

**SUBMISSION OF CREATIVE PROJECT TOWARDS A MASTERS
OF DOCUMENTARY ARTS**



**REPORT ON THE IMPLEMENTATION OF AN IMPACT
CAMPAIGN FOR THE DOCUMENTARY FILM, *THIS LAND*:
FROM CINEMA TO COMMUNITY CENTRES – A GUIDE TO
DEVELOPING A GRASSROOTS IMPACT STRATEGY**

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1. Introduction

I entered this impact campaign with more questions than answers, more willingness to learn, than knowledge. As a documentary filmmaker of 20 years I had never conceptualised or implemented an impact campaign. The motivation for this project stemmed from several years of attempting to define the purpose of my work. In 2011 I reached a filmmaking catharsis, where I questioned the impact of films on the lives of the people featured or the issue at stake in them. I considered abandoning filmmaking and finding a more meaningful way to make a positive impact on the world and on the issues I cared about. Instead I made a decision to change the way I approached filmmaking.

I realised that in addition to the creative and financial production of a documentary, a film that aims for social impact needs to be “activated”. The conventional broadcast model that I grew accustomed to in the 90s and 2000s has shifted and the role of the filmmaker and/or the impact team (if the film has the resources for this) extends beyond the completion of the film or its distribution through conventional platforms. In 2015 I was commissioned by The Land and Accountability Research Centre (LARC) to produce a documentary to support their work in raising awareness around issues of land rights in rural South Africa. The documentary, titled *This Land*, was completed in 2017. *This Land* is a forty-eight minute narrative documentary which tells the story of a small village in rural South Africa, where the community resists the development of a mine on their land. The impact campaign for *This Land* evolved over time, as did my role in. It could be described as a process of guided learning-in-practice, where I consulted with researchers, academics, civil society leaders and representatives from the communities where *This Land* was filmed. I furthermore researched other successful impact campaigns, for example the impact campaign for *Miners Shot Down* by Rehad Desai¹; I attended an impact “Boot Camp” convened by Dr. Liani Maasdorp from the Centre for Film and Media Studies² at UCT; and I researched global impact case studies³. While I don’t describe my academic research in this report, I describe the strategy that evolved for *This Land*, its implementation and the relationship between the film impact goals and the impact campaign.

It is important to note that this implementation report constitutes the production component of my Masters Creative Production, and it is accompanied by written research titled “Implementing an Impact Strategy for Documentary Film Using a Community Driven Approach: A Case Study of *This Land*”. The two documents are closely linked and should be read together to gain a full picture of the practical and academic aspects of the implementation. Where there is overlap or repetition between the two documents it is in order to provide

¹ The academic research on *Miners Shot Down* is described in a paper that I presented at The South African Communication Association Annual Conference (SACOMM) in 2018, titled *Investigating a participatory approach to the subject in optimizing the impact of a documentary film, the case of Miners Shot Down by Rehad Desai*.

² The Encounters UCT Boot camp supported by Bertha Foundation offered a workshop on maximizing impact for documentary film.

³ The Impact Field Guide and Toolkit by Doc Society is a valuable resource when developing an impact campaign, highlighting various case studies.

information or contextualisation needed in order to read each document on its own. What differentiates this report from my academic engagement with the topic is that this report uses narrative enquiry to describe and reflect on the process of developing and implementing the impact strategy, where the academic study, drawn from the experiences documented in this report and contained in the dissertation, is a matrix that can form the foundation for a grassroots impact campaign, with a limited budget, that optimises partnerships with community-based organisations and other stakeholders through deep and meaningful collaboration.

2. Connecting narrative to impact

The research and development phase of *This Land* was a collaborative process between the filmmaker team and LARC researchers. During the process of viewing and transcribing the research material, we were struck by the visibility of the fearless leadership of Mbhekiseni Mavuso from Makhasaneni. We realised that his ability to articulate the essence of the struggle in certain rural communities and the unfailing stand he takes against corrupt leadership could serve as strong narrative elements to address the issues that LARC had identified in the commissioning brief for the film. As filmmaker, I wanted to make a film that could not just capture that, but contribute to effect the structural change necessary. The powerful role Mavuso played in his community and the values he represented is reflected in the film and supported by the impact campaign. As the process unfolded my focus as filmmaker shifted over time from creative production to “activation” and the implementation of an impact campaign.

While the success of an impact campaign relies on a compelling film to engage audiences, a social justice film without the effective implementation of an impact campaign is like a painting on a wall in an exclusive gallery where few will enter. While it has a place, it will have limited power or influence. A well-conceived strategy is required to ensure that the film reaches the impact goals. This strategy may, and I would argue in most cases should, change or evolve as more information is gathered about its efficacy.

Another thing I learnt in this process is that many of the models that exist for impact don't support the context in which we work in the developing world, where access to media platforms differ, budgets are much more conservative and the lived reality of the target audience differs from European or American audiences. To this end an impact strategy for *This Land* evolved to optimise our chances of reaching the impact goals and best access the audience and people represented by the story.

When discussing the process with other filmmakers wishing to design impact strategies for their films, I realised that the impact campaign that emerged through *This Land* has the potential to serve as a model for impact for filmmakers and organisations, especially where the campaign relies on reaching grassroots audiences to meet its impact goals. There are a few successful documentaries, like *The End of the Line* or *Blackfish* that make headlines and have access to substantial resources for big global impact

campaigns. But filmmakers in the developing world, confronted with pressing issues that arise from poverty, corrupt governing structures or exploitation by powerful entities, often lack the resources to effect legislative change or global impact. This does not mean the film will be less “successful” in achieving its impact goals. Instead the challenge is to align the impact campaign to the goals and context of the film and create a strategy that can be achieved within those limitations. It is with this in mind that I outline the implementation of the impact strategy for *This Land* and hope that some of the tools and structures created can be used by other film projects.

3. *This Land* documentary: background

The Land and Accountability Research Centre (LARC), which is situated in the University of Cape Town, Faculty of Law, commissioned the documentary film, *This Land* (2017), in 2015. LARC provides strategic support to citizens living in areas formerly within the apartheid Bantustans⁴, where the experiences of rural citizens are often at odds with the vision of a constitutional democracy. Many of the problems arise as a result of the land falling under the custodianship of traditional leaders who in some cases make unilateral decisions without consulting people who live on the land. LARC aims to ensure that law and policy work towards supporting democracy and question archaic power structures in former homelands that undermine these principles.

LARC recognized the potential of film to support this work and commissioned Plexus Films⁵ to make a documentary about it. As a research organization LARC is engaged with the subject matter both academically and in practice. As such they share information about these issues by publishing academic research and opinion pieces, engaging legal support and making submissions to parliament. However LARC identified documentary film as a powerful vehicle to engage a broad audience on an issue that would otherwise only interest people directly affected or involved and so doing draw attention to the work. As filmmaker my brief was to create a film that could raise awareness, stimulate national dialogue and advocate for the development of legislation that recognised the land rights of individuals and families living in communities where land rights are held under the custodianship of traditional leaders.

Brendan Boyle, a senior researcher at LARC and experienced investigative journalist served as the producer for the film within the organization, connecting the organisational objectives and the filmmaker’s creative vision. He outlined the impact goals as follows:

Goal #1 – Raise national and international awareness about the continued and intensifying exploitation of people living on communal land in the poorest parts of the country.

Goal #2 – Influence policy and legislation to protect the rights of

⁴ The Bantustans were 10 “tribal” homelands created by the Apartheid Government, to which the black majority was restricted according to the “tribal” classification. This effectively isolated the black majority of the population to just 13% of the land (*This Land* 2017).

⁵ Plexus Films is an independent documentary production company, which specializes in social documentary. Established in 2000, Plexus Films is managed by producer team, Lauren Groenewald and Miki Redelinghuys

people who own or occupy rural land with informal rights, (and in terms of customary law).

Goal #3 - Create a tool to be used in NGO and grassroots activism for the protection of the land and other rights of rural people and communities (B Boyle 2015, personal communication, 29 January).

It followed from these goals that the target audience would include:

1. Policy decision makers, political influencers and thought leaders.
2. Corporations with a stake in mining and other commercial developments.
3. Rural communities seeking access to information for the protection of their land and other rights.
4. Civil society leaders who could use the film as tool for activism in their work.
5. Students, especially those studying towards working in mining or law.
6. The South African public.
7. International audiences with an interest in social justice, land rights and activism.

After an extensive research period over six months, where various rural areas were visited, documented on camera and reviewed, it was decided to tell the story of Makhasaneni, with protagonist Mbhekiseni Mavuso, leading the narrative. As storytellers we were fortunate to have a compelling character and powerful leader in Mavuso, who could hold an audience and so-doing support the impact goals. The story of Makhasaneni also had the potential of a conclusion for the narrative arc within the timeframe available for filming in that the community achieved a victory at the end of 2016, when the prospective mining company withdrew their application to prospect for iron ore. Mavuso believed that this was as a result of strong opposition from the people living on the land that was earmarked for the mining development. In addition to the story of Makhasaneni, the film would draw comparative narratives from the communities of Babanango and Mtubatuba. In Babanango the community was facing land dispossession because of the development of a game reserve and a palace for a member of the Zulu royal family. Their struggle highlighted that the core of the issue at stake does not relate only to mining, but any development that takes place without meaningful dialogue and that fails to recognize the rights of the people who live on the land. In the villages near Mtubatuba communities suffer as a result of mining activities. Their struggle and the visual evidence of the damage caused by mining, represents the situation that the people of Makhasaneni were seeking to avoid. LARC expressed an urgency to have a film completed by the beginning of 2017, which created a time and funding limitation, as the film would need to highlight a narrative that could pose an outcome within that period. It also limited the time for fund-raising required for a long form feature. Within these limitations it was decided to create a 48-minute film that was achievable with the funds and time available and could portray a narrative that answered to the goals as outlined by LARC. While offering a compelling narrative with an engaging

protagonist, the story of Makhasaneni, juxtaposed with that of Babanango and Mtubatuba, could inspire an impact campaign to support the goals. As such the impact goals did shape the choice of narrative, but not at the expense of telling a good story with a strong creative vision.

4. *This Land* Documentary synopsis

We have seen that the chiefs are selling land to business people, mining companies, giving land to foreigners to build malls. We know that sometimes our land rights are not properly written in the law. But we know that traditionally we have a land right (Mavuso M, *This Land 2017*).

With his uneven, yet determined, gait, Mavuso leads us to his father's grave. He promised his father he would fight for the land and not allow his remains to be disturbed. He turns to reveal the words on his t-shirt: *30 Years in the Land Struggle*. This is no co-incidence. Mavuso has committed his life to fighting for the recognition of rights to land for rural communities, starting with his own, the small village of Makhasaneni. Hidden in the rolling hills of Northern Kwazulu-Natal, this land was considered commercially worthless in the time of Apartheid. The land, which was included in the Bantustan of KwaZulu, was too mountainous for use by commercial white farmers, too treacherous to navigate for forestry and unlikely to be profitable or so they thought. Mavuso continues explaining as he walks:

So now in 2011 we see people coming in and digging...and people saw this and starting asking what's going on and then they were told by one of the diggers... that there are minerals under here and "all of you are going to be moved (*This Land 2017*).

But the people of Makhasaneni are not planning to go.

Between 1960 and 1983 over 3.5 million South Africans were forcibly removed from 'white' South Africa to the homelands or 'Bantustans' as they became known (*This Land 2017*). Many of the families living in Makhasaneni are amongst those that were forcibly removed. Today they face a second forced removal as the struggle for rights to the land continues. While the traditional leaders are negotiating with Indian-owned Jindal Mines, the citizens set up a committee to affirm their right to the land. They have the support of the headman, Induna Dlodla, a wiry old man on the wrong side of 90, with a mind as sharp as a razor and the gravitas of the old guard. While his life has been threatened, he sticks to his principles and won't be moved. "I sleep like a rabbit, with one eye open", he says.

In 2012, a study by the UN Human Rights Council Advisory Committee found that smallholder farmers, landless people and tenant farmers are amongst the most vulnerable in the world. The community of Makhasaneni is a living testimony to this. Mavuso and members of the committee were targeted by professional hitmen in 2013. He has been in and out of hiding ever since, but is determined to continue the struggle. He travels around Kwazulu-Natal inspiring

other communities, boldly challenging government and traditional authorities. In a public meeting, he states boldly, “land is everything to us, we’re not scared to die” (*This Land*, 2017).



Figure 1. Mbhekiseni Mavuso, KwaZulu-Natal, Land Rights Activist

More information about *This Land* is available on the website:
<http://www.thislandfilm.com>

The film can be watched online at: <https://afriDocs.net/watch-now/this-land/>

5. The evolution of an impact strategy

The impact strategy for *This Land* evolved through a process of consultation and collaborative development. We initially set out to affect legislation as a priority goal, but our experience led us to realise that this goal would have to be approached indirectly. By creating awareness, creating a tool of activism and shedding a light on the issues at stake, the campaign sought to effect the decisions on legislation by building a groundswell of support. I describe below the evolution of the impact strategy and the implementation of the campaign.

