province.

Chiefs and their power over property in the Bakgatla area: a brief history

The Bakgatla-ba-Kgafela 'tribe' ('community') is one among at least five Setswana-speaking African groups that share the name 'Bakgatla'⁸ that can be found in South Africa and in Botswana. Two groups in Botswana (Mochudi) and South Africa (North-West⁹), share both the Bakgatla-ba-Kgafela (henceforth 'Bakgatla') name, and a similar historical origin. For the sake of space, I shall not deal with this aspect of pre-colonial history (which dates back to the sixteenth century).

⁸ The other four are Bakgatla-baga-Mosetlha, in Hammanskraal, South Africa; ii) Bakgatla-baga-Mmanaana, and Thamana in Botswana; iii) Bakgatla-baga-Mmakau, in Brits in the North West Province of South Africa; and iv) Bakgatla-baga-Mosha, also in Hammanskraal, South Africa (Makgala, 2009, p. 46).

⁹ In the area known as the Pilanesberg region, north of Rustenburg (formerly under the Transvaal colonial republic). Later, during the apartheid period, the Bakgatla area fell under the Mankwe District of the Bophuthatswana Bantustan. The latter became part of the North West province in 1994 when the democratic government came to power in South Africa in 1994.

The early history of Bakgatla is not well recorded. There are gaps and diversions in various accounts from different sources. What is clear is that Bakgatla, like other African groups, have been subjected to a turbulent history characterised by cessations, wars, colonial conquest, land dispossession and multi-ethnic integration. As such, the Bakgatla chiefdom has not always been fully functional as a political unit, and it cannot be described as a purely homogenous ethnic community.

The historical formation of the Bakgatla-ba-Kgafela 'tribe' can be summarised in relation to five critical historical moments¹⁰.

The first significant moment in the formation of the current Bakgatla tribe falls within the first half of the nineteenth century (1820s–1850s). This period began after the death of *Kgosi* Phetho, early in the second decade of the nineteenth century. During the first half of the nineteenth century the Bakgatla chiefdom experienced great social and political instability. Such instability emanated from a number of factors including inter-tribal wars, internal power struggles, cessations, colonial invasion and ruthless land dispossession by colonial invaders (Boers). The tribe during this period was already settled in what was to be named by the Boers the Pilanesberg region, north of Rustenburg.

A critical figure during this period was *Kgosi* Pilane, Phetho's son from his second house, the progenitor of the current ruling dynasty of the Bakgatla tribe both in Pilanesberg (South Africa) and Mochudi (Botswana). Most accounts about the settlement of Bakgatla in the Pilanesberg point to the leadership of *Kgosi* Pilane, after whom the Pilanesberg Mountains were named. *Kgosi* Pilane is estimated to have ruled between 1825 and 1850.

When Pilane came into power around 1825 he consolidated the tribe in Pilanesberg. There was some stability during the early days of Pilane's rule until the arrival of Mzilikazi (also called Moselekatse by the Tswana people) and his Ndebele (Matebele in Setswana) raiding fugitive warriors in the late 1820s. The entry of the Ndebele marked the Bakgatla's first direct experience of the vicissitudes and devastating impact of the *Difaqane Wars*¹¹. The already-weakened Bakgatla were no match to Mzilikazi's powerful Ndebele fugitive armies,¹² and did not pose any resistance to Mzilikazi. To keep the latter placated, at least for a while, the Bakgatla paid tribute in the form of "skins, corn and ivory" (Schapera, 1942: 8) to the Ndebele.

¹⁰ Following standard Bakgatla historiography, *Kgosi* Kgafela I, the founder of the current groups of Bakgatla-ba-Kgafela, is estimated to have ruled Bakgatla from the late seventeenth century until the early eighteenth century. After Kgafela I, the chronological list of Bakgatla chiefs (only firstborn males) is as follows: Tebele (Kgafela's son); Masellane (Tebele's son); Kgwefane (1760–1770); Molefe (1770–1790); Mmakgotso (1790–1795); Phetho (1795–1810); Lebetse (1815–1820); Pilane (died around 1850).

¹¹ A series of devastating tribal wars which left many South African indigenous polities dispersed and dispossessed during in the first half of the nineteenth century.

¹² Also called the 'Impis'.

