

LAND CONFERENCE 2022 DAY ONE

17-19 AUGUST
THE FAILED PROMISE OF TENURE SECURITY
CUSTOMARY LAND RIGHTS AND DISPOSSESSION

Rapporteurs 'master document'
(mistress document)

LAND CONFERENCE

2022 SUMMARY

17-19 AUGUST

THE FAILED PROMISE OF TENURE SECURITY
CUSTOMARY LAND RIGHTS AND DISPOSSESSION

Welcome & introduction - Nolundi Luwaya

The conference convenes activists, academics and allies to draw attention back to the urgent need to secure the tenure, land and resource rights of vulnerable communities — as a precondition for development, and not as a trade-off for it. Question why a democratic government, its draft Communal Land Tenure Bill - again seems to be siding with vested interests particularly elite and corporate interests, against those of rural communities who hold informal and customary rights to land - and to other natural resources. Irony that government and traditional leaders are aiming, in the name of custom, to transform customary rights into a western form of property. The conference brings us together to support exchange of knowledge and experience in a space of solidarity among activists, leaders, lawyers, researchers and others allies. We aim to contribute to strategies and practices of community mobilisation, policy initiatives and litigation approaches to resist and defend tenure security in the former homelands, but also elsewhere on Trust land and on land reform land more generally.

Remembrance ceremony - Nokwanda Sihali

In the remembrance ceremony we paid tribute and commemorated land defenders who have passed away, including some who have been assassinated. These were visionaries who championed the struggle for land - especially powerful women also leading these struggles for land. Many have lost their lives at the frontline of resistance, in South Africa.

Grace Maledu

I grew up eating food from the soil, drinking fresh milk from the cow. When our land was being taken, I refused to be moved. They wanted to mine our land and even started mining through open cast mining. Can we teach our children to work the land? Women can you fight for our children and their land that they will have to grow from. Let's plant and live off the land. They can give you money, cars and all the resources but without the land we where will we stay. My father taught me that land is life. I am farming even now and I am waiting to harvest. Where are you young people?

“To the women of our country, forward we go, forward we go!”

Sindiso Mnisi-Weeks spoke about how customary law can be supported and developed as living customary law, without being sidelined, defined as parallel to common and statutory law, or codified and therefore fixed into one version. She set out 3 options:

- First, **to combine customary and common law**, and thereby codify the content of customary law. That is not a preferable route, because by codifying customary law, you turn it into official static customary law, and kill 'living' customary law, because it is a

system that is flexible and living. You fix it and limit its ability to evolve and be flexible. “Customary law ceases to exist” isn’t realistic because living customary law’s existence defies any attempts to abolish it. [You can’t abolish customary law!]

- Second, **to treat customary law and common law as two parallel**, separate systems, and to apply them separately. When we do this, it does allow the living customary law to evolve and be flexible, but this means that you do not infuse common law with customary law principles. This is when you can get common law decisions that make customary rights inapplicable. So this is also not a preferable route. Customary law develops as a separate law; that is always going to be the case. The legislature and courts do have a choice as to whether to incorporate customary law.
- Third, **amalgamation of customary law and the common law** would mean that customary law principles and rules infuse the common law. This is what we see, in any event. There is a limitation, as it means that some aspects of customary law will be codified, but within the transformative vision, this is acceptable. Customary law is united with common law - this would be amalgamation rather than harmonisation. This is possible.

Sonwabile Mnwana

Collusion between mining capital, chiefs and the state. If one observes life in the platinum belt, it is an existence of precarity. Colonial officials perceived land rights to be communal in nature - and because natives were seen as being at a lower evolutionary level, and private property a mark of civilization. This was a process of disempowering Africans through indirect rule. We need to shift from defining communities - to understanding where the principle of community lies. The fact that rural residents are consistently defined as homogenous tribal groups whose interests are controlled by chiefs is problematic. Physical characterisation of land should be avoided.

1A Dispossession and mining the sacred

Dineo Skosana

NO LAST PLACE TO REST: MINING AND DISPOSSESSION IN THE POST-APARTHEID SOUTH AFRICA. We do not have a concept that a person is being laid at their last place to rest. 2 key areas: white agri farmland and dispossession on tribal land. Presentation will speak specifically to KZN. Coal mining takes place in different provinces across South Africa. Limpopo: particularly in Waterberg. Also in Mpumalanga province and in parts of KZN. Case study specifically looks at Somkhele (near Richard’s Bay). Standard contracts: offer small cash payments, as if it is a choice, as if it bears any relation to the loss. Main point is that “DISPOSSESSION CONTINUES TO TAKE PLACE TODAY: DISPOSSESSION IS NOT A COLONIAL OR APARTHEID PHENOMENON.” Loss of land - a place to live, resources for livelihoods. But dispossession doesn’t end with death. Loss of graves. And intangible loss is that which we do not see. Which are peoples connections to the land. When I spoke to baba Magubane and others, this is what they said:

We were not asked whether we want the mine or not, we were told that it is coming. *Baba Magubane;*

They provided prison like blankets not the ones we had placed on the remains.
Zwane;

“...we were told that we can go and stand at the gate of our cemetery and speak to our ancestors...” Mbuyazi

For the mining company, indomba or a kraal are replaceable. They do not know that siyaphahla (we give thanks) for these things to our ancestors. We consider these irreplaceable.

Mbuso Nkosi

Mbuso encouraged archaeology and historical study to understand the political and social context of unmarked graves, citing case studies. Sol Plaatjie’s story about how, just after the 1913 Natives Land Act, the Gobadi family of sharecroppers were evicted from their land, carried their children and possessions through the night, and how a sick baby died on the road - and there was nowhere to bury it. White farmers using prison labour led to the potato boycott in 1959. Land dispossession leads to the criminalisation of people, and how criminalisation and Even in black people’s death they could not find peace. Dispossession today is also a spiritual question. To use different eyes to free ourselves, the past and our land. What kind of freedom do the dead demand? The fact that in the past prisoners were buried like dogs and this is what they feared the most is quite telling.

Simon Gush

Three short films were presented, about land claims in Salem in the Eastern Cape, outside Makhanda, which showed how land dispossession happened but also how land restitution asks people to live and hold land together - often in ways that are inconsistent with how people actually live, and social relations now. The films also highlighted the fact that it costs a lot to transfer or lease a farm but it is difficult for small scale farmers to make profit.

Mbongiseni Buthelezi: “DISPOSSESSION IS NOT ONLY HISTORICAL, IT IS PRESENT, IT IS HAPPENING NOW”.

PANEL 1B DISPOSSESSION DISGUISED AS REGULATION

This panel will focus on how the operation of seemingly neutral laws have the effect of dispossessing people living under forms of customary tenure and in el will explore the seemingly neutral laws and processes of laws in South Africa as well as how it affects people living in communal areas.

Kholosa Ntombini

On the Trust Property Control Act, one of the important cases of partnership between rural communities and a mining company is the Richtersveld case which found that customary rights to land are actually ownership. Kholosa Ntombini’s work show that the history of trusts is

complex - and historically they were used in dispossession. Problematic notion that African property rights must be supervised. Has the nature of trusts changed? No it has not; even though now people can control their own trusts, arrangements are so complex, there is so much dysfunction among trusts and the inability of the Master to intervene means that powerful partners like Alexkor can overpower community trusts. Where there are problems are so far-reaching the 'exclusion is by design'.

Philile Mbatha:

Philile Mbatha gave the example of how environmental regulations, and the creation of the iSimangaliso wetland park at Kosi Bay, has actually dispossessed people of rights - even if they remain on the land, the range of their uses of the land, the forest, the sea, are constrained, which amounts to dispossession even without expulsion. While theoretically there need not be a conflict between protecting the environment and defending land rights, regulation has done precisely this.

Colin Louw, David Mayson:

In one of the first successful land claims, the Khomani San got 8 farms back from the government, and owns this as a Communal Property Association (CPA), under a democratically elected committee. Now a more recent law, the Traditional and KhoiSan Leadership Act (TKLA) indicates that traditional leaders that are recognised will hold and administer land. So there's a tension between the CPA and the leader which is now conceived in the TKLA as taking over. Effectively, "we are now under two acts". The CPA Act doesn't make provision for any traditional leader. The land was given to the community - not to a traditional leader. But now, if the government scraps the CPA Act, then we will have a problem because there are 8 bloodline leaders. In short: the TKLA is superimposed in a context where people already hold land as CPAs.

Sithe Gumbi and Janet Bellamy

This presentation focussed on examples of communities who have been adversely impacted by traditional leaders. It outlined the history of the amaThuli community – and how they continually are unable to access security of tenure in land that was historically belonging to them. This is due to the complete failure of land administration and the failure of Cogta to hold the traditional leadership structure to account. The crux of the matter is that although it is clear that the dispossession can be tracked - through proclamations and statutory vesting - the communities' tenure rights in the land remains insecure.

Aninka Claassens

The Richtersveld case said customary land rights are property rights - they *are* ownership - held by a community. The Maledu (maGrace) judgment upholds customary rights - against the assertion that mining takes precedence over land rights, even over the Constitution. The Ingonyama Trust judgment talks about individuals and families within communities - and who has decision-making authority. The ITB judgment proves that there are pre-existing property rights on land, customary rights. If you are not in a position to exercise decision-making authority, then your property rights are not being respected. Taking the decision-making powers of owners and giving these powers to an institution is a dispossession of property. Consent to

stop deprivation is the most basic of property rights. Yet the CLTB debate has been presented as being about the status of chiefs and amakhosi - rather than being actually about the nature of property and the ability of people to protect their property from arbitrary deprivation. It is ironic that those who claim to be defending custom are actually promoting titling and privatisation of land in the name of custom - so they are trying to use the constructs of western property law to usurp and dispossess customary land rights. The Ingonyama Trust judgment is a refreshing judgment, saying "custom cannot be a blanket to obscure ongoing processes of dispossession". The arbitrary deprivation of property is a violation of the Trust Act, IPILRA and the Constitution.

Tembeka Ngcukaitobi

The Draft bill in its current form will be unconstitutional. We must look at the theory underpinning section 25(6) of the constitution. The first is that it is an equalising right. The second is that it is located in s25(5) – which is intended to transform property relations. The Bill believes that the land in communal areas is actually state land, and that it can be controlled through traditional institutions. Historically, the state has entrusted chiefs to 'control' land. The true political power is inseparable to control over land. Instead of transforming existing colonial relations, the risk is that this bill will entrench them. It is a regressive law. The Bill further uses a vague notion of 'community'. This renders the individual and the family invisible. Decisions could be made by a large group on behalf of individuals - this is a colonial construct toward native land. It never regarded it as being capable of having individual control. The power relations have calcified over time - in favour of men and traditional leaders. The third problem is the actual day - to - day operation of the Bill. The community may make a choice on how to administer the land - either through a traditional council, CPA or other entity as approved by the minister. There is thus ongoing control of traditional institutions. The Bill is neither equalising nor transformational. The ITB judgment gives effect to living customary law - it is modern. We must be explicit in rejecting the Bill. Community views must be reflected in it. We must also build robust institutions that support community structures. Resources should be made available to strengthen community associations. IPILRA sets out basic protections, and its starting point is the individual - IPILRA needs to be built up/made permanent.

Tembeka's 5 steps:

Step 1: The Bill needs to be scrapped and re-written. Communities don't want a Bill drafted for them by the government. They want a Bill in which their views are reflected.

Step 2: A new Bill that is not going to be drafted from the top-down but will be drafted from the bottom-up. The law's duty is to reflect what the people say - not what the politicians say.

Step 3 is building robust institutions of customary law, that support community structures.

Step 4: We do have an alternative piece of legislation. It's called IPILRA. It was done on an interim basis. But it sets out very basic provisions. Its starting point is the individual. Building IPILRA up, making amendments to it and making it permanent. But it is not up to us, the elites, to decide.

Step 5 is winning our case at the Supreme Court of Appeal.

Own summary

Rejection of the idea that there is an opposition between people demanding their land rights and custom. People demanding land rights *is* custom.

Some do's:

- Please write as much as possible, even if it is VERY MESSY and not 100% accurate.
- Please type in 'real time' as people are speaking. Even if you type slowly, please type rather than taking handwritten notes and typing up later.
- Please include direct quotes using inverted commas "like this" whenever possible if someone says something quotable (doesn't matter if in another language, your own translation is fine).

Some don'ts....

- Don't worry about spelling and grammar. It really doesn't matter!
- Don't delete any chunks of anyone's text - yours or anyone else's!

Task:

Write notes, as detailed as possible.

When you can, cluster them under these theme headings.

You can also leave a general chunk of text that doesn't fit into these categories.

Themes:

1. Points of **Agreement**: What resonates with our own experience?
2. Points of **Disagreement**: What do we disagree with or need clarity on?
3. Insights and **New ideas**: What are our new insights and lessons?
4. Are there **Action points**: What does this mean for our movement / our call for action?

Rapporteurs:

- Joburg: **Tshepo**, Mbuso, Jeanette, David, Ektaa
- Durban: **Saadiyah**, Aaron, Kiren
- EL: **Sipesihle**, Goodness, Ona, Bonani
- Online: Shane, Ashley, **Ruth**, Wilmien

(bold = person responsible, eg. for sharing out sessions & ensuring notes are done)

Tweets:

“We pay tribute and commemorate land defenders who have passed away. They were visionaries in their communities... who championed the struggle for land, with powerful women also leading these struggles for land. Many have lost their lives at the frontline of resistance” Nokwanda Sihlali

Land struggles are connected to labour struggles - especially here in South Africa. We therefore also acknowledge yesterday as the 10th anniversary of the massacre of striking workers at Marikana on the 16th of August 2012 - a massacre that took place on communal land, in a struggle for decent wages by those working to extract mineral wealth.

DAY 1 : Wednesday 17 August 2022

Describing the problem

Welcome & introduction

The conference convenes activists, academics and allies to draw attention back to the urgent need to secure the tenure, land and resource rights of vulnerable communities — as a precondition for development, and not as a trade-off for it. Question why a democratic government, in the draft Communal Land Tenure Bill - again seems to be siding with vested interests particularly elite and corporate interests, against those of rural communities who hold informal and customary rights to land - and to other natural resources. Irony that government and traditional leaders are aiming, in the name of custom, to transform customary rights into a western form of property. The conference brings us together to support exchange of knowledge and experience in a space of solidarity among activists, leaders, lawyers, researchers and others allies. We aim to contribute to strategies and practices of community mobilisation, policy initiatives and litigation approaches to resist and defend tenure security in the former homelands, but also elsewhere on Trust land and on land reform land more generally.

Summary

In the remembrance ceremony we paid tribute and commemorated land defenders who have passed away, including some who have been assassinated. These were visionaries who championed the struggle for land - especially powerful women also leading these struggles for land. Many have lost their lives at the frontline of resistance, in South Africa.

Nolundi's welcome

Purpose of conference: around having conversations to scale up on rights and what can offer legislative protection. To protect the vulnerable people who live in communal land. Further understandings:

Understanding problem

Analysing the problem

Answering the issues.

Conversation needs to be holistic in nature.

Discuss the threats to tenure security

Nolundi's acknowledgements of funders and organizations. [Nolundi's speech will be included]

Nokwanda's remembrance section of those colleagues who have passed on. Rev Mavuso lead the group into song. "Seylani qinisela" [translation please]

Swazi, please extract tweets...

In this remembrance ceremony we pay tribute and commemorate land defenders who passed away in the last several years. They were visionaries in their communities and across the rural landscape. Visionaries who championed the struggle for land, with powerful women also leading these struggles for land. Many have lost their lives at the frontline of resistance, in South Africa but also elsewhere. According to last year's Global Witness Report, 2020 was the deadliest year recorded for the murders of grassroots land and environmental activists: globally, 227 of these activists were killed. The majority of those killed were land activists who opposed the economic interests of corporations and individuals in mining and other extractive industries.

Violence does not end with mining and other corporations taking over community land. Those displaced from their land are recruited as cheap labour. Land struggles are connected to labour struggles - especially here in South Africa. We therefore also acknowledge yesterday as the 10th anniversary of the massacre of striking workers at Marikana on the 16th of August 2012 - a massacre that took place on communal land, in a struggle for decent wages by those working to extract mineral wealth.

