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Traditional leadership, violation of land rights and resistance from below in Makhasaneni village, KwaZulu-Natal

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Introduction

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

Rural resistance is not new. Govan Mbeki (1964) described peasant uprisings in Pondoland, Zululand, Basutoland and Sekhukhuneland

between 1946 and 1962. These struggles were, in essence, about land and the roles of traditional leaders. Ntsebeza (2005) adds that control over land was the main issue in rural struggles, right up to the dismantling of apartheid in 1994. Even in post-apartheid South Africa, attempts by the government to secure the land rights of people in the former homelands have not been successful. Instead, contradictory laws that give power over land to traditional leaders have been proposed and passed (Claassens, 2008).

Using the case of Makhasaneni, a village in northern KwaZulu-Natal near Melmoth, this chapter explores how people living in 'communal' areas have campaigned to protect their land rights, when opportunities for profit accumulation have led to traditional leaders abusing their power. It demonstrates both the violation of land rights by traditional leaders and the resistance of villagers. I argue that while rural citizens may show little or no interest in the accountability of traditional leaders in advisory or ceremonial roles in their community, when their land rights are threatened they do demand accountability and resist. Through 'everyday forms of resistance' (Scott, 2008) characterised by subtle sabotage, avoidance and passive noncompliance, rural citizens expose the limitations of traditional leaders in land governance and question their role in advancing the interests of citizens. In response to this push-back from citizens, some traditional leaders have used coercion and divisive tactics in an attempt to weaken resistance.

Research for this chapter was conducted between March and December 2015. Over this period, I was working with the Land and Accountability Research Centre (LARC) to investigate land rights violations and resistance in Makhasaneni. I visited the community again between January and July 2016. I conducted semi-structured interviews with members of Makhasaneni Community Committee, the local headmen, officials at the provincial office of the Department of Cooperative Governance and Traditional Affairs (COGTA) and lawyers representing the community. Attempts to meet with the chief were not successful.[1] In addition, I used participant observation, attending workshops and community meetings with the people of Makhasaneni.

In this chapter, I contextualise communal land rights in KwaZulu-Natal (KZN), where land is held by the Ingonyama Trust, and consider the impact of related laws. I pay attention to the two post-apartheid laws that were passed in the Parliament of South Africa to protect the rights of people living in communal land, i.e. the Ingonyama Trust Act No. 3KZ of 1994 and the Interim Protection of Informal Land Rights Act No. 31 of 1996 (IPILRA). I then assess the roles of traditional leaders today and explore how they have positioned themselves in recent large-scale land investments in rural areas, particularly areas where mining takes place. The chapter looks closely at the case of Makhasaneni village, with a focus on the history of the area, livelihood strategies, the arrival of Jindal, how the community resisted and the push-back from the traditional authorities.

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

The factors that enable land rights violations in current-day rural South Africa can be explained by the way land is held and the nature of relationships between ordinary citizens and traditional leaders, especially in light of the discovery of minerals. Unpacking communal land rights, the government's attempts to secure land tenure through land reform and the role of traditional leaders in mining help us locate some of the underlying causes of land rights violations.

Communal land rights in context

The majority of black people who live in communal areas in the former bantustans have insecure land rights (Claassens, 2008). This is despite laws that have been passed by Parliament to ensure security of tenure for people living in communal areas. While there are laws that seek to protect their land rights, the government has also proposed contradictory laws that concentrate power with traditional leaders, rendering the rights of ordinary citizens insecure. Some of the reasons

for the contradictions are located in the history of colonial rule (Weinberg, 2015).

Before recapping what colonial rule entailed with regards to land in rural areas, it is crucial to unpack what communal land rights are. Cousins and Claassens (2004) describe the concept 'communal' with reference to the extent of community control over who can or cannot be allocated land for residential and cropping purposes. The groups of people that make up the particular community are often interested in maintaining identity and coherence and securing their land-based livelihoods (Cousins & Claassens, 2004). While colonial interpretations of communal tenure tried to vest the decision-making powers over land to one individual (the chief), in practice the administration of communal land tends to be more socially inclusive (Weinberg, 2015). Social inclusivity means individuals and families have relative rights to some land, be it agricultural or residential. They negotiate access and control over common resources, such as rivers, mountains and grazing land, which are shared by the larger community beyond the individual or family household (Cousins, 2008).