The fortunes of Mzilikazi and his Ndebele warriors were soon to diminish with the arrival of the Voortrekkers¹³ (Afrikaners) under Hendrik Potgieter and Peter Uys in the Highveld in 1836. In 1837, after a series of attacks by Boers in alliance with some Tswana regiments (including Pilane's Bakgatla) and another fierce attack by the Zulus under King Dingane, Mzilikazi's Ndebele were forced to flee northwards across the Crocodile River until they finally settled in the Motopo Hills in Zimbabwe (Schapera, 1942: 9). *Kgosi* Pilane died around 1850 and was succeeded by his eldest son from the first house, Kgamanyane Pilane (1850-1874).

The arrival of the Voortrekkers in the Highveld, especially in the area north of Rustenburg (Pilanesberg area) in the late 1830s marked the first experience of colonial invasion and land dispossession for the Bakgatla and other African polities in the area. This was the dawn of a new era in the history of the agro-pastoralist African communities in the western Transvaal – the earliest encounter with white colonial rule and ruthless alienation of all land belonging to Africans. When the Transvaal (Zuid-Afrikaansche Republiek (ZAR)) was formed,¹⁴ all land belonging to Africans was demarcated into huge white-owned private farms. So ravaging were the exigencies of the colonial conquest that:

the entire African population was converted into a tenantry, living on formally demarcated farms and subject to the rentier demands of their new white landlords (Capps, 2010:159).

By virtue of 'conquest' the Afrikaners regarded and asserted themselves as the owners of both the land, and the labour of African communities in it. The process of colonial dispossession was soon to be followed by new forms of relationships between the new white 'masters' and African landless 'servants'.

The second important moment in the history of the formation of the Bakgatla tribe was the period of multi-ethnic integration of the Bakgatla tribe after colonial conquest. This era was distinguished by the 'patron-client' relationships between the Bakgatla *dikgosi* (plural of *kgosi*) and the Afrikaner leading figures of the ZAR. *Kgosi* Kgamanyane of Bakgatla was, apparently, one of the prominent chiefs in the Western Transvaal who displayed extraordinary compliance to the Boer demands through their allegiance to local white leaders and their consistence in providing labour regiments (*mephato*),¹⁵ assisting the Boers in conducting horrific slave-raiding operations in other African communities, reinforcing hunting expeditions, and helping the Boers during battles with indigenous groups who tried to resist colonial domination (Morton, 1998:83; Morton, 1995:201). With much-needed communal labour under their command, Kgamanyane and other prominent African chiefs in the Transvaal accumulated vast amounts of material wealth and enormous recognition from the Transvaal colonial authorities in exchange for their loyalty – a phenomenon which Capps (2010:150) regards as 'new forms of accumulation stimulated by accelerating mercantile penetration'.

¹³ Disgruntled groups of land-hunting Dutch settlers (Boers) who fled from the British colonial rule in the Cape Colony and trekked into the interior during the first half of the nineteenth century.

¹⁴ In 1852. The ZAR was the earliest Afrikaner Republic (colony) established after colonial conquest.

¹⁵ Organised according to age groups.

Kgamanyane accumulated some benefits from his allegiance to the white colonial state officials. His relationship with the Rustenburg Veldcornet Paul Kruger¹⁶ was the epitome of this (Bergh, 2005:97). Loyalty to the Boers earned Kgamanyane and his Bakgatla people many privileges, including being accommodated on Paul Kruger's farm Saulspoort¹⁷ (the present Moruleng village) along the north-eastern foothill of the Pilanesberg mountains (Mbenga, 1997). As Morton (1992:108) puts it '[w]ealth and power belonged to *dikgosi* who served the Boers' – the wealth of *Kgosi* Kgamanyane of Bakgatla rose in tandem with his political status. Morton (1992:108) continues:

In addition to wagons, houses, horses, cattle, and guns, Kgamanyane maintained 48 separate households, one for each of his wives ... Kgamanyane ... traded in ivory north of the Limpopo.