We recognise that violence is a tool used and misused by those who have power in its different forms. Power to silence those who defy and weaken those who resist. Having suffered enough under Apartheid, we cannot replicate the same pain and devastation as was caused before - yet this is what is happening. We see ongoing assassinations of land rights defenders even now, under a democratic government - in communal but also urban areas, as the dispossessed struggle to find a place in the city. We do not see those responsible being prosecuted and convicted. We plead with those in power to protect rural citizens in the former homelands and take learnings and lessons from this

conference forward for wider societal change, reimagining the rural landscape, and confirming the land rights of all.

We therefore remember and honour those land rights defenders who have passed away, across the provinces in our sector:

KwaZulu Natal

Bhekinhlanhla Mabaso
 Thandi Ngidi
 Ezrom Shandu
 Sizani Ngubane
 Mnimandla Ntombela
 Bongani Zikhali
 D Ntuli
 Fikile Ntshangase
 Ayanda Ngila assassinated
 Nokuthula Mabaso assassinated
 uMkhulu Zabalaza Mshengu
 S'fiso Ngcobo assassinated
 Gcino Shabalala
 Michael Shabalala
 Mzimkayise Mavundla
 Sukethini Beauty uMashezi

Eastern Cape

Glady Mpepo
 Makana Elsie Peta
 Sikhosphi Bazooka Rhadebe (assassinated)
 Nontobeko Moletsane

North West

Dawid Phetoe
 Reverend Cy-prian Ramosime
 Maria Mapula Molete
 Mr Setou
 Ronnie Monye
 Koos Mohotsi

Limpopo

Vasco Mabunda
 William Mokgetle

Terror Masha

Mpumalanga

Mbhonas Stantely Mashego

Ephraim Mohlolo Mo-le-te-le

Kenneth Mnisi

Wilfred Chiloane

Abios Modipane

Millon Tonga

Lesegamang Moeng

Motshogeng Efiyas Mokgope

Ishmael Sekatane

Fitas Mosoma

We say:

Nilaleni ngokuthula maQHAwe!

Robalang ka kgotso bagale ba rena

Plenary 1 (Ruth)

Grace Maledu: the first applicant in the Maledu judgment. She comes from the Lesethleng community. She is joining from Johannesburg.

I grew up eating food from the soil, drinking fresh milk from the cow. When our land was being taken, I refused to be moved. They wanted to mine our land and even started mining through open cast mining. Can we teach our children to work the land? Women can you fight for our children and their land that they will have to grow from. Let's plant and live off the land. They can give you money, cars and all the resources but without the land where will we stay.

"To the women of our country, forward we go, forward we go!"

I have not sowed the land as we speak because I came here to speak to the people. To encourage people to work the land, plant and not just build rooms for people to hire and stay there. Making money is not the only way of living, working the land is most important because we can live and raise our children from the land.

I am from a family of 13, and I grew up with strong belief in the land. We saw our land being threatened and I stood up to ensure that we do not allow mines to take our land. There was open cast mining and that jeopardized our land. I have even been arrested because of that.

I am not educated but I know that my land is everything. Even if I am given R10 million, where will I put everything without any land. I must farm to survive; today when you go to markets example Northam the cattle prices are fluctuating so if I take money where will my cattle graze. I am appealing to DALRRD Minister to assist us with our land and even come to meet us.

What am I going to benefit, after they have removed the minerals from our country?
 We are born and are going to die being black. Let's not hesitate to come forward and battle for our future, for our children. We must know that..... [interpret?]

We don't have land for grazing our cattle without our land? How are we going to be people without our land. Even water is on the land, everything is on the land. I am here to say to the women of SA, forward we go, forward. The government, the parliament of SA need to know, we need the land.... So that we can have everything so that we can irrigate at any time, when we have water. I am a single parent with 5 children, and have survived to send them to school because of farming, because of the land. I am still saying: the land. Message to women and young girls to fight for their land

From left to right, forward we go. Amandla!

2nd Speaker : Sindiso Mnisi Weeks, Associate Professor, Law and Society, University of Massachusetts Boston - her input is virtual.

The Constitutional Court has been on a positive trajectory with regards to land law.
 Ramuhovhi Was a case that the paper starts out describing
 The court had refused to rule on polygamous marriages.
 Polygynous marriages?
 We will have to write notes after I think.
 The court drew a distinction between house and family property
 Bhe judgment: was criticized because it didn't take into account customary beliefs in the rights across generations, and the fact that women don't only feature as wives and children - but are other relatives.

Ramuhovhi case took account of the relationships

Recognised the 'nested rights' that exist within living customary law.

Customary and common law are more compatible!
 Similar in nature: living customary law become common law.
 Customary law and common law are both entwined in African law.
 It is somewhat artificial to think of customary and common law as separate.
 I acknowledge that there are challenges...
 Technical challenges: ZK Matthews breakdown

Sindiso Mnisi-Weeks spoke about how customary law can be supported and developed as living customary law, without being sidelined, defined as parallel to common and statutory law, or codified and therefore fixed into one version. She set out 3 options:

- First, to combine customary and common law, and thereby codify the content of customary law. That is not a preferable route, because by codifying customary law, you turn it into official static customary law, and kill 'living' customary law, because it is a system that is flexible and living. You fix it and limit its ability to evolve and be flexible. "Customary law ceases to exist" isn't realistic because living customary law's existence defies any attempts to abolish it. [You can't abolish customary law!]
- Second, to treat customary law and common law as two parallel, separate systems, and to apply them separately. When we do this, it does allow the living customary law to evolve and be flexible, but this means that you do not infuse common law with customary law principles. This is when you can get common law decisions that make customary rights inapplicable. So this is also not a preferable route. Customary law develops as a separate law; that is always going to be the case. The legislature and courts do have a choice as to whether to incorporate customary law.
- Third, amalgamation of customary law and the common law would mean that customary law principles and rules infuse the common law. This is what we see, in any event. There is a limitation, as it means that some aspects of customary law will be codified, but within the transformative vision, this is acceptable. Customary law is united with common law - this would be amalgamation rather than harmonisation. This is possible.
- **Option 1: "customary law ceases to exist"** isn't realistic because living customary law's existence defies any attempts to abolish it. [You can't abolish customary law!]
- **Option 2: Customary law develops as a separate law;** that is always going to be the case. The legislature and courts do have a choice as to whether to incorporate customary law.
- **Option 3: Customary law is united with common law** - this would be amalgamation rather than harmonisation. This is possible.

Constitutional Court acknowledges customary law as equal to other law. This language suggests that there are not 2 parallel systems of law. What are the adaptive challenges of amalgamation?

Precedents like Barkhuizen from 2007 provide an analogue.

In customary law, process - consultation and consent - is more important than content.

This is what IPILRA tried to capture.

This is defended in Maledu.

Fluid, flexible, malleable, negotiated.

This may be most central to the feasibility of amalgamation.

This can form the basis for amalgamation.

Dikgang Moseneke affirms that

Amalgamation of customary and common law would be transformative - this should be our goal.

Can someone explain what amalgamation of customary and common law means?

Integrate customary law values into their own practice - Ubuntu - when applied to the role of courts and judges amounts to rights as relationships, and courts as mediators that foster these relationships.

Applying these principles to all courts in society is the way forward for amalgamation.

Wilmien's summary

Customary law as a source of law within the SA legal system, where we have statute law and common law.

How do deal with customary law next to the common law.

In court decisions, where customary law is not considered when decisions on the common law are made, there are decisions that do not recognise customary law relationships and rights.

How can we incorporate customary law as a source of law into the SA legal landscape?

Three different possibilities:

- First, to combine customary and common law, and thereby codify the content of customary law. That is not a preferable route, because by codifying customary law, you turn it into official static customary law, and kill 'living' customary law, because it is a system that is flexible and living. You fix it and limit its ability to evolve and be flexible.
- Second, to treat customary law and common law as two parallel, separate systems, and to apply them separately. When we do this, it does allow the living customary law to evolve and be flexible, but this means that you do not infuse common law with customary law principles. This is when you can get common law decisions that make customary rights inapplicable. So this is also not a preferable route.
- Third, amalgamation of customary law and the common law would mean that customary law principles and rules infuse the common law. This is what we see, in any event. There is a limitation, as it means that some aspects of customary law will be codified, but within the transformative vision, this is acceptable.

How to realise this amalgamation of customary law and common law? It requires a radically transformed judiciary: courts that understand customary law and its values, and draw from plural normative traditions. It's not unusual in our context. There is common law jurisprudence that draws on contextual interpretations of common law. In the same way, customary law should 'infuse' the common law.

But how can this be achieved? It requires a different role for courts - not only to be adjudicators, but also co-strategists. This is what we have already seen in the Shilubana and Mayelane cases.

Sonwabile Mwana, *Professor of Sociology, Rhodes University*

I am thrilled to see Mma Maledu since we last met and her millitance has not changed.

Disempowered - dispossession and conflict on the platinum belt

Work been doing for several years. In this conference - the promise of tenure is one of the key issues that epitomize the core of SA democracy.

Freedom charter - all right to occupy land where choose

Stronger assertion than other famous sentence - land shared amongst those who work it

What constitutes land?

This limits the meaning of land to a productive asset that is 'property'.

In SA, land conflict has long been a major cause and outcome of unparalleled dispossession and inequality. Especially black people were left with no land where they could lay their feet. For more than 2 decades I have explored the significant impact of mining on people in the former homeland areas, and observed the struggles that mining has produced. Intense struggles over mineral-rich land in Limpopo and NW:

- Dispossession
- Conflict

Outcome of unparalleled dispossession and racial inequality

Sonwabile Mnwana

Collusion between mining capital, chiefs and the state. If one observes life in the platinum belt, it is an existence of precarity. Colonial officials perceived land rights to be communal in nature - and because natives were seen as being at a lower evolutionary level, and private property a mark of civilization. This was a process of disempowering Africans through indirect rule. We need to shift from defining communities - to understanding where the principle of community lies. The fact that rural residents are consistently defined as homogenous tribal groups whose interests are controlled by chiefs is problematic.

Two decades - examined social shift mining rural SA - significant impact mining communal land in former homelands - observed struggles that mining produced.

Struggles over mineral rich land

- 1) Dispossession This happens because of collusion between mining capital, chiefs and the state. If one observes life in the platinum belt, it is an existence of precarity - people do not know when they will be forced off their land. Non-recognition of prior rights in land, including the history of group land buying which was quite dominant in parts of the 19th and 20th century. When we talk about conflict on the platinum belt, there has been a lot of violent protest over mining, and Mma Maledu has talked about how they have resisted being dispossessed by the mines - and women and men resisting, and even the mines destroying their homes. And the chiefs have been colluding with the mines. I will not go through the history, the Land Act and how the apartheid state colluded with tribal authorities.
- 2) Conflict

Mining added another layer dispossession - vast tracts land fenced off (land used arable)
collusion - mining, chiefs and state

Limpopo and NW - new forms of? Formed

Life of precarity - rural residents don't know when land will be targeted by mining
Non-recognition of preexisting ownership of land (including group land buying)

Violent protest against mining - fought in courts, resisting being dispossessed
NW and Limpopo - people resisting
Chiefs been colluding with the mines

Focus will be on two issues ; one - the concept of power and the concept of community
Configuration of power at local level - help understand local
Disempowerment on plat belt has ideological origins

Denial of prop rights, community rights, struggle identities - scholars like Model of indirect rule enforced in SA

- Power: this can help us understand local conflict, but it also has its own ideological origins. Disempowerment on the platinum belt has been produced historically. Denial of property rights and enforcement of 'community rights' and prescription of native identities - as Mamdani shows across colonial Southern Africa - was based on the demand for migrant labour. Colonial officials perceived land rights to be communal in nature - and because natives were seen as being at a lower evolutionary level, and private property a mark of civilization. This was a process of disempowering Africans through indirect rule. The power of chiefs varied. For instance, in some cases Africans were permitted to purchase private property, but as indirect rule flourished in the early 20th century, the defective notion was promoted that all Africans were subjects of chiefs and were thus members of tribes. In SA, the administratively and legally laborious declaration of so-called natives land laws was part of how this power took root. But how

Catherine Boone argues that in all political economies, property rights lie at the confluence of political and economic order. Poverty and wealth accumulation are directly connected to access to land and natural resources. She argues that property rights are social relations concerning access and use of things.

Okoth-Ogendo argues that tenure regimes cannot be - who is the custodian of the land - the tribe, the clan, the community, the family, the household, the lineage, the individual? He says there is an over-emphasis on the physical characteristics of land - its size and location. What constitutes property is the product of a social milieu in which we live.

If we are to understand the character of mining-led development in SA, we need to understand property in a different way.

Demand for migrant labour

Perceived African land rights to be communal in nature (lower level of social)

Land policies - process disempowering africans, effectiveness indirect rule and power of chiefs varies

Ltd period private property - pursued for period of time

Notion that all africans now subject to chiefs/members of tribes

Recent lit on power - social and political - property rights lie at political legal order and economic order

All rights to be sanctioned by legitimate legal authority

Robust definition of property

Property rights = social relations including access and use of things

More complex definition and explanation - Ogendo - opens debate that tenure regimes cannot be adequately explained by institution ownership

Who is society? Individual,/chief/clan/lineage

Helpful point of departure. Ogendo overemphasised the current physical characteristic of land

What constitutes property?

Useful to understand the nature of mining and land development in SA

Ogendo's model centered around intricacies of power - 2 pillars: processes and institutions that decide ... of power

Second - consent with the processes , how power vested with societal members, who has the power to decide on which land

- **Community:**

Community is a principle. Notion of 'community'. We need to shift from defining communities - to understanding where the principle of community lies. The fact that rural residents are consistently defined as homogenous tribal groups whose interests are controlled by chiefs is problematic

- Need to look at community as a principle
- One of the oldest terms

Popular in modern conceptions, malleable in policy and contemporary claims. Rural residents are generally referred to as communities or 'traditional communities'. Definitions come from above. This interpretation is that Africans in rural areas are assumed to be collectivities with a common history, culture and identity. Quite disturbingly, the grouping of black people in SA into collectives has led to problematic concepts and practices that regard black people as subjects of local chiefs, whose interests and resources are communal. This elevated the power of chiefs into custodians of 'communal lands'.

As long as we continue to define communities - need to look at it differently. An identity usually imposed from above - not given an opportunity to define who they are.

Drawing on the work of Gerald Cohen, *community is a principle of socialism*. The key argument is that claims on land are rooted in demand by *groups and individuals* for a share of wealth.

This does not cover the local context or organic opps for sharing wealth, no opportunity for equal contribution to decision-making. The *distributional impasse* is the basis of conflict on platinum belt

Underlying principle of community - help us nav the principle, where applies management and control customary land

Fact that regard themselves as community not nec that all land to be held communally

Defining resources shared within units - such resources defined and shared

Should not focus on which definitions are wrong, courts focus on defining a community in context distribution land rights

But principle of community exists beyond rural, beyond notion of 'custom'

Most important point - instead of looking for how to define communities and how to distribute.

Look at where people apply the 'community' concept - local level? Water resources? ..lands?

Look for community as a principle, Not a form of identity. The processes and institutions that decide about the allocation of land. Local mechanisms of control and how power is vested within society.

Q&A:

- **Who?** What is the place of youth in this system? There is the promise of development, and jobs - but people in the Eastern Cape have seen the outcomes of mining and so oppose it.
- **Who?** Comments on Sindiso Mnisi Weeks - amalgamating customary law with common law (civil law) will destroy its principles. Civil law is judgmental, customary law is conciliatory. Also, the problem is that we view customary law through eurocentric lenses and misunderstand it.
- **Shirhami Shirinda** from Limpopo says there's a difference between communities owning land together, and community sharing rules. - in SA courts saying need to share rules of land, where i come from - a minority of people own cattle and grazing. I see our group as grazing cattle. But we share with chiefs who have nothing to do with grazing - is the community to do with them? Or only with us who are grazing the land
- **Baby Makgelidisa** from the North West asks: "What is the judiciary and the law of SA doing about the apartheid laws that continue to rule us in rural areas - like the 1927 Native Administration Act and the 1952 Bantu Administration Act? Why are we still being treated differently from other people in South Africa?"
- **Bhekisisa Khanyeza** our problem is that we are imagining SA in a foreign way of living and we must move out of a market driven country and imagine things in our own way of doing things. s.
- **Khanyeza Sbonge** from Emolweni (Pinetown): Our lives need to be changed so that we are not a market for people in SA. We need to start with basics. Our problem is that we are imagining SA in a foreign language and in a foreign way of living. We must move away from market-related way of viewing South africa. Let us focus on our own way of doing things.
- **Nonhle Mbuthuma** from the Eastern Cape, to Prof Mnwana about native land laws: can he elaborate on who has power to decide about or control communal land? This is the most important thing because this is where we differ with government because

government always said communal land is owned by the people. But government is also the same entity that controls and decides. We do not decide! It is clear the mining companies never come to us as the landowners. do not welcome the landowners so it means that we are not controlling; the state is controlling. That is problematic. The bylaws and customary law of our areas we have rules and bylaws of how do you access a residential site or land. We are not controlling; the government is controlling. But the same government, the same officials, they break and bend the bylaws. For the izinduna, they use land as something you can buy - but when they approach our communities, if someone is rich, they just go and pay and get a site and build. We have indunas and others, people are able to bribe their way into doing things and acquiring land. If the officials can't respect the laws the system will collapse.