5.1. Preview screening: The Labia Cinema, November 2016

From the outset LARC aimed to screen the film to members of parliament and decision makers on policy that would have far-reaching impact on the lives of rural citizens. At the time, in 2015/2016, a draft of the Traditional and Khoi-San Leadership Bill (TKLB)⁶ was before parliament for approval and there was an urgency draw attention to the negative effect the TKLB would have on communities living under traditional leadership. In essence the bill re-entrenches the controversial Bantustan boundaries and ‘tribal’ classifications of

⁶ The Traditional and Khoi-San Leadership Bill was introduced in the National Assembly of the South African parliament in September 2015. It provides for the “recognition of kingship or queenship, traditional community, headmanship or headwomanship” (Government Gazette 2019, 2).

the apartheid-era. In giving additional power to traditional leaders it creates legal divisions between the former Bantustans and the rest of South Africa. The aim was to use *This Land* as one of the tools to influence members of the relevant parliamentary portfolio committees to oppose the passing of the TKLB. The film highlights, through the lived experience of rural citizens, the impact the TKLB would have on their lives.

With this in mind, a special preview screening of *This Land* was arranged at The Labia Cinema in Cape Town on 30 November 2016, since parliamentarians were in residence in Cape Town. Despite personal invitations and careful planning to accommodate the members of the parliamentary portfolio committee for mineral resources, only one researcher for the committee attended and engaged. The film was received with enthusiasm by invited guests with an interest in the subject matter, who enquired about using the film as a tool for engagement, for example the UCT Law Faculty and the Institute for Poverty, Land and Agrarian Studies (PLAAS), who would later use the film to inspire dialogues. Community members from Makhasaneni and Babanango who are featured in the film were present and a powerful discussion ensued after the film, where audience members could ask questions prompted by the film. This underpinned the value of the participation of the activists in screenings and would motivate decisions when planning the impact campaign.

The preview screening served as a good testing ground for the film and its potential impact. It highlighted the need for a comprehensive strategy to achieve impact goals and drew attention to the fact that decision-makers had to be reached in a way that did not rely on their willingness to engage with the film.

After the screening a few final edits were made to the film and a Zulu language version was created. The final version of *This Land* was completed in January 2017

5.2. Film festivals: building the conversation

Film festivals have the power to engage audiences and media interest. For this reason we chose to host the premiere screening of *This Land* at the Encounters South African International Documentary Film Festival (Encounters) in June 2017, followed by the Durban International Film Festival (DIFF) in July. We invited high profile panelists for the Encounters screening which in turn secured full-house audiences and media coverage. At the V&A Waterfront cinema in Cape Town former deputy chief justice Dikgang Moseneke participated in a panel discussion with Mbhekiseni Mavuso and Dr. Aninka Claassens, director of LARC. In Johannesburg former president Kgalema Motlanthe served on the panel with Mavuso and Prof Sonwabile Mnwana, whose academic research focuses on meanings of land, large-scale natural resource extraction and rural social change. Motlanthe is a much-respected former president who was moved to tears by the film, taking a few minutes to compose himself before he could address the audience. At the time he was serving as the chair of the High Level Panel appointed by the South

African parliament to research and assess the impact of certain legislation on the people of South Africa. With this in view, drawing Motlanthe's attention to the issues raised in *This Land* was an important milestone in the developing impact strategy and a way to ensure that the message reaches the very top level of political decision-makers. Having him in the room also raised the profile of the film and lead to further media exposure for the issues raised in the film, like a feature article in the Daily Maverick, which has an estimated readership of 700 000 people, meaning many more people could be reached through the print feature than by the film screening.

(Read the full article: <https://www.dailymaverick.co.za/article/2017-06-08-review-this-land-is-whose-land-exactly/>)

Another important factor at the Johannesburg screening was building partnerships. In attendance were leaders from affected communities who expressed an interest in taking the film to the rural communities they serve. Emily Tjale and Constance Mogale from the Alliance for Rural Democracy (ARD) was in the audience that night and we started a conversation that would evolve into a comprehensive grassroots strategy in the future.



Figure 2. Johannesburg premiere of *This Land* at the Cinema Nouveau at the Rosebank Mall. From left to right, Emily Tjale (ARD), Mbongiseni Buthelezi, Miki Redelinghuys, Mbhekiseni Mavuso, Kgalema Motlanthe and Sonwabile Mnwana

In July 2017 *This Land* screened at The Durban International Film Festival. Community members featured in the film as well as members of other mining-affected communities attended the screening on 15 July 2018. Also present were land movements such as Abahlali baseMjondolo⁷, the Rural Women's Movement⁸ and Groundworks⁹ environmental group. Representatives of

⁷ *Abahlali baseMjondolo* is a shack-dwellers association that campaigns against evictions and for access to land and housing. Mavuso was previously actively involved with this movement.

⁸ The Rural Women's Movement is a rural organization founded by Sizani Ngubane to address the rights of women living under customary law.

⁹ Groundworks is a NPO that addresses climate and environmental justice.

organizations and committees in attendance requested screenings of *This Land* in their areas, expressing a need for facilitation and discussion to accompany the screenings. An important partnership that emerged from the Durban screening was with Sizani Ngubane from the Rural Women's Movement who expressed an interest in using the film in community meetings and discussions around the issue of land rights and problems experienced under traditional leaders in certain communities. On the morning after the screening I held a meeting with community leaders in attendance from Makhasaneni and Babanango (as featured in *This Land*) and Sithembiso Gumbi, LARC researcher based in Kwazulu Natal, to gather their input on desired outcomes for the film and the impact campaign.



Figure 3. Sizani Ngubane in discussion with Induna Dlodla after the screening at DIFF, 15 July 2018

Key points that were raised during these discussions are summarized below:

Rural Women's Movement (RWM), represented by Sizani Ngubane

1. Ngubane sees great value in screening the film in RWM workshops
2. Needs include a projector; access to a DVD player or laptop

Babanango committee, represented by Zweli Mchunu. Thokozane Nda, Mzweli Magwaza

1. Mchunu notes that "the film is a true reflection of what is happening, for this reason we want to take it back to the community"
2. Potential problems for community screening in Babanango:
 - Access to electricity
 - Access to a suitable venue (which would require transport)
 - Transport costs
3. Magwaza expressed the importance of screening the film in universities

Makhasaneni committee, represented by Mbhekiseni Mavuso, Vumekazi Msezane, Induna Dlodla

1. Mavuso notes: “This is our tool to educate people, especially young ones at schools. We need to engage high schools and students in the struggle. It’s a means for empowering”
2. Mavuso would like rural communities to have access to the film; he sees value in being in attendance

LARC represented by Sithembiso Gumbi

Gumbi states, “People were very excited after seeing the film last night, they wanted to interact and shake the hands of the people who they saw in the film. I had people from Umnini calling me way into the night. They would like to know when we can screen the film there”.



Figure 4. Meeting with community leaders after the DIFF screening to discuss their ideas for impact, 16 July 2018.

Summary of festival screening outcomes

1. An opportunity for focus group discussions with stakeholders and affected communities

It followed from the festival screening discussions that there was a need for a comprehensive roll out of film screenings in places of learning and in affected communities, where the film could be used as a tool for sharing knowledge and building solidarity amongst isolated rural communities

2. Broad media exposure to the issue

In addition to news articles in the City Press and Daily Maverick, the film screenings generated television and radio interest. The Espresso Morning Show featured an interview with the director of the film about the film and the

issues raised in the film. This exposure generated national interest. Gauteng radio station, KAYA FM hosted a *This Land* screening at The Bioscope Independent Cinema in Johannesburg, as well as a panel discussion that was broadcast on radio. Ncebakazi Manzi from Kaya FM hosted Mbhekiseni Mavuso, Constance Mogale from the Alliance for Rural Democracy (ARD) and Sifiso Dladla from Mining Affected Communities United in Action (MACAU) in the panel discussion. After the broadcast of this discussion, the station continued a series of radio broadcasts on issues raised in *This Land*. It follows that the film served as an impetus to a range of interactions on other media platforms that dealt with land rights and structural inequality in rural South Africa.

3. Television broadcast and on-line streaming

Afridocs (an African documentary broadcast platform available on satellite television and an online platform) licensed *This Land* for broadcast. This broadcast licensing agreement provided seed funding for the development of the *This Land* Impact campaign.

In summary, the festival screenings and pursuant engagement on multiple platforms contributed to a growing national awareness of the broader issues of land redistribution. It highlighted the need for the recognition of informal land rights and the effect mining developments have on rural communities. While acknowledging that these engagements raised awareness of the issues, we recognized that awareness is the “low hanging fruit” of an impact campaign and had to develop a strategy to affect legislation and mobilise the film to be used NGO’s and grassroots activists as a tool “for the protection of the land and other rights of rural people and communities”. I outline targeted screenings below.

5.3. Targeting focus groups, civil society and academic institutions

Brendan Boyle, senior researcher for LARC (which is situated in the University of Cape Town Faculty of Law) had an existing relationship with academic stakeholders at institutions where the film could be introduced:

1. In partnership with the Students for Law and Social Justice (SLSJ) *This Land* screened on campuses across South Africa, including those of the University of Cape Town, University of the North West, University of KwaZulu-Natal, University of Stellenbosch and the University of the Witwatersrand in Johannesburg. The SLSJ hosted discussions after each screening and sent reports to LARC. I summarise points raised in these reports:
 - a. A strong theme was the “disconnect” between the law and the everyday lives of South Africans, particularly in rural areas.
 - b. Laws are required for the protection of citizens who don’t wield financial or political power.
 - c. Students recognized the need to balance development with the recognition of informal land rights.

- d. Should the decision be made to favour development, residents need to be compensated in an equitable manner
 - e. Many students could relate to the issues raised in the film as they had family members in rural areas.
 - f. Students expressed a desire to grapple with the issues raised in the film and find ways to bring this conversation into the academic discourse; undertaking to develop this conversation in the future.
2. The Human Science Research Council (HSRC) hosts weekly seminar programs on pertinent issues. The HSRC hosted a multi-city live-streamed screening and panel discussion of *This Land*. The participants and audiences in Cape Town, Pretoria and Durban were linked via the HSRC's internal broadcast channels. This provided a rare opportunity for activists and researchers to interact in order to address the issues raised in *This Land* and discuss collective strategy. The HSRC screening organiser, Valerie Fichardt stated after the screening: "we work in science/research communication, so we are thrilled to see a research based documentary" (2017, personal communication). Topics raised in the HSRC screenings include:
- a. Activism
 - b. The law and democracy
 - c. The purpose of the film and the role the film can play in society
 - d. The film-making process
3. *This Land* screened at the Alternative Mining Indaba¹⁰, which was attended by Mavuso and Boyle, who hosted a discussion on the social impact of mining in rural areas. The Alternative Mining Indaba was also used as an opportunity to launch *This Land* on the Afridocs online platform.
4. *This Land* brought the rural discourse onto urban platforms by screening at the Msanzi Women's festival and the Abantu Book festival and Rethink Africa in Johannesburg as well as a pop-up screening the the Thsisimani Centre for Activist Education in Cape Town. Reports from these screenings highlighted the followings issues:
- a. The importance of screening the film in rural areas
 - b. The film could help rural audiences to verbalise their own struggles
 - c. The film could be a powerful educational tool
 - d. Many audience members identified strongly with the issue of land rights

¹⁰ The Alternative Mining Indaba is an annual conference attended by representatives from mining affected communities where delegates seek solutions to concerns about the mining sector.

5. Further student engagements followed, aimed at the thought-leaders of the future, a new generation of mining practitioners, economists, law practitioners and filmmakers. Screenings included:
 - a. The UCT Centre for Film and Media Studies
 - b. Rhodes University Department of Journalism
 - c. Inkhulu FreeHeid, a youth-led non-partisan movement aiming to bring about social cohesion (Inkhulu FreeHeid, 2019).
 - d. The Metals to Mining programme in the UCT Faculty of Engineering hosted the film along with discussions led by Brendan Boyle and Mbhekiseni Mavuso.
 - e. The UCT School of Economics screened the film as part of a short course on Land Economics and Governance for PhD students coming from across Africa. Mavuso was invited to address the students and engage in debate around the issues raised.

Issues raised at the further student engagements screenings included:

- The importance of balancing citizen rights with the need for economic development
- The need to address the way the mining sector engages with communities
- The importance of title deeds to property
- The spiritual value of land in indigenous culture versus the commodification of land

5.4 Summary of 2017: The learning curve

By the end of 2017 a great deal had been achieved by the screenings of *This Land*: the film had successfully raised awareness about the issue on public and academic platforms, unlocked debate and brought a marginalised rural struggle into urban discourse. Yet focus group research amongst affected communities (as described above) drew our attention to the importance of reaching the segment of the target audience that doesn't have access to mainstream venues, university campuses or satellite television. This remained a challenge. With consideration to the third goal of the commissioning brief from LARC, namely, "to create a tool to be used in NGO and grassroots activism for the protection of the land and other rights of rural people and communities", *This Land* needed to reach rural audiences across the country. We had to devise a strategy to show the film in rural citizens most affected by legislative failure to recognise their land rights. At the same time the film needed to be activated in urban locations to raise awareness of the issues nationally. The challenge was the logistical requirements and cost of screening films in remote places, where there are no screening facilities and, in some cases, not even access to a venue with reliable electricity. Furthermore, it was clear that the film was most powerful when supported by a dialogue or workshop where information could be shared and audience members could have an opportunity to relate their own stories. In 2018 a political opportunity presented itself to gain support for the countrywide screenings of *This Land*.