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

The ways in which communal land tenure arrangements are understood, particularly by the state today, were influenced by a range of colonial and apartheid measures, largely characterised by

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

In KwaZulu-Natal, communal land is held under the Ingonyama Trust, a state institution established during the dying days of apartheid in 1994, under the Ingonyama Trust Act. King Goodwill Zwelithini is the sole trustee of the trust, which is managed by the Ingonyama Trust Board. The mandate of the Trust is to hold land for the benefit and social wellbeing of the communities living on the land (see Ingonyama Trust Board, 2018). The land thus does not belong to the trust or to the king. People living on this land have strong protection under the Ingonyama Trust Act of 1994, which stipulates that 'the Ingonyama shall not encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the prior written consent of the traditional authority or community authority concerned'. This obliges the Trust not to enter into any land agreements, such as leases, that would marginalise people living on that land. In theory, communal land rights are protected. However, it is not always the case in practice, as I will show later in the chapter.

Land reform, policy and the legislative set-up

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

Before exploring the different laws, it is worth rehearsing what the Constitution of South Africa says about land tenure, as it relates to people living in communal areas. Section 25(6) of the Constitution stipulates that 'a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of parliament, either to tenure which is legally secure or to comparable redress'. According to Section 25(9) of the Constitution, 'Parliament must enact the legislation referred to in subsection (6)' (Constitution of the Republic of South Africa, 1996). In the view of researcher Aninka Claassens (2008), the Constitution recognises the existing differences between practices and occupation on the land, including vulnerability due to past discriminatory laws and practices. But has parliament enacted such legislation?

The answer is not a simple yes or no, because of the contradictory nature of laws that have been passed to date. On the one hand, there are laws that aim to protect the rights of people living in communal areas such as the Ingonyama Trust Act (outlined above) and the Interim Protection of Informal Land Rights Act (IPILRA) of 1996. The latter was passed by Parliament to provide protection for people living in communal areas (former bantustans), most of whom were

affected by forced removals and do not have documents to prove their land rights. Informal rights to land include the right to use, live on, or access the land. This implies that IPILRA protects people's rights to their household fields, plots and common natural resources, such as grazing land and rivers. While IPILRA was meant to be a temporary law while Parliament passed another permanent law, this has not been the case and IPILRA is renewed by Parliament every year.

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

Another example is the proposed Communal Land Tenure Policy of September 2014 (CLTP), which would inform the Communal Land Tenure Bill of 2017, and proposes transferring land in the former bantustans to traditional councils. Through this bill the Department of Rural Development and Land Reform (DRDLR) further suggests that traditional councils obtain title deeds for this land, while individuals and families occupying the land would get institutional use rights to parts of the land.

Scholars, land rights activists and civil society organisations have argued that transferring land to traditional leaders would render the rights of those living in communal areas insecure, thus defeating the purpose of tenure reform (Weinberg, 2015). Instead, as Cousins and Claassens (2008) suggest, tenure reform should focus on strengthening existing rights and land administration mechanisms that are derived from social relations under living customary law, which is not static but stems from people's experiences and practices.

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

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

Traditional leaders and mining deals in KwaZulu-Natal

Researcher Lungisile Ntsebeza (2005) raises questions about the role of traditional leaders in a democracy and suggests that this has been the most challenging task of the South African government post-1994. During colonial and apartheid periods, traditional leaders' roles combined land administration with local government functions and, similar to the colonial-apartheid architects, they were authoritarian and undemocratic. For this reason, traditional leaders were not popular among many (Ntsebeza, 2005). Research and analysis show that some traditional leaders still display such characteristics today. Ntsebeza (2005) argues that in present-day South Africa, the legitimacy of traditional authorities is closely associated with their control of the land-allocation process. This is reflected in some of the laws explained above, but also in the narratives of both the former president of South Africa, Jacob Zuma, and the Zulu monarch, King Goodwill Zwelithini.