- **Dr Fani Ncapayi:** Chiefs are agreeing with white landowners and there are many large scale agribusiness in the eastern cape. People living on farms they are also without secure tenure; this is all over SA. The same for people who want to access and use land even in urban areas they want to farm in urban areas; but we have this mindset that farming is for rural people only. There is municipal land that they should be able to access but the land is allocated to white large farmers instead of black small scale. Mr & Mrs April were activists who were shot. Mining isn't the only cause of dispossession. There are challenges with agribusiness - like in Centani where an agribusiness company promised opportunities to people but this has become a struggle for land rights. Also in Limpopo there is collusion around land sales between local people and outsiders. Farming is an activity that should be supported locally, but that is not forthcoming.
- This is **Bonani Loliwe** right?yes Even though the tension between common law and customary law - sameness causes issues?customary law will always be looked down upon especially when speaking about amalgamation - this is cause for concern. It may be better to develop customary law. Congruence/channel of an English definition. As long as we are stuck and want to give customary law recognition as any other law, customary law will always be looked down on. It is better to build customary law. What are the ways of reversing the definition of customary law as it is now?

G

Grace Maledu (translation): I want to agree with Prof Sonwabile because this is exactly our experience on our land as people who are fighting for our land. We say to government: please know that this is our land and we need help please assist us to be able to have our land. Please stop giving traditional leaders the rights to abuse our rights. As government, we say to you: make sure that you restore our land to us. Stop prioritizing traditional leaders. Where I am coming from there is blasting, dust and no grazing land for livestock. There is just barren land and when the future comes we will be faced with health crisis of asthma and TB and we say to the Dept. of Environment come to the villages and see how we are living and we say to the government: **“leave us with our forefathers properties”**. Some of this land has been bought by the mine and pls govt go and sit down and think about us. We elected you and now we are disappointed. We were expecting more green pastures from you. Stop having agreements with chiefs and spending money which belongs to the community. Chiefs are not taking care of us,

people from the environment need to conduct inspections because areas that we live in are not in a great state to live, there is dust everywhere. We are unable to sustain our farming activities.

Prof Mwanza: will not be able to do justice to all the questions. He will share the paper. Broader point around the principle of community, as opposed to looking for a definition. We need to ask the right questions - in what aspect of social and economic life does the issue of community come in e.g. community watch in the urban areas. This means they do have a principle of community in their social lives, and are applying this in their social lives? And shows the successful application of community in this setting. Why then do we have to have a top down importation of the definition of community only when it comes to communal people in rural areas? Contradictions exist, for example in Limpopo rural residents were relocated, young people promised jobs, but no land was allocated to them (not in line with custom - as per custom when you come of age you must be allocated land) in this instance it did not materialise as there was no provision made for it. Many young people are arrested and harassed when they raise grievances.

Black people are being dispossessed and relocated - with not much benefit accruing to them. I am not sure whether or how the Bafokeng and Bakgatla communities are benefitting. The chiefs are benefitting but the rest of the community are not.

Dispossession: 1913 and 1936 Land Acts formalized the dispossession of land from black people. Many Africans were taken away from land - some were allowed (like sharecroppers) but they too were also pushed out. Only labourers were allowed. This was the manner in which dispossession was allowed to happen. Further, Africans were forced into the bantustans by the state. Even today the state holds their land, and when mining companies come, the people do not have the power to defend these rights that they have in respect of the land. Who has the power to decide? It should be the community, not the state and chiefs or mining companies.

Shirhami's Q was not well understood - needs clarification. [can someone ask Shirhami to type the question directly into the chat?]

We should depart from the fixation with defining communities, and rather discuss how the principles of community apply in different areas of Africans' economic and social lives. Even today, rural communities have no power when the land is targeted for mining investments, because the state holds that land as a custodian, and the residents have weak rights.

PANEL 1A DISPOSSESSION AND MINING THE SACRED (Ashley)

CHAIR: Mbongiseni Buthelezi, *Public Affairs Research Institute, University of the Witwatersrand*

No last place to rest: Grave Matters

Dineo Skosana, *SWOP, University of the Witwatersrand*

Whose eyes are looking at the history of dispossession?

Mbuso Nkosi, *University of Pretoria*

Working the Land: The contemporary problems of restitution

Simon Gush, *Artist and filmmaker*

CHAIR: Mbongiseni Buthelezi

This session will delve deeper into describing the problem. We have 3 speakers who will help us do this thing of delving deeper - by looking at what problems we are facing in South Africa around the topic of customary land. We are looking now at the dispossession that happens around graves in particular. People have lost land historically and people continue to lose land today (through mining and other means). When people lose land they lose the asset (used for agri production) but they lose much more. There are spiritual and symbolic elements - people perform rituals and have their loved ones buried on their land.

When people lose land, What are they losing?

1ST SPEAKER: Dineo Skosana

Researcher at SWOP. Background into project: core project looks at SA transition from coal to renewable energy. In this project we trace Labour related issues in transition to renewable energy. My specific work looks at mining dispossession.

TITLE: NO LAST PLACE TO REST: MINING AND DISPOSSESSION IN THE POST-APARTHEID SOUTH AFRICA

We do not have a concept that a person is being laid at their last place to rest. 2 key areas: white agri farmland and dispossession on tribal land. Presentation will speak specifically to KZN. Coal mining takes place in different provinces across South Africa. Limpopo: particularly in Waterberg. Also in Mpumalanga province and in parts of KZN. Case study specifically looks at Somkhele (near Richard's Bay).

Main point is that "DISPOSSESSION CONTINUES TO TAKE PLACE TODAY: DISPOSSESSION IS NOT A COLONIAL OR APARTHEID PHENOMENON."

Intangible loss is that which we do not see. Which are peoples connections to the land.

Tendele Coal Mine has operated as an open cast mine since 2007. The area has been mined in phases.

Speaker shows how a standard contract is shown to communities when they relocate them - this is not happening in other areas. The contract states that they will receive a cash payment (as though it is a choice). Shows the activities that this cash payment will cover: extensive. This compensation is actually very little for what it is expected to cover.

Spoke to the families who had been relocated. It is not just the relocation of the homes that is involved in this study. It is also the relocation of their ancestral graves. Image showing graves that have been relocated from homesteads and relocated to public cemetery. Now exposed to an open mine dump - not properly labeled and many have actually lost their loved ones. As high as 300+ graves have been lost. There are no markers - the families know which cemetery their loved ones are in but don't know the exact grave. In many cases graves have sunk into the ground.

“Our graves were dug and relocated. We did not know that graves could be relocated” - very little compensation given.

“Putting the remains on prison like blankets, not the blankets we used”. Couldn’t find the bones (dependent on the age of the grave). In some cases a coffin may have decomposed and some families don’t use coffins, but put the body straight into the soil. The process of relocation was not organised. Many got livestock in ‘exchange’ for relocation of graves. “We saw where they were buried, but now so many graves have been added, we have lost our loved ones” - there are no markers on the grave.

Families were told to stand at the cemetery gate and talk to their ancestors - “I sometimes lose my mind. It is very difficult” - Dineo has coined this as “**Spiritual Insecurity**”.

Why is this happening???

This is happening because when mining companies see a sacred ancestral home (made with mud/concrete with a thatch roof) it looks to them like a replaceable structure. Coined as “**Material Reductionism**”. This is similar when they see a cattle kraal - understood as a replaceable structure that can be replaced elsewhere. The space is sacred and when this is uprooted people go through Spiritual insecurity.

Mining companies use a market-driven approach.

Legislative Gaps: doesn’t outline what constitutes adequate consultation, and it just becomes a tick-box exercise and lacks meaning. Also issues around compensation - no fixed amount or guideline on how to compensate communities. MPRDA + Heritage Act + IPILRA = mineral law trumps all legislation as mining company is seeking profit (and working with ministers).

Don’t understand the sacred meaning behind space for communities

In closing:

We have lawful exclusion: the laws, which were meant to bring about justice, is now excluding communities. These gaps have been exploited by mining companies to exclude people within a legal framework. This continues dehumanization for African People. People are dispossessed when they are alive and when they are dead. This mining is a constant site of dispossession. People therefore do not have a final place to rest.

They gave us a cow and goat as per the chief's instruction. The family agreed because the chief agreed with the mine. We were told what to do and not asked whether we want the mine or not. “When the mine came they demolished the house of one of the community members.”

“On some of the graves we could not find the caskets and bones because of decomposition, we only found the blankets that we bury our members with. The whole process was disorganised because there was a TLB machine on one side and people digging with shovels on the other.”

When mining companies see sacred ancestral homes made with concrete, it looks like a very replaceable structure. The problem is that mines use a market driven approach. They do not understand the sacred significance of what we do. There aren't laws that state how much should

be paid to people when mining companies are introduced in these communities. Legislative gaps are being exploited by mining companies.

2ND SPEAKER: Mbuso Nkosi

Title: Whose eyes are looking at the history of dispossession. The eyes of the state, those who are dispossessed, those who are dead and the eyes of the farmer (and those who work the land).

Mbuso encouraged archaeology and historical study to understand the political and social context of unmarked graves, citing case studies. Sol Plaatjie's story about how, just after the 1913 Natives Land Act, the Gobadi family of sharecroppers were evicted from their land, carried their children and possessions through the night, and how a sick baby died on the road - and there was nowhere to bury it. White farmers using prison labour led to the potato boycott in 1959. Land dispossession leads to the criminalisation of people, and how criminalisation and

Various case studies: arrive at a theory.

Research starts in 1950s: 1959 during a potato boycott in Mpumalanga. The communities would not consume potatoes because they look like humans. Farms were using prison labour to work the land and farmers were brutal, killing those who worked the land, burying them in the fields and planting potatoes on top. The potatoes now came back 'looking like humans'. The case of the dead coming back and speaking for themselves.

1913: Sol Plaatjie

Ms Gobadi Carried a sick baby when she was evicted from the farm. When evicted from farm, the second one became sick and passed away. The Gobadi family had no rights on the farm. The deceased child needed to be buried but where? How? Buried child during night. Anguish of dispossession in SA is not the untold or many spoken truths - the anguish comes from those who had to steal a grave and bury in a hurry. This is seen as historic, but it is also part of our historical present. To locate it we need to look into SA vast sectors of land. Once people are removed from the land, they become labourers and criminals. Condition of Ontological Knowingness. Through the child's death, the Gobadi family were looking at their own story: not knowing where they will die or be buried. Eyes looking at past (snatched violently), present and future. Having no place to call home. Losing possession, life and future through the death of their livestock and offspring.

"Our history is forever present in the current way of life."

Plaatjie: met people who had become criminals because of resistance.

Map the eye as a prejudiced organ: in appreciating the story of dispossession, how then do we think of the eye (which is shaped by the time). Why the question of whose eyes are looking is important. Eyes of people who no longer have a home in the country of their birth. Our present is steeped in a past that entails death.

To see with a spiritual eye

Spiritual moment when ancestors bring visions to the eyes of the divine: either the present or future. Manifestation through physical body. These people were soles “wandering, searching for peace and freedom”. She discovered the souls were coming from ... in KZN. a Farmer who owned the farm before was an evil man who tortured and killed workers. Those who were buried on the farm were classified as criminals. **“Place of offense”**: where people were buried (“buried like a dog”: brutality)

Through unmarked graves: not a new phenomena. Digging up a past but needed tools to know if victims were victims of an unjust past.

The eye is not only something that sees in the physical, but also sees in the spiritual space. The Spiritual eye of the sangoma was not enough and the state was needed to help in making the past speak.

Site of archeology frozen in time: speak of the condition to allow us in the present to understand the past. Mshanene (Sangoma’s name meaning ‘broom’) - unearthing power of the broom to see what is underneath the surface. The problem was that these dead bodies were nameless and faceless - the burden fell on the living to identify and claim dead loved ones. In a sense the outcry of these specters used the body of the Sangoma as a medium - ghosts demanded freedom - the process of excavation. Bones revealed the horrors of living on SA farms.

Even in black people’s death they could not find peace. Dispossession today is also a spiritual question. To use different eyes to free ourselves, the past and our land.

If they did not keep moving they would be without a grave. If they had no hope for the future they could return to their past in the free state. The gobadi family was also looking through the land through an ontological lens.

Considers various case studies of dispossession. They are the eyes of the state, the dispossessed, eyes of the dead, eyes of the farmer - those who work in land. I might not get the chance to get every case, so I will try and condense everything. My research starts in 1950 during a potato boycott in mpumalanga. Where Sa’s started to say they will not consume potatoes. The reason is that communities looked like humans. Farms were using prison labour to work the land. Farmers killed laborers and planted potatoes on their dead bodies. That’s why the community theorized potatoes were starting to look like people.

“What kind of freedom is demanded by the dead?”

3RD SPEAKER: Simon Gush

Summary:

Three short films were presented, about land claims in Salem in the Eastern Cape, outside Makhanda, which showed how land dispossession happened but also how land restitution asks

people to live and hold land together - often in ways that are inconsistent with how people actually live, and social relations now.

Speaking about film: "Working the Land" - looks at processes of dispossession and restitution in the Eastern Cape (Salem). Part of a 3 film series (independent films but build on each other). Research and interviews was done in collaboration with journalist (Name: Tolsi?). Family was part of the original dispossession in Salem in 1980. History of land as commonage: judgment was that land would be shared between claimants and current land owners. Before this happened 5 farms were restituted through the 'willing buyer willing seller' model.

- **1st film:** court case and how the claim is structured. Frustrations within the community and about the cutoff date of 1913. The commonage in Salem was founded in middle of 19th century after initial dispossession
- **2nd film:** looks at settlements around the occupation of the land. Story of my ancestor Richard Gush (Simon's ancestor). Arrival of 1820 settlers. Histories contested by different historians in the evidence given. Looked at how land dispossession was a deliberate path to force people into wage labour.
- **3rd film:** What is happening on these restituted farms? Began when he went to Salem and spoke to communities on farms - changed understanding. What does it mean symbolically to return to the land? How are beneficiaries living on the land relating to this process? Kept coming back to the idea of work - or lack thereof. Prompted to look more closely at problems about getting the farms running after the restitution. Some of these problems being experienced become large hurdles to get over and the accumulation of these problems is NB
 - Lack of government support: not there or unclear how to access it (support is not sufficient).
 - EVEN WHEN SUPPORT WAS ACCESSED - IT COULD DISAPPEAR: gives case showing this (seeds). Real problem as it takes a lot of capital to get a farm running. It can be hard to generate a profit in the agri sector with small scale farms - the industry is built on low wages.
 - RACISM WITHIN THE AGRI SECTOR:

** Shows clips of film **

I started looking at Salem because my family arrived there in 1980. I started looking at the history of the land.

Clips of the film

1st clip is of the people of Salem, racism and violence on these farms.

The farm workers asking how they will leave with white farm owners and whether they will accept the notion that they are equal.

2nd clip is that there still is apartheid in the area.

3rd Clip, Black community members are still experiencing problems when it comes to them entering into the farming market, and being at animal auctions. They are given lower prices

when selling livestock but when white farmers sell their livestock it's sold at higher prices.. The market shuts them out as black farmers.

CLOSING: WHAT MIGHT THIS SAY ABOUT THE PROCESS OF RESTITUTION?

Key question: what is being restituted?

Land is returned within a capitalist system as a productive asset to generate profit. Can we have a more expansive understanding of what restitution is that accounts for all else that was lost - beyond land as an asset.

In this way restitution won't be held back by notions of work/labour - not only about working the land.

