

## FIVE

# Chiefs, land and distributive struggles on the platinum belt, South Africa<sup>1</sup>

SONWABILE MNWANA

### Introduction

Recent studies have shown that South Africa's 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 & Capps, 2015; Mnwana, 2016). This is contributing to new struggles on the platinum belt, where mining expands largely on 'communal' land. This chapter argues that while many studies report land-related conflicts across Africa, there have been limited attempts to understand the historical processes that shape the structure of power at a local level, and how these processes connect to distributive struggles.

The resilience of traditional leaders (chiefs) in postcolonial Africa has largely been attributed to chiefs' authority over customary land. There have been intense debates about 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 inequality and land grabbing, while also falling short of government's 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, inequality, competition and intensified conflict over land, fuelled 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 the meanings of property – particularly among 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 leaders 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 in the countryside exist exclusively within, and act as, homogenous groups (or 'communities') and can 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 (also problematically) 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 (Grischow, 2008: 64).

In post-apartheid South Africa, debates about the resurgence and resilience of chiefly power have grown over the past two decades. Among others, dominant arguments include questions of 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 (Krämer, 2016).

Anthropologists John Comaroff and Jean 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 (2009: 21) describe this process as ‘incorporation of identity, the rendering of ethnicised populations into corporations of one kind or another’. The Bakgatla, Bafokeng and other traditional communities who are involved in the mining industry on South Africa’s platinum belt fit into this analysis well. Manson and Mbenga (2012: 109) have argued that struggles in South Africa’s former homeland areas, especially on the rural platinum belt, epitomise a revival of those ethnic identities suppressed under the former Bophuthatswana homeland, thus ‘leading to forms of a better-defined ethnic sense’.

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 of communal land (Mnwana, 2016). But the resilience of traditional leadership remains less understood at the 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 a detailed case study (conducted mainly through archives and oral histories) of the Bakgatla Ba Kgafela traditional authority in North West province to demonstrate some less-reported historical processes that enhanced the power of chiefs over rural land. The analysis shows how such processes connect to contemporary distributive struggles over land and mining revenues.

The arguments in this chapter are divided into two main sections: The first, shorter section maps out the resurgence of chiefly power in post-apartheid South Africa, particularly chiefs’ control (or assumed custodianship) over land and mining revenues. The second details the case of the Bakgatla chieftaincy.

As this manuscript was going to print (in late 2018), the Constitutional Court of South Africa passed a significant judgment in favour of the Lesetlheng land-claiming group in the Bakgatla area. The judgment upheld the Lesetlheng community’s land tenure rights,

overturning an eviction order awarded to Itereleng Bakgatla Mineral Resources (IBMR) and Pilanesberg Platinum Mines (PPM), which would have seen the community removed from their land. This land had been bought by the community in 1919, registered in the name of the native commissioner and held in trust for the leader of the Bakgatla Ba Kgafela. In 2008, IBMR and PPM were granted a mining licence and a surface lease agreement was signed with the Bakgatla Ba Kgafela traditional authority. In October 2018, the Constitutional Court ruled that the land tenure rights of the Lesetlheng community trumped these mining rights. The judgment sets an important precedent, by asserting that communities themselves, and not simply traditional leaders, must have a role in deciding whether mining can proceed. The implications of the judgment for future legislation and land disputes remains to be seen. However, by tracing the historical relationship between the Bakgatla Ba Kgafela, the land, and its resources, this chapter articulates the significance of this judgment and the configurations of power that will continue to shape how land rights are negotiated in the North West.

## 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 leadership (kings and chiefs of various ranks). This has become increasingly evident in the manner in which the major political party leaders have competed for the attention of traditional leaders, and the latter for greater state recognition.

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 revenues, and rural development. This is in the face of democratically elected local government officials and administrators (Mnwana, 2015a).

Chiefly control over land and mineral wealth is often attributed to two processes: The first critical process is the attempt by the ruling African National Congress (ANC) government to define

residents in rural areas, through legislation, as subjects of ‘traditional communities’ (or ‘tribes’) under chiefs. The ANC has, since the early 2000s, introduced and passed laws that not only gave chiefs a secure 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 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 informed by the Inkatha Freedom Party’s historically entrenched dominance over chiefs, as well as local politics in KwaZulu-Natal (Van Kessel & 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 (2014:1):

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.