Speaking at the opening of the House of Traditional Leaders in 2014, then president Zuma encouraged traditional leaders to get the best lawyers and to embark on land claims on behalf of their communities (South African Press Association, 2014). In 2017, the former president told the same House that land was a central issue for traditional leaders (Zuma, 2017). The Zulu king has come out publicly to praise the potential role of mining in the development of rural areas. Addressing rural residents from mining-affected areas in the province in 2015, the he said traditional leaders should drive mining initiatives and that mining companies should train them (Harper, 2015). All of this is said to be done for the benefit of people living in communal areas. However, in reality, some rural people are further marginalised, as the case of Makhasaneni will demonstrate.

The Case of Makhasaneni

I conducted research in Makhasaneni between March and December 2015, with occasional visits in 2016. Through structured interviews, focus groups and observations, I established how the discovery of iron ore in this village led to the violation of people's land rights, displacement of livelihoods and conflict between the villagers and traditional leaders, leading to the mining company withdrawing its operations.

Background

In an interview, the 97-year-old local headman Mr Jaconia Dludla explained that as a young boy during the 1930s, his family and neighbours were forcibly removed from their homes in eMagogogweni near Melmoth by the colonial government to make way for tree plantations. They were dumped in Makhasaneni village. In 1998, when the South African government opened the call for people to lodge land claims under the land restitution programme, many members of Makhasaneni did so. Mr Dludla has been a headman of Makhasaneni under the leadership of Chief Thandazani Zulu of Entembeni Traditional Council for about 15 years. While reflecting on the painful experience of being forcibly removed, he speaks fondly of his current home, Makhasaneni, and promises that he will not be forcibly removed again. Mr Dludla further explains that Makhasaneni is home to approximately 600 households, which combine land-based livelihood strategies, such as crop production, livestock keeping (cattle, goats and chickens), medicinal plants and water harvesting, with remittances, social grants, informal business and wage employment in the nearby sugarcane farms. Most of the residents are descendants of people who, like Mr Dudla, were forcibly removed from the nearby farms around Melmoth. As a traditional leader, farmer and elder, Mr Dludla sees himself as a local historian who knows the area like the back of his hand. He knows where the village boundaries start and end, and which household belongs to

whom in Makhasaneni. When there are disputes over crop fields, or damages caused by unaccompanied cattle or goats, he is the first port of call, and sees it as his duty to try and resolve conflict between families. While the people of Makhasaneni know of their chief, it is Mr Dludla they have a closer relationship with, and they understand his role as it pertains to the day-to-day social relationships in Makhasaneni.

As is the case in most communal areas, land in Makhasaneni is accessed and managed under communal tenure arrangements and the land rights of people are recognised and protected by the Constitution, IPILRA and the Ingonyama Trust Act.

I came to Makhasaneni in March 2015 after hearing about the community struggle to stop a mining company that had started prospecting in the area. I sought to establish how the mining company had obtained access to land in Makhasaneni, why and how people were resisting and what the outcomes of their actions were. In the sub-sections that follow I provide a detailed account of events in this regard.

The arrival of Jindal Africa (Pty) Ltd and the violation of land rights

Jindal arrived in Makhasaneni in November 2011 and began prospecting in people's fields, without consulting the community or the people who depended on the produce grown on the fields, which were destroyed in the process. Explaining what happened, community member Mama Rita Ndlela put it this way: 'I saw cars arriving and people started drilling in my crop field. We were told they were building a mine.' Land rights activist Mr Mbhekiseni Mavuso added: 'They were called geologists. They said there is wealth underneath and we will all be evicted.'

Jindal sought to establish whether the area had sufficiently high levels of iron ore to justify mining. After the prospecting began, a number of cattle and goats died from poisoned water. Ancient family graves were damaged, crop fields were destroyed and water streams became poisonous and ultimately ran dry. In the interview with Mr

Mavuso, who has been one of the key community activists fighting against the establishment of a mine in Makhasaneni, he explained that those families whose fields and family graves were destroyed went to Mr Dludla to report and seek answers.