MBONGISENI:

The kinds of dispossession that have happened, are dispossession of land as a physical asset, but also other forms of dispossession. Very striking is the impoverishment: material, social (people being thrown together and having to find a way to live together: very difficult with complicated power dynamics) and spiritual (Ontological Nowhereness). Also striking from these presentations: the dead get to speak for themselves. It is also a question of "Who is hearing the dead?".

Q&A & Comments EL

The room concurs (murmuring) that what is happening (that we die and be manure...) is shameful.

Mr Sishuba: pleased that the matter of grave dispossession has been discussed, the graves are being eroded, there are bones found lying in the rivers, I am worried because the world is changing, there are people arriving and taking over and they might not respect and take care of the graves the way we used to. Advise the department to help have strong graves that will not be easily destroyed, eg. a strong tombstone with all the names of those buried there. These would then be regarded as heritage sites. People can then go and pray and worship there. The new people would then be unable to destroy these. The next generation will then know where it's coming from.

Nomonde Phindani: "Land dispossession and women". We live in patriarchy, the Agri-businesses get into these agreements with traditional leaders who still regard women as minors. Women are the majority and the most negatively affected, the most unemployed, yet they rely on agriculture (nature) to survive. Once they have no access to land they suffer the most. It's worrying when we talk about land and fail to recognise that women suffer the most. Women lack access and participation, any participation is ineffective, their voices are not heard.

Sishuba: "Not a question but a comment on the issue of spirituality. This is where our communities The developers don't understand our beliefs. They don't understand us as Africans. Our culture doesn't exist (for them). It is only for profit... it is easy for them to bulldoze... we need to explain ourselves to them and they are not willing to listen. No matter

how we explain it doesn't mean anything because they keep saying that 'you spirits can't stop development'.....this is where we lost as africans. We jump for jobs but these jobs don't exist.....at the end of the day we lost our spirit, we lost Ubuntu, in the name of jobs. When we try to explain that there are things that you can't see.....they just say they will compensate. Compensation is not something we want as africans. We want Ubuntu - this is what is being crushed in order to put capitalism in our communalism. Once communalism has been destroyed, we are going to experience everything we are facing now....we need to defend this no matter the cost. Even if we are being killed.....if we don't defend this now, there will be no future for the next generation”.

Sihluba: “not a question, but a contribution. I am happy that graves have been mentioned because it is one of the things that worries me a great deal. We have got the old graves where we used to stay but during the forceful removals we left the graves there. We left them alone, no one is looking after them. The soil erosion means the graves are being eroded. In some cases, bones are found lying in the river....I worry because the world is changing. There are new people arriving in our place who might eventually take the whole land. Those people might not respect those graves like we used to do. When they see those tomb stones that are there, they might just throw them away and do whatever they like.....I always want to advise that we ask the governem,ent to help us build strong graves there, stronger than what we have done, so they are not destroyed and can remain for years. If we could have one big tomb stone where all the names of the people who are lying there are written - on one tombstone. Then something very strong to cover all the graves - something very strong. This would provide work for our people in erecting these structures. This would help us....we regard these as our local heritage sites.....people go and pray and worship there, so as to keep them alive.....when the new people who are conquering, they will never be able to destroy those things. The children to come would be able to know who the land used to belong to. They will learn that”.

Speaker 3???: “I want to speak about land dispossession and women.....we live in a male dominated society that favours patriarchy. When I was listening to the speakers talk about consultations.....We know traditional leaders still regard women as minors.....just like during Apartheid times. We need to understand how women are so negatively affected by land dispossession....women are a majority in this country and the majority of unemployed are women. Women rely on land to survive. Women rely on agriculture to survive. Women rely on nature to survive. When women get no access to land, they suffer a lot. I get worried when we speak about land dispossession and we don't emphasise how women are negatively affected. Especially with the issue of consultation.....even if women are in decision making structures, we know these structures are still male dominated....”.

Kristina (Marikana): “We have problems regarding graves within our community....as i know this is the reality for many.....they know and understand that certain families have graves within their yard but they were excavated. We faced another removal of our grave yards....you can't point who is there because now it just says 'rest in peace'.....another relocation and the area is muddy. Water comes into the ground and the graveyards disappeared within the ground”.

Our graves have been excavated by the mine. We are struggling to find our loved ones because they graves are only written rest in peace.

Matthews Hlabane: “No last place to rest and no resting in peace....blasting and exume and do all sorts of things. Many community issues are so painful. The dispossession does not only take place in the form of grabbing the land....also water and soil quality, biodiversity and dignity of our people. As water sources are being destroyed, the education system is also used as a tool to ensure we are pushed into dependency, and eventually the crisis we have because of poverty. I want to say thank you, but there is so much work to still be done. The media (TV)....perpetuates dispossession....”.

CLOSING

Dineo: Speaking to the heritage act. Want to enlighten community members who have struggled with dispossession. The heritage act protects against dispossession but is dependent on date/age and location of graves. You will need an archeologist if the graves are too old. The heritage act protects the grave as a site but doesn't necessarily protect the graves as **sites of connection**. The idea of **intangible loss**. SWOP has exchange workshops to teach around these regulations so communities are aware of the laws. Dispossession impacting women: aware that issues like climate change and dispossession impact women the most. Have workshops to try to build resistance within communities. Need to work together across disciplines - this is how we can build resistance.

Mbuso: There is a lot that needs to be done and most is around questions of spirituality - this is when communities come in to assist.

Simon: Nothing to add - many thanks.

Mbongiseni: “**DISPOSSESSION IS NOT ONLY HISTORICAL, IT IS PRESENT, IT IS HAPPENING NOW**”.

PANEL 1B DISPOSSESSION DISGUISED AS REGULATION

CHAIR : Zenande Boo, Center on Race Law and Justice, Fordham University

This panel will focus on how the operation of seemingly neutral laws have the effect of dispossessing people living under forms of customary tenure and in el will explore the seemingly neutral laws and processes of laws in South Africa as well as how it affects people living in communal areas.

1. The failed promise of remedies: A political analysis of the Trust Property Control Act of South Africa

Kholosa Ntombini, University of Cape Town

Summary:

One of the important cases of partnership between rural communities and a mining company is the Richtersveld case which found that customary rights to land are actually ownership. Kholosa

Ntombini's work shows that the history of trusts is complex - and historically they were used in dispossession. Problematic notion that African property rights must be supervised. Has the nature of trusts changed? No it has not; even though now people can control their own trusts, arrangements are so complex, there is so much dysfunction among trusts and the inability of the Master to intervene means that powerful partners like Alexkor can overpower community trusts. Where there are problems are so far-reaching the 'exclusion is by design'.

TPCA the aim of the paper is to explore neutral laws threaten the property rights of people living on communal land. the Richtersveld community as a case study to show how the minimalist nature of the TPCA fails beneficiaries. The TPCA was passed to provide some overarching regulation over private trusts but at the same time not overwhelm the master of the high court. So it was apparently decided to put minimum requirements into the TPCA. The Master is granted some limited powers, for example when trustee positions come vacant. It has been proposed in the past to give the Master more powers, but has not been done. A vacuum has been left that is to the detriment of community trusts. Many can't have lawyers draw up trust deeds that protect beneficiaries and have mechanisms of accountability.

The Masters offices are notorious for being highly dysfunctional. It struck me during my research that officials don't know the basics of what the powers of the Master are - it means that there is not a uniform approach to access to documents for example.

Exclusion can be by design. If the Master does not act, then the only recourse of communities is to approach the court - that excludes most people. TPCA - focus on sections. Richtersveld as case studies - minimalistic nature of Act fails beneficiaries.

Trusts are a constant feature in communal areas - missionary land, mining developments today There are 2 types - public (governed by an Act) and private (TPCA). Private trusts were unregulated - most matters were challenged in the courts. Role of the master. The Act was passed in 1988, ratified 1996. TPCA is a benchmark for valid trust and not overwhelming Master. Approach = minimum requirements valid trust. Some of the powers given by the master are discretionary powers - means that the master *may* give directions. This was problematic as it left a vacuum, and many poorer communities did not have access to recourse as they did not have the requisite funds to challenge problems.

Certain masters offices were also not clear in the manner in which they must work - there is no uniform process. This raises questions about whether a master will exercise their powers to challenge the issues that appear in trust issues.

"Exclusion can be by design"

"One of the hallmarks of property rights is decision-making power." The Trust redefined owners of property rights as decision-makers. (check)

Richtersveld is made up of 4 towns - they form the community and surround the Richtersveld national park- there is diamond mining occurring there since the 1920s. There's conservation and mining. Trusts in 3 issues - mining, land claim and conservation. 2007 won land claim. In the transition period, the land actually belongs to the community, SANparks pays rent to the community . (3 trusts in total) - one for rent and 2 others to hold assets. [unclear, check recording]

Community held 49% of the mining rights, and Alexkor held 51%. [add from recording; we

missed quite a bit of detail here] The manner in which the trust works is quite complicated. An issue is that trustees often take unilateral decisions without consulting the communities. "The trustee acts unilaterally" One of the trusts was frozen - community did not know why. It turns out that one of the trustees had passed away. Where is recourse in this case? The trust deed is supposed to provide clarity, otherwise the master. But the master is often dysfunctional, so the community was at a loss as to how to replace the trustee and get the trust going again. [sorry zoom froze]

Historically, trusts allowed the colonial and apartheid states to appropriate indigenous land. It was underpinned by the ideology of trusteeship - Africans need supervision. The emergence of the trust model in post-apartheid SA must be analysed politically. What are the ideologies that underpin these so-called 'neutral' laws? And maladministration from the Master must be seen as an injustice that is actionable.

Exclusion by design - that trusts create a complex arrangement that blurs decision making powers. Land is underpinned by communities being able to make decisions about matters affecting them on their land. The history of trusts is complex - and historically they were used in dispossession. Problematic notion that African property rights must be supervised. Has the nature of trusts changed? No it has not - as peoples rights are still being policed. The TPCA continues to have the ideology that people's rights must be supervised.

Comment from jhb: the way trusts formulated before there was not much say in how the trust functioned, the community did not benefit from the trust

Q from Durban:

2. iSimangaliso Wetlands unraveling the complexities of plural governance systems in coastal conservation

Philile Mbatha, *University of Cape Town*

Summary:

Philile Mbatha gave the example of how environmental regulations, and the creation of the iSimangaliso wetland park at Kosi Bay, has actually dispossessed people of rights - even if they remain on the land, the range of their uses of the land, the forest, the sea, are constrained, which amounts to dispossession even without expulsion. While theoretically there need not be a conflict between protecting the environment and defending land rights, regulation has done precisely this.

Kosi Bay is within SA's first UNESCO world heritage site, Isimangaliso. I will look at the heritage governance and the issues emerging. I use Kosi as an example to show how governance issues impact upon the local people. They claim indigeneity to the area and there was forced displacement. A lot of the people there had hoped that post-apartheid would bring development and restore their customary way of living. However, nothing has really changed. Some argue it has gotten worse.

In SA, natural resources are important for peoples' livelihoods. Coastal people rely on it and have been for generations even in precolonial times. Their ability to physically access the resource and have rights to the resource has been impacted by apartheid dispossession. Colonial era saw the appropriation of natural resources and land. Further entrenched during

apartheid. A lot of displacement for conservation purposes. In particular in the Kosi bay area - displaced for conservation in the 1950s. A lot of the current heritage areas were demarcated under apartheid times. We cannot understand conservation governance without looking at how history has influenced the modes of governance in SA. Even though we became a democracy in 1994, people are not better able to access rights in conservation areas.

Conservation in SA is still driven by the tragedy of the commons rhetoric - the need to privatise resources. There is a lot of evidence that people in coastal areas have always had their own understanding of how to interact with nature, 'conservation' (western term). However, the government assumes that communities have no sense of conservation and impose statutory ways that undermine social practices. WE still see lack of rights and access - and continued indirect rule. The state relies on traditional authorities to govern on its behalf.

Isimangaliso focuses on the conservation status of the area, with very little focus on social aspects. The entire ecosystem is the reason why this area is protected - but there are communities there who have relied on that same ecosystem for generations. Philile presents a timeline of how Isimangaliso was created over time - between 1948 and 2000 when the World Heritage site was enacted. The 70s and 80s saw massive forced removals of the local people. At the time, people were told it is to stabilize sand dunes and they will return - but of course they never did. This happened with the collusion of the chiefs. Some people say the chiefs even wore the uniforms of the conservation agency. That did convince some people to trust the process.

The site includes a Marine Protected Area, an estuary and forest reserves. Unique system that is rich in biodiversity. International and domestic protection - local people are subject to all these rules that they have to navigate in their daily lives. The normative idea is that the different complexity of institutional arrangements communicate with each other and work seamlessly. But that is not the case at all. IT only allows for passing of the buck when communities complain about rights violations.

There are very strong customary structures on the ground in kosi, but has been undermined by the colonial and apartheid government and continues to be undermined today. They rely on the statutory structures. They say, when they have consulted with a chief, that we have consulted with the communities. Chiefs see the more democratic local structures as a threat and therefore don't want to consult with them. It is important to separate the customary and the statutory/traditional authority structures. This does not mean that traditional authorities are never customary leaders, but it happens in some areas.

Before Isimangaliso, people used agriculture, fishing, and so on, for livelihoods. But this is changing: agriculture demolished; access to marine resources becoming very dangerous. Shift to government grants for livelihoods. Eco-tourism has emerged as a new option. But communities report that their lives are over-regulated: what they may do to their houses etc.

ASSUMPTION: that all of the different governance structures at Isimangaliso work in harmony, but that is not true at all. Local municipality doesn't even know what their role is given the international and national authorities that all assert power in Isimangaliso.

Plural governance systems and rural coastal livelihood strategies. Kosi bay is used to show how governance systems impact on the livelihood of people in the area. In post apartheid - ppl are

hoping that their rights will be realised. Much of the dispossession that occurred is being perpetuated. Some argue matters have got worse. Local and indigenous communities - rely on natural resources. Their ability to access the resources and rights to the resources are affected by the apartheid laws and policies. Colonial dispensation - dispossessed ppl of land- this was worsened in apartheid. In the 1950s they were dispossessed for reasons of conservation - these areas are now world heritage sites (from 1999). We cannot understand conservation governance without looking into the history of dispossession. Many people believed that with democracy their lives and access to land will be protected or realised. However, research shows that people in coastal areas who are marginalised, have the knowledge and mannerisms of interacting with the land - but the government assumes that people don't want to conserve and comes in with their own rules/regulations etc - thereby sidelining the traditional local customs and livelihoods. Many still lack access to rights. The indirect ruling of apartheid powers is still occurring in these areas. They rely on chiefs and ignore the community structures.

Kosi Bay. UNESCO has 3 manners of conservation- ecological(natural attributes), cultural (mostly in the north) and mixed sites. In Kosi bay they focus mainly on the natural sites (whilst ignoring the cultural heritage).

Shorter notes:

- The population is rural, little access to employment and education. the area is protected due to its unique ecological impact.
- Timeline 1948 - 2000.
- Displacement in the 1970s
- Its nationally (UNESCO) and internationally(DFF) protected. Double layer of protection (marine and terrestrial protection).
- Presented a table of the various authorities and institutions that are governing the area.
- Ambiguity in governance and conflict
- History, politics and power - impact on the lives of people. In KOSi Bay - there is much research that shows customary structures were and continue to be undermined by the current government. The current govt only consults with chiefs and ignores the wider community's structures. Chiefs oppose any other democratically elected community structures -
- "Chiefs are not representative to local communities" must differentiate between customary structures and traditional leaders . . .
- People have a long history of use of the land . all managed by customary rules (which are undermined)
- Argues for the separation (analysis) between real customary practices and customary authority, which has been perverted.
- Use of english (language barrier) to block access of people to information.

Questions from EL: [hard to hear]

JHB comment:

- In the olden days people survived by natural resources and when people were promised land they were happy but that did not happen. Instead the land was protected and people continued to suffer. People depend on social grants whivery limited [did not hear name]

Questions 1B, JHB

Francina Nkos (Limpopo?): I want to understand how women can be more resilient because when you talk about land you talk about women; and women need access to land. How can women hold this government accountable and communities are the most affected and forcefully relocated? This is directed to last speaker

comment from Durban by Mam Lina: we made a land claim land in Lowebuge to Minister Nkwinti but we as beneficiaries did not receive anything. The department does not want the beneficiaries to go to the land. The trustees have no voice.