However, it remains highly contested whether chiefs have the ability to deliver rural votes, or whether the good fortunes of the ruling ANC, and its dominance in the former homeland areas, have a direct connection to the party’s close ties with, and placation of, local chiefs (Beinart, 2014; Buthelezi & Yeni, 2016). What remains clear is that the post-apartheid government has increased the powers of chiefs, legitimising both their control over land and their mediation of relations between mines and communities (Mnwana, 2016).

The Traditional Leadership and Governance Framework Act No. 41 of 2003 (TLGFA) re-enacts traditional (tribal) authorities to preside over precisely the same geographic areas that were defined by the apartheid government (Claassens, 2011: 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. 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 Act No. 11 of 2004, the Traditional Courts Bill [B-2008, B-2012 and B-2017] and the Traditional and Khoi-San Leadership Bill [B-2015].

Rural communities and civil society organisations have strongly resisted these laws, mainly because they give traditional leaders disproportionate and illegitimate powers, and because of the poor consultative and top-down processes with which the state has introduced 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. Nevertheless, 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 Act.<sup>2</sup>

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 & Matlala, 2014: 116).

The second critical process is the post-1994 state attempts to redistribute wealth through the minerals policy reform. In an effort to redress past injustices, the post-apartheid government has introduced some legislative measures in the mining sector, particularly with regard to the historical racial exclusion of Africans from mine-ownership structures and the relationships between mining companies and local communities (Mnwana & Capps, 2015). The Minerals and

Petroleum Resources Development Act No. 28 of 2002 (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 also champion mining-led community development. Such a 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 (Mnwana 2015a). Not only have distributive struggles over mining revenues led to unrelenting chieftaincy (power) 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 some of the 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 (see Mnwana & 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 paucity of tangible benefits epitomises this challenge. Moreover, mining, especially in rural areas,

tends to exacerbate conflict and power struggles (Mnwana, 2015a). Detailed research in several areas/villages/communities has shown that these transformations have not led to economic benefits for the majority of 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 traditional leadership structures (Mnwana, 2015a; Mtero & Hay, 2016).

Although the processes highlighted above are fairly well reported and recent, it is not accurate to suggest that the upsurge of chiefly power over land and mineral resources is purely a post-apartheid phenomenon. The following section describes 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 of at least five Setswana-speaking African groups that share the name ‘Bakgatla’, and can be found in both South Africa and Botswana. Two groups in Botswana (Mochudi) and South Africa (North West) share both the Bakgatla Ba Kgafela (henceforth ‘Bakgatla’) name, and a similar historical origin. (For the sake of space, this chapter will not deal with this aspect of pre-colonial history, which dates back to the 16th century; see Makgala, 2009.)

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. Having noted this, the historical formation of the Bakgatla Ba Kgafela ‘tribe’<sup>3</sup> can be summarised in relation to five critical historical moments, which the rest of this section addresses.

The first significant historical moment in the formation of the current Bakgatla tribe was in the first half of the 19th century (1820s–1850s). This period began after the death of Kgosi (chief) Phetho, early in the second decade of the 19th century. During the first half of the 19th 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 increasingly ruthless land dispossession by colonial invaders (Boers). The tribe, during this period, was already settled in what the Boers would call the Pilanesberg region, north of the present-day town of Rustenburg (Schapera, 1942).

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 thought to have ruled between 1825 and 1850 (Schapera, 1942).

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. The already-weakened Bakgatla were no match to Mzilikazi's powerful Ndebele fugitive armies, 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' to the Ndebele (Schapera, 1942: 8).

The fortunes of Mzilikazi and his Ndebele warriors were soon to diminish with the 1836 arrival of the Voortrekkers (Afrikaners) in the Highveld. 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 Matopo 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, in the late 1830s, of the Voortrekkers in the Highveld, especially in the area north of Rustenburg (Pilanesberg area), 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, all land belonging to Africans was demarcated into white-owned private farms. So ravaging were the exigencies of the colonial conquest that, according to Capps (2010: 159), ‘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’.

By virtue of ‘conquest’, the Afrikaners regarded and asserted themselves as the owners of both the land and labour of African communities on it. The process of colonial dispossession was soon to be followed by new relationships between the 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 tribe after colonial conquest. This era (which was roughly the second half of the 19th century) 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 one of the prominent chiefs in the Western Transvaal, and displayed extraordinary compliance with Boer demands. His allegiance to local white leaders was evidenced in his consistent provision of labour regiments (*mephato*), reinforcing hunting expeditions, assisting the Boers in horrific slave-raiding operations on other African communities and supporting the Boers in battle with other indigenous groups that attempted to resist colonial domination (Morton, 1998: 83; Morton, 2005: 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 researcher Gavin Capps (2010: 150) regards as ‘new forms of accumulation’.