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

Dludla explained that, as a member of the traditional council, and the local leader of Makhasaneni, he is the interface between the community and the chief, and should be informed of business activities pertaining to his area of jurisdiction. A community meeting was convened and a decision was taken to pause the operations of the mine while seeking clarity from the chief. The headman then convened another community meeting, inviting the chief to come and explain the activities of Jindal on their land. The meeting was held in December 2011, during summer holidays when those family members who worked in places far away from Makhasaneni would also be present.

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

His actions were a clear disregard of IPILRA and the Ingonyama Trust Act, which stipulate that people should give prior written consent for such activities to take place on their land. Starting from the arrival of Jindal up until the community meeting with the chief, one would assume the chief was deliberate in his efforts to bypass the headman and the community in making the decision to give Jindal

permission to access the land. His actions did not serve the interests of the community, but of the mining company and most likely himself. In attesting to this, Claassens (2000) suggests that tensions over land use arise when there are opportunities for investment on the land. Questions arise as to whether or not people want the investment and how the benefits should be distributed within the community. The benefits from this type of investment have often not been paid to communities directly affected, but predominantly to the chief (Claassens, 2000).

The weeks and months that followed the Makhasaneni community's meeting with the chief saw the establishment of the Makhasaneni Community Committee (MCC), the arrival of the chief's brothers, intimidation of activists, intervening of lawyers and, ultimately, the withdrawal of the mining licence application by Jindal.

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

The MCC was established in early 2012 by concerned members of the community after the arrival of Jindal. Initially, the committee was made up of 30 members, with two members from each of the 15 wards that make up Makhasaneni. The idea behind this set-up was for all wards to be equally represented in the committee. By 2015, the number had dropped by half, as some members were expelled, while others voluntarily left when they could no longer serve the interests of the community. When asked in one of the committee meetings why they did not recruit new representatives to replace those expelled, members pointed out that no new members volunteered to join the committee. The secretary of the committee explained that being a member of the committee had become risky at that time, as there were negative rumours about the committee being against the chief. He thought this might explain why people chose to be bystanders, with the hope that they would also benefit should the committee win the fight. The committee would be the first stop in Makhasaneni for anyone who

wanted to discuss any matters pertaining to Jindal. Before elaborating on the experiences of the committee, I will explore the reasons why people in Makhasaneni were opposed to mining in their area.

By resisting mining, what exactly was being protected?

The community members of Makhasaneni were outraged by people coming from elsewhere to impose a mine upon them. The headman explained that they didn't want a mine in Makhasaneni because their goats and cows died from contaminated water due to drilling during prospecting. This is how he expressed his sentiments: 'Firstly, we saw no use in welcoming something that brings us death, and, secondly, people would be moved from here to an unknown place. And they would take people from the graves and bury them elsewhere, and that worried all of us, and this is how we view the mine.' From the headman's explanation, one gathers that, to people of Makhasaneni, mining is a form of destruction that displaces their land-based livelihoods and disturbs deceased family members in their graves. Land in this case belongs both to the living and the deceased and this, the people of Makhasaneni believe, should be respected at all times. Respect for the deceased means not removing them from their graves. For the activists like Mavuso, graves represent hope and strength for the remaining family members, and he sees it as his responsibility to ensure that his father, who was buried in his homestead next to the crop fields, remains there eternally. Mavuso said that in his dying days, his father told him that he depended on Mavuso to ensure that he would not be moved from his grave because of mining.

At the committee meeting I attended in May 2015, one member explained that they visited a village near Mtubatuba, where there was already an established mine, and asked if people were happy with the mine. They said 'no', because the mine had polluted their water and relocated them without compensation. They had also lost their livestock and crop fields, as well as the houses they had built over the years. Instead, the mining company built them smaller houses that were cracking and dangerous to live in. They were promised

jobs, but most of the community members were still unemployed. All these reasons persuaded community members to reject mining in Makhasaneni.

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

Accountability: Meaning and practice

'We are not saying we do not want the chief, we just want him to be accountable to us on matters relating to our land', one member of the MCC said in an interview. But what does accountability mean in Makhasaneni?