3. **Where does power lie, CPA Committee or traditional leader.... The tensions between the CPA Act and TKLA: the Khomani San experience** Cecile van Schalkwyk, *Legal Resources Centre* David Mayson, *Phuhlisani Solutions* and Colin Louw, *Khomani San community leader (last former chair of indigenous communities of SA)*

Colin Louw, David Mayson:

In one of the first successful land claims, the Khomani San got 8 farms back from the government, and owns this as a Communal Property Association (CPA), under a democratically elected committee. Now a more recent law, the Traditional and KhoiSan Leadership Act (TKLA) indicates that traditional leaders that are recognised will hold and administer land. So there's a tension between the CPA and the leader which is now conceived in the TKLA as taking over. Effectively, "we are now under two acts". The CPA Act doesn't make provision for any traditional leader. The land was given to the community - not to a traditional leader. But now, if the government scraps the CPA Act, then we will have a problem because there are 8 bloodline leaders. In short: the TKLA is superimposed in a context where people already hold land as CPAs.

David Mayson: We have been involved doing work with Khomani San and then LRC will engage the Khomani San Cpa. The forebears lived in a nomadic way, and then when the park was established they were removed when the park was consolidated. Became beneficiaries of the first successful land claim and 8 farms were transferred. This included the Kgalagadi National Park and managed by SANParks, which is also governed by CPA constitution in co-management. The governance of the community on the land is regulated by the CPA Act and a CPA constitution of the Khomani San. The TKLA came into effect in April 2022. It is likely that the Khomani San will be recognised as a KhoiSan community in terms of the Act. The TKLA does not give land management powers, but says a traditional council has powers in terms of customary law of the community. There is thus going to be an inevitable tension between the CPA committee and the to be established traditional council. [merge with this text] LRC and Phuhlisani have been involved with work with the Khomani San. Cecile will ask a number of questions to the chair of the Khomani San. The forebears lived in the southern area - between 1913 and 1965 they were systematically removed. They were one of the first groups that received land restitution. Their land which was returned to them (a portion was part of the Kalagadi part. 1 april TKLA came into effect. It is likely they will be recognised in terms of the TKLA. while the TKLA doesn't give governance powers, it says that the customary laws must say how the management must occur. The traditional leader will be allowed to apply to be

recognised as a leader. This creates a potential conflict between TKLA (and the appointed leader) and the CPA.

Cecile to Colin: please give us some background to the Khomani San community and its approach to leadership

Colin Louw: The Khomani San is a traditional community with different tribes and leadership in the community. He lists names of different tribes/clans. Some have bloodline leaders. It was one of the clans that started the land claim but the government decided that they cannot give the land to one clan and added the other clans. The land was restored. It was given to the community, held by the CPA. Now we have great difficulty with the TKLA giving recognition to traditional leaders. We have one traditional leader who was elected, not a bloodline leader.

Cecile: can you talk about the relationship between the different leaders of the 8 clans and the overarching chief?

Colin Louw: it was a problem at the start to have 8 clans with different leaders so the community decided to rather elect one. His role is supposed to be to look after the heritage of the community.

Cecile: why was it decided to include a traditional leader in the CPA?

Colin Louw: At the time, the trad leader felt excluded. So the community decided to add him as an ex officio member of the CPA committee to make sure that the issues of heritage, culture and language be considered when decisions are taken. The leader is supposed to promote the heritage, culture and language of the community. That is his mandate.

Cecile: What do you think the impact of the TKLA will be on the Khomani San situation?

Colin Louw: We have concerns, but the TKLA does not speak about land. It only recognises the leaders. The concern is, however - and I asked the Commission on Khoi and San issues - if our leaders apply and are recognised as leaders, will the government provide those leaders with land? Because we have the CPA act that gives powers to the committee, not the CPA. So when they are recognised, where will they get land to promote the culture and heritage as the TKLA expects?

Cecile: So the concern is that there could be a tension between the powers of the two structures.

Colin: We cannot be under two acts. We are either under the CPA Act or the TKLA. Then they must repeal one of them.

Cecile: are you engaging with COGTA or the DALRRD?

Colin: We raised these issues with them but their only reply was that we must go to the commission. SO I raised the questions with the commission and they said the CPA chair should Apply to be a traditional leader !

Cecile: what has Phuhlisani and LRC doing to help?

David: we did extensive workshops with the CPA committee, communities, committee of elders to try and get a sense of the customary law so that the provision in the TKLA that says powers come from customary law could be given content. We went through an extensive process of consultation also for amending the constitution and to try and clarify the roles of the different leaders; and built in certain accountability mechanisms. Further detail about how the leader would be nominated and elected. And we helped with operational rules. In the old constitution, the leader was a member of the management committee of the CPA. No longer the case. Now only a liaison of the leader sits on the committee to ensure that there is a line of communication with the leader.

Cecile: please explain the Khomani San community - background and their approach to leadership, and the parts that make up the khomani san.

Colin: Khomani is a traditional community with diff tribes and leaderships within the community itself. It also has "bloodline leaders" . (nanacep) were the initial group that . problem is that the land falls under the CPA. The difficulty is that there are many leaders in the same community. There is only 1 elected leader in terms of the CPA - not bloodline leader.

Cecile : Historically, the KS consisted of 8 community and clans that each had a leader. There was 1 captain - how did this system work?

Colin: community decided to elect 1 leader out of the 8 - at the AGM one leader is elected to ensure that the heritage that he protects is promoted and protected.

Cecile: why was it decided that a leader would be elected every couple of years?

Colin: CPA act gives more power to committee, and not the leaders. The community decided that this leader was needed to ensure that the language and culture aspects are protected in decisions made in the CPA.

Cecile: what is the role of the leader? **Colin:** he must protect the culture, language and heritage.

Colin: Protect the culture, traditions and traditions

Cecile: what will be the impact on the traditional leader when TKLA is enacted?

Colin: the concern is that if the leaders apply, and are recognised as leaders, would the govt provide these leaders with land? The CPA act gives powers to committees not the leaders - so now in terms of the TKLA would the land now go to the traditional leader?

Cecile: TLKA gives certain powers that are different than the CPA (point of conflict) - this has th potential to cause tension and conflicts - government needs to clarify this position. Which law is going to be followed?

Colin: the act gives them powers(TKLA) and CPA - which laws must now be followed?

Cecile: Have you engaged with the department of rural development and land reform ?

Colin: we have engages with the DRDLR and they told me that the CPA can be recognised

Cecile: certain steps were taken by LRC and Khomani San to safeguard the community from the TKLA. What steps were taken to address the disruptive measures on the CPA by the TKLA?

David: TKLA asserts that customary law must be applied. So they had a detailed workshop with CPA and elders - express customary law emerged from the workshop- which was sent to TKLA team.

Constitution - clarified the roles of elders community - advisory board of TL. it must meet numerous times in the year and hold the TL accountable.

Leaders Role - leader is responsible for the furtherance of language traditional and cultural projects.

Management committee must deal with the management of the land and how it is dealt with.

Operational rules and policies.

Leader is no longer a member of the management committee - this used to create tension - the assistant of the leader is part of the management (but the assistant does not have powers) this is strictly a reporting role.

Tshepo: common challenges on TKLA, how come they are allowing us to elect leaders but TKLA does not give us land rights

8 farms transferred to CPA

Governance - CPA constitution - election management committee (elections every 4 years) and traditional leader

Questions in EL:

- **Monalisi Njende** - What I observed is that there is a conflict of interest with the CPA and TKLA as well as the conflict regarding the resources and wealth in their disposal. Is there a big deal in amalgamating the two (CPA and TKLA) in one in order to resolve the conflict of interest? [missed question: conflict of interest] how can we resolve the conflict between the CPA & the TKLA [Zenande's summary: Land claim in Blouberg to Minister Nkwinti. Dept doesn't want beneficiaries to access the land, and the Trustees have no power.]

Questions in Jhb:

- [Summary only; no detail of discussion or question: Women can build more resilience to ensure that children can survive]

Question in Durban:

- **Lerato:** (comment)need to call the relevant departments and have them in these spaces, so participants can highlight their needs to government officials directly.

Response from Cecile to question from EL (what is the role of TL and CPA): these roles need to be clearly defined. The 2 Act also do different things. The conflict was attempted to be alleviated (Sorry missed some here - did you get this, Sipe/Goodness?).

Plenary 2 (Wilmien - backed up by others) Summary: 3 sentences in yellow: Ektaa & team

HOW THE COMMUNAL LAND TENURE BILL (CLTB) POLICY APPROACH ENTRENCHES THE

URGENT CRISIS OF RURAL LAND TENURE INSECURITY AND CONFLICTS WITH THE CONSTITUTION

CHAIR

Nolundi Luwaya, LARC, University of Cape Town

The Ingonyama leases judgement - implications for customary ownership and the Communal Land Tenure Bill policy approach

Aninka Claassens, LARC, University of Cape Town

The impact of proclamations, regulations, vestings and the power of traditional leaders on the land tenure security of ordinary people in the former homelands Sithe Gumbi and Janet Bellamy, LARC, University of Cape Town

Why and how the CLTB approach conflicts with the requirements of section 25(6) of the Constitution

Tembeka Ngcukaitobi SC, Johannesburg Bar

Janet Bellamy and Sithe Gumbi from LARC, UCT

Summary: This presentation focussed on examples of communities who have been adversely impacted by traditional leaders. It outlined the history of the amaThuli community – and how they continually are unable to access security of tenure in land that was historically belonging to them. This is due to the complete failure of land administration and the failure of Cogta to hold the traditional leadership structure to account. The crux of the matter is that although it is clear that the dispossession can be tracked - through proclamations and statutory vesting - the communities' tenure rights in the land remains insecure.

Sithe: Our topic is the impact of proclamations, statutory vesting, actions of traditional leaders and the failure of land administration on ordinary people.

S25(6) of the Constitution promises tenure security through an act of parliament. SA, with its colonial and apartheid history and overlapping rights, is beset and faces a challenge in realising this promise. 25 years after the passing of IPILRA, that requires annual renewal, we still have no legislation that secures tenure in the former homelands. Over the last year, we at LARC have worked with various communities in KZN. What we share is not a recording of data, but sharing of lived experiences backed up by historical research. The stories represent just some of the problems encountered by people in the former homelands. We will demonstrate the catastrophic impact on the tenure security of community members of these failures. There have been many efforts undertaken to find tenure security: obtaining TC consent, PTOs, leases, approaching COGTA etc.....still they are dispossessed.

We start with the story of the community of Umnini. A story of dispossession. Has its origins in the history of the amaThuli tribe. This resulted in the formation of the Umnini Trust in the 1860s. The first land owning native land trust in SA. to this day it remains unique. The story continues with the community currently living on the land trying to stop the allocation of the traditional leadership contrary to their customary law. We share the struggles of a society created to nurture the elderly.

Janet presents a chronicle of dispossession

1750: amaThuli migrate south towards coast and settle on the Bluff in present day Durban

1824 white settlers arrive

1845 Natal annexed by British. First dispossession: amaThuli land on the Bluff put up for allocation - 4500 acres granted to white settlers on 3 conditions: Amathuli will retain rights to water, grazing and access to graves - then reneged.

1851 Second dispossession: remaining 1600 acres 'sold'. The chief protested but was given 2 options: remain or exchange for another parcel. He was left with little choice.

1851 removed

1858: Amathuli's right was established by a Deed of Indenture and Umnini Trust established. It was the first native land trust. Trust remains today but later vested in Ingonyama Trust

24 December 1986 - series of proclamations gazetting, vesting thousands of properties listed in the schedules - including Umnini land.

- Vesting by statute - means that certain portions of land vest in another entity. So umnini land vested in the State.
- That land, vested in the State, was then transferred to the Ingonyama Trust through statutory vesting.
- Umnini Trust land is used for residential and agricultural purposes with shared rules of access and use.
- Customs and rules transformed into decisions being taken by the Inkosi and his Izinduna exclusively.
- Portions of the land sold or let out without consent. Community formed a concerned group to address the issue. They made several attempts to raise this with COGTA. A service provider was appointed.
- MEC announced a moratorium on land sales in 2012 after visiting the area - pending investigation of SP. Despite this, the inkosi continues to this day to allocate land unlawfully.
- The SP submitted its final report in 2015, "but the report has never been made public or shared with community".

In 2016, community made an urgent application seeking an order to interdict the inkosi from allocating their land from misappropriating and appropriating land. The case did not proceed, but was removed from the court roll on the basis that the applicants lacked standing.

Our research shows that the actions of the TA has greatly impacted on the community. A group of senior citizens - society formed to support them and disabled community members. Previously met under a tree. In 2009, noticed an abandoned building. Approached Inkosi, its customary law, asking that the building be allocated for day care centre. It was provided free of charge. They revamped the building. Premises became a central meeting place used for worship, sports and recreation

In 2013, after hearing that property could be secured via Ingonyama trust, they applied for a lease. After Christmas, they returned to see the building is occupied. It appeared the Inkosi had sold the building to a church without notifying the society. He told them they had abandoned the building.

They followed up the lease of the building with the ITB - at great cost - Aug 2016, the lease was signed by both parties and elders paid a R625 deposit. When they went to collect their lease, they were told that the lease was granted in error and the land is actually granted to Eskom (in 1959). The ITB cancelled the lease but did not refund the deposit. The elders received a letter from Eskom saying that they want to upgrade a power station on the land. That has not happened. They have written to Eskom multiple times for clarity. No response.

The occupier who bought the premises from INkosi has undertaken their own construction.

Farmer near Newcastle - second case study

1979: he arrives in Newcastle following a series of moves by eviction and removal. Upon arrival at Newcastle he was granted the use of the land by a local farmer.

He filed applications to buy the land to Dep of Agric. Went to Ulundi several times to follow up. As part of his farming business, he was granted a PTO in 1999 under the KZN PTO regs of 1994. He had a letter of no objection from the TC.

In 2006 he received a warrant of ejectment from the person who had granted him the land. He got land from the traditional council confirming that he and his family had lived there for 25 years and couldn't be evicted. He went to many government departments for funding.

But in 2013, a relative of the original land owner visited him and claimed to have a title deed. The farm was fenced and a lock installed, locking him out - preventing him from accessing the land he owned since 1979.

He heard that the ITB owned land in the area and he applied for a lease, with a letter of no objection from TC. ITB sent someone to survey the land. A land surveyor confirmed the land was owned by someone else who had a title deed.

After years, all of this was of no use. The land was privately owned. The farmer passed away in 2019 from a stroke. Extended family still reside on the land under constant threat of eviction.

Cast Study 3: Displaced by INanda Dam

COMMUNITY was compensated by land from the SADT. Included agric and township land. The township land was eventually developed. Communities discovered that certain transactions had taken place on their land without consent. The community was compensated by land from the SADT. Included agric and township land. The township land was eventually developed. Communities discovered that certain transactions had taken place on their land without consent.

39 properties transferred in terms of ULTRA, registered in the name of the tribe under the chief. {really struggling to follow all this detail}

Black Administration Act was repealed, but only in stages - and sections have an afterlife under the Deeds Registries Act.

Insecure land tenure affecting many South Africans must be addressed by Parliament. It is a daunting task, but we must solve the conundrum.

Aninka Claassens

The Ingonyama leases judgement - implications for customary ownership and the Communal Land Tenure Bill policy approach

Aninka Claassens

The Richtersveld case said customary land rights are property rights - they are ownership - held by a community. The Maledu (maGrace) judgment upholds customary rights - against the assertion that mining takes precedence over land rights, even over the Constitution. The Ingonyama Trust judgment talks about individuals and families within communities - and who has decision-making authority. The ITB judgment proves that there are pre-existing property rights on land, customary rights. If you are not in a position to exercise decision-making authority, then your property rights are not being respected. Taking the decision-making powers of owners and giving these powers to an institution is a dispossession of property. Consent to stop deprivation is the most basic of property rights. Yet the CLTB debate has been presented as being about the status of chiefs and amakhosi - rather than being actually about the nature of property and the ability of people to protect their property from arbitrary deprivation. It is ironic that those who claim to be defending custom are actually promoting titling and privatisation of land in the name of custom - so they are trying to use the constructs of western property law to usurp and dispossess customary land rights. The Ingonyama Trust judgment is a refreshing judgment, saying "custom cannot be a blanket to obscure ongoing processes of dispossession". The arbitrary deprivation of property is a violation of the Trust Act, IPILRA and the Constitution.

Janet and Sithe have provided examples of problems of tenure security. I am going to show how the fault lines they raise are exacerbated by the proposals of communal land tenure bill. IN light of Ingonyama Trust Act, I will show that the proposals are unconstitutional, contrary to customary law and to IPILRA.