6. *This Land* 2018: Identifying an opportunity for the implementation of the grassroots impact campaign

Since president Cyril Ramaphosa's State of the Nation address in February 2018¹¹ the land debate intensified and there was a renewed interest in screening *This Land* to unlock debate and facilitate workshops on the land issue.

In July and August 2018 The Constitutional Review committee hosted public meetings on the proposed review of section 25 of the South African constitution. The outcome of these hearings would determine whether land could be expropriated without compensation, playing a key role in the future redistribution of land in South Africa. LARC, along with the Alliance for Rural Democracy (ARD), planned to facilitate workshops ahead of the hearings to share information on the law and what the amendment of the constitution would mean. Explaining the impact of the TKLB and discussing ways to mobilise people against it was a key feature of the workshop program. This presented an opportunity to screen *This Land*, to unlock the discussion.

Attached is a detailed program for the public hearings (annexure A). In summary, during the period from 27 June to 4 August 2018 the constitutional review committee hosted thirty-four public hearings on the proposed review of Section 25 of the constitution in all nine provinces of South Africa. An idea was formulated to screen *This Land* and host discussions on the land issue ahead of the public hearings in the various locations where the hearings took place. The film addresses many of the issues that are impacted by land reform and land rights, referencing not only the historical framework of the debate, but placing the viewer firmly in the lived reality of rural citizens in contemporary South Africa. It furthermore demonstrates the power of activism in asserting land rights and offers arguments for the recognition of informal land rights. At this political moment *This Land* addressed many of the burning issues of the day and could be used as a tool by NGO's and grassroots activists as an educational and network building tool, as originally planned when identifying the impact goals. An grassroots impact strategy evolved where *This Land* would screen in all nine provinces of South Africa as part of educational workshops, which explained the legislation and issues pertaining to land rights, ahead of the public hearings on the proposed review of Section 25 of the constitution. Below I will explain how this strategy was implemented in practice.

7. Forging Partnerships

It is necessary to identify partners who can assist in the implementation of a documentary impact campaign. These can include organisations that work with the issues addressed in the film, logistical or technical partners, civil society, funders, media, educational institutions and community leaders. Since the film was commissioned by LARC, the implementation of the campaign relied on the

¹¹ At the State of the Nation address on 16 February 2018, president Cyril Ramaphosa proposed a review of the South African constitution to allow for the expropriation of land without compensation.

partnership between the filmmaker and LARC researchers. LARC furthermore already had existing partnerships with rural activist groups, academic institutions, the Legal Resource Unit and civil society organisations (discussed in more detail later in this report). We needed to forge logistical and funding partnerships and assemble a team for the implementation of the campaign.

7.1. Implementation partners

Although public hearings took place in regional centers, the workshop locations for community engagement had fluctuating levels of access to electricity and technical infrastructure. It follows that the film screenings at the workshops required a mobile cinema unit that could provide its own source of power for the projector. Sunshine Cinema run solar powered mobile film units across the Southern African continent.

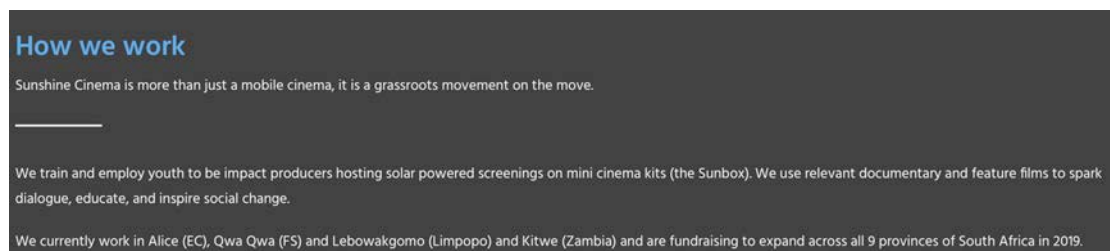


Figure 5. An extract from the Sunshine Cinema website which inspired me to approach them to partner on *This Land* Screenings

Nokwanda Sihlali and Brendan Boyle from LARC and I met with Sydelle Willow-Smith of Sunshine Cinema. We agreed to collaborate on the implementation of the grassroots impact campaign for *This Land*. Since Sunshine Cinema is geared towards screening films through mobile units in rural locations they could provide the technical support required for the screenings. In addition to this, the philosophy of Sunshine Cinema, to screen films to “spark conversation” aligned with the vision of the impact strategy for *This Land*. Not only did they bring technical know-how and infrastructure, but shared the vision of the campaign.

Sunshine Cinema made two “Sunbox” units available to *This Land* free of charge. Each unit includes a projector, audio speakers, a screen and solar powered battery-pack and requires a technical coordinator, or as Sunshine Cinema refers to them, a “Sunbox Ambassador” to take responsibility for the screening itself. In the case of the *This Land* screenings, the Sunbox Ambassador had to understand the political issues at stake, as well as have knowledge of film for impact. We advertised for the position of screening facilitator via academic newsletters, the Documentary Filmmakers Association newsletter and social media posts. Willow-Smith and I screened the applications and interviewed 8 potential candidates. Nozuko Poni and Samkelo Donisi had the right combination of political interest, social justice commitment and a background in communication and media to be the *This Land* screening facilitators. Poni had worked in communications but had a vested interest in the land issue due to her family background of land dispossession. At the time, Donisi was a Masters student in the University of Cape Town Centre for Film

and Media Studies with an interest in political communication and documentary impact.

Sunshine Cinema supplied training and technical support to the Sunbox ambassadors/screening facilitators. LARC advised on the workshop program as coordinated through the Alliance for Rural Democracy and suggested funding partners to enable the impact campaign. As filmmaker, I drafted the screening program, managed the logistical and production set-up that was required and coordinated the content support and information sharing. This is explained in more detail below.

7.2. Funding partners

With support from LARC I submitted a funding proposal to the Nelson Mandela Foundation (NMF), outlining the plan for impact screenings of *This Land*. NMF aims to contribute to the making of just societies and as such identified dialogues on the land issue as an area of focus. *This Land* screenings presented an opportunity that fitted within their organizational vision. In addition to this, the foundation was already supporting some of the civil society organizations we had identified as screening partners, so there was a natural synergy for the partnership. NMF identified this initiative as a partnership and not merely a funding grant. This means that NMF staff engaged actively with the screenings and dialogues, shared feedback and strategic ideas and actively sought ways to further support the impact goals of the film. NMF gave clear guidelines on how their brand should be associated with the impact screenings. The impact team welcomed this as the association with NMF brought networks and exposure to the project, which would further benefit the impact goals of *This Land*.

We committed the funds raised by the Afridocs licensing fee to the impact screenings, as the purpose of the film was not commercial gain, but impact.

To complete the budget required for the planned screenings, we successfully applied for a Bertha Impact Grant, as Bertha had supported LARC's work and the production of *This Land* film production and as such had an interest in the impact campaign.

In order to facilitate the cash flow and to ensure that the screenings could launch while some of the funding was pending, the budget was divided into two phases. Below is an outline of budget items as submitted to funding partners.

This Land Screening Budget Items¹²

-	SCREENINGS - PHASE 1
-	-
A	GENERAL
1	Sunbox Ambassador/Screening Facilitator
2	Sunbox Ambassador/Screening Facilitator
3	Cell Phone and Data 1
4	Cell Phone and Data 2
5	Travel and Accommodation (details provided separately)
B	SUPPORT AND OVERHEADS
-	-
	<u>SUNSHINE CINEMA</u>
1	Sunbox Kit: Projector, sound, screen and solar power pack
2	Sunbox Insurance
3	Sunbox Ambassador training
4	Technical support
-	PLEXUS FILMS
5	Producer: Logistical set-up & production support
6	Communication - cell phone and data
C	Setswana LANGUAGE VERSION
1	Edit create and supply clean version of THIS LAND
2	Ear Candy quote
D	PRINTED SUPPORT MATERIAL
	<u>Information booklet</u>
	Content creation
	Printing
	Film Impact review leaflet
	Poster and advertising
-	-
-	SUBTOTAL COSTS PHASE 1
	CONTINGENCY @ 3%

¹² For reasons of contractual confidentiality I cannot share the budget amounts, but the list of items that need to be considered should serve as a useful guide for other impact campaigns.

	SCREENINGS - PHASE 2
E	GENERAL
	Sunbox Ambassador/Screening Facilitator
	Travel and Accommodation (details provided separately)
	Cell Phone and Data 1
	Refreshments
	Community Transport
	Venue fee
F	SUPPORT AND OVERHEADS
	-
	<u>SUNSHINE CINEMA</u>
	Sunbox Kit: Projector, sound, screen & solar power kit
	Sunbox Insurance
	Technical support
	<u>PLEXUS FILMS</u>
	Logistical set-up and production support
	Communication - cell phone and data
	<u>LARC</u>
	Organizational support
	Social Media and community awareness
G	Printed material
	<u>Information booklet</u>
	Content creation
	Printing
	Film Impact review leaflet
	Poster and advertising
	SUBTOTAL COSTS PHASE 1
	CONTINGENCY @ 3%

7.3. Screening partners

While LARC was the primary organisational partner in the impact campaign, their capacity is vested in strategy and research, so it was imperative to build rural networks through civil society organisations to forge screening partnerships across the country. The relationships forged through the festival screenings of *This Land* proved invaluable as a key to connecting with rural organisations. Constance Mogale and Emily Tjale from the Alliance for Rural

Democracy further introduced me to the leadership of smaller organisations. The networks established through The Rural Women's Movement, Groundworks and the Makhasaneni and Babanango community leadership would also lead to further connections to other community groups. While workshops had been scheduled through the networks of the Alliance for Rural Democracy ahead of the public hearings, many communities hadn't yet mobilised, so it was up to the impact team to set-up the screening and dialogue. In this way *This Land* screenings became the key to unlocking dialogue and creating a platform for knowledge sharing.

List of organization and civil society groups that hosted screenings (in order of screening chronology):

1. Alliance for Rural Democracy
2. Land Access Movement of South Africa (LAMOSA)
3. Association for Rural Advancement (AFRA)
4. Rural Women's' Movement (RWM)
5. Culisa
6. Sekhukhune Environmental Justice Network
7. South African National Community Organizations
8. Walter Sisulu University, SRC
9. Border Rural Committee
10. Orange Farm Human Rights Centre
11. Zingela Ulwazi
12. Institute for Poverty, Land and Agrarian Studies (PLAAS)
13. Tshintsha Amakhaya
14. Ndifuna Ukwazi
15. Reclaim the City
16. International Labour Research and Information Group
17. Tshisimani Centre for Activist Education
18. UCT Film and Media Studies
19. Kwazulu-Natal South African Gallery Education
20. The Makhasaneni Leadership committee
21. The Impaphala committee
22. The Babanango committee
23. The KwaShikishela committee
24. Sony Music
25. Riverside Arts Academy

26. The Nelson Mandela Foundation
27. Institute for Property, Land and Agrarian Studies (PLAAS)
28. Institute for Reconciliation and Social Justice, UFS

8. Impact campaign materials

Additional materials were created to support the screenings. This included a Setswana language version, printed support materials and on location tools to facilitate the screenings both logistically and informatively.

8.1. Additional language version – Setswana

There are ten official languages in South Africa and our aim was to make the film accessible to rural audiences who do not speak English as a first language. Since we did not have the resources for multiple language versions, we had to consider the locations of the screenings and which languages to prioritise. Since Zulu is the language most prevalent in Kwazulu Natal where *This Land* was filmed, we created a Zulu version of the film as well as an English version. The English version has an English voice over and English subtitles on Zulu content and where the Zulu version has a Zulu voice over and Zulu subtitles on the English content. To reach our large audience in the North West province, the Northern Cape, parts of Mpumalanga, Gauteng and Limpopo, we created a Setswana language version, which was included in the budget presented to funders for the impact campaign. *Ear Candy*, who specializes in creating South African language versions of films, recorded a Setswana dubbed version of the film.