The patron-client relationship also helped Kgamanyane to forcibly absorb smaller and weaker African groups to his Bakgatla chiefdom (Morton, 1992:108). This phenomenon was prevalent in some of powerful polities in the Transvaal and was also made possible through the 'politico-military' (Capps, 2010:141) support and reinforcement from the Boer authorities in the Rustenburg region. During the mid-1820s, several small African groups who were displaced by the *Difaqane* Wars came and settled in the Magaliesberg (Rustenburg) region. Some of these groups were powerful and successfully absorbed smaller and weaker groups into their polities, while others were asylum seekers who were integrated into bigger and stronger tribes without cohesion (Capps, p. 2010:141–142). These small groups of raiders and asylum seekers later became known as *bafaladi* (alien ethnic immigrants) (Schapera and Comaroff, 1953:30). Some of the smaller and weaker of these were absorbed into the more powerful groups who were already in the area north of Rustenburg. *Kgosi* Pilane and Kgamanyane (his successor) formed an allegiance with Voortrekker leaders such as Potgieter and together they successfully warded off the devastating attacks by Mzilikazi's Ndebele warriors and launched severe attacks on other African communities who were not willing to accept the colonial disposition in the Transvaal region (Morton, 1992:107). Some of the defeated groups were integrated into the Bakgatla tribe.

It is against this background of the post-*Difaqane* political power surge, which was a result of the integration of smaller groups and colonial patron-client relations, that the Bakgatla 'tribe' can no longer be accurately described as a purely homogenous ethnic group. However, such multi-ethnic integration was by no means a new phenomenon – it predates colonialism and continues well beyond colonial conquest.

Not all groups that joined Bakgatla were constituted as tribes at their point of entry. At different historical moments, groups of diverse sizes, political statuses and ethnic origins joined the Bakgatla Chiefdom, some out of choice and others by coercion. The Bakgatla *dikgosi* also gained significant

¹⁶ Kruger later became the Commander and eventually the President of the Transvaal Republic.

¹⁷ Kgamanyane and his followers moved to Saulspoort around 1861. Before that they are said to have settled at the hillock called Mabule, not far from Saulspoort. Others were scattered in many other places around Pilanesberg and they kept on shifting from time to time due to various reasons.

power and status when they became the main 'recognised chiefs' through whom Africans could purchase and register the land in the 'scheduled areas'¹⁸ around Pilanesberg.

The third significant moment was a period of political instability and division of the 'tribe' which resulted in the colonial evolution of the contested seat of 'paramountcy' in Botswana and further disintegration of the tribe in South Africa. This period began with the colonial separation of the 'tribe' into two groups, one in Botswana and the other in South Africa in 1870. This separation was a result of an incident in 1869 when *Kgosi Kgamanyane's* relationship with the powerful 'patron' Paul Kruger took a drastic and depressing turn. Facing internal resistance from his followers, Kgamanyane could no longer keep up Kruger's insatiable demands for forced labour from the Bakgatla people in Saulsport. This failure led to Kgamanyane being tied against "a wheel of a wagon" and publicly flogged by Kruger in full view of his followers and other chiefs from the neighbouring Tswana groups (Makgala, 2009:91). So unbearable was the humiliation caused by this incident that Kgamanyane and approximately half his followers decided to leave the Pilanesberg area and trekked northwards until they finally settled in Mochudi in Bechuanaland (Botswana) (Mbenga and Morton, 1997:157). Kgamanyane died around 1874 and was brought back and buried at Mabule hill, in Pilanesberg. The historical separation of the Bakgatla-ba-Kgafela tribe into two groups residing in two different countries has a significant bearing on the contemporary battles over political power and communal property of the tribe.

It should be noted that the white colonial state in South Africa and the post-1994 democratic government had, at different historical moments, recognised the superiority of the Bakgatla group in Botswana over the one in South Africa, hence the chiefs in Botswana are referred to as the 'Paramount Chiefs'. The courts in South Africa have upheld this view, even during some moments when the Botswana-based Paramountcy was seriously contested by different sections of the Bakgatla group in South Africa.

The fourth period that is worth highlighting was the period between 1910 and the late 1930s which was marked by the intensification of the racially segregative 'Native Land Policy' under the Union government in South Africa. Of critical importance are the second and the third decades of the twentieth century, which marked a period of the highest increase ever in the history of land-buying by Africans in the Bakgatla area. This period, according to Mbenga (1996), marked the 'golden years' of the Bakgatla chieftaincy. The main significance of this period, observes Mbenga (1996:203) was that:

the first two decades of this century were their 'golden years' in terms of the resources with which to buy land. The Bakgatla's major resource of cattle was then relatively plentiful due to their large-scale looting of Boer cattle during the South African War. Consequently, the Bakgatla, who had far more cattle than any other group in the Pilanesberg region, were better able to buy more land than anyone else.