Kgamanyane accumulated significant benefits from his allegiance to the white colonial state officials. His relationship with the Rustenburg field cornet, Paul Kruger, 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, Saulspoort (the present Moruleng village) along the north-eastern foothill of the Pilanesberg mountains (Manson & 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 into his Bakgatla chiefdom (Morton, 1992: 108). This phenomenon was prevalent in some powerful polities in the Transvaal and was also made possible through the ‘politico-military’ support and reinforcement from the Boer authorities in the Rustenburg region (Capps, 2010: 141). During the mid-1820s, several small African groups displaced by the Difaqane Wars settled in the Magaliesberg (Rustenburg) region. Some of these groups 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, 2010: 141–142). These small groups of raiders and asylum seekers later became known as *bafaladi* (alien ethnic immigrants) (Schapera & Comaroff, 1991: 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. As suggested above, Kgosi Pilane and Kgamanyane (his successor) formed an allegiance with Boer leaders, such as Potgieter and later Paul Kruger. 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 colonial rule 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 colonial patron-client relations and the integration of smaller groups, that the Bakgatla 'tribe' could 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 status and ethnic origins joined the Bakgatla chieftdom, some out of choice and others by coercion. The Bakgatla *dikgosi* also gained significant power and status when they became the main 'recognised chiefs' through whom Africans could purchase and register the land in the 'scheduled areas' around Pilanesberg.

The third significant moment was a period of political instability and division of the Bakgatla '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 in 1870 of the 'tribe' into two groups: one in Botswana and the other in South Africa. This separation was a result of an incident in 1869, when Kgosi Kgamanyane's relationship with the powerful 'patron' Paul Kruger took a drastic turn. Facing internal resistance from his followers, Kgamanyane could no longer keep up with Kruger's insatiable demands for forced labour from the Bakgatla people in Saulspoort. 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 & 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 what were to become two different countries, has a significant bearing on the 'tribe's' contemporary battles over political power and communal property.

It should be noted that the white colonial state in South Africa (1910 onwards) and the post-1994 democratic government at different historical moments recognised the superiority of the Bakgatla group in Botswana over the one in South Africa, hence the Bakgatla chiefs in Botswana are referred to as the 'paramount chiefs'. The courts in South Africa have upheld this view, even during moments when the Botswana-based paramountcy was seriously contested by different sections of the Bakgatla group in South Africa.

The fourth period 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 third decades of the 20th 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: 203), marked the 'golden years' of the Bakgatla chieftaincy:

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 Bakgatla's increased capacity to buy land. However, there is evidence that land was not always purchased on a tribal basis in the Bakgatla area, but quite often on a private basis. Recent research on contemporary land disputes in the Bakgatla area points towards a history significantly dominated by private groups of Africans buying land (Mnwana &

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 tribe or 'chief'.

When the whites in the Transvaal Republic established their legal and administrative systems of ownership and registration of land, they debarred Africans from owning land (Bergh & Feinberg, 2004). Despite this prohibition, groups of Africans in the Transvaal managed to purchase land anyway. African 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 for 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 & 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 Pretoria and London Conventions in the retrocession Transvaal.<sup>4</sup> 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 detailed administration process that would culminate in a precarious form of ownership for the purchasers and in another form of dispossession through the custodianship of the chiefs (in whose ‘tribal’ group the land was registered). This tenural regime, although legally ambivalent and administratively laborious, was kept intact and sustained through colonial declarations as well as the two major Natives Land Acts of 1913 and 1936.<sup>5</sup> There is insufficient space here to describe various forms of trusteeship.

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: 13) summarise how this historical process unfolded in the Transvaal during the late colonial and segregation periods:

[Since] 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. As will be seen in the next section, 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 No. 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 policy (Breutz, 1989: 278, 339). During the first half of the 20th century, 27 farms were purchased by Africans in the Bakgatla area, of which four were privately owned (Breutz, 1989: 339). All the farms were generally regarded as 'tribally owned farms' (Breutz, 1989: 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, beneath these farms – unbeknownst to many at the time – spanned some of the world's richest platinum group metals.

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: 72) from South Africa in 1977. It was during the time of 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 Bophuthatswana President.