8.2. *This Land* impact toolkit

The filmmaker created a screening toolkit for the Screening facilitators. This included:

- This Land Venue posters - see figure 6
- Sunshine Cinema Poster (Annexure B)
- Attendance register (Annexure C)
- Impact survey (Annexure D)
- Screening guidelines (extract below)
- Screening questions for discussion (Annexure E)
- This Land screening letter (Annexure F)
- Sunshine Cinema impact report (details and example below)

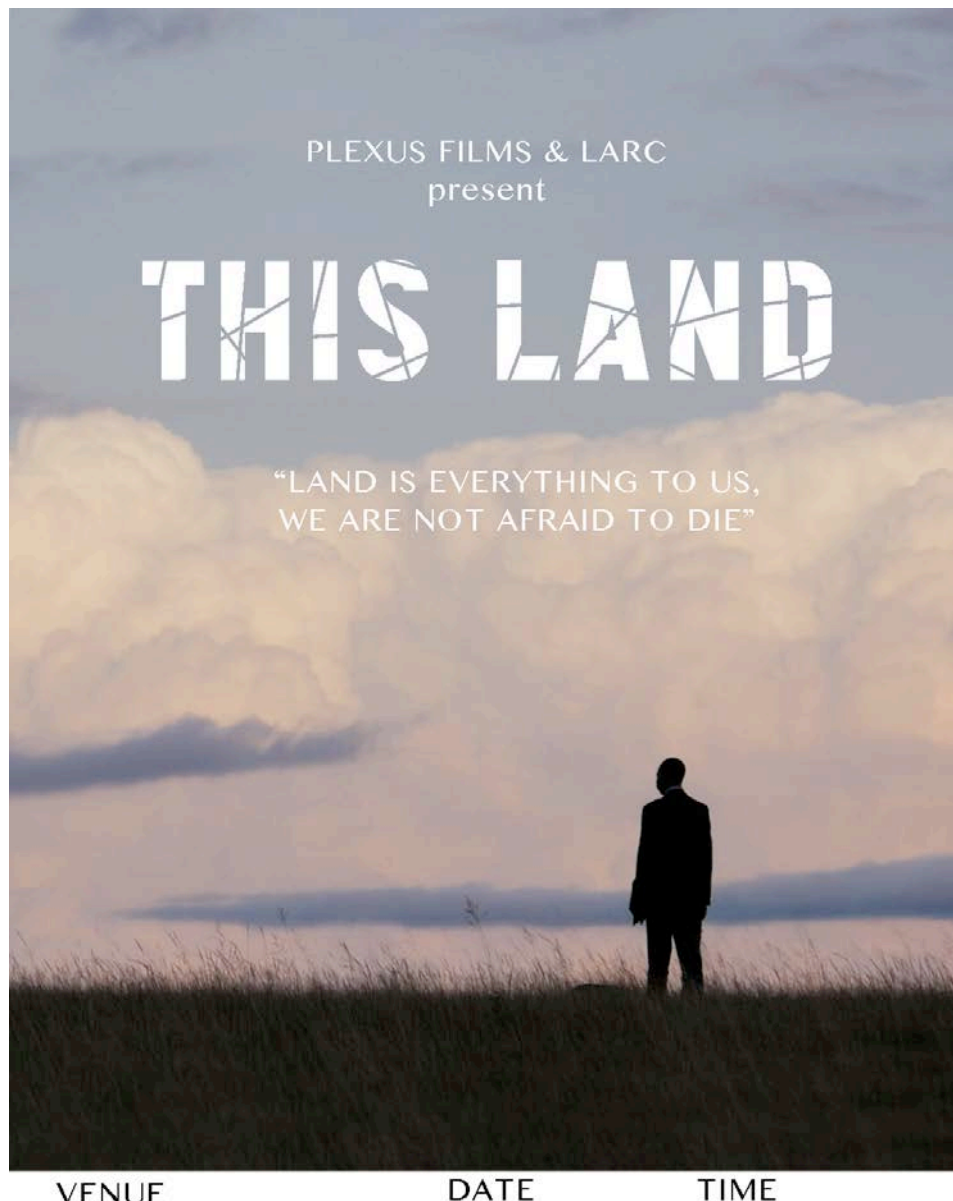


Figure 6. The *This Land* screening poster was laminated so that details could be added with a whiteboard marker for each venue and re-used for each venue.

8.3 Printed material for distribution at screenings

A brochure with useful information relating to the issues in *This Land* was compiled by the LARC research team to be distributed to members of the audience at the screenings. This proved an invaluable tool to expand on the content of the film with fact sheets, contact numbers, organizational information and further reading. The printed material is available in English and Zulu.

The brochure includes information about legislation relevant to issues addressed in the film as well as an outline of organisations that could offer support.

Summary of brochure content

1. *This Land* documentary film description
2. An update on Makhasaneni land restitution claim
3. *Amending the property clause*, by Nokwanda Sihlali and Zenande Boo
4. *The Traditional and Leadership Khoi-San Bill*, by Monica da Souza, Thiyane Duda and Ayesha Motala
5. *The Ingonyama Trust Act*, by Nokwanda Sihlali
6. *Interim Protection of Informal Rights Act* – LARC Fact Sheet
7. *Mineral and Resources Development Act*, by Zenande Boo
8. *Traditional Courts Bill*, by Thiyane Duda
9. *Restitution of Land Rights Amendment Bill*, LARC Fact sheet
10. *Communal Property Associations Act*
11. Organisations that can assist with issues relating to recognition of land rights, customary law and the impact of mining activities
12. How to organize a *This Land* screening

(Full English brochure is attached as Annexure G)

8.4. Impact screening report



Figure 7. Cleaning away coal dust before the screening at Emalahleni

An Impact screening report template supplied by Sunshine Cinema was used to guide the feedback from the facilitators. A report was completed at the end of each screening and they were ultimately used to compile a comprehensive report that informed the second phase of the screenings as well as the round table discussions. I include below an example of a completed location screening report. The report template can be adjusted according to the needs of the impact campaign, but this is a useful guide for the gathering of quantitative and qualitative screenings data.



Sunshine Cinema Screening Report

Name of Organisation: Plexus Films, LARC, ARD, Nelson Mandela Foundation

Facilitators Name and Gender: Samkelo Donisi, Male

Country, Location: South Africa, Emalahleni, Souta Village Church.

Date of Screening: 01 July 2018

Which film(s) were screened: This Land.

Estimated number of people who viewed the films: 20

Adults: 20

<u>Males</u>	<u>Females</u>
5	3

Youth: 12

Males	Females
9	3

Description of the Target Audience:

Policy makers/influencers (e.g. government officials, international agencies): Yes

Community Members: Yes

Civil Society Organisations: Yes

Schools: N/A

Tertiary educational institutions: N/A

Innovation Hub Participants: N/A

Social Entrepreneurs: N/A

Community Activism Groups: Yes

Other: Please specify

What was the purpose of the screening? - Why were the films shown?

- Motivate the community about the role of activism.
- Share information about informal land rights
- Share information about the impact of mining

Briefly describe the main issues that came out in the discussion after the screening?

- Lack of support from other organisations
- Lack of access to information
- Issues portrayed in the film differ with their current situation, but there are some similarities
- More activism training is needed, often they do not know what to do, but they learnt a great deal from the film in this regard
- There coal and steel mines are dumping waste where they stay; water is contaminated and sink holes occur, which make it difficult to develop the area.

Describe the significant audience reactions (positive and negative)

- Positive

Did the audience consider the actions they could take as individuals to address the issues raised in the films (such as poverty, inequality, climate change) Please explain in detail:

- The community would like more information and films to learn more about activism.
- The community members are concerned about their health, which is deteriorating with no action or support from other organisations.
- The community members welcomed the information provided about LARC and ARD.

How do you think future screenings can be improved?

- N/A

Any other comments you would like to add?

- Community leader (ward councilor) was present; she shared similar comments to that of the audience. She was grateful that we had shown the film to youth so that they can take action. She expressed that even in her position it is difficult to resolve these problems alone because it's a long process. She also edged the community not to take the information light and use it to empower themselves.
- After the screening we walked around the are with young activists. There is a great need to connect young activists to experienced elders such as Mavuso

Thank you for you participation and effort ☺

9. Practical Implementation

Since there was a time constraint on the screenings that took place ahead of the public hearings, it was decided to take a phased approach to the screening implementation. This allowed for immediate roll out of screenings within the program of the public hearings while still working on securing funds for the screenings in phase two. It also meant that, as a team implementing this kind of campaign for the first time, we could ascertain the practical needs, successes and shortfalls after phase 1 and incorporate this learning into how we structure phase two.

Mobile screenings phase one: 27 June-4 August 2018

From 27 June to 4 August 2018 *This Land* screenings were planned according to the program of the constitutional review committee public hearings. The public hearings served as a guide to locations for the screenings, where the aim was to screen the film 1-3 days before the public hearing took place. The screening was positioned in this way as part of a strategy to prepare participants for the hearings and to use the workshop to equip them with the knowledge to participate in a meaningful way.

Regions in which the film screened include Limpopo, Mpumalanga, North-West Province, Northern Cape, Eastern Cape, Gauteng and the Western Cape. For the safety reasons, *This Land* only had one screening in Kwazulu-Natal during the time of the public hearings, as there were many instances of violence during this time.



Figure 8 *This Land* screening at Chiawelo, Gauteng July 2018

Total number of screenings during phase one: twenty-five screenings

Summary of practical requirements and the team involved

- Two mobile cinema units or “Sunboxes” (supplied by Sunshine Cinema)

- *This Land* documentary (three language versions) on USB drive (supplied by Plexus Films)
- Impact producer (myself)
- Two screening facilitators (Donisi and Poni)
- Impact toolkit (as outlined at 6.3)
- Accommodation, travel and per diem for screening ambassador
- Logistical support supplied by Plexus Films
- Technical support supplied by Sunshine Cinema
- Organisational support supplied by LARC and workshop organizers.
- Smartphone for screening documentation (and logistical communications)

Useful items for screening management

- Blackout fabric and duct tape for blocking light during daytime screenings
- Prestik for putting up posters
- Cloth for cleaning dusty surfaces (this is because of high volumes of dust in mining affected areas)

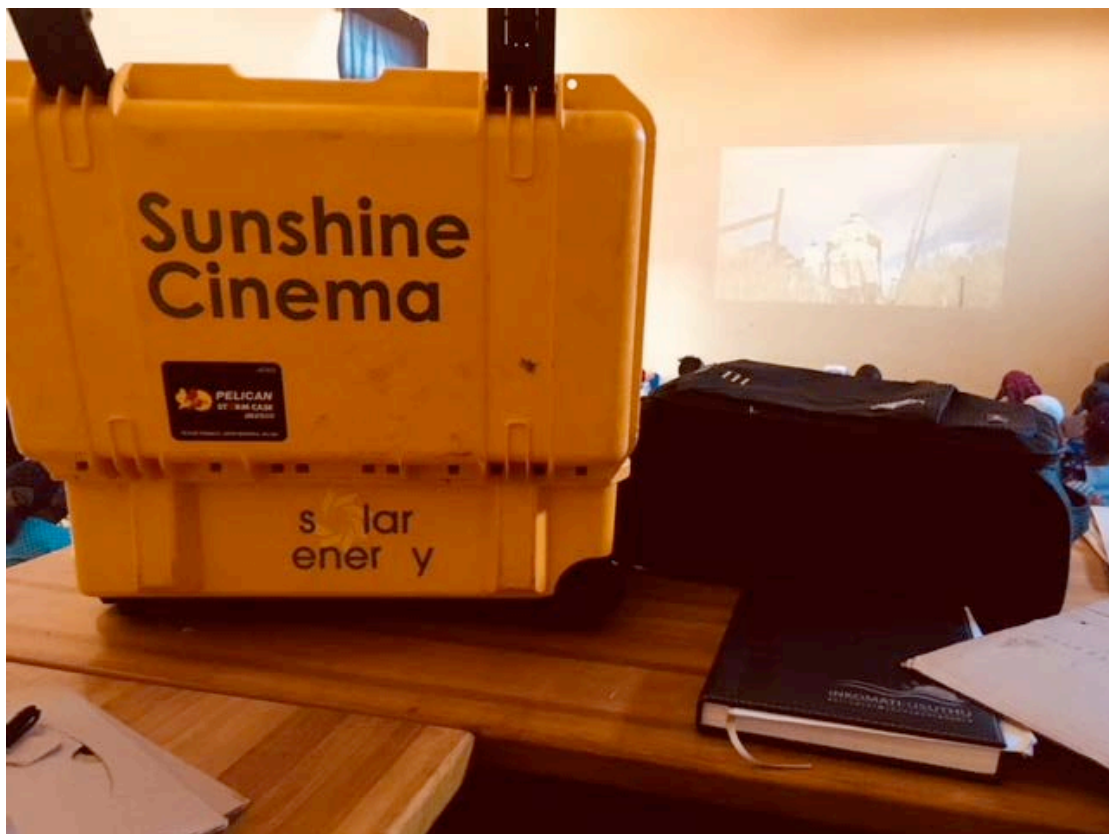


Figure 9. The Sunbox mobile cinema in action



Figure 10 The team showing commitment to reach the highest window with blackout in Kasteel

Mobile screenings phase two: August-November 2018

After the public hearings on the Amendment of Section 25 of the Constitution were completed *This Land* continued to screen in collaboration with LARC partner organisations and community leaders. The initial screenings had a strong “word of mouth” following. Community leaders would share information about the film with people in other villages, who made contact to arrange a screening. Many leaders who attended the ARD workshops requested that the film be screened in their home villages to reach broader audience. In this way the momentum built during the first phase informed phase two

Based on observations made in phase one of the impact screenings, we made changes to our plan for phase two.

The cost per screening was higher than our original budget allocation for the following reasons:

- a. We had to include community transport, which wasn't necessary in phase one, when the screenings took place in workshops where transport was already provided. Since the discussions in phase two were structured around the screenings, it made sense for transport to be supported as part of the screening budget.
- b. Since people travelled far to reach screenings a budget allocation

was made for refreshments. Where possible we supported local traders and limited waste creation with the choice of refreshments.