When the committee was established, its position opposing Jindal was clear. So, members who changed their position in support of the mine would be expelled unreservedly. Following the community meeting, in which the chief was confronted, the headman reported to the committee that the chief told his traditional council in a meeting that he was bullied and intimidated in Makhasaneni. The headman felt he was no longer welcome in the traditional council and proposed that the people of Makhasaneni should apologise so as to clear the air. The committee agreed as they did not want relations to sour. They wanted the discussions between themselves, Jindal and the chief to be transparent and conducted in good spirit.

In my view, the chief had already demonstrated his abuse of power

when he did not consult the community at the start. To claim that he was intimidated by the community seems to have been a tactic to manipulate the situation, shift the blame to the community and absolve himself of responsibility. The committee, however, remained optimistic and believed a democratic process was still possible.

The headman then scheduled a community meeting with the chief.[2] The chief proposed to come in August 2012 to accept the apology. He came with the mining company staff members, his brothers (the princes or *abantwana* as they are called in Makhasaneni) and members of his traditional council. In his speech to accept the apology, the chief said people should accept the mine, as it was going to bring lots of jobs, especially for women. People applauded. Then one of his delegation proposed that people should vote by a show of hands in favour of or against the mine. In a community that has certain ideas about chiefs, where the line between respect and fear is sometimes blurry, it is problematic, however, to suggest that voting should be done by a show of hands.

Out of the total number of people present, 55 said 'yes' while 15 said 'no'. Reflecting on what transpired on this day, one committee member suggested that, after having been in trouble for confronting the chief about Jindal's unexpected arrival, they were scared to challenge him again. It should also be noted that while the meeting was in Makhasaneni, not all who attended the meeting and voted were from Makhasaneni. There was no space provided for people to ask questions, no information on what exactly Jindal was planning to do, how, for how long and with what outcomes. While IPILRA and the Ingonyama Trust Act do not stipulate the exact procedure for consultation processes and producing written consent, voting by a show of hands from random community members who did not represent the number of households in Makhasaneni was far from the notion of accountability. In the view of one committee member, that entire process was a way to sell out the community.

At this meeting, one of the brothers of the chief announced that he was representing the committee of *abantwana* in Ntembeni, and was going to establish a trust to be in charge of the mine. He also said that the pending land claims on 40 commercial farms around

Melmoth should be withdrawn, and the trust would take over and lodge one consolidated land claim on behalf of everyone. Two people from Makhasaneni should be elected to be part of the trust, he said, and added that the trust would also be in charge of the mine.

Members of Makhasaneni were shocked to learn of this committee of *abantwana* and the plans they already had in mind, not only about the mine but also the pending land claims. No solid decisions were taken at this meeting about the establishment of the trust. However, the seed was planted.

Later, during a focus group meeting with the MCC,[3] I asked who the brothers were, if they had been known to the community, if they lived in Makhasaneni and what their function was. Mama Ngidi responded, saying Chief Zulu and Headman Dludla were the only traditional leaders known to the people of Makhasaneni. With the arrival of Jindal, the community of Makhasaneni came to know of the brothers of the chief. 'We started discussing this issue of the mine with our chief, whom we knew, and suddenly *abantwana* appeared, claiming to be the chief's committee. They want to do whatever they want in our place. When we tell them we are not happy about what Jindal wants to do in Makhasaneni, they tell us the land belongs to them,' Mama Ngidi explained. Another member of the committee, Sithembiso Dubazane, added that 'we have a problem with chieftaincy because they told us as the people of Makhasaneni, we have no right to the land, the land belongs to the Zulu Kingdom.' To claim that the people of Makhasaneni had no right to their land is not only in contravention of the law, but reveals the lack of accountability of some traditional leaders to the citizens whose interests they claim to advance.

Strategies and tactics of resistance

The members of the Makhasaneni community were clear about one thing, and that is that they were not going to allow the traditional leaders to abuse their power and have residents evicted from their homes against their will. While mining is often seen by the state as development, in Makhasaneni it is viewed as destruction as it implies

demolishing homes, polluting water and displacing livelihoods. It was for these reasons that the people resisted.