Due to the global upsurge in platinum demand in the 1980s and 1990s, income from platinum mining, and thus 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 North West province's Department of Finance. Since then, significant amounts of money have mysteriously disappeared from these accounts (*City Press*, 2012). 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 syndicates, most land purchased by independent groups in the Pilanesberg area had to be registered and managed through the 'recognised' chiefs of Bakgatla (Mnwana & Capps, 2015). In fact, archival documents confirm that during the period when the contested farms were acquired, the Department of Native Affairs demanded that at least three essential bureaucratic requirements be met without fail by African land buyers when acquiring landed property.<sup>6</sup> 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 requirement, which was a hindrance to African group buyers, was that it was not just any chief or tribe that could 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 20th century on behalf of the tribe and several other farms for their own private use, were ostensibly held in high esteem by the colonial state in South Africa when it came to land markets.<sup>7</sup> 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 20th century, oral traditions in the selected villages revealed that African land buyers were especially vulnerable to manipulation by chiefs and European land sellers. Moreover, the process of entry into the colonial land market was economically and emotionally challenging for African land buyers; there is evidence that some of the farms may have been overpriced 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.

Very few people were more strategically positioned to benefit from this arrangement than the Bakgatla *dikgosi*. In Pilanesberg, many individual Europeans and speculating companies that 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 chiefdom 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 significant personal wealth in the process.

Another factor, which not only inhibited written records about farm purchases at the level of the land-buyer groups 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 literate) to tell them what to pay and when. It is evident that such a position benefitted the chiefs. It is common knowledge that several Bakgatla chiefs purchased many farms in the Rustenburg region in their own personal names. For instance, Kgosi Isang Pilane (Kgosi Lenchwe's son), who died in 1941 at the age of 56, owned more than 300 cattle, a significant number of small stock (sheep and goats), three large farms in Rustenburg and two lots in the township of Lady Selborne in Pretoria. In Transvaal alone, Isang's landed property was worth £4,522.<sup>8</sup> Isang's estate was divided among his heirs (his wife and children) after his death.<sup>9</sup>

Unsurprisingly, chiefs were not always transparent about their farm purchases, especially with regard to the funds that were raised for purchasing farms. For example, during the rule of Chief Tidimane Pilane, there were a number of instances where complaints would surface, particularly about 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 male adult member of his tribe for the purchase of the farms Middelkuil No. 564 and Cyferkuil No. 372.

These farms were purchased from Chief Molefe Pilane 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, 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 if there were funds that the chief utilised without first securing a tribal resolution to do so (Mnwana, 2014b).<sup>10</sup>

Jacob lost his court application against the chief. However, 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. The court also accepted the argument 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 subjects. 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 farmer. Having lost the court application, he had nowhere else to turn, and his fellow ‘rebels’ had learned their lesson – never to challenge the chief again (Mnwana 2015b).

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 20th 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

group-exclusive entitlements – and disentanglements – 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 the product of ethnic commodification, nor a revival of previously suppressed ethnic identities, as scholarly contributions (highlighted earlier) seem to suggest. Although colonial processes of dispossession and alienation of Africans from landed property had clear variations between different regions, the case of the Bakgatla chieftaincy sheds important light on some of the historical processes that produced the powerful and pre-eminent position that the Bakgatla chiefs enjoy today over land and mining revenues. To fully understand the roots of present-day mining and land-related conflicts on the platinum belt, and indeed elsewhere, it is crucial to uncover the local and regional historical processes that shaped the power structure of specific parcels of rural land and resources. In so doing, it is necessary to move 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 a greater 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, families and other social units have over land, is essential.