- c. In consultation with Mbhekiseni Mavuso, LARC and community partners, it was agreed that the presence of Mavuso in the screenings was a valuable contribution to the discourse. He could inspire community groups facing similar problems, offer first hand advice, connect them with support and inspire them as living testimony for the power of activism and unity in the struggle. This truly answered to the impact goal of building rural networks of activists. Budget had to be allocated for his time, travel, per diem and accommodation.
- d. Phase two required more input from the facilitators than phase 1, since there wasn't the infrastructure created during phase 1 by the workshop organisers. For this reason additional budget was allocated towards the time required
- e. It was agreed to pursue fewer screenings and re-allocate the budget to allow these screenings to carry greater impact.
- f. In addition to the community screenings, a special screening and round table discussion was arranged at the Nelson Mandela Foundation in Johannesburg, which is outlined in more detail later.

These factors contributed to the scaling down of the number of screenings from the thirty proposed screenings in phase two, to seventeen screenings. The motivation was to create well-organised and powerful screenings, rather than a bigger number of screenings that could not be properly supported.

To summarise, phase two had the same practical requirements and team as phase one, however we added the following:



Figure 11. Mavuso address the audience after a screening near Escourt

- Transport
- Refreshments
- Venue fee
- Mavuso in attendance
- Mavuso's travel, accommodation, per diem and fee

Regions in which the film screened during the second phase include KwaZulu-Natal, Mpumalanga, North-West Province, Eastern Cape, Gauteng, Free State and the Western Cape
Total number of screenings: seventeen

10. Screening guidelines and reports

From July to November 2018 *This Land* was screened in forty-two locations in nine provinces of South Africa. The screening guidelines helped to streamline the process and ensured that everyone on the team had clarity on the requirements. I include below the screening guide and checklist provided as a tool for the screening facilitators. Below that is a data sheet reflecting a compilation of the screenings, location and attendance figures.

THIS LAND SCREENING GUIDELINES SET-UP AND STRIKE CHECKLIST

1. THE KIT

- a) Sunshine Cinema suitcase with projector, speakers, power cables, memory stick with films, battery, inverter and chargers
- b) Collapsible screen and light stand with balancing head for projector
- c) Additional suitcase with: Blackout curtain, Duck/gaffer tape, scissors, prestik, whiteboard marker; extension cable and two-prong adaptor
- d) Posters: laminated option for re-use, non laminated as some organisations like to keep a copy with the screening particulars written on it
- e) Sunshine cinema laminated logo poster
- f) LARC information pamphlets
- g) This Land Impact Survey leaflet for completion after screening
- h) Dialogue question guide
- i) Sunshine Impact report for Sunbox Ambassador to complete

2. SET-UP (1-2 hours)

- On arrival greet and talk through the process with the local leader/liaison; establish what they would like to achieve and if they agree with the format we use; enquire if there are specific issues they'd like to add.
- Request assistance to set-up and hang blackout, move and wipe surfaces if required.
- Check electrical points and windows and decide on best possible screening position.
- Set-up own power if required.
- Set-up projector and sound and do technical checks; make sure focus and audio levels good.
- Place *This Land* and Sunshine Cinema posters on entrance to venue; and inside venue
- Hang blackout
- Set out pamphlets and survey sheets
- Have attendance register ready
- Setout refreshments.

3. INTRODUCTION (5-10 minutes)

- Introduce and welcome, thanking local organization for hosting and local coordinator for arrangements and venue logistics.

- Briefly outline the project, where LARC & Plexus Films partnered with Sunshine cinema to conduct screenings and facilitate dialogue; this was made possible with the support from Bertha Foundation and the Nelson Mandela foundation.
- Introduce the mobility of the Sunbox and invite groups to arrange screenings.
- Inform audience that there will be a discussion after the film and that we will make brochures available with supporting information
- Send attendance register (establish that it is voluntary for people to fill in their names), We would like to know organization and communities represented at the screening.

4. SCREEN FILM (48 Minutes)

While film screens:

- a) Gather data for Sunshine Cinema impact report sheet
- b) Take photos:
 - a. People watching the film (try to capture from the front, with light from screen on faces, but also silhouettes from behind with strong visual on screen);
 - b. Context of screening, i.e. where is the venue, show anything interesting or specific about the context, capture identifying location markers, like signboards, town or venue names;
 - c. Photo of leader/leadership of organization; note full names and correct spelling as well as name of organization and location for accurate reporting.

5. DISCUSSION (1 hour)

- Invite local coordinator/leader to join in leading the discussion
- Gather initial responses and comments
- Where possible record comments/quotes on phone audio, or write it down, if someone has made a point we'd like to quote, note their name
- Offer refreshments
- Explain survey and how to tear for answers (This was later replaced with a raise of hands survey)

6. STRIKE

- Remove posters and prestik from walls, offer non-laminate poster to organization/ youth leader;
- Remove and fold black-out, remove all tape before packing fabric away;
- Remove all tape from venue walls, remove all waste, biscuit wrappers, and pack chairs and furniture, restoring venue to its state on arrival.

REPORTS

- Complete reports and share on same evening as delays may cause observations to be forgotten;
- Send photos and comments to be added to This Land and Sunshine Cinema Social media pages;

- Create a folder for each screening with photos and add captions, people names where possible, to use for our research report

SUMMARY OF SCREENINGS: JULY-NOVEMBER 2018

SCREENING	DATE	LOCATION	PROVINCE	LANGUAGE	ATTENDANCE
1	18/06/26	Groblersdal	Limpopo	English	40
2	18/06/28	Kasteel	Limpopo	Zulu	131
3	19/06/28	Kuruman	Northern Cape	English	48
4	19/06/30	Burgersfort	Limpopo	None	0
5	19/07/01	Emalaheni	Mpumalanga	English	20
6	19/07/02	Middleburg	Mpumalanga	English	5
7	19/07/16	Rustenburg	North West	Setswana	52
8	19/07/16	Durban	Kwazulu Natal	English	50
9	19/07/27	Bapong	North West	Setswana	20
10	19/07/18	Bokfontein	North West	Setswana	28
11	19/07/21	Cradock	Eastern Cape	Zulu	25
12	19/07/22	Butterworth	Eastern Cape	Zulu	38
13	19/07/22	Mamelodi	Gauteng	English	12
14	19/07/24	Idutywa	Eastern Cape	Zulu	50
		Chiawelo-			
15	19/07/24	Soweto	Gauteng	English	38
16	19/07/25	Keiskammahoek	Eastern Cape	English	37
17	19/07/25	Diepkloof	Gauteng	English	25
18	19/07/27	Moutse	Gauteng	English	0
19	19/08/02	Orange Farm	Gauteng	English	38
20	19/08/11	De Deur	Gauteng	English	38
21	19/08/22	Woodstock	Western Cape	English	140
22	19/08/23	Langa	Western Cape	English	0
23	19/08/23	Mowbray	Western Cape	English	55
24	19/08/24	UCT	Western Cape	English	25
25	19/08/24	Carletonville	Gauteng	English	106
26	19/09/20	Durban	Kwazulu Natal	English	20
27	19/09/22	Makhasaneni	Kwazulu Natal	Zulu	40

28	19/09/23	Eshowe	Kwazulu Natal	Zulu	15
29	19/09/24	Babanango	Kwazulu Natal	Zulu	45
30	19/09/25	Mtubatuba	Kwazulu Natal	Zulu	100
31	19/09/26	Isingolwene	Kwazulu Natal	IsiZulu	80
32	19/10/02	Johannesburg	Gauteng	English	40
33	19/10/13	Qwa Qwa	Free State	English	31
34	19/10/23	Johannesburg	Gauteng	English	150
35	19/10/24	Cape Town	Western Cape	English	70
36	19/10/24	Bloemfontein	Free State	English	250
37	19/11/17	Sethlare Village	Mpumalanga	Zulu	0
		Pelindaba			
38	19/11/17	Village	Mpumalanga	Zulu	0
39	19/11/18	Lethabo	Mpumalanga	Zulu	57
40	19/11/18	Bushbuckridge	Mpumalanga	Zulu	30
41	19/11/20	Mammetsoe	North West	Setswana	45
42	19/11/18	Rustenburg	North West	Setswana	25

A full report was drafted after the first twenty-five screenings (Annexure H). The second series of screenings (phase two) were also documented in the impact screening reports, but instead of a written report we opted for a video report.

Issues highlighted through the written reports and the video interviews included:

- Forced removal from ancestral land or homes – many people are still affected by this
- Failure of restitution after 1994
- Corrupt leadership on various levels: municipal, local government and traditional leadership
- Tribal authorities who make deals with mining companies or other development projects without consultation with the community inhabiting the land; and loss of land and livelihood as a result
- Intimidation and threat to lives
- Lack of recognition of a right to the land
- Concern about the pending TKLB which would further strengthen the power of traditional leaders, making it more difficult to oppose their decisions by law.
- Concerns about health issues as a result of conditions created by mining

- Concerns about contamination of the environment
- Concerns about food security as a result of land dispossession of small scale farmers and the contamination of water and soil
- A need for networks of activist support
- A need for further interaction and more screenings of films that can offer insights into the struggles faced
- The lived experience under the current government is similar to that experienced under Apartheids
- A need for further information and access to organizations that provide support



Figure 12 Kasteel, audience responding to survey question: "Has anyone been directly affected by a forced removal?"

11. Screening challenges

In a number of instances screenings were purposefully “sabotaged” by leaders opposed to the content of the film. The first time that this happened was ironically on Nelson Mandela Day (18 July 2018) in the North West when the municipality, who had committed a municipal hall to the screening weeks in advance, cancelled it on the morning of the screening. Thanks to committed leadership from local organiser, Kholisile Dingiswayo and the screening facilitators, an alternative venue was arranged on short notice and audiences transported to see the film in a make-shift screening venue.



Figure 13. Kholisile Dingiswayo leads the discussion in the last minute screening venue at Bokfontein, July 2018

Below is an extract from an email from Samkelo Donisi, dated 19 July:

“What a stressful day it was! Initially the film was going to be screened at workshop organised by the municipality. They cancelled the screening last minute... with the help of the councilor, community developer and community organizer at Bokfontein, we managed to screen the film to an audience of 28 people. The feedback was amazing. We also discovered that none of the community members have title deeds. Some of them have been moved more than three times and they are expected to be moved soon. They will be in touch with Kholisile for assistance.”

At another screening, organized by Speaker Mahlake near Bushbuckridge, community members were intimidated via loud hailer to avoid the screening. Not to be deterred Mahlake arranged for a secret nighttime screening in his home and people who had contacted him via What’s App were supported with transport to attend and participate in the discussion. There were four screenings in total that were cancelled as a result of perceived deliberate interference by community leaders who did not agree with the film. Two

screenings were cancelled due to risk of violence and 3 screenings were arranged in secret with only trusted leaders invited. The controversy surrounding the screenings and the discussions revealed the extent to which the issues raised in the film were hitting a nerve. The team was mindful of the safety of organisers and facilitators and all decisions pertaining to screening or cancellation of screenings were made in consultation with community organisers, the screening team, LARC (who has extensive experience working under circumstances where there may be a threat). Ultimately a balance was sought between allowing for access to information and not taking unnecessary risk. We were guided by the principle of “do no harm” and where the potential for conflict or reprisal was high, screenings were cancelled.

In a discussion about these issues during a Skype meeting with Nokwanda Sihlali from LARC and Khalil Goga from the Nelson Mandela Foundation, it was decided that a bigger conversation was needed. A round table discussion was proposed. Hosted by the Nelson Mandela Foundation in Johannesburg, it would be followed by a screening at the cinema at NMF. Dr. Aninka Claassens from LARC welcomed the opportunity to bring attention to these issues and drafted a concept document that informed the planning of the event.



Round Table Discussion

Threats to the poor in the current bills before parliament

The heated and emotional national discourse around expropriation without compensation ignores threats to the property rights of rural citizens contained in bills such as, the Traditional Leadership and Khoi-San Bill as well as the Traditional Leadership and Governance Framework Act before parliament.

The Nelson Mandela Foundation in collaboration with the Land & Accountability Research Centre & Hanns Seidel Foundation invites you to a round table discussion centred on moving beyond the EWC narrative & what the concrete solutions to securing black property rights look like.

Venue: Nelson Mandela Foundation, 107 Central Street, Houghton
(Secure parking available)

Date & time: 23 October 2018 from 15h00 - 17h00

RSVP: Please confirm your participation by e-mail to SylviaG@NelsonMandela.org



Figure 14. The invitation to the Round Table Discussion

12. Round table meeting and screening at the Nelson Mandela Foundation

The Round Table was hosted at the NMF offices in Johannesburg on 23 October 2018. The gathering included activists from areas where *This Land* screenings took place creating an opportunity for interaction between people who experience similar challenges. NMF invited thought leaders and media to participate in a discussion on the causes of the disruption of lives in rural areas and shared ideas on actions to counter this. Claassens gave a thorough outline

of legislation that has been passed in parliament that effectively disempowers rural citizens (summarized in annexures I-O). The TKLB was highlighted as the most pressing issue as it was yet to be ratified by the president and the aim was to stop this from happening. Round table participants brainstormed ideas for building opposition to the passing of the TKLB.

The screening was followed by a panel discussion hosted by Nokwanda Sihlali from LARC with Mbhekiseni Mavuso, Emily Tjale from LAMOSA, Constance Mogale from ARD and Sunbox Ambassador, Nozuko Poni.