Janet and Sithe highlighted three key problems:

1. Historical vesting - all former homeland land vested in homeland governments.
2. Decision making
3. Failure of land administration

The Communal Land Tenure Bill defaults exactly to the boundaries of the homelands wherein land was vested. It set up a segregated system of land rights in SA. It provided that in homelands, land will be transferred in ownership to traditional councils. Land occupied and used by ordinary members will be handed to traditional councils.

This entrenches the problems of decision making without countervailing accountability mechanisms. We know this has led, and will lead, to wholesale dispossession.

There is a complete breakdown of land administration systems. It has to incorporate some sort of internal rights for community members (the CLTB) because otherwise it is unconstitutional - but there needs to be a land admin system to regulate those rights.

The explicit powers provided to TCs by TKLA and CLTB give overriding power to TCs.

The notion is that the communal land is free for the taking and the government can hand it to anyone they choose.

The ingonyama trust judgment proves that wrong: there are pre-existing property rights on that land, customary rights, and the CLTB (and the old vesting trusts) attempted to obscure those rights.

e

Background: the ITB cancelled records of all pre-existing rights and told people for tenure security they must get residential leases. Otherwise threatened with evictions. Forced people to pay for land that they had occupied and owned for generations. This doesn't happen only in KZN. happens all over SA.

The perpetuation of the notion that customary land is vacant and thus free for the taking exacerbates tenure insecurity and dispossession

Extracts from the judgments: The court said that, under customary law each member of each calcs or community is entitled to and allotment thought procedures

The court said that under CL, each member of each community is entitled to an allotment into CL and it is then no longer communal land but belongs to that family. It is "involable" property rights of those families passing from generation to generation.

Judgment relies not only on CL, but also on IPILRA and the Constitution. Contrary to what the CLTB assumed, that 'communal land' is already covered by ownership rights.

The notion that customary law ownership is not new. From 1960s it has been part of our law - in academic writing, ULTRA, Section 25(6) of Constitution, IPILRA, Alexkor, Tongoane and Maledu judgments. Contrary to the legislature's approach, the court has repeatedly recognised this principle.

IPILRA, however, is a very basic law that only gives the very basic protection against removal.

ITB judgment goes further. It looks at rights of the individual/households.

Decision making rights are integral to property rights. But that right is taken away from people on communal land.

ITB judgment says elements of customary ownership: occupy, use, dispose of, erect x or let, transfer, bequeathe.

The most basic of those is the right to consent prior to deprivation - IPILRA only protects that.

ITB does not talk about the land beyond that allocated. But the judgment does reference the facts that people have strong and secure rights to commonage (grazing land etc).

It differs from IPILRA: land held on communal basis can be deprived on basis of majority of affected rightsholders. Completely different to the idea that a chief can take the decision.

Judgment says to force people with customary ownership to get leases is an arbitrary deprivation and therefore unconstitutional.

For the CLTB, it means that if the state enacts the current version and transfer ownership and control not to families, then it will be unconstitutional.

So will government go back to the drawing board after ITB? Unlikely, because the debate about that bill is not about property rights but about power of traditional leaders. This completely hides the property rights that are at stake.

Court was critical of the ITB's attack on the people who came to assert their property rights. It is not to be confused about the constitutional status of the King. It has nothing to do with that. It is about property rights.

VERY ironic that the ITB is demanding common law ownership - a western concept - at the expense of customary ownership. THIS undermines the 'traditional' values they claim to uphold.

Leave to appeal has been granted on limited grounds. Good if it goes to a higher court to extend the precedent.

What we have now is a political process that simply aims to appease traditional leaders and other elites.

Tembeka Ngcukaitobi:

Alternatives to secure tenure

The Draft bill in its current form will be unconstitutional. We must look at the theory underpinning section 25(6) of the constitution. The first is that it is an equalising right. The second is that it is located in s25(5) – which is intended to transform property relations. The Bill believes that the land in communal areas is actually state land, and that it can be controlled through traditional institutions. Historically, the state has entrusted chiefs to 'control' land. The true political power is inseparable to control over land. Instead of transforming existing colonial relations, the risk is that this bill will entrench them. It is a regressive law. The Bill further uses a vague notion of 'community'. This renders the individual and the family invisible. Decisions could be made by a large group on behalf of individuals - this is a colonial construct toward native land. It never regarded it as being capable of having individual control. The power relations have calcified over time - in favour of men and traditional leaders. The third problem is the actual day - to - day operation of the Bill. The community may make a choice on how to administer the land - either through a traditional council, CPA or other entity as approved by the minister. There is thus ongoing control of traditional institutions. The Bill is neither equalising nor transformational. The ITB judgment gives effect to living customary law - it is modern. We must be explicit in rejecting the Bill. Community views must be reflected in it. We must also build robust institutions that support community structures. Resources should be made available to strengthen community associations. IPILRA sets out basic protections, and its starting point is the individual - IPILRA needs to be built up/made permanent.

Tembeka's 5 steps:

Step 1: The Bill needs to be scrapped and re-written. Communities don't want a Bill drafted for them by the government. They want a Bill in which their views are reflected.

Step 2: A new Bill that is not going to be drafted from the top-down but will be drafted from the bottom-up. The law's duty is to reflect what the people say - not what the politicians say.

Step 3 is building robust institutions of customary law, that support community structures.

Step 4: We do have an alternative piece of legislation. It's called IPILRA. It was done on an interim basis. But it sets out very basic provisions. Its starting point is the individual. Building

IPILRA up, making amendments to it and making it permanent. But it is not up to us, the elites, to decide.

Step 5 is winning our case at the Supreme Court of Appeal.

Please highlight tweetable stuff for comms team. Tembeka will be tweetable.

I am very pleased to have been invited. :) And i will present in both English and isiXhosa
The topic I will deal with is the constitutionality of communal land rights bill. It goes with a policy adopted in 2014.

Firstly: we are talking about a draft bill

- Communal Land Rights Bill. It is not a new bill, it was first introduced in 2004, There is a new bill and that is what we are talking about today.

Before they were called Bantustans they were called Native lands.

SO what do I think about the CLTB? I believe that the draft bill, if passed in its current form, will be unconstitutional. Some of the reasons have been alluded to by Anninka. But let add further reasons.

1. The first is: we have to look at the theory underpinning s25(6) of the Constitution. A person or community whose tenure of land is insecure as a result of past racial legislation or practices are entitled to tenure security in terms of a law or comparable redress.
2. It provides for racial discrimination - so should be read with s9 of the Constitution.
3. There is a duty on the state to eradicate all forms of racial discrimination. It is an equalizing right.
4. The second element is that it is located in s25 which is a section intended to transform property relations created under apartheid. "It is a transformational right".
5. Both the equalising and the transformational is central to understand what law must be passed under that section.

Section 7(2) of const say we must also respect, protect, promote and fulfil all rights.

How does the Bill see the role of the different institutions involved in different communal land areas. Dominant element of the Act: it believes that there is a legal vacuum in relation to the land held by communities. But the premise of the Bill is that it believes that the land in communal areas is actually state land and can be controlled by the state through traditional institutions/leaders. That is a historical problem. When you consider where this comes from: it comes from history. The state has always put the chiefs between the government and the people and entrusted them with control over the land. This is clear from 2 pieces of legislation: Native Admin Act 1927 and Native Trust Act 1936. When you read both: one creates a trust to control native land, the other creates trad institutions accountable to give in order to exercise political control over native people. The political control extended to control over land.

Aninka is too generous to gov when she says they regard communal areas a legal vacuum. There is something more sinister: they regard it in the same way as the colonial and apartheid states. True political power is inseparable from control over the land.

Problem nr 1. Instead of transforming existing colonial and apartheid relations to the land, the risk is that the CLTB will entrench that. Fails in this aspect of s25(6) - a regressive law.

Secondly, it uses a vague notion of community. 60% requirement to pass decisions - 60% of community. This notion renders individuals and families invisible. you can go into a hall and find that someone else can take a decision whether your plot of land can now be registered in the name of the community. This is a continuation of the colonial construct of native land. The colonial government never regarded natives capable of individual control. The clash of the european construct with the indigenous concepts lives through this CLTB. It still does not realise that the native is as capable of exercising autonomous rights over property. This is an old problem.

What is wrong with that? The colonial gaze. And the power relations that have calcified over time in favour of men and trad leaders. marginalization of women and of 'the people'. It thus does not serve the second underpinning of s25(6) - equalising.

These two problems cut across the sections in the bill. Whether s28 (land admin and the choice).

When this Bill comes into operation, you will have a situation in which a community, with a chief as its leader (that notion of community as run by the chief), will have various choices about how to administer their land. 1. Under the traditional council 2. A CPA 3. Any other entity as approved by Minister.

Community already includes a TC, now adds it as another vehicle for land admin. In 2013, Dep said CPAs don't work and must be scrapped. ONgoing entrenchment of role of TCs to the sacrifice to true community decisions.

THIS is odd. The ANC claimed that it wanted to implement the Freedom Charter. The FC says that the land shall be shared among those who worked it. It never intended the land to be controlled at a state level. It was always a bottom up approach. We have a bill that is neither equalising nor transformational. What are we going to do?

Option 1: we have the ITB judgment. It is beginning to talk meaningfully about customary law. It is not referring to an idealised form of CL but living CL - the experiences of people now. That is what the constitution has in mind. What will CL look like after this judgment? Living CL is non-discriminatory, non-gendered, incorporates the youth, future looking, dismantles patriarchy, participatory. We need fuller theorisation of CL>

Option 2: We need to reject the Bill outright. It must be rewritten. Communities don't want a bill drafted for them by the government. Clear political demand to scrap the bill and draft it bottom up. Communities know what they want. The law's duty is to reflect what the people want and what they say!!!!

Option 3: Building robust institutions of customary law that support community structures. Many peoples have criticised CPAs. They have weaknesses but remain the most viable instrument of community interest. There needs to be resources to strengthen CPAs.

Option 4: WE are not operating in the dark. We have IPILRA, but it was done on an interim basis. Very basic protections. Unlike CLTB, its starting point is the individual, not a nebulous notion of a community. WE will not be left in a vacuum. We need to build IPILRA up. It is not for the elites to decide. Create structures for people to make their voices heard.

Option 5: Win the ITB appeal at the SCA.

Quotes:

- "The state has always put the chiefs between the state and the people, and entrusted them with control over the land"
- "The colonial and apartheid governments achieved this by providing to chiefs political control over people, through the Native Administration Act of 1927 and political control over land, through the Natives Land and Trust Act of 1936."
- "Renders invisible the individual and the family."

Q&A

Solomon Mabuza, Mpumalanga - Buffelspruit: Our gov promised us to have 3 spheres of government but the interference of trad leadership in local government and even COGTA has disturbed the whole process of spatial planning in rural areas. What is our government saying about implementing the laws of IPILRA - where is our government when the laws are being violated? Do we still have a government when our laws that were passed in parliament and gazetted are being violated? We have interference by government, what is government ?

Mokhuwe Masekwa, North West - GaMotlatla: We have realised that the TL are abusing the communal land and how about we come with a proposal such as we want to withdraw status as a traditional community and we want to approach the Premier in our area in Ga-Motlatla and what will we call ourselves as an alternative as a group when we withdraw as a community? They want to withdraw from being led by a chief and which structure should they establish once they have withdrawn?

Shirhami Shirnda, Limpopo - Bungeni: We have IPILRA and yet people's rights are still being violated so what will be different once IPILRA is made permanent?

Questions Durban :

-

Lina Nkosi: did anyone get the q by Ms Nkosi?

Lerato Ntombela: To Tembeka, if you say IPILRA I want to know if you said that IPILRA will help us in the communities tell us how, in which way?

Q&A & Comments EL

Angelina Matsheke - from Gwatyu - there are people working with Rural Development which are working with Tshashu and Ngugubele and sadly we are being overlooked, Tshatshu people are given preference. There are discussions about us (Gwatyu) held in our absence. We really have a lot of problems

Why does the State refuse to give the land to us (people of Gwatyu)? There is no development, there are no jobs in Gwatyu. That is why our children are in cities like Cape Town looking for work and some end up taking drugs because of a lack of opportunities. The State has not taken any steps to assist people from Gwatyu. What the state often does is that they have meetings with "Chief" Ngugubele about Gwatyu without the people of Gwatyu.

There are a lot of decisions taken about Gwatyu without the involvement of people from Gwatyu.

Nosintu Mcebeni, from Nqamako— We had lost hope as soon as we realised how ancient and deep rooted the issue is. Adv gave us hope though...the fact that the drafting can be from a bottom up approach...however, women should now take part. "There should be nothing for us, about us, without us."

Let me thank you chair. I'm from Gwatyu. There are people in our area lead by Ngugubele

Panel Comments and Responses:

Tembeka:

- The Gwatyu situation will be dealt with in a more structured way, it requires structural intervention and we are working with LRC, Wilmien Wicomb. [Thank you for rephrasing his words haha] Thank you to the women from Gwatyu and your passionate plea.
- IPILRA: There are options - maybe even better alternatives because we do not have to be stuck with CLRБ
- The gov ignores people that it perceives do not have power, marginalizes and prioritises those with money

This is why we have laws that sometimes contradict the constitution.
The key is to always take the power back to the people.

CLRB will also marginalise people and suppress them - why it must be confronted.

Aninka: Hear the complaints- gov basically ignores the 3 spheres of govt. And it does seem that TN is right. Govt is not talking to people whose land rights are at stake, talking instead to then TL, chiefs etc. ITB case is the 3rd structural interdict that was received against the govt. These Nkwinito said- you will win in the courts and we will win on the ground - teh Minister supported the Ingonyama in this matter. We have to build on the gains that we made - 1 way is to get iPILRA recognised. By focussing on individual rights held by families etc - to draw on the rights possessed by members of the community. The struggles that ppl are facing on the ground are crucial.this is why there is always proof that what the govt is doing is unconstitutional

JAnet: Depressing to hear some of the background, but she feels that today has started recognising the problem - we have to look at the now and use what we have to build IPILRA up and frame the problem, which we all know is there and find solutions to this. In having a look at the blanket laws and how they effect peoples lives for years - its depressing but we must not allow them to go any further.

Sithe: covered. Aninka hit the nail on the coffin - struggle has just begun.

Debrief/close off the day

End of day briefing:

What resonates with our own experience today? –

- 1. He is happy that he came to the discussion and he was able to be here and in fact we are still colonised. Traditional leaders and muni officials are the ones who are dispossessing us of our land.
- 2. He experienced that people don't have land people don't have chiefs, chiefs is for the gov. chiefs operative the same as the councillors because councillors belong to gov. we had an oppression apartheid regime and now a gov that has turned against the people.

What do we disagree or need to clarify on –

- - Hello to all, all what has been said here today is things that are happening in our rural areas. even the laws u discussed – some where oppressive. It does affect us. Other thing is that in rural areas I fu are a woman and want land, you need to get a male to represent you because you are regarded as a minor so you need a man to be allocated land. Even the ing trust case showed that we are all oppressed by it here especially in kwazulu natal

Insights and new ideas:

- IPLIRA must be permanent, women need to be have their rights assented to.
- Mbatha: The bill is good at presentation level, but at implementation it is too biased.

Action points:

n/a

Difference of opinions on what the speakers said:

Disagree with Sindiso point on customary law on the amalgamation. He says let the customary law be parallel to the common law, take abit of the common law. so that the common law doesn't bite where the customary law.

RAPPORTEUR NOTES

Durban

Saadiyah & team

Agreement -

- Khayelihle: Happy that he came and participated and thinks that we are still colonized and the traditional leaders and municipal officials are still oppressing us.
- Khanyeza Bekisisa : He explained that people don't have land, they don't have chiefs, chiefs are for the government. Chiefs are operating the same as counselors, because counselors belong to the government.
- Dingeni Mthimkhulu: Greetings. All discussed here today happens in the rural areas. The laws that are oppressive do affect us, in rural areas you are a woman and you need land to be allocated, you need to get a male to represent you because you are treated as a minor. ITB case showed that we are all oppressed by it here in KZN
- They all agree with Ngcukaitobi

Disagreement-

- Sindiso weeks said that customary law must amalgamate - Ncedo disagrees - it must be parallel systems. That is the area of disagreement for him.

New ideas - No real different items.