## References

- Beinart, W. 2014. 'Verwoerd, Zuma and the chiefs'. *Land and Accountability Research Centre* website: <http://www.customcontested.co.za/verwoerd-zuma-chiefs/>, accessed 21 August 2014.
- Bergh, J. S. 2005. "“We must never forget where we come from”": The Bafokeng and their land in the 19th century Transvaal'. *History in Africa*, 32, 95–115.
- Bergh, J. & Feinberg, H. M. 2004. 'Trusteeship and black land ownership in the Transvaal during the nineteenth and twentieth centuries'. *African Historical Review*, 36 (1), 170–193.
- Boone, C. 2017. 'Legal empowerment of the poor through property rights reform: Tensions and trade-offs of land registration and titling in sub-Saharan Africa'. *WIDER Working Paper 37*. Helsinki: UNU-WIDER.
- Breutz P. L. 1953. *The Tribes of Rustenburg and the Pilanesberg Districts*. Pretoria: Government Printer.
- Breutz, P.L. 1989. *A History of the Batswana and Origin of Bophuthatswana: A handbook of a survey of the tribes of the Batswana, Southern Ndebele, Qwa Qwa and Botswana*. Margate: Thumbprint.
- Buthelezi, M. & Yeni, S. 2016. 'Traditional leadership in democratic South Africa: Pitfalls and prospects'. *Nelson Mandela Foundation* website: [https://www.nelsonmandela.org/uploads/files/Land\\_law\\_and\\_leadership\\_-\\_paper\\_1.pdf](https://www.nelsonmandela.org/uploads/files/Land_law_and_leadership_-_paper_1.pdf), accessed 21 December 2016.
- Capps, G. 2010. 'Tribal-landed property: The political economy of the Bafokeng chieftaincy, South Africa, 1837–1994'. PhD thesis. London: London School of Economics.
- Capps, G. 2012. 'A bourgeois reform with social justice? The contradictions of the Minerals Development Bill and black economic empowerment in the South African platinum mining industry'. *Review of African Political Economy*, 39 (132), 315–333.
- Chimhowu, A. & Woodhouse, P. 2006. 'Customary vs private property rights? Dynamics and trajectories of vernacular land markets in Sub-Saharan Africa'. *Journal of Agrarian Change*, 6 (3), 346–371.
- City Press. 2012. 'Madonsela to probe tribes' lost millions'. Editorial, <http://www.citypress.co./news/madonsela-to-probe-tribes-lost-millions-20120211/>, accessed 22 August 2014.
- Claassens, A. 2011. 'Resurgence of tribal levies: A double taxation for the rural poor'. *South African Crime Quarterly*, 35, 11–16.
- Claassens, A. & Matlala, B. 2014. 'Platinum, poverty and princes in post-apartheid South Africa: New laws, old repertoires'. *New South African Review*, 4, 113–135.

- Comaroff, J. L. & Comaroff, J. 2009. *Ethnicity, Inc. The Zulu Kingdom awaits you*. Chicago: University of Chicago Press.
- Delius, P. & Chaskalson, M. 1997. 'A historical investigation into the underlying rights of land registered as state owned'. Report commissioned by the Tenure Reform Core Group. Pretoria: Department of Land Affairs.
- Grischow, J. D. 2008. 'Rural "community", chiefs and social capital: The case of Southern Ghana'. *Journal of Agrarian Change*, 8 (1), 64–93.
- Krämer, M. 2016. 'Neither despotic nor civil: The legitimacy of chieftaincy in its relationship with the ANC and the state in KwaZulu-Natal (South Africa)'. *The Journal of Modern African Studies*, 54 (1), 117–143.
- Lund, C. 2008. *Local Politics and the Dynamics of Property in Africa*. Cambridge: Cambridge University Press.
- Makgala, C. J. 2009. *History of Bakgatla-baga-Kgafela in Botswana and South Africa*. Pretoria: Crink.
- Mamdani, M. 1996. *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press.
- Manson, A. & Mbenga, B. 2012. 'Bophuthatswana and the North-West province: From pan-Tswanaism to mineral-based ethnic assertiveness'. *South African Historical Journal*, 64 (1), 96–116.
- Mbenga, B. K. 1996. 'The Bakgatla-Baga-Kgafela in the Pilanesberg district of the Western Transvaal from 1899 to 1931'. PhD thesis. Pretoria: University of South Africa.
- Mbenga, B. & Morton, F. 1997. 'The missionary as land broker: Henri Gonin, Saulspoor 269 and the Bakgatla of Rustenburg district, 1862–1922'. *South African Historical Journal*, 36 (1), 145–167.
- Mnwana, S. 2014a. "'Mineral wealth – in the name of morafe?" Community control in South Africa's platinum valley'. *Development Southern Africa*, 31 (6), 826–884.
- Mnwana, S. 2014b. 'Chief's justice? Mining, accountability and the law in the Bakgatla-ba-Kgafela traditional authority area, North West Province'. *South African Crime Quarterly*, 49, 21–29.
- Mnwana, S. 2015a. 'Mining and "community" struggles on the platinum belt: A case of Sefikile village in the North West Province, South Africa'. *The Extractive Industries and Society*, 2 (3), 500–508.
- Mnwana, S. 2015b. 'Democracy, development and chieftaincy along South Africa's "Platinum Highway": Some emerging issues'. *Journal of Contemporary African Studies*, 33 (4), 510–529.
- Mnwana, S. 2016. 'Custom and fractured "community": Mining, property disputes and law on the platinum belt, South Africa'. *Third World Thematics: A TWQ Journal*, 1 (2), 218–234.
- Mnwana, S. & Capps, G. 2015. "'No chief ever bought a piece of land!'"