Emily Tjale from ARD opened the discussion by stating, *“I am where parents were, where they were not supposed to be. I am where I am not supposed to be.”* This summarises in very simple terms the lack of transformation and the extended process of the dispossession of rural citizens

In attendance was an audience of 150 people of, amongst others, business leaders, political commentators, ANC veterans, academics, activists and media. The entire event was filmed and broadcast live by the SABC. Over the following few days there was a series of radio interviews and broadcasts that related to the topic.

This event shined a light on the issues *This Land* had set out to expose and served as an impetus to events that followed, networking of activists and media exposure.

13. The impact short film

Since many stories emerged in communities where the film was screened, it was decided to document some of these lived experiences. In many villages community members requested that the filmmakers return to document their stories. Since this wasn't possible we decided to record some of the experiences on mobile phone, stills camera and handy-cam at the screenings. On reviewing the testimonies gathered, the filmmaker created a short film as audiovisual report on the screenings.

View the impact film here:

<https://vimeo.com/314470275>

This is an additional visual tool for interaction between affected communities and serves as a visual report to funders and stakeholders.

14. *This Land* impact campaign after 2018

By December 2018 we had completed our proposed series of impact screenings but we received many requests for more screenings. Based on the reports we identified the following requirements

1. The distribution of the film to community leaders for independent screenings;

2. The provision of support material that outlines legislation pertaining to land rights, mining and customary law
3. A contact list of organizations that offer legal or information support in rural areas.
4. Follow-ups with community leaders who had expressed a need for further support

Based on this feedback it was decided to allocate some of the remaining impact funds to create a USB flash drive containing these resources for distribution to communities requesting screenings and support. In consultation screening partners stated that flash drives are preferable to DVD's, since they could be used with laptops, where television sets with DVD players are not available and they could include all the resources in one place. 30 Flash drives were printed containing the following resources:

Flash Drive contents

1. *This Land* Documentary

Three language versions of *This Land*

- English
- Zulu
- Setswana

2. *This Land* Impact screening film

3. Information sheets

A series of documents, compiled by the Land and Accountability Research Centre and the Centre for Law and Society, that provides supporting information on some of the issues portrayed in *This Land*:

- Land Rights Under the Ingonyama Trust (ANNEXURE I)
- Four things that rural mining communities need to know about the Traditional and Khoi-San Leadership Bill (ANNEXURE J)
- High Level Panel Summary Sheets: Traditional Leadership (ANNEXURE K)
- High Level Panel Summary Sheets: Tenure Reform: Ingonyama Trust (ANNEXURE L)
- High Level Panel Summary Sheets: Mining (ANNEXURE M)
- High Level Panel Summary Sheets: Restitution (ANNEXURE N)
- Maledu & Baleni LARC presentations: Court victories for individuals and communities living on traditional land (ANNEXURE O)
- TKLB Summary – isiZulu
- TKLB Summary – Setswana
- TKLB Fact Sheet – English (ANNEXURE P)

5. Screening brochures and report

The brochures distributed with *This Land* screenings supply a summary of helpful information and contacts for support organisations

- *This Land* pamphlet – English
- *This Land* pamphlet – isiZulu
- *This Land* screening report template

In addition to the Flash Drives 40 DVD's were printed to distribute to areas without access to USB screening facilities and hard copies of printed material were made available.

The filmmaker coordinated the production of these resources while distribution is managed by LARC, who interface regularly with the relevant community leaders and organizations.

15. The work continues

A project like *This Land* has no clear natural conclusion. The struggle continues, and so the work of the film continues. Sunshine Cinema has taken *This Land* into their body of work and regular screenings take place throughout the Southern African region. Screenings in community and academic meetings continue.

16. Sharing the model

I summarise below key factors in the impact campaign for *This Land*:

1. Engage and consult with:
 - a. affected communities;
 - b. organisations that work with the issues addressed by the film and the impact campaign.
2. Assess the practical requirements for the implementation of the strategy
3. Identify partners that can support the realisation of the campaign. This includes,
 - a. organisational
 - b. technical and
 - c. funding partnerships.
4. Harness existing networks and communities of interest to support and facilitate screenings
5. Create new networks where none exist.
6. Support screenings with
 - a. discussions and
 - b. relevant take-home materials such as brochures with information on the issues addressed in the film.
7. Where relevant and possible, invite the protagonist in the film as a guest speaker.

8. Make the film and all other resources available in multiple languages
9. Take the film to affected communities (rather than expecting them to seek out the film)
10. Release the film at an opportune time so that its themes align with existing local, national or even international debates
11. Link the film to relevant key dates or events and use existing platforms to distribute it (e.g. film festivals, opening of parliament, conferences, academic programs)
12. Optimise media coverage of the film to reach the general public with the key issues of the film
13. Make use of different platforms and media to engage with different audience segments (e.g. mobile screening equipment in community halls for rural communities, mainstream news media for general public, film festivals and academic screenings for urban audiences)
14. Be flexible. If it is apparent that the strategy is not reaching the goals, then either adjust the strategy or reassess the goals.

The *This Land* impact campaign relied on a process of listening and learning in order to develop a strategy. While I entered the process with many questions, it has taught me the importance of consultation and flexibility when conceptualizing a strategy. Over time the strategy and focus shifted. In my view the approach to implementation that evolved during this process can serve as a model for filmmakers wishing to reach a grassroots audience. It can be adapted according to the needs and funds available for the project in question. Key aspects include community engagement on their vision for the campaign, strong partnerships and a commitment to activate the film to do the work required to achieve the impact goals.

Acknowledgements

A big thank you to Brendan Boyle, for guiding me during the film-making process and for shining the light on the impact goals of the film; for being a sounding board for ideas, strategy and finding solutions.

Thank you to Mkhekiseni Mavuso and the people of Makhasaneni who were willing to share their story and participate in the impact campaign, despite the risks involved. Thank you to the film creative team, Stha Yeni for being on the road with me during filming, Lauren Groenewald, producer at Plexus Films and Khalid Shamis for helping to shape the story and the impact film report in the edit. Thank you to Sunshine Cinema for jumping in and sharing the vision to use film to “spark conversation”, to Samkelo Donisi and Noni Poni for the tireless commitment to using the film as a tool of activism. As I floundered at times to find the road to impact the people at LARC were constantly there to support, answer queries and pose difficult questions – thanks to Aninka Claassens, Nokwanda Sihlali, Nolundi Luwaya, Amilinda Wilkinson, Thiyane Duda and Monica da Souza for all stepping in at different parts of the process. Thank you to my academic supervisor and enthusiastic supporter of the impact process, Liani Maasdorp, who guided me. Constance Mogale and Emily Tjale from ARD were partners in the quest to reach more people with the *This Land* impact campaign, as were Sizani Ngubane, Speaker Mahlake and Kholisile Dingiswayo and many other community leaders fighting a lonely struggle. Thank you for the incredible inspiration that you are. Khalil Goga and Sumaya Hendricks lived up to the promise that NMF was seeking a partnership. You helped this campaign grow. Thank you to the Bertha Foundation and Nelson Mandela foundation for supporting this initiative and believing in the power of story for change.

Resources Referenced

Afridocs, viewed 30 January 2020,
<https://afridocs.net/about/>

Alliance for Rural democracy, viewed 30 January 2020,
<https://allianceforruraldemocracy.org/>

Alternative Mining Indaba, viewed 30 January 2020,
<http://altminingindaba.co.za/>

Bertha Foundation, viewed 30 January 2020,
<https://berthafoundation.org>

Human Sciences Research Council, viewed 30 January 2020,
<http://www.hsrc.ac.za/en>

KAYA FM, viewed 30 January 2020
<https://www.kayafm.co.za>

Land and Accountability Research Centre, viewed 30 January 2020,
<http://www.larc.uct.ac.za/larc-work>

Nelson Mandela Foundation, Dialogue and Advocacy, viewed 30 January 2020,
<https://www.nelsonmandela.org/content/page/dialogue-overview-page>

Sunshine Cinema, viewed 30 January 2020,
<https://sunshinecinema.org>

Filmography

This Land 2017. Miki Redelinghuys, South Africa, Plexus Films, 48 minutes, viewed 5 December 2019,
<http://www.thislandfilm.com>
<http://afridocs.net/watch-now/this-land/>

This Land Impact Screenings 2018. Miki Redelinghuys, South Africa, Plexus Films, 11 minutes, viewed 5 December 2019,
<https://vimeo.com/314470275>

Annexure A

CONSTITUTIONAL REVIEW COMMITTEE PUBLIC HEARINGS IN PROVINCES ON PROPOSED REVIEW OF SECTION 25 OF THE CONSTITUTION

TEAM A

PROVINCE	DATES	
LIMPOPO	27 June 2018	Public Hearings in Groblersdal Elias Motsoaledi Local Municipality
	28 June 2018	Public Hearings in Mokopane (Potgietersrus) Mokgalakwena Local Municipality
	29 June 2018	Public Hearings Giyani Greater Giyani Local Municipality
	30 June 2018	Public Hearings in Thohoyando Thulamela Local Municipality
MPUMALANGA	2 July 2018	Public Hearings in City of Mbombela
	3 July 2018	Public Hearings in eMkhondo (Piet Rietief)- eMkhondo Local Municipality
	4 July 2018	Middelburg – Steve Tshwete Local Municipality
NORTH WEST	17 July 2018	Public Hearings in Taung Greater Taung Local Municipality
	18 July 2018	Public Hearings in Mmabatho

		Mahikeng Local Municipality
	19 July 2018	Public Hearings in Rustenburg Local Municipality
GAUTENG	26 July 2018	Public Hearings in Randfontein Randfontein Local Municipality
	27 July 2018	Public Hearings in Vereeniging Emfuleni Local Municipality
	28 July 2018	Public Hearings in Tshwane Municipality
WESTERN CAPE	1 August 2018	Public Hearings in Oudtshoorn Local Municipality
	2 August 2018	Public Hearings in Beaufort West Local Municipality
	4 August 2018	Public Hearings in City of Cape Town Cape Town Metro

TEAM B

PROVINCE	DATES	
NORTHERN CAPE	26 June 2018	Public Hearings in Springbok Nama Khoi Local Municipality
	28 June 2018	Public Hearings in Upington Khara Hais Local Municipality
	29 June 2018	Public Hearings in Kuruman Ga-Segonyana Local Municipality
	30 June 2018	Public Hearings in Kimberley Sol Plaatjie Local Municipality
FREE STATE	2 July 2018	Public Hearings in Botshabelo Mangaung Metro
	3 July 2018	Public Hearings in Welkom Matjhabeng Local Municipality
	4 July 2018	Public Hearings on Phuthaditjhaba Maluti-A-Phufong Local Municipality
KWAZULU-NATAL	18 July 2018	Public Hearings in Vryheid Abaqulusi Local Municipality
	19 July 2018	Public Hearings in Jozini Multi-Purpose Centre
	20 July 2018	Public Hearings in Ethekewini Metro Council

	21 July 2018	Public Hearings in Kokstad Greater Kokstad Local Municipality
EASTERN CAPE	23 July 2018	Public Hearings in Umtata King Sabatha Dalindyebo Local Municipality
	25 July 2018	Public Hearings in Queenstown Komani Local Municipality
	26 July 2018	Public Hearings in Kingwilliamstown Buffalo City Metro
	28 July 2018	Public Hearings in Jansenville
WESTERN CAPE	2 August 2018	Public Hearings in Clanwillam Cederberg Local Municipality
	3 August 2018	Public Hearings in Swellendam Swellendam Local Municipality
	4 August 2018	Public Hearings in City of Cape Town Cape Town Metro

Annexure B



Annexure D

THIS LAND DOCUMENTARY IMPACT SURVEY

Please help us rate the impact of this film by making a tear next to the answers that you choose

YES		NO
	I own the title deed to the land where I live	
	I have been evicted/forcibly removed from my land	
	I have been threatened with eviction/ forcible removal from my land	
	I have been informed of my land rights by the film and the printed support material	

For the screening co-ordinator

Date

Place

Annexure E

THIS LAND SCREENING QUESTIONS

1. How does this story relate to your own situation with regards to access to land or recognition of land rights?
2. Have you ever experienced any of the situations depicted in the film: e.g.
 - i. being forcibly removed or threatened by eviction
 - ii. being intimidated
 - iii. fearing for your life
3. Has the film affected the way you think about the role of activists?
4. Are there any tools that you can take home and apply in your community or situation from the film?
5. Land dialogue: How has This Land assisted you in engaging with the Land Dialogue

NOTES OF PROMPTS FOR QUESTION 4:

- i. Mobilise and stand together
- ii. Recognise the power of community and standing together
- iii. Know the law and know your rights: Seek legal support from organizations who can advise and support
- iv. Know the facts: research and understand what is happening, who is threatening your rights? What process was followed?
- v. Alert media or use your own social media and networks to make other groups and the broader public aware
- vi. Network – connect with other groups who face similar challenges and share experiences, build solidarity and support

To Whom It May Concern:

THIS LAND DOCUMENTARY

THIS LAND is a powerful 48-minute documentary, about a small village, as they oppose the development of a mine and assert their right to the land on which they live.