Action points:

- IPILRA need to be made final.
- Women's rights need to be advanced and defended.
- Nokubonga:: Constitution is good on its own but it is not being made real in practice.

Joburg

Tshepo & team

Agreement:

- If we do not have legislation then we can dream and make our own alternatives - traditional leadership has stolen our identity so there is no one size fits all.
- We do not need someone to supervise us. The Gov knows where the problem started - why don't we scrap Chapter 12 of the constitution? How can someone be a custodian of our land and yet they are going to steal our land?
- "The community does not need a chief; it is the chief that needs the community."
- The terms are different from our local languages - Sechaba, Morafe, Tribe - are these all the same understanding? We could have a workshop on interrogating the definition and see how we relate to these terms.
- Kgosi is one of the members of the community.
- "Customary law is not traditional leaders or institutions - it is *our* law."

Disagreement:

- There was no immediate disagreement but some fear that amalgamation is too complex and has implications we do not understand.
- In addition, the academics might not be fully engaging community responses or inputs

New ideas:

- Individual households withdrawing as members of traditional communities and alternatives; this would be best practical for governance in some people's view (how would this happen and what would be the implications?)

Action points:

- The CLRB needs to be scrapped and there must be consultation from bottom to top.
- IPILRA is our best mechanism of protection in present day. We need to push Gov that IPILRA must be made permanent
- When necessary you must then open a criminal case against the TL for infringing on your rights when they violate IPILRA
- Trusts vs CPAs: when the Trustees refuse to account and the members take the matter to court. How do we get the courts to give priority to such litigations?
- Strengthen our customary law and our focus can be how do we mobilize to reclaim our democratic rights and campaign to correct what is wrong with the current system of CPAs. Some CPA committees behave exactly like the TL - how do we come up with a campaign to reclaim what belongs to us and democratize it?

**Additional Notes (These might certainly be irrelevant and can be deleted as necessary - they are only captured as we did not want to miss any inputs)

- We can also look at the judgement by Moseneke re: Nyalala vs CPA and then we acknowledge that the land belongs to the people and not the chief.
- Obakeng community: I am remembering the panel chaired by Zenande - Dispossession disguised as Regulation - on our land we are advised to claim our land but we missed the cut-off date. At that point political comrades are colluding with TL and doing ecotourism. We have lived on the land for 35 years and yet we are told we must rather be relocated but we are farming people who need arable land. We have high unemployment and the gov is refusing us access to land.
- There is a problem of inheriting the colonial system to apartheid and now even in democracy. We need to demand that we dismantle the system that was inherited.
- What stood out, the speaker Kolosa Ntombini shows us how the system is disempowering our people. We have people who opt for Trust instead of CPA without knowing that this takes away power and knowledge because to amend Trusts requires money.
- Emily Tjale: I am saying we should be aware of the tricks that Gov is playing. We have to keep fighting the Bantustan mentality!!! Women, let us go to the fore and bring our children and people with disabilities
- Henk: Lamosa bundle - summit on government collaboration between traditional leaders and gov. The answer on land tenure issues was traditional leaders. Traditional leaders

will be the 'proxy government'. today , tomorrow and friday is the opposite - it is for us to make sense of it. Sponsor of conference = dep science and innovation - Min Blade Nzimande. But in Feb this year he announced hydrogen mining society. Going to make green hydrogen for the world - this is splitting up water into its parts. Green ammonia is a dangerous gas and is used in maritime and shipping industry; so we provide hydrogen for ships to Rotterdam. There will be 60 000ha of Richtersveld land and 240 000 ha of Khomani San will have to lose land rights in order to sign off on these projects. They send provincial government to consult - but they don't have the power. Section 32 of TKLA allows the provincial gov to have overarching powers to dispose of our land rights. How do we deal with attacks on our land and property rights>that is what is out of the next two days

East London

Sipesihle & team

Agreement

- All were thankful for the conference.
- Land dispossession has been ongoing in several ways. Some are disposed of by chiefs and others by the local municipal council. This dispossession is multifaceted, there is the physical land aspect, the spiritual, the social and??
- The legislative framework enables land dispossession and perpetuates conflicts in communities.

Disagreement

- There were no disagreements per se as the chair kept giving explanations/clarity where people sought such. For example, one speaker whose further details are given in the general notes below was of the opinion that we do not need to be concerned with laws and land claims anymore, we are sure to be given the land. We should be discussing how to get resources to work that land. The chair responded and the house concurred. The response was that we have to start with such discussions, understand the law in order to then challenge it. This, we can afford. Providing equipment to work the land is very important but very expensive but that does not mean that you cannot approach us for such. We might not be able to give you equipment but we might point you towards the right direction or right persons, so we each do what we can.

New ideas

- People must hold each other accountable just as much as they hold the government accountable. They must adopt sustainable practices in relation to mother nature.
- We need to look into how to capitalise on using marijuana for our economic development.

Action points

- A committee must be set up to facilitate the education of villagers about the Bill
- NGOs and interested parties must come together to equip people who have been given land to work the land.

Ntombentle Nelani, Kariega PE: What affects me the most is that we have a lot of land but we do not have access to it. Our animals have no grazing land, they end up in town and we have to pay a fine. For

the land reserved for grazing, one must get municipal approval of which only well known people really ever get it. Bluekraans land was bought for some beneficiaries who own 41 % of the land, the white man owning the remainder said he will kick out any of the beneficiaries that are not working for him. I am told here that we must make an action to remove the laws that oppress us, but where do I even start? There are commonage lands in Kariega, but when we occupy them the municipality arrests us and says that's its land and we should wait on it to grant us the permission to occupy the land. We are in the same position as those oppressed by the Chiefs, we are oppressed by the Municipality.

Ntomboluni Keiskammahoek: For the longest time, we have called for a bottom up approach but in vain. Chiefs are especially the issue as with us it is not clear if we even have a chieftaincy or not. I thought the Ntlama Commission would clarify this but it did not. I don't understand why chiefs have been given so much power. We have intentions of having a CPA but with the uncertainty on Qoboqobo chieftaincy issues, it is difficult for us as we do not know how and whether we are protected, we feel that chieftaincy is being forced on us. The issue of title deeds is as problematic since one could have a title deed in relation to a specific piece of land but this title deed ends up with the traditional council than the people. NGOs and communities in general end up in a dilemma

Chair: Adv Ngcukaitobi said we can re-draft the Bill so that communal land is given to the people than the traditional council. We shall not give up just because the issue has been going on for long. Rather we should hold on tighter. Chiefs now have roles in Municipal Councils hence the same issues.

Mount Frere KwaBhaca: We are also ruled by a chief. However, we managed to get it hammered that the chief only has oversight on the land, the land belongs to the people. These issues have been here. But we have to fight over and over again and put them (chiefs) in their place as they keep testing us. When we talk about land we talk about a mother, or a girl. I was really hurt by the dislocation of graves. It's a dismantlement of a woman (or man born of a woman) in her own nature which is the land...why are we silent? History speaks of women who fought hard and did not fear bullets, what sort were they that we are not? We need to be empowered; we need unity. Chiefs keep testing us to see if we still hold the position we had held. Democracy did not free men while keeping women subservient to men.

Zuziwe Sandlana: we have PTOs, our land is taken by our own people. We have a chief whom we have reported the issue to but he did not resolve it. Yet the chiefs are said to have oversight over the land. These chiefs do not even care, or know what is happening, how are we to be ruled by them?

Buffalo City Amagqirha/Traditional healers: natural resources issues, seas, waterfalls or nature in general is sacred. We get power there. But since the municipality controls the land, we no longer have these areas open to us to perform our rituals/ceremonies, they are closed. We were given one area (Gulu), but you still have to get permission from the municipality. The municipality is most likely to deny you access if you are not well known. Recently Gulu has been sold to a private person. We now have nowhere to go. Please let this be checked, we are well licensed, and trained so we want to be recognised too. Our municipality and government in general is oppressive, let us be given respect like churches and other cultures.

Monwabisi Jembe, Xukwana: May I be corrected...is this the right place and time to be talking about chiefs in their absentia as if we fear them, or bad mouthing them? How will they know our concerns when we only discuss them here and not take the issues to them? Maybe we should talk to them in person.

Chair: the conference is so that we raise the issues, and then we will further discuss and have follow-ups, structure up and then we can see a way forward.

Lulamile, Centane: We were also affected by an Agri-business promising economic development but failing to deliver. There is also the issue of the land near the sea. We made an inquiry about that land which was taken from our people but we got no answers. Generally, these laws really need us to give them life. But some chiefs do run away when you try to engage with them. We had handed over the issue to the LRC but we are still waiting for their way forward.

Andile Sishuba, Hewu: We have a different case of land dispossession. Our land was taken far before 1913. It has always been trimmed and given to other communities. This resulted into conflicts between us and the communities being established around our land. We have tried to get help but got none, our area is now surrounded by a lot of communities and it cannot grow. We are not asking that the surrounding communities be chased away, we ask to be given other land. We have some in mind, proper investigations might help establish who the land belongs to, otherwise the state should give us from its own. The chief issue.., ours has no good background, he lives somewhere else. We seldom see him yet he is our chief. He rules by remote and he just keeps appointing people to rule us. We have been to Cogta but got no help. We presented the Cala judgment saying it ought to be enforced/applied to us as well but nothing. The government has helped remove chiefs before but they are not helping us. We need the same help.

Dwesacwebe-Xorha: What opportunities do we have to try to draft the law we need and get rid of the Bill Adv Ngcukaitobi spoke of? The people are not given the chance to make representations. How can we ensure that the promulgated law is the one that reflects our views? We were given some land in 2001. We had sought it for development purposes. Yet we had to fight to ensure that our people are employed in any development taking place there. People from other places were always given preference. It is only lately that we see a bit of our people being hired. The nature reserve is no longer fenced even, the persons, the very government, responsible for it abandoned it so that the government says we are unable to maintain it.

Mancete, Mdantsane: There is a lot of land all around, yet we do not have it. We are farmers at heart but the land is a problem. I have a vision for farming and I need some land to live up to these visions. Can't we all stand and investigate these farms that have been left there by whites, so that we know how to access them?. There is a big issue of land being relieved but not being used. Traditional healers were accused of endangering species and polluting nature. We had to go and explain and prove that we are not the ones who had done these things. We explained that we stand against those who do those things. We established that indeed there are other healers who are guilty as charged. How do we fix all this so that we are given land.

Chair: True, let us also check ourselves as much as we check the government, we do have some tendencies that promote unsustainability of resources. Let us not take ourselves backwards by our own doing then.

Ms Mhlahlo, Qoboqobo: Government brought several contradicting policies, e.g chiefs were made land administrators in one piece of legislation that was meant to recognise the Khoisan. The same government said commonage land belongs to the people, which is contrary to the notion of putting chiefs in total control of the land. These chiefs have been given too much power by the government which causes conflicts between chiefs and communities. We have a Plant Water Board, yet the community is not benefiting. There is also a reservoir having about 250 000 litres of water. This water is taken to Rinipeople who don't need that water since they rent some from the municipality. We are left without water and not benefiting from this reservoir. **Is this system an apartheid one?** Mount Coke has a quarry, I saw 45 trucks of gravel yet the community knows nothing. A white man fenced the area, after making

agreements with the chief. The community knows nothing on how the chief is benefiting. Let's press the government, it's selling us.

Mawethu, Vulamasango member: We live with "Amaphara", the chiefs. For example, we wanted to erect a cell phone tower at a certain school hoping that the future generations will benefit. The school would benefit through rental. We then needed authorisation from the councillor and the chief. The chief refused and asked " what will I get out of this?" We explained the benefits the community would get from the project. Ultimately we managed, We do get R3500 per month into the school account. So indeed the government has brought us problems by giving the chiefs administrative power. They give away land as they please. We also have a CPA which is run by the chiefs and the elderly to the exclusion of the community. These are the issues we deal with.

Mzingisi Thomas, Berlin and Donwe: Thanks for the conference, The book "Zemki'inkomo magwala ndini" was on to something. We are now ruled by children through the law made by the government. How I wish people from rural areas would also get the information on the Bill. May all necessary steps be taken to educate the villagers about this Bill. Let's elect a committee to ensure that this happens, this Bill resembles the Groups Act, the government is now making us all subservient to it, its really sent by the Europeans and US. Let's take it seriously as it is a spiritual war. As rastafarians we say "mother earth". Land first and all shall follow. Please let us have a proper plan. Our chiefs have been brainwashed by these businesses and a government that arrives at night with promises that are always broken, we have to stand. Like traditional healers, we are in trouble. We are not free yet, for example, a cannabis licence is R1mi. Only the rich will get it and continue to be rich. The very same people who policed against it. Now a Chinese company proposed cannabis production and the government is considering it.

Joe, Qonce: We have similar problems. I am grateful for these presentations, they empower us. May it be made accessible to all our villages, so that we then come up with an action plan.

Zoleka Mabetha, Stutterheim: We have been on this road for so long. We get the land but then what? May we have a plan of action on how to get resources to work the land? The issue is that we are unemployed youth, we will get the land but have no resources to work the land. What then can we do to help getting resources for each other because our government has left us on our own.

Chair: The money on towers - chiefs think its their money.

"Transkei is not part of South Africa" check out this article

<https://dailyfriend.co.za/2022/08/14/transkei-is-not-part-of-south-africa/> Mike Coleman

Online

Ruth & team

Agreement

Disagreement

New ideas

Action points

Points of Agreement

Durban

- Happy that we came and participated. We are still colonized and the traditional leaders and municipal officials are still oppressing us.
- People don't have land, they don't have chiefs, chiefs are for the government. Chiefs are operating the same as counselors, because counselors belong to the government.
- All discussed here today happens in the rural areas. The laws that are oppressive do affect us, in rural areas you are a woman and you need land to be allocated, you need to get a male to represent you because you are treated as a minor. ITB case showed that we are all oppressed by it here in KZN
- They all agree with Ngcukaitobi

Joburg

- If we do not have legislation then we can dream and make our own alternatives - traditional leadership has stolen our identity so there is no one size fits all.
- We do not need someone to supervise us. The Gov knows where the problem started - why don't we scrap Chapter 12 of the constitution? How can someone be a custodian of our land and yet they are going to steal our land?
- "The community does not need a chief; it is the chief that needs the community."
- The terms are different from our local languages - Sechaba, Morafe, Tribe - are these all the same understanding? We could have a workshop on interrogating the definition and see how we relate to these terms.
- Kgosi is one of the members of the community.
- "Customary law is not traditional leaders or institutions - it is *our* law."

East London

- All were thankful for the conference.
- Land dispossession has been ongoing in several ways. Some are disposed of by chiefs and others by the local municipal council. This dispossession is multifaceted, there is the physical land aspect, the spiritual, the social and??
- The legislative framework enables land dispossession and perpetuates conflicts in communities.

Points of Disagreement

Durban

- Sindiso weeks said that customary law must amalgamate - Ncedo disagrees - it must be parallel systems. That is the area of disagreement for him.

Joburg

- There was no immediate disagreement but some fear that amalgamation is too complex and has implications we do not understand.
- In addition, the academics might not be fully engaging community responses or inputs

East London

- There were no disagreements per se as the chair kept giving explanations/clarity where people sought such. For example, one speaker whose further details are given in the general notes

below was of the opinion that we do not need to be concerned with laws and land claims anymore, we are sure to be given the land. We should be discussing how to get resources to work that land. The chair responded and the house concurred. The response was that we have to start with such discussions, understand the law in order to then challenge it. This, we can afford. Providing equipment to work the land is very important but very expensive but that does not mean that you cannot approach us for such. We might not be able to give you equipment but we might point you towards the right direction or right persons, so we each do what we can.

New Ideas

Durban

- No real different items. [It is what we know]

Joburg

- Individual households withdrawing as members of traditional communities and alternatives; this would be best practical for governance in some people's view (how would this happen and what would be the implications?)
- We can also look at the judgement by Moseneke re: Nyalala vs CPA and then we acknowledge that the land belongs to the people and not the chief.
- What stood out, the speaker Kolosa Ntombini shows us how the system is disempowering our people. We have people who opt for Trust instead of CPA without knowing that this takes away power and knowledge because to amend Trusts requires money.
- Section 32 of TKLA allows the provincial gov to have overarching powers to dispose of our land rights. How do we deal with attacks on our land and property rights>that is what is out of the next two days?

East London

- People must hold each other accountable just as much as they hold the government accountable. They must adopt sustainable practices in relation to mother nature.
- We need to look into how to capitalise on using marijuana for our economic development.