The increase in wealth in terms of cattle numbers during the post-war period may have contributed towards the increased land-buying. However, there is evidence which demonstrates that land was not always purchased on a tribal basis in the Bakgatla area but quite often on a private basis. Recent

¹⁸ Areas where Africans could purchase and occupy land.

research on contemporary land disputes in the Bakgatla area point towards a history significantly dominated by private group land-buying by Africans (Mnwana and Capps, 2015). Indeed, this was a common phenomenon in the colonial Transvaal Republic. The land purchased in this fashion would then be transferred to a white state official who held the property 'in trust' for the chief and his tribe.

When the Afrikaners in the Transvaal Republic established their legal and administrative systems of ownership and registration of land, they debarred Africans from owning land (Bergh and Feinberg, 2004). Despite this prohibition, groups of Africans in the Transvaal managed to purchase land anyway.¹⁹African land-buying syndicates purchased land through white intermediaries, mainly missionaries residing among them. After the first British occupation of the Transvaal, the notion of trusteeship was formalised through the declarations of the Pretoria Convention of 1881 which was replaced by the London Convention in 1884. These provisions later formally granted a right to purchase land, but the land purchased by Africans was to be formally registered under the name of a white state official 'in trust' for the African purchasers, thus establishing a legalised (formalised) form of trusteeship which Capps (2010) terms 'state trusteeship'. The main policy shift introduced by the London Convention was that, instead of registering the land acquired by Africans 'in the name of the Native Location Commission' (as stated under Article 13 of the Pretoria Convention), it was to be registered "in the name of an officer of the South African republic" (Delius & Chaskalson, 1997:29). Bergh and Feinberg (2004:170) summarise the informal and formal trusteeship as follows:

Trusteeship meant that although Africans might have paid for land, they could register the transfer of the property from the previous owner in the name of a white person only, especially a missionary [informal] or, after 1880, a public official [formal], who would hold it 'in trust' for the real buyers. Only registration could give legal validity to the transaction.

The formalisation of the institution of trusteeship as a tenure system for Africans in the Transvaal began with radical colonial state bureaucratic and policy measures of controlling and limiting the land rights of the 'native' population. It was immediately after the British Annexation of the Transvaal Republic and during the short-term rule of the British colonial government (1877–1880) that the latter began the formalisation of the institution of 'state-trusteeship' by curbing the then dominant informal institution of missionary intermediation by "declaring the new Secretary of Native Affairs as *ex officio* trustee of all lands purchased by or for the natives" (Capps, 2010:173; see also Berg and Feinberg, 2004:178–179). Despite the fleeting tenure of British rule, this initial step by the colonial state was to be confirmed and enforced by the major clauses of the Pretoria²⁰ and London Conventions in the retrocession Transvaal. Further, 'trusteeship' was to become a formal institution of land tenure for Africans not only in the Transvaal (and Natal) but throughout colonial South Africa. Through these processes, all African land acquisitions would follow a harsh administration process which would culminate in a precarious form of ownership for the purchasers and in another form of dispossession through the trusteeship of the chiefs. This tenurial regime,

¹⁹ Much of this practice was due to the weak bureaucratic systems, ambivalent policy and poor implementation capacity of the newly formed Afrikaner Republic (ZAR).

²⁰ Mainly Articles 13, 21 and 22 (Delius 1997:29).

although legally ambivalent and administratively laborious, was to be kept intact and sustained through colonial declarations and the two major 'Native' Land Acts of 1913 and 1936. There is no space to detail various forms of trusteeship in this contribution²¹.

A significant portion of power and control over the purchased land was in the domain of the tribal trustees – the chiefs who were assumed to be custodians of tribal properties. Mnwana and Capps 2015 summarise how this historical process unfolded in the Transvaal during the late colonial and segregation periods:

The colonial authorities worked within an ideological framework that presumed all Africans to be members of tribes, they would only sanction new group land purchases if they were tribally based. This in turn encouraged such groups to seek out the nearest chief, or simply reconstitute themselves as a 'tribe', in order to enter the land market.

Subsequently, chiefs had enormous leverage to define and impose customary rights on their subjects who occupied the purchased land. Therefore, it is no exaggeration to say that the powerful political status and control over 'tribal' landed property that is enjoyed by the Bakgatla *dikgosi* is rooted in the 'tribal-trusteeship' institution. Various chiefs of the Bakgatla, including Lenchwe, Ramono, Isang, Ofentse and Tidimane Pilane, mediated land purchases in the Bakgatla area at different times.