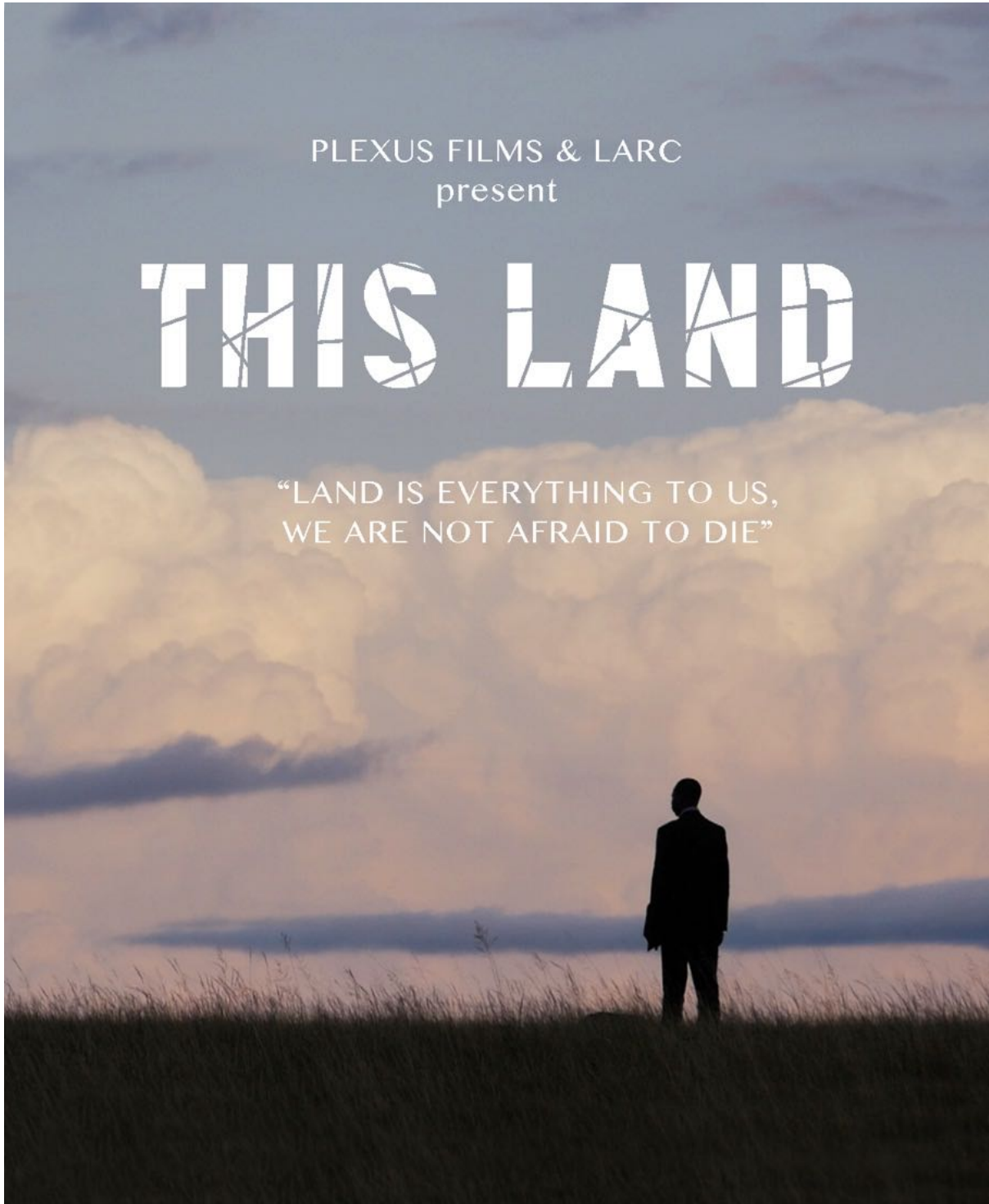
Commissioned by the Land and Accountability Research Centre (LARC), the film is being used to make people aware, to stimulate national dialogue and to advocate for the development of legislation that secures the tenure of individuals and families in traditional communities. Since Cyril Ramaphosa's State of the Nation address in February 2018 the land debate has intensified and there is a renewed interest in screening THIS LAND to unlock debate and facilitate workshops on the land issue. Plexus Films (the producers of the film) and LARC have partnered with the Nelson Mandela Foundation and the Bertha Foundation to support screenings and discussions around the country as we debate this issue. We will be working with Sunshine Cinema who have portable screening facilities by way of a Sunbox, which includes a screen, projector, speakers and its own power supply, making it possible to screen in any community, church or school hall, with no need for electricity. Screenings will be conducted by Samkelo Donisi, currently a post-graduate student in UCT Media studies department and employed as Sunbox Ambassador for this project.

We would like to invite community groups and village meetings to make use of this opportunity to screen the film.

Looking forward to working with you and your partners on this



Thank you
MIKI REDELINGHUYS
PRODUCER: THIS LAND
8 November 2018



PLEXUS FILMS & LARC
present

THIS LAND

“LAND IS EVERYTHING TO US,
WE ARE NOT AFRAID TO DIE”

VENUE

DATE

TIME



THIS LAND DOCUMENTARY

“We have seen that the chiefs are selling land to business people, mining companies, giving land to foreigners to build malls. We know that sometimes our land rights are not properly written in the law. But we know that traditionally we have a land right”



Mbhekiseni Mavuso, Makhasaneni, Kwazulu-Natal, South Africa
- **LAND RIGHTS ACTIVIST**

THIS LAND is a powerful 48-minute documentary, about a small village, as they oppose the development of a mine and assert their right to the land on which they live.

The documentary film **This Land** was commissioned by the Land and Accountability Research Centre (LARC) at the University of Cape Town. The intention of the project is to raise awareness about the escalating abrogation of rights to land of rural communities by politically connected elites with interests mainly in mining, and to build solidarity amongst affected people and communities.

Assisted by government officials and facilitated by a range of current and proposed laws and amendments that seek to dilute the constitutional, statutory, informal and customary

rights of rural people, these elites strike deals with traditional leaders purporting to speak for communities.

We are using the film as a resource to bring awareness to rural citizens; to stimulate national dialogue and to advocate for the development of legislation that secures the tenure of individuals and families in traditional communities.

This includes ensuring that people are not unfairly denied access to their land, that natural resources necessary for living are not contaminated, and that the benefits from the minerals in community land flow to the people on the land fairly and in an accountable manner.

Update on Makhasaneni:

The Makhasaneni community lodged a land claim in 1998. In 2018 it was agreed that 11 000 hectares would be returned to land claimants in the Melmoth area, including Makhasaneni. The Ingonyama trust intervened, arguing that the land should not be transferred to them rather than to the community.

The Trust argued that the Makhasaneni villagers are subjects of the King and the land must therefore vest in the King. In late 2018 the Land Claims Court rejected the arguments of the Ingonyama Trust, saying the Trust had never lodged a claim, nor had it ever been dispossessed of the land in question.

Members of the Zulu family and others want to appeal the judgment to the Constitutional Court. Currently, the land is set to be transferred to Makhasaneni and neighbouring communities

News article about Makhasaneni Restitution cases:

<https://city-press.news24.com/News/zulu-king-loses-in-court-over-land-claim-20181203>

<https://city-press.news24.com/News/zulu-kings-land-grab-20181027>

Access to heads of argument:

<http://www.customcontested.co.za/makhasaneni-restitution-claim-hijacked-by-ingonyama-trust/>

<http://www.thislandfilm.com/>

Amending the Property Clause

Nokwanda Sihlali and Zenande Booii

Since the 2017 ANC Conference, supplemented by Cyril Ramaphosa's State of the Nation address in February 2018, the land debate has intensified and there is a renewed interest in fast tracking land reform. The motion for amending section 25 of the Constitution (the "property clause") to allow for expropriation without compensation, brought forward by the EFF leader Julius Malema, was adopted with a vote of 241 in support and 83 against.

The matter has been referred to the Constitutional Review Committee chaired by Mr. Vincent Smith and Mr. Lewis Nzimande, which must report back to Parliament by August 30 2018. The constitutional review committee will be hosting public meetings on the proposed review of section 25 of the South African constitution. The outcome of these hearings could determine whether land can be expropriated without compensation, playing a key role in the future redistribution of land in South Africa.

However, according to some land experts, activists and High Level Panel report chaired by former president Kgalema Motlanthe, the current failures in land reform are not due to the inadequacy of the Constitution. The state has failed to articulate and provide for the exercise of its extensive powers to achieve land reform, and give effect to the positive rights provided for in section 25.

Thus, they do not believe that s25 Constitution should be amended to allow for expropriation without compensation for the following reasons:

1. The Constitution allows for significant intervention by the state in the existing distribution of wealth in SA. Illustrated by:
 - a. The obligations it places on the state to reverse injustices of the past;
 - b. The rights in the BOR that provide for access to housing; healthcare; social security; food and water.
2. To this end, when interpreted properly, section 25 already allows for expropriation without compensation for the purposes of land reform.
3. Section 25 has two functions:
 - a. prohibiting the arbitrary deprivation of property - a procedural right against property being taken with no legal justification;
 - b. gives the state power to achieve land and related reforms aimed at reversing the effect of colonial and apartheid dispossession.
4. Throughout section 25, land reform is confirmed as an appropriate legal justification for the deprivation of property:
 - a. Section 25(2) and (3) empowers the state to expropriate land in the public interest - public interest includes land reform (section 25(4));
 - b. Section 25(8) provides that no provision of section 25 can be interpreted in a way that interferes with

the ability of the state to take steps to achieve land reform.

5. The above subsections read together illustrate the commitment of section 25 to remedy the consequences of pre-constitutional South Africa, based on the dispossession of black South Africans
6. The rest of section 25 provides positive rights that are aimed at achieving land reform and requires laws to be passed to fulfil these rights:
 - a. Section 25(5) requires land redistribution;
 - b. Section 25(6) requires land tenure security reform;
 - c. Section 25 (7) requires land restitution for people dispossessed after 1913.
7. The power of expropriation is limited by the requirement that a law about it be passed and that just and equitable compensation be paid.
 - a. What 'just and equitable compensation' is must be considered in the context of the Constitution and the provisions set out above.
8. Thus, if read properly the requirement to pay just and equitable compensation can be read to include the payment of no compensation.
9. What is necessary is that the law required by the Constitution be clear about the exact limits of state power in expropriating.

Also:

- a. The point of departure must remain just and equitable compensation, providing for no

compensation in clear instances for land reform alone

Courts must remain the final decision-makers of whether in each case no compensation is just and equitable

10. *Simmer & Jack Proprietary Mines LTD v Union Government* a case from 1912 says the state has the power to expropriate without compensation - but it must be clearly set out
11. *First National Bank of SA v Commissioner of SARS* the ConCourt in 2002 said expropriation without compensation clearly defined in law is permissible

The Traditional and Khoi-San Leadership Bill

Monica De Souza Louw, Thiyane Duda and Ayesha Motala

The stated aim of the Traditional and Khoi-San Leadership Bill (TLKB) is to provide recognition of Khoi-San communities, leaders and councils; as well as combine all laws on traditional leadership to create a single law. However, the Bill has been criticised for reinforcing apartheid geography and its effects. It does so by adopting and merely renaming structures created by colonial and apartheid laws.

In the main, the Bill creates divided citizenship between urban and rural citizens, with the most marginalized South Africans subjected to chiefly rule without any choice of opting out. The bill encourages elite capture as it vests all decision making with traditional institutions to the exclusion of community members.

This Bill also allows traditional councils to enter into agreements and partnerships with municipalities, government departments and, most importantly, “any other person, body or institution” without getting the consent of the community, who are the owners of the land. This is a common

unconstitutional practice that many communities are complaining about and amounts to dispossession of communal land by traditional councils without compensation and this Bill seeks to make it legal

Many grassroots civil society organisations view the Bill as the government's way of taking rural citizens back to apartheid days by resuscitating the Bantustans and subjecting them to the rule of traditional leaders without the possibility for opt-out.

Ingonyama Trust Act

Nokwanda Sihlali

A day before the much anticipated report of former President Kgalema Motlanthe's High Level Panel recommended to Parliament that it should be disbanded, the Zulu King's Ingonyama Trust Board urged KwaZulu-Natal residents to swap their land rights for leases.

In reassessing the laws that affect rural citizens, especially those residing in KwaZulu-Natal, where 2.8 million hectares of land are vested in the Ingonyama Trust, with the king as the trustee and the Ingonyama Trust Board being the administrator of the land affairs, the panel criticized the ITB's record and proposed that it should be disbanded.

The Panel motivates for the repeal of the Ingonyama Trust Act to bring KwaZulu-Natal in line with national land policy, and to secure land tenure for the communities and residents concerned. If repeal is not immediately possible, substantial amendments must be made. They must secure the land rights

of the people affected, and ensure that the land vests in a person or body with proper democratic accountability.

The Witness and other newspapers on 20 November 2017 published adverts suggesting that the Permission-To-Occupy (PTO) certificates that rural residents have used to confirm their land rights would no longer be enough.

The first advert said:

“All people, companies and other entities holding land rights on Ingonyama Trust land in terms of the Permission To Occupy (PTO) are hereby invited to approach the Ingonyama Trust Board (ITB) with a view of upgrading these PTOs into long-term leases in line with Ingonyama Trust Board tenure policy”.

There are many issues with the purpose and wording of the adverts. The first being the manner in which PTO holders are implicitly forced to forfeit ownership of their land. The advert tells residents that people need a lease agreement as proof of residence for purchasing cellphones, opening a bank account or even to vote. It suggests that they have no alternative if they want to engage proactively as South African citizens.