*Chiefs, land and distributive struggles on the platinum belt, South Africa*

- Struggles over property, community and mining in the Bakgatla-ba-Kgafela traditional authority area, North-West Province'. Working Paper 3. Johannesburg: Society Work and Development Institute, University of the Witwatersrand.
- Morton, F. 1992. 'Slave-raiding and slavery in the Western Transvaal after the Sand River Convention'. *African Economic History*, No. 20, 99–118.
- Morton, F. 1995. 'Land, cattle and ethnicity: Creating Linchwe's BaKgatla, 1875–1920'. *South African Historical Journal*, 33 (1), 131–154.
- Morton, F. 1998. 'Cattleholders, evangelists, and socioeconomic transformation among the baKgatla of Rustenburg District, 1863–1898'. *South African Historical Journal*, 38 (1), 79–98.
- Morton, F. 2005. 'Female inboekelinge in the South African Republic, 1850–1880'. *Slavery & Abolition*, 26 (2), 199–215.
- Ntsebeza, L. 2005. *Democracy Compromised: Chiefs and the politics of the land in South Africa*. Leiden: Brill.
- Peters, P. E. 2004. 'Inequality and social conflict over land in Africa'. *Journal of Agrarian Change*, 4 (3), 269–314.
- Schapera I. 1942. 'A short history of the BaKgatla-bagaKgafêla of the Bechuanaland Protectorate'. *Communications: Issue 3*. Cape Town: School of African Studies, University of Cape Town.
- Schapera, I. & Comaroff, J. L. 1991. *The Tswana* (revised edition). London: International African Institute.
- Van Kessel, I. & Oomen, B. 1997. "'One chief, one vote": The revival of traditional authorities in post-apartheid South Africa'. *African Affairs*, 96 (385), 565–568.
- World Bank. 1989. *Sub-Saharan Africa: From crisis to sustainable growth*. Washington DC: World Bank.

**Document sources from the South African National Archives:**

Deeds Register RAK 3017

NA: PTD, Vol. 0, Ref. 1442/1956

NTS 3541 478/308

NTS 3541 478/308

NTS, 254, 1137/16/F596

NTS, Vol. 3514, Ref. 323/308

NTS, Vol. 3514, Ref. 323/308 Letter from 'The Secretary of Native Affairs', 1 June 1926.

**North West Provincial Archives**

File 191, 6/4/2

## Notes

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- 2 See *Tongoane and Others v Minister for Agriculture and Land Affairs and Others* (CCT 100/09) [2010] ZACC 10 (11 May 2010).
- 3 I use the term 'tribe' with caution, not to suggest that Africans in the Bakgatla area are members of a homogeneous tribal unit. I use it to portray the way African groups were depicted in colonial historiographies.
- 4 The period roughly from 1881 to the late 1890s was marked by colonial treaties (the Pretoria Convention of 1881 and the London Convention of 1884) between the English and the Boer/Afrikaner settler communities that gave effect to gradual (albeit contested) Boer self-rule in the former Transvaal Republic.
- 5 The Natives Land Act No. 27 of 1913 and the Native Trust and Land Act No. 18 of 1936
- 6 See: NTS, Volume: 3541, Reference: 478/308 [PNA]; NTS, Volume: 254, Reference: 1137/16/F. 596, 534/16/E. 596
- 7 For details on the involvement of Bakgatla chiefs in colonial land purchases see among others, Pretoria National Archives NTS, Volume: 35/77, Reference: 754/308; Native Land Commission Proceedings in Pilanesberg, 1906 – NLC, Volume, C27, Reference: 13; NTS, Volume: 6853, Reference: 54/319-56/319 and NTS, Reference: 254/139/55s.
- 8 See: Pretoria National Archives, NA, MHG, Ref. 2243/41
- 9 Ibid.
- 10 See also: Pretoria National Archives, PTD, Vol. 0, Ref. 1442/1956