The fifth moment which bears noting is the moment of constitution of the Bakgatla 'tribe' as a Tribal Authority under the Bantu Authorities Act 68 of 1951 (BAA). Tribal authorities were established as part of the apartheid state policy of racial separation. The Bakgatla Tribal Authority was established in 1953 in line with the said colonial policy (Breutz, 1989, p. 278/ 339). During the first half of the twentieth century, 27 farms were purchased by Africans in the Bakgatla area, of which four were privately owned²² (Breutz, 1989, p. 339 ;). All these farms are generally regarded as 'tribally owned farms' (Breutz, 1989, p. 339) and in 1953 these farms, together with eight 'Trust' farms in the Pilanesberg, were amalgamated to constitute the newly established Bakgatla-ba-Kgafela Tribal Authority in terms of the BAA. As such, the current boundaries of the Bakgatla Tribal Authority were established and formalised in terms of the BAA. Like other tribal authorities that were incorporated into the Bophuthatswana 'homeland' in 1977, the Bakgatla chieftaincy had farms registered with the state in trust for the chief and his tribe. Remarkably, these farms spanned some of the richest platinum group metals in the western limb of the Bushveld Complex.

During apartheid, the Minister of Bantu Affairs mediated the contracts between mining companies and tribal authorities. The powers of 'state trusteeship' regarding mineral and surface rights on tribal land were to be transferred to the Office of the President of Bophuthatswana when the latter gained its 'independence' (Capps, 2012, p. 72). It was during the Bophuthatswana regime that the Bakgatla chieftaincy began to receive mining royalties from Anglo American Platinum (Amplats) Union Mine in 1982 (Mnwana, 2015). These royalties were deposited into Bophuthatswana state accounts called development accounts (D-accounts), held by the Office of the President.

²¹ For details in the processes involving chiefly trusteeship of 'tribal trusteeship' see Capps, G., 2016. Tribal-Landed Property: The Value of the Chieftaincy in Contemporary Africa. *Journal of Agrarian Change*, 16(3), pp.452-477.

²² By chiefs and other members of the ruling elite.

Due to the global upsurge in platinum demand in the 1980s and 1990s, the royalties payable rose significantly. From time to time, the chiefs would request funds from these accounts for various community development projects. After 1994 and South Africa's first democratic elections, the D-accounts fell under the administration of the province's Department of Finance and Local Government and Traditional Affairs. Since then, significant amounts of money have mysteriously disappeared from these accounts. Since it took over the administration of these funds, the North-West provincial government has been neither transparent nor accountable to the relevant communities (Mnwana, 2015a).

Bakgatla chiefs as African intermediaries in the colonial land markets

Due to the colonial policies, particularly the Pretoria and London Conventions, that forbade formal registration of land privately purchased by independent African syndicates²³, most land purchased by independent groups in the Pilanesberg area had to be registered and managed through the 'recognised' chiefs of Bakgatla (Mnwana and Capps 2015). In fact, archival documents confirm that during the period when the contested farms were acquired, the Department of Native Affairs demanded at least three essential bureaucratic requirements to be met without wavering by African land buyers when acquiring landed property²⁴. First, the local Commissioner in Pilanesberg had to produce a certificate of recognition which confirmed that the land-buying group was constituted as a tribe under a recognised chief. Second, a copy of a Tribal Resolution had to be produced which confirmed that the purchase of the farm was authorised by a tribe in a tribal meeting. The Tribal Resolution had to contain the signatures of the chief, tribal council members and some local state officials. Third, before a land transfer was done, the Sub-Commissioner in Pilanesberg had to produce the original Deed of Sale which would show among other details the name of the chief who was (supposedly) buying the land on behalf of his tribe. The transfer of the purchased land could only be registered once the buyers had paid the full price including the bond interest.