A brief context

I sat in about eight meetings with the MCC between May and November 2015 in which they discussed various strategies and tactics for protecting their land. These meetings took between two and three hours and never started before the headman arrived. The headman would begin by giving announcements or raising any issues that had emanated from weekly meetings with the chief and other members of the traditional council. The chair of the meeting would then open the floor to all the members for comments and questions. If there had been other meetings or tasks that the members participated in, they would also get a chance to share. At the top of the agenda was always the question of Jindal. The members would debate, agree and disagree on certain points until they found common ground, allocated tasks and responsibilities and then closed. I was fascinated by the diverse nature of the group. There were young and old members, women and men, some came in their smart shirts, while others came barefooted with worn-out jeans. Despite their gender and/or class differences, these people were driven by one common goal: to stop the mine from taking their land away from them. My appreciation for Mavuso was great. He was well spoken, bilingual (he speaks Zulu and English), understood the law and could explain it in the simplest ways to the committee. He understood the weaknesses of the traditional council, as he was previously a member. While the people of Makhasaneni in general, and the committee in particular, appreciated him and spoke highly of his role as a thinker in their struggle, he never took decisions unilaterally.

So what were some of these strategies and tactics?

The day after the meeting in which people voted in favour of the mine by show of hands, Jindal made their way back to Makhasaneni.

Following the meeting the previous afternoon, which had left members of the MCC disheartened, the committee had met and agreed to stop Jindal cars from entering. Two committee members, Mavuso and Dubazane, were up early and waited on the street. Indeed, they stopped the car and pleaded with the people not to resume work until at least there was a memorandum of agreement. Jindal understood that there were already tensions in the area due to lack of consultation. Given that they wanted to work in a politically stable environment, it mattered to them, to a certain extent, to cooperate with the people of Makhasaneni. They agreed and proposed that the committee draft a memorandum, stipulating their terms and conditions. Some of the conditions were: 80 per cent of the employees should come from Makhasaneni, Jindal must show them where they were planning to dig before beginning to do so, R5,000 should be paid for each hole to the relevant family and the community's water should not be used in the process of prospecting.

About a month later, a meeting was then called with the mining representatives. They came in their numbers to 'accept' the agreement. The agreement was signed. The mine then started drilling exploration holes around November 2012. Soon after, disputes between Jindal and the MCC began again, and Jindal was stopped from operating. The cause of the dispute was that the committee had found out that Jindal was paying R2,500 per hole to the chief. Jindal refused to stop operating, saying the chair of the committee had granted permission. Following this, the community called a special meeting, where they decided to expel the chair. The chair of the committee was no longer serving their interest, and the committee suspected that he had received a bribe from Jindal. While the dispute between the MCC and Jindal continued, Jindal workers went on strike as they had not been paid. Meanwhile, people in Makhasaneni discovered that their livestock had died due to drinking contaminated water and that community water had been used – in contravention of the conditions put forward by the committee in the memorandum of understanding. Another meeting was called by Jindal to try and resolve the matter, and the committee told them that they demanded compensation for damages (to graves, water and livestock). Jindal reported the committee to

the chief and opened a case against the MCC. The MCC, in turn, instructed Jindal to stop working until the case was resolved. At this point, the committee had also discovered that Jindal's prospecting licence would soon expire, so the hope was to delay their work until such time.

About two months down the line a community meeting was called by the traditional council to address the charges and the halting of Jindal's work. *Abantwana* were present and told the members of the MCC that they had no right to stop the mine or charge them for any damages.

Jindal then invited Dubazane and Mavuso (of the MCC) to a meeting in Durban, again to seek suitable solutions to the problem.[4] Jindal wanted to be given a chance to complete the prospecting, so that they could continue the process of obtaining a full mining licence. By this time, the committee had decided to revert to their original position to oppose any and all mining on their land. They were no longer interested in the negotiations and no longer felt intimidated by the traditional council. During the meeting in Durban, *abantwana* asked if Dubazane and Mavuso had intimidated the chief in the first community meeting in which the chief had admitted to having given Jindal access to their land. Before they could answer, one of *abantwana* ordered them to go and tell the people of Makhasaneni that they had no right to stop the mining, since they were not educated.