Action Points

Durban

- IPILRA need to be made final.
- Women's rights need to be advanced and defended.
- Constitution is good on its own but it is not being made real in practice.

Joburg

- The CLRБ needs to be scrapped and there must be consultation from bottom to top.
- IPILRA is our best mechanism of protection in present day. We need to push Gov that IPILRA must be made permanent
- When necessary you must then open a criminal case against the TL for infringing on your rights when they violate IPILRA

- Trusts vs CPAs: when the Trustees refuse to account and the members take the matter to court. How do we get the courts to give priority to such litigations?
- Strengthen our customary law and our focus can be how do we mobilize to reclaim our democratic rights and campaign to correct what is wrong with the current system of CPAs. Some CPA committees behave exactly like the TL - how do we come up with a campaign to reclaim what belongs to us and democratize it?

East London

- A committee must be set up to facilitate the education of villagers about the Bill
- NGOs and interested parties must come together to equip people who have been given land to work the land.

Mbuso's notes

DAY ONE

- *Violence is a tool used by those in power*
- *Assassination of land right activists*
There is no justice.
- *KZN Ayanda Ngili Nokuthula Mabaso were assassinated*
- *EC Bazooka Radebe assassinated*
- *She offered a tribute to those who passed away in their quest for land justice*

Moment of silence for those who have passed on.

Opening Plenary Discussion

Mme Grace Maledu

- *The Maledu Judgement*
- *They grew up living in the land, they never worked because they lived from the land.*
- *She took a stand because she fought for rights of miners*
- *Imprisoned in 2008*
- *She refused to be relocated in 2014 when others were.*
- *Teach children about the importance of land,*
- *'What are we going to benefit once the minerals are depleted?'*
- *She says we should value land because material things that are bought with that money will eventually dissipate.*
- *Calls on rural minister to fight for people's land rights*
- *Places emphasis on the water issue.*
- *Single parent of 5 who grew up with the land*
- *Women who are victimised need to fight back*

Sindiso Mnisi - Weeks

- *The Relationship between Land and Marriage*
- *Ramohovhi Case (one and two)*
- *Looking at marriage in the african sense and how to distribute that*
- *1 was in 2017 and 2 was in 2019*
- *Land is a source of livelihood for survival.*
- *Looking at land from a perspective of customary law*
- *All parties have equal rights within customary law in terms of land*
- **LOOK INTO THE RAMOHOVHI CASE**
- *Customary law is separate and othered from common law.*
- *An amalgamation of common and customary law would be plausible*
- *Codifying customary law kills living customary law. She views it as flexible and evolutions*
- *The other option is to apply common and customary law to be parallel to each other*

- *An amalgamation of living customary law and common law would be infused and work together. There is a limitation in terms of codifying but it's better than other options.*
- *Requires a radically transformed judiciary*

Professor Sonwabile Mnwana

- *Dispossession along the platinum belt*
- *The understanding of property.*
- *Land conflict has always been there in South Africa due to dispossession*
- *The expansion of mining in rural south africa especially in the former homelands*
- *Mining has led to conflict.*
- *Mining capitalists, chiefs and the state are in cahoots with this.*
- *People are scared that they will be forced off their land by mining.*
- *A focus of disempowerment in the platinum belt*
- *A look into shared land and property rights*
- *Power and how it plays in dispossession*
- *The notion of community; what it is and the understanding of it.*
People whose interests are in the hands of the chiefs
Being a community doesn't mean that their land and rights are to be treated like that,
there should be some autonomy within a community.
Community should be a principle and not their identity.

Prof is reading a paper which I am hoping he could share.

Engagement Point of the Plenary

- *Mining has left a lot of people worse off than they were and people have observed it.*
- *Xirame Xirima:*
Says he has a problem with the rules around sharing land
- *Baby*
What is being done with apartheid laws that are rearing themselves in rural communities??
- *Bhekisisa Khanyeza*
"Our biggest issue is the country, we could fix the law but the governance and their identity is where the danger is. We are chasing western standards and they are not serving us. I would like us to focus on what we knew before. We need to change our way of life as black people so we can go back to our essence."

Eastern Cape questions/comments

- *There is a family that was killed in an attempt to protect their land in 2020.*
- *Agri development is also a major contribution in the land grabs.*
- *There is an issue in Limpopo where chiefs sell land that they had lost to communities*
- *He is highlighting ways in which people are disenfranchised from their land.*

Eastern Cape questions

- *Question to Weeks*
- *Customary law should be independent*
- *The reversal of villages*

Mme Grace

Grace Maledu (translation):

I want to agree with Prof Sonwabile because this is exactly our experience on our land as people who are fighting for our land. We say to the government: please know that this is our land and we need help please assist us to be able to have our land. Please stop giving traditional leaders the rights to abuse our rights.

Kolosa Ntombini

(We were cut off from this and we joined a breakaway)

Dr Dineo Skosana is speaking about the exploitation of mining companies and the removal of their graves. They lost over three hundred graves that were placed next to a mine dump.

Mbuso Nkosi

- *We should change the way we view land and dispossession*
 1. *The state*
 2. *The dead*
 3. *The Farmer (or mine)*
- *Farms in Bethel were using prisoners to plant potatoes on land that had graves which led to a potato boycott in 1959.*
- *A family that was dispossessed had to 'steal' a grave after they were forcibly removed from the farm/*
- *Once people are removed from their land, they become labourers or criminals.*
- *A sangoma named Gogo Mshanyelo was haunted by ghosts who demanded to be freed. They are allegedly souls that were begging for their freedom and they were buried at a farm 250 km from her.*
- *These were 100 unmarked graves that belonged to prison labourers.*
- *They called that gravesite 'a place of orphans' and they were buried like dogs.*
- *The previous owner of this land was apparently evil and tortured prisoners from the early 50's to the 80's.*
- *They doubted Gogo because her eyes were spiritual so they wanted a plausible cause by hiring an archaeologist in 2015..*
- *There has not been any follow up on the case.*

Simon Gush

- *His films are about land claims in Salem in the Eastern Cape.*
- *His family settled in that land when they arrived.*
- *He wanted to make a film about where he grew up and it ended up being one about the quest of the people his family dispossessed claiming their land.*

- *The people from Castle Farm are facing challenges in terms of their claims as a result of being black. They are being sidelined by the White people in Salem. Lungiswa says that there is some apartheid present there.*

Mbongiseni Buthelezi comments

- *Highlighting the conversations around spirituality with land that were raised by Mbuso.*
- *Looking at their graves and how people have been dispossessed even in their death as a result of capitalistic behaviour as Dr Skosana has stated.*

Observation:

I think the crux of today's conversation so far is dispossession and the effects it has on people. There are multiple angles that have been presented and they all trickle down to the legacy of colonialism and

Durban Comments

- *This man says that it is quite shameful what is going on in terms of the land. People who died on that land have been turned into manure*
- *Chiefs and the government are siding with mines.*
- *It is hard to emphasise our spirituality because we don't want to learn our beliefs.*
- *They claim that they are creating jobs and these jobs require them to bulldoze our land and our bones which is something we value.*
- *The quest for jobs and capitalism has dissipated ubuntu and people are desperate for jobs so they agree to these terms hoping they'd be seen.*
- *Let's bring back ubuntu*

East London comments

- *An erection of a stone that is strong enough to last the stand of time.*

Nomonde

- *The focus of land dispossession and women.*
- *The effect of it on women and how they are not seen by traditional leaders.*
- *Women are the majority of this country and women feed generations using the land and patriarchy pushes them aside*
- *"Are women's voices taken seriously?"*

Johannesburg comment

Christina Mudau

- *They removed graves even though the graves were in their yard.*
- *Relocation of graves to places where the graves suffer erosion and disappear because they aren't*

Matthews Hlabane

- *There is no resting in peace because of blasting and excavations*
- *Dispossession reduces biodiversity and the dignity of the people*
- *Education system and media contribute to the idea of land dispossession through the set agenda.*

Janet Bellamy and Sthembiso

- *The story of Umnini, a community that was dispossessed.*
 - *They are the first land owning land trusts in South Africa.*
 - *The amaThuli lived in the 1750's until settlers arrived in 1824.*
 - *In 1845, they were first dispossessed and in 1851 they were dispossessed again.*
 - *This left them with no access to land to graze, water and their graves.*
 - *They later moved to uMgababa river and named it Umnini trust.*
 - *They were protected from the native land act.*
 - *The land is used for residential and agricultural practices.*
 - *The land is being sold against the will of the community and the community set up a group in protest to their land being sold by the traditional leader.*
 - *They are fighting against their land being sold without their consent to people outside their trust.*
 - *A report was submitted in 2015 to the MEC but it's never been public.*
 - *A farmer fought tooth and nail for his land that turned out to be privately owned as a result of it being sold by the trust without their consent.*
-
- *The development of the Inanda Dam*
 - *A tribes land was taken to develop the dam*
 - *Portions of land were sold to the municipality without the communities consent.*
 - *The land is now occupied by informal settlements.*

Annika Classens

- *Highlighting the contravention of customary law by the Ingonyama Trust.*
- *The abuse of power by traditional leaders.*
- *The lack of land administration in the former homelands and the country.*
- *Land that was used communally was transferred to traditional leaders at the end of homelands.*
- *The Ingonyama Trust cancelled records of all pre existing land rights and forced people to take out leases on land they've lived in for generations.*
- *Mining takes precedence over everything in South Africa.*
- *The Ngonyama Trust took away rights to live, sell or bequeath the land that these people have lived on for centuries.*
- *The trust arbitrarily deprived people of their rights.*
- *Royal power in opposition to property rights of the masses.*

Thembeke Ngcukaitobi

- *The draft bill in its current form would be unconstitutional*

1. *It is an equalising and transformational right which are important in adjusting the impact of apartheid's land distribution.*
 2. *The bill believes that land in communal areas belongs to the state which they have control over through traditional leaders.*
 3. *The state entrusted control over the land to the chiefs who act as a balance between the government and their people.*
 4. *They regard communal areas in the same light as the colonial government did instead of a vacuum.*
- *This law is regressive and it uses a vague notion of community.*
 - *The community is under the chief so they end up taking decisions for the team.*
 - *The Freedom Charter stated that land will be shared and not to be controlled at state or traditional levels.*

Engagement Session

Joburg

- *The interference of traditional leaders has led to some instability as a result of COGTA and is the government here to help us because it seems that they are watching,*
- *A possible solution to withdraw from a traditional community as a response to the mess they have caused.*
- *What is the difference between the interim law and the law that will be put in place permanently?*

Durban

- *A general thank you to Adv Tembeka for the clarity regarding the law.*
- *Will phira help the communities and in which way?*

East London

- *"We are in pain as a result of the chiefs in Gwatyu, this means that they aren't traditional leaders there yet the Tshathsu clan takes everything pertaining to the land. The government is also involved because they aren't assisting. They want their land back."*
- *"I had many questions but if this goes as far back as the 1800's who are we? And I am also fearful of the fatalities that could arise as a result of this fight for our land but Adv Ngcukaitobi gave me hope."*

DAY 2: Thursday 18 August 2022

Responding to the problem – here and now

RECAP OF DAY 1

Wilmien Wicomb, *Legal Resources Centre*

ORGANISING AGAINST BANTUSTAN MENTALITY, SELF-EMANCIPATION FROM BELOW (all? Language issue)

CHAIR: Constance Mogale, *Alliance for Rural Democracy*

COMMUNITY ACTIVISTS

- Christinah Mdau, *Mmaditlhokwa Community, North West*
- Zibuyisile Zulu, *Matshantsundu Community, KwaZulu Natal*
- Margaret Molomo, *Mapela Community, Limpopo*
- Speaker Mahlake, *Moreipuso Community, Mpumalanga*
- Nomvuso Nopote, *Cala Reserve, Eastern Cape*

COMPARATIVE AFRICAN EXPERIENCES WITH FORMALISATION (Ruth)

CHAIR: Admos Chimhowu, *University of Manchester*

Evaluating land titling as a means of securing tenure in the context of customary tenure: A case of Uganda, Malawi and Mozambique Judith Atukunda, *LANDnet Uganda*

Junior Alves Sebbanja, *ACTogether Uganda* Kate Chimwana, *National Engagement Strategy Platform for Land Governance Malawi*
Clemente Ntauazi, *Livanningo Mozambique*

The impact of formalisation on women's land rights

Phyllan Zamchiya, *PLAAS, University of the Western Cape*

Chilombo Musa, *University of Cambridge*

Land Law Reform and Tenure Security in West Africa: Evidence from Ghana

Augustine Fosu, *PLAAS, University of the Western Cape*

UNDERSTANDING CUSTOMARY LAND RIGHTS IN CONTEXT: HISTORICAL INTERPRETATIONS AND CURRENT STRUGGLES (Ashley)

CHAIR: Nolundi Luwaya, *LARC, University of Cape Town*

Ascertainment and Ignorance: the Making of Customary Law of Land in the Eastern Cape Derick Fay, *University of California*

The Municipal- Traditional Authority

Interface in the Governance of Land Under Customary Tenure in South Africa

Gaynor Paradza, *Public Affairs Research Institute, University of the Witwatersrand*

CPI's/Alternatives to CPAs

Tara Weinberg, *University of Michigan* and Sithembiso Gumbi, *LARC, University of Cape Town*

THE PROBLEM OF LEGISLATING CUSTOMARY LAW (Shane)

CHAIR: Wilmien Wicomb, *Legal Resource Centre*

Asserting customary fishing rights in South Africa

Michael Bishop, *SC, Cape Town Bar*

Legislating Customary Law

Thandabantu Nhlapo, *University of Cape Town*

Giving effect to customary rights in legislation: the case of customary fishing rights

Jackie Sunde, *Masifundise Development Trust* Wilmien Wicomb, *Legal Resource Centre*

MOBILISATION AND LITIGATION NEXUS (Ruth)

CHAIR: Nokwanda Sihlali, *LARC, University of Cape Town*

Conceptions of Justice: Obstacles to Land Restitution in South Africa's Putfontein Community

Baby Makgeledisa, *Land activist, North West Alex* Dyzenhaus, *Cornell University*

A Neglected but Vital Factor in the Demand for Land: The Spiritual Power of Restitution

David Coplan, *Wits University, Kearabetswe Moopela, land research anthropologist and ethnographer*

A Glance at Liberia Land Reform: Progressive Land Rights Law that Protects Customary Land Rights

John Kelvin, *Rights and Rice Foundation in Liberia*

DAY 3: Friday 19 August 2022

Where to from here in addressing the problem?

RECAP OF DAY 2

Dineo Skosana, SWOP, University of the Witwatersrand

Dimuna Phiri, Land Equity International Pty Ltd., Zambia/Australia

POTENTIAL CHALLENGES TO THE FORTHCOMING
COMMUNAL LAND TENURE BILL (Ashley)

CHAIR: Zenande Booi, Center on Race Law and Justice,
Fordham University

**Are 'customary' land tenure systems in rural
South Africa changing, and if so, why?** Ben
Cousins, PLAAS, University of the Western Cape

**Protection gaps illustrated in previous Communal Land Tenure
Bill**

Zenande Booi, Center on Race Law and Justice, Fordham University

DISCUSSANT

Describing the probl

FREE, PRIOR AND INFORMED CONSENT IN THEORY AND PRACTICE: WHAT'S THE NEXT FRONTIER FOR
STRUGGLE? (Ruth)

CHAIR: Sienne Molepo, PLAAS, University of the Western Cape

IPILRA and Section 54 of the MPRDA: How we leveraged various laws to achieve FPIC for mining projects
Aubrey Langa, community activist, Mogalakwena Mining Communities

**FPIC and natural resources:
Lessons from Nigeria**

Dayo Ayoade, University of Lagos, Nigeria

**Consent and Coercion: Communities' capacity to respond to external requests for community land in Liberia, Uganda and
Mozambique** Rachael Knight, International Institute for Environment and Development

THE INTERFACE BETWEEN LAND TENURE SECURITY AND LAND ADMINISTRATION (Shane)

CHAIR: Wilmien Wicomb, Legal Resource Centre

How is the role of land administration understood in the rural context?

Nokwanda Sihlali, LARC, University of Cape Town

The Gwatyu problem

Sipesihle Mguga, Legal Resource Centre Thembakazi Matsheke, chairperson of an "unregistered" Gwatyu CPA

Nesting land tenure in land administration Rosalie Kingwill, independent researcher