Another concealed requirement, which was a hindrance to African group buyers, was that it was not just any chief or tribe who could easily secure a mortgage bond and have easy access to the legal expertise required in the highly technical process of acquiring land. Correspondence between the Secretary of Native Affairs and local state officials reveal that for the state to approve the sale, the chief and his tribe had to enjoy a reputation of being capable of meeting the purchase price. The Bakgatla chiefs, having purchased 27 farms during the first half of the twentieth century on behalf of the tribe and several other farms for their own private use, were ostensibly held in high esteem by

²³ For example, the Pretoria and London Conventions (1881 and 1884). The recommendations Commissions: The Lagden commission (1904–1906), The Native Location Commission (1905–1907) and the Beaumont Commission, The Squatter's Law, The Land Settlement Act (1912), The Natives Land Act (No. 27 of 1913) and other policies and measures.

²⁴ Mainly in terms of Clause 3, Law 3 of 1898 (Transvaal) and of Section 1 of the Natives' Land Act, 1913.

the colonial state in South Africa when it came to land markets. Therefore, it was highly possible that many independent land-buying syndicates had to depend on the Bakgatla *dikgosi* for land purchases and registration of the purchased land. Consequently, the Bakgatla chieftaincy grew significantly in size and political stature since this process meant that independent land buyers could only retain their rights to land if they remained loyal and submissive to the authority of the Bakgatla chiefs. Even in cases where the buyers were somehow affiliated to the Bakgatla chief, their private land rights vanished as soon as their land was registered under a state official 'in trust' for the Bakgatla Chief and his tribe.

Despite the already-mentioned highly bureaucratic process of entry by African groups into the colonial land markets in the early twentieth century, oral traditions in the selected villages revealed that African land buyers were more vulnerable to manipulation by chiefs and European land sellers. Moreover, the process of entry to the colonial land market was economically and emotionally challenging for African land buyers. There is evidence that some of the farms may have been overpriced²⁵ by European land-owning companies who seem to have been determined to make a fortune out of the land-dispossessed Africans. The purchasers had to raise vast amounts to meet the purchase price. They had to find a 'recognised chief', and not just any chief, but a chief with a reputation for buying land – an essential requirement for securing a mortgage bond.²⁶

Very few people were more strategically positioned to benefit from this arrangement than the Bakgatla *Dikgosi*. In Pilanesberg, many individual Europeans and speculating companies who owned farms in areas that were reserved for African occupation were poised to make a quick fortune out of the land-hungry, dispossessed, and (at times) fugitive African groups. As rulers of the most powerful chieftdom in the Pilanesberg area at that time, the Bakgatla chiefs became the main land intermediaries in the land-buying processes. As such, not only did they enjoy rapid expansion of their territory and political stature, they also amassed enormous personal wealth in the process.

Another factor which not only inhibited written records about farm purchases at the level of the group land buyers but also made the buyers even more vulnerable was the fact that very few among them were literate and numerate. Quite often, buyers did not fully understand the process of buying land, including the price of the land and how much they still had to pay. They relied on the chiefs (who were often literate²⁷) to tell them what to pay and when. It is evident that such a position benefited the Chiefs. It is common knowledge that several Bakgatla Chiefs purchased many farms in

²⁵ For details on this, see Mswana and Capps 2015.

²⁶ It was also incumbent on the Local Commissioner to approve or disapprove the proposed purchase. If he approved the purchase, he would write a motivation to the Secretary of Native Affairs. The Sub-Commissioner in Rustenburg, in the motivation letters he wrote to the Secretary of Native Affairs, had to state whether the price was fair and clearly show that the purchasing 'tribe' was capable of paying off the mortgage. Quite often, this argument was substantiated by rough figures of the size (population – adult males) of the said tribe and the number of cattle that the tribe had. Such a motivation had to confirm not only that the purchasers were constituted as a tribe but also that the land under sale to Africans was fell within the 'scheduled areas' that were demarcated for African occupation.

²⁷ The members of the ruling class in Bakgatla were often well educated, especially the chiefs. This can mainly be attributed to their early exposure to missionary education.

the Rustenburg region under their own personal names. For instance, *Kgosi* Isang Pilane (*Kgosi* Lenchwe's son), who died in 1941 at the age of 56, owned three large farms in Rustenburg (Vogelstruiskraal No. 679, Varkvlei No. 903 and Doornpoort No. 251 (a 1/3 portion), and two lots in the township of Lady Selborne in Pretoria. In Transvaal alone Isang's landed property was worth £4,522. Isang's estate was divided among his heirs (his wife and children) after his death.²⁸