It is interesting that *abantwana* had ostensibly assumed the duties of the chief, who was not part of this meeting. In fact, according to Mavuso, *abantwana* had also overtaken the Jindal negotiations, and their style was intimidating, arrogant and undermining of the people of Makhasaneni.

Abantwana then asked Dubazane and Mavuso to select five people to be part of a steering committee for the Jindal mining project. They refused and said they would first go back to Makhasaneni and consult the committee. Again, the meeting ended on a bad note. According to Mavuso, while this was happening the chief was arrested for other crimes and distanced himself from the mining issue. In the weeks that followed, one of the *abantwana* was appointed by Jindal as the capacity building officer, as was a former

employee of COGTA. According to members of the MCC, this was the beginning of 'a war'.[5]

Push-back from *abantwana*: Intimidation of activists

Abantwana started a campaign against activists using the newspaper *Bayede*[6] to write stories that discredited Mavuso's actions, calling him a spy that was out to dethrone the king (Yeni, 2015). Mavuso saw this as a way to divide the community of Makhasaneni and turn members against him, shifting the focus from the actions of the traditional council onto the activists. Mavuso expressed his regard for the king, stating clearly that his primary objective was to protect the land rights of the Makhasaneni people and that his actions were not aimed at dethroning him. 'Land is everything to us, we are trying to show not only the chief, even the king, that we are the land owners here,' he explained in an interview.

In the space of one month, there were four *Bayede*[7] articles about Mavuso. He was warned that there were rumours that people were out to kill him. The targeting of key activists was a recognisable tactic for clamping down on the rural anti-mining activists, as was the case with the killing of the chairperson of the Amadiba Crisis Committee in Xolobeni in 2016.[8] Discussing the issue of intimidation in July 2015 in an interview with one member of the MCC who asked to remain anonymous, she explained that she received a call from a relative who was a hitman, who claimed to have been bought to kill seven of the MCC members: Mavuso was top of the list. The hitman did not know that his relative was among the seven as the instruction given was 'including the three women' and the names were not provided. The hitman did not proceed with the task. The MCC member added that 'we are not scared of dying, we even sleep with doors unlocked. If they kill us, it will be known that we died for fighting the mine. We do not want the mine.'

In an interview, Mavuso added that 'those who raise questions and attempt to resist face the risk of death. Our traditional leaders claim ownership of our land. What should we do? Should we run away?

Does all the land we live on belong to the chiefs? Do we not have ownership rights to this land? How are we going to fight this form of development?'

The last questions raised by this community member are very well answered in both IPILRA and the Ingonyama Trust Act, which recognise people living on the land as the rightful owners, as the Constitution requires. However, their experience with the arrival of Jindal raised doubts and suggests that land rights are only protected when there are no business opportunities on the land.

It was around February 2015, as articles started to appear in *Bayede*, that I started to work with the community of Makhasaneni. The Land and Accountability Research Centre (LARC) went to Makhasaneni at the request of a few members of the committee, who had previously attended a LARC workshop on land rights. LARC could provide lawyers to look into issues of intimidation and violation of rights, which would help stop Jindal from obtaining a mining licence. The community committee requested that we in LARC link them with journalists who would write about their experiences, as more exposure provided them with a form of security. During this time, their story was published in *Mail & Guardian* (Timse, 2016) and *City Press*. The appointed lawyers wrote to *Bayede* and demanded that they publish an article to apologise to Mavuso for putting his life at risk. Even though *Bayede* never published such an article, they did stop publishing untrue stories about Mavuso.

Abantwana persisted in their attempts to bring the mine to Makhasaneni. The headman shared with LARC that *abantwana* had visited his home in his absence, demanded that his wife accept a letter on his behalf and threatened to assault their daughter, who was also a member of the committee. The wife refused to accept the letter. Mavuso went into hiding for three weeks as the threats to kill him increased. In an interview with Dubazane in July 2015, he explained that he was confronted by one of *abantwana* who told him he was not scared of the people of Makhasaneni and he would do the killing himself. The last attempt by *abantwana* to assume control, and further the mining project, was done through COGTA.

In August 2015, COGTA visited Makhasaneni together with

abantwana and the full membership of the traditional council, except the chief who by then had distanced himself from the matter for quite some time. The purpose of the visit was to redefine boundaries in the area. A few weeks before, the headman was informed about the visit and so convened a community meeting to inform people. I was also informed by the committee members, who requested that I investigate COGTA's intentions. In my interview with the official from COGTA, he explained that their mandate was to create a database of all the village wards and their headmen, and store the boundaries in their GPS. The actual identification of boundaries was the work of the traditional leaders. The members of MCC saw this as yet another attempt by *abantwana* to take their land. In redefining the boundaries, *abantwana* – working through the traditional council – would deliberately push Mr Dludla out and put a different headman in charge of that particular piece of land that they were targeting for mining.

On 20 August 2015, the day that COGTA arrived, community members gathered on the hill called Kwesezulu. They expected the meeting to take place on that hill, but when COGTA and the members of traditional council, including *abantwana,* arrived, they gathered at a different spot. A few members of the traditional council drove up the hill and requested that the headman come down with them as COGTA and *abantwana* were ready to start with the meeting. The crowd shouted 'no', saying COGTA and *abantwana* must come up if they wanted to meet the headman. One community member said that they were not going to allow their headman to be separated from them. The members of the traditional council accepted that the headman was not going to come and left. Mr Dludla remained the headman of Makhasaneni.

Conclusion

The case of Makhasaneni demonstrates the problems that are created by the ongoing lack of clarity about the roles of traditional leaders broadly, and traditional leaders' control of land in particular. By

resisting mining on their land, the people of Makhasaneni challenged unaccountable traditional leaders and the dominant profit-driven development model that is advanced and supported by the state. It is neoliberal in nature and characterised by land dispossession, the displacement of land-based livelihoods and the inability to absorb the labour of those dispossessed. The MCC have nicknamed this mode of development 'tsunami', because as soon as it arrives they have to flee. It approaches in a wave of destruction. They go to sleep peacefully and wake up to mining construction on their fields and grazing land. Mavuso said they were aware that certain government officials, mining companies and chiefs collude together without care for the physical, social and environmental wellbeing of the people. This raises serious questions about how we think about land reform and rural development going forward.

In June 2016, the community of Makhasaneni discovered that Jindal had withdrawn its application for a mining licence. In a letter to their stakeholders, they gave the global decline in the price of iron ore as the reason for their withdrawal. The villagers, however, believe it was due to their sustained efforts to drive the mining company off their land. While this was a victory for the people of Makhasaneni, the struggle for recognition of land rights continues. Until the parliament of South Africa enacts a law to give them security of tenure on communal land, people living in the former homelands remain vulnerable. Until their rights to the land they occupy are recognised, they will remain under threat.

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Endnotes

1 I did speak with him briefly on the phone, during which he said he preferred not to be interviewed.

2 Interview with Mbhekiseni Mavuso

3 Focus group meeting in Makhasaneni primary school hall, 30 April 2015

4 Interview with Mavuso, in Cape Town 2017. I met with him as I was writing this chapter and needed him to remind me of some of the events that had taken place, which I did not have in my field notes.

5 The term 'war' here was used figuratively to express that the conflict had got tougher, but it was not implying a war in the sense of delegating the army.

6 *Bayede* describes itself on its website (www.bayedenews.com) as a 'weekly isiNguni publication targeting a niche market, interested in a critical approach to policy formulation and implementation, politics, cultural heritage, current affairs, and rural and economic development'.

It targets people living in rural KwaZulu-Natal, but it is also available in the big cities of South Africa.

7 *Bayede* newspaper between February and April 2015 focused extensively on publishing stories pertaining to mining and traditional leaders in KwaZulu-Natal. This included stories about Makhasaneni and Mavuso.

8 The Amadiba Crisis Committee (ACC) was formed in 2007 by villagers of Xolobeni in Pondoland to fight the mining of titanium in their area.