Chiefs were not always transparent about the farm purchases, especially with regard to the funds that were raised for purchasing farms. For instance, during the reign of Chief Tidimane Pilane, there were a number of instances in which complaints would surface, particularly regarding his lack of transparency about the tribal levies collected for buying farms. One particular instance was a court application filed by a certain Mr Jacob Pilane against Chief Tidimane in June 1956. Chief Tidimane Pilane had in 1953 imposed a levy of one ox per person on every adult member of his tribe for the purchase of the farms Middelkuil No. 564 and Cyferkuil No. 372. These farms were purchased from Chief Molefi Pilane²⁹ who was the Bakgatla 'Paramount Chief' based in Botswana. The combined price for the two farms was £14,000. Those who could not pay the levy were obliged to pay £15 per person. The main contention of Jacob and his group of dissenters was that Chief Tidimane never reported how much money was collected in total and how many people (tax payers) contributed,³⁰ and they were never given receipts or told how much their oxen were sold for. Furthermore, Jacob wanted Tidimane to account for how the tribal funds were being utilised and he also wanted to know if there were funds that the Chief utilised without first getting a tribal resolution to do so. Jacob lost his court application against the Chief. Nonetheless, the findings of the court were revealing. The court dismissed Jacob's application based mainly on the arguments that the chief has no responsibility to account 'to any one of his individual subjects' concerning the tribal accounts and that Jacob, although a member of the tribe, did not have *locus standi* to present a petition against the chief who, according to the court, was accountable only to the tribe and not to individual subjects³¹. This negative verdict was not the last of Jacob's troubles. His family was constantly harassed by the Chief's loyalists in Moruleng. The ultimate punishment that Jacob received from the Chief was to have his cattle and agricultural tools taken by force and sold to a neighbouring white farmer³². Having lost the court application, he had nowhere else to go and his fellow 'rebels' had learnt their lesson – never to challenge the Chief again.

²⁸ NA, MHG, Ref. 2243/41.

²⁹ It was common for the Paramount Chiefs in Botswana to sell their private farms to the Bakgatla in Transvaal, especially during the second half of the twentieth century. However, many informants in the Bakgatla area argue that the farms were previously bought by private syndicates and the chiefs registered them as their personal private property only to resell them again to the tribe later in the twentieth century.

³⁰ According to Jacob, there were 5,164 taxpayers of the Bakgatla Tribe registered by the Native Commissioner in Rustenburg in 1950.

³¹ NA: PTD, Vol.0, Ref. 1442/1956

³² This part of the story was narrated to me by one of Jacob's sons who is now a retired teacher residing in Moruleng.

The question of abuse of power by the Bakgatla chiefs is inextricably linked to a distinctive history of group land buying and policy which regulated African land purchase in the colonial Transvaal. It was this history which placed the Bakgatla *dikgosi* at a political and economic advantage as custodians ('trustees') over significant portions of land that were (reportedly) acquired privately by diverse African syndicates in the Bakgatla area during the first half of the twentieth century. It is against the backdrop of this history that modern contestations over land in the Bakgatla area have taken the form of distinctive group land histories that function to assert exclusive group entitlements and disentitlements to the benefits that accrue from mining.

Conclusion

Through the empirical material drawn from detailed research conducted in the Bakgatla traditional authority, this contribution has attempted to demonstrate how the entrenchment of chiefly power over rural land is not exclusively a product of post-apartheid legislation, nor a product of ethnic commodification, nor a revival of previously suppressed ethnic identities, as scholarly debates (highlighted earlier) seem to suggest. Although colonial processes of dispossession and alienation of Africans from landed property had some variations between different regions, the case of the Bakgatla chieftaincy sheds some light on some of the historical processes that produced the powerful position that the Bakgatla chiefs enjoy today over land and mining revenues. To fully understand the roots of mining and land-related conflicts on the platinum belt, it is crucial to uncover some of the local and regional historical processes that shaped the power structure over rural land and resources. These struggles have to be seen beyond the simplistic perceptions of homogenous 'tribes' and 'traditional communities' who share common interests. Understanding the ongoing rural struggles along the platinum belt must begin with appreciation of specific historical contexts and socio-political dynamics that shaped the local structure of power. Only then can we begin to fruitfully analyse some of the evolving, complex political and socio-economic shifts that arise with rural-based platinum mining expansion in South Africa.

Therefore, a shift towards recognition, not only of different layers of rights, but also of the historical character of power and the amounts of power that individuals and other productive units have over land, is essential.

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