The second issue is that ITB/IT is effectively taking ownership away from people and forcing them to pay for land that they already own. This completely abrogates their property ownership rights and opens them up to potential dispossession if they fail to make lease payments. Though the leases are presented as an upgrade of existing rights, we know from its reports to Parliament that the ITB's rental revenue rocketed from a few thousand rand before the residential leases were implemented to R96.1 million in the 2015/2016 financial year. There is no evidence in the reports that any substantial share of this income has benefited ordinary residents.

<http://www.customcontested.co.za/ingonyama-trust-wants-people-of-rural-kwazulu-natal-to-pay-rent-for-land-they-already-own/>

Interim Protection of Informal Rights Act

LARC Factsheet

In 1996 IPILRA was introduced to provide immediate protection to vulnerable rights holders whilst parliament was developing a more comprehensive and permanent law. Informal land rights were elevated to the status of property rights, in that the Act provides that people may not be deprived of informal rights to land without their consent, except by expropriation.

The former Land Rights Bill of 1999 was meant to replace IPILRA, however because this process is yet to be finalised - IPILRA has been subjected to renewal annually since its inception. Interim Protection of Informal Land Rights Act (IPILRA) has been renewed every year to fulfil section 25(6) of the Constitution. IPILRA protects “informal rights to land”. These informal rights are defined to include rights to use, occupy or access land in terms of customary law in the former Kwa-Zulu and other former homeland areas.

Section 2(1) provides that people who have such informal rights to land may not be deprived of these rights without their consent. They may only be deprived of land without their consent if the disposal of the land is approved by the majority of those who hold such rights within an affected community. If they are deprived of the land based on a community decision, they are entitled to compensation.

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

Mineral and Petroleum Resources Development Act

Zenande Boo

The MPRDA makes the state the custodian of all the mineral wealth in South Africa and tasks it with allocating mining rights. It does not require the consent of the owner or occupier of land before a mining right is granted or can be exercised. For mostly white landowners with registered title deeds, the practice is that a mining company negotiates with the owner and agrees, usually through legal representatives, on a surface lease that includes compensation for any loss that results from the exercise of the mining right.

This process is clear because the rights, including the nature of the rights held, are registered in the Deeds Office in the name of the holder. It is a very different story for black rural communities and people living on land that falls under the jurisdiction of traditional leaders. In such instances the registered nominal owner of the land is the Minister of Rural Development and Land Reform.

The actual holders of rights, and the nature of the rights they hold, are not formally recorded. The practice in such instances has been that the Department of Mineral Resources encourages mining houses to engage with officially recognised traditional leaders rather than with the people who actually hold rights to the land and will directly be affected by mining. In both the North West Bakgatla ba Kgafela and Eastern Cape wildcoast Xolobeni contexts, the officially recognised traditional leader is a shareholder in the mining operations.

Traditional Courts Bill

Thiyane Duda

The Traditional Courts Bill is before Parliament for the third time. While the current version is an improvement on its previous iterations, the portfolio committee on justice and correctional services seems determined to reverse these improvements. The bill was first introduced in Parliament in 2008, but was withdrawn. It was reintroduced in 2012 but lapsed in 2014 after being rejected by a majority of provinces in the National Council of Provinces. It faced widespread opposition from many sectors of society, especially rural citizens.

Previous versions of the bill were opposed as unconstitutional for several reasons: it did not provide for women to represent themselves or participate as members in traditional courts; only courts at the level of senior traditional leader were recognised; and only senior traditional leaders could preside over the courts. The bill proposed penalties that could include

an order to provide free labour, deprivation of customary entitlements such as land and banishment from the community. It did not provide for opting out when summoned by a traditional court.

A reference group consisting of traditional leaders, the government and civil society was formed in 2015 to consider issues identified in the previous versions of the bill. The 2017 draft was informed by the outcomes of the group. Many concerns raised about previous drafts of the bill are rectified in the 2017 draft. It captures the voluntary and consensual nature of customary law by enabling people to opt out of the jurisdiction of superimposed “tribes” and of specific traditional courts.

Concerns, however, remain about the practical implementation of these improvements.

<http://www.customcontested.co.za/how-mps-are-pushing-back-against-the-traditional-courts-bill/>

Restitution of Land Rights Amendment Bill

LARC Factsheet

On the 5th of October 2017 LARC attended the Rural Development and Land Reform portfolio committee meeting where honourable P. J Mnguni of the ANC presented the memorandum of a private member's bill initiated by himself for the Restitution of Land Rights Amendment Bill. He has pushed for certain amendments to the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) ("the Act") such as:

- Extending the date for lodging a claim for restitution to five years after the commencement of the Restitution of Land Rights Amendment Bill, 2017
- To make it an offence to prevent, obstruct or unduly influence a claimant or any other person from pursuing his or rights as provided for in the Act
- To criminalise the lodgement of fraudulent claims; to regulate the appointment, tenure of office, remuneration and terms of conditions of judges of the Land Claims Court ("the Court")
- To further amend certain provisions aimed at promoting the effective implementation of the Act.

The Restitution of Land Rights Act (No. 22 of 1994) was passed in 1994. Its goal was to offer a solution to people who had lost

their land as a result of racially discriminatory practices such as forced removals. This included people who were dumped in Bantustans and put under traditional leaders.

We must roll back the legacy of land dispossession resulting from colonialism and apartheid. But in the current context and in its current form, the new Restitution of Land Rights Amendment Bill is unlikely to meet the needs of rural people, and could well undermine their land rights as protected by Sections 25(6) and 25(7) of the Constitution.

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

Communal Property Associations Act

LARC Factsheet

Under colonialism and apartheid, millions of black people had been dispossessed of their land and their land rights. It was an urgent priority of the new democratic government to restore land to black South Africans and to secure their land rights against powerful actors, including the state (who had been a dispossessor under apartheid).

Since the land reform programme would involve the transfer of land from the state and private landowners to black South Africans, a legal entity needed to be created through which land reform beneficiaries could acquire, hold and manage property.

The new legal entities needed to accommodate and be able to adapt to a range of de facto land-holding practices, many of which were group-based. Unfortunately they have often failed to mirror or adapt to realities on the ground; focus has been too much on compliance with the Act, not enough on how they work smoothly for groups. Communal Property Associations (CPAs) were established to meet these challenges.

Beneficiaries of the land reform, restitution and redistribution programmes who want to acquire, hold and manage land as a

group can establish legal entities to do so. The Communal Property Associations Act 28 of 1996 provides for government registration of CPAs and also government oversight to enforce the rights of ordinary members. At its Land Summit in September 2014, the Department of Rural Development and Land Reform (DRDLR) released a new policy on CPAs. The CPA Amendment Act is currently under consideration by the National Council of Provinces.

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

For more information on This Land:

Facebook:

<https://web.facebook.com/ThisLandDoc/>

Twitter:

https://twitter.com/ThisLand_Doc

Website:

<http://www.thislandfilm.com/>

You can also watch it for free on Afridocs:

<https://afridocs.net/watch-now/this-land/>

The High Level Panel which was chaired by former president Kgalema Motlanthe to assess the progress of key legislation has been summarised into two pagers for easy reading.

These two pagers can be accessed on:

<http://www.larc.uct.ac.za/hlp-summaries-2018>

Organisations that assist with land issues:

PLAAS does research, policy engagement, teaching and training about the dynamics of chronic poverty and structural inequality in Southern Africa, with a particular emphasis on the key role of restructuring and contesting land holding and agro-food systems in the subcontinent and beyond.

<https://www.plaas.org.za/>

Tel: +27 (0)21 959 3733

The Rural Women's movement (RWM) has been fighting for indigenous women's rights to own land and to be treated equally since 1994. For more than 20 years we have been working side-to-side with rural communities all over the country.

ruralwomensmovement@gmail.com

<https://www.facebook.com/ruralwomensmovement/>

The LRC is a law clinic that uses the law to pursue justice, democracy and the realisation of socio-economic rights in South Africa, through the promotion of public interest law. The law clinic has been promoting public interest law in South Africa for 28 years and more so since 1994, when South Africa became a democratic state, whereupon the clinic intensified its work for the development of a fully democratic South Africa based on the principle of substantive equality.

<http://lrc.org.za/>

Tel: +27 11 838 6601

Fax: +27 11 838 4876

Tshintsha Amakhaya is a civil society alliance for land and food justice in South Africa. Rural women and men stand united in solidarity to advance their rights and secure livelihoods. Our members are farm workers, farm dwellers, smallholder farmers, fisher folk, forest dwellers, livestock keepers, people on communal land and people on church land.

<https://amakhaya.org/>

Tel: 021 447 5096

Nkuzi is a non-profit section 21 company (97 20743/08) providing a range of support services to historically-disadvantaged communities wishing to improve their rights and access to land. Nkuzi started operating early in 1997 and now has 10 full time staff working throughout the Limpopo Province, northern parts of Mpumalanga Province and with farm residents in Gauteng Province.

<http://nkuzi.org.za/>

Tel: 015 297 6972

Ndifuna Ukwazi is part of Reclaim the City, a social movement of tenants and workers struggling with access to land and affordable housing who believe it is time to take the struggle justice and equality to the centre of the city, to the people who should live there, to the heart of power and to the land that matters. The movement has tapped into a deep sense of injustice in the city about the current model of exclusionary development, bearing in mind our history of apartheid spatial planning and forced removals. Reclaim the City now has two chapters in the inner city and surrounds.

<http://nu.org.za/reclaim-the-city/>

Tel: 021 012 5094

Abahlali baseMjondolo is a movement of the poor shack dwellers in Durban, Pinetown, Pietermaritzburg and other parts of the province and the Western Cape. Abahlali's call for land and housing in the cities has become a threat to the authorities, some NGOs and some academics who still believe that social change cannot come from the bottom, who still believe that democracy is all about being loyal to their authority. Such top down system has terrorized our society. In fact it is an insult to assume that poor people cannot think for themselves, that someone else must talk for them without their concern. In view of a rejection of this understanding a new living politic of the poor has been born.

Tel: 031 304 6420
Fax: 031 304 6436
Cell: (27) 083 547 0474
Email: abahlalibasemjondolo@telkomsa.net

<http://abahlali.org/>

Phuhlisani Solutions provides comprehensive services and support for land reform and integrated rural development in South Africa. Together with our rapidly expanding network of associates we are expanding into the SADC region.

<http://www.phuhlisani.com/view.asp?pg=contact&allow=yes>

rick@phuhlisani.co.za

Tel: +27 021 685 1118

If you would like to organise a screening in your community please contact:

Nokwanda Sihlali
021 650 3405
Nokwanda.sihlali@uct.ac.za

Miki Redelinghuys
mikiinthecity@gmail.com

Special Thanks:

We would also like to appreciate the support of the Bertha Foundation and Nelson Mandela Foundation. The seizing of this moment and ensuring that all South Africans have a

chance to engage proactively with the film, would have not been possible without them. Our partners Sunshine Cinema and those working at grassroots level, namely ARD (Alliance for Rural Democracy), have assisted greatly in connecting us with local communities and for that we are incredibly grateful.



THIS LAND SCREENING REPORT

Compiled by Miki Redelinhuis

August 2018

SCREENING 1

Groblersdal, Limpopo

DATE: 26 June

Screening in co-operation with LAMOSA/ARD

Estimated number of people who viewed the film: 40

The screening took place within the program of a workshop hosted by ARD and LAMOSA, so the issue had already been contextualized by the time the screening started. The film unlocked dialogue as many community members could relate to the issues raised and reflect on similarities in their own environment.



Comments include:

“In our village we chased the mine away, saying that whatever happened with the chief, should not affect us, any agreement should be done at a grassroots level - so the traditional leader, with the masses on the ground.”

Figure 1 - engaged in dialogue at Groblersdal

Re the community leadership: *“unity is strength.. you must have one vision”*

“When we conscientise the communities, telling them “they are going to move you here”, the mammas started saying, “No, no, no”. When we asked who it was, it’s Anglo American, we stormed those meetings. They came to me at night... they come with brown envelopes full of joy and happiness...”

“They were supposed to hold public participation meeting. In terms of their SLP’s, they have recorded that they have developed our area, they’ve got a massive hall, there is a

science laboratory at the school, which is not there”

DATE: 27 June
Attend Public Hearing
Marble Hall. Limpopo

COMMENTS INCLUDE

On arriving at the hearing venue we attained press passes for access. Preceding the hearings the DA was holding a protest outside. The EFF and Cope also maintained a visible presence. Concerns are raised by members of Lamosa and Alliance for Rural democracy members that the process is flawed and being politically captured. The hall was too small to accommodate all the people present and not all the submissions would be heard. There was such a throng of people trying to get in that the security scanners were broken and access control dismantled.



Figure 2 - Emily Tjale from LAMOSAs at Marble Hall

What I'm saying is, it cannot be a public hearing when the majority of the people are outside, the venue is not conducive. This is a party-political something. Its chaotic. We work with old people, we work with legitimate land rights people, who are abused in the villages every day, who don't have security of tenure, who are facing mining activities which are illegal, who are being evicted, in the farms every day. So how are they going to make their submissions when there's a lot of people, a rent a crowd, this is a rent a crowd.

So we are not free to participate, as the Alliance for Rural democracy, I will advice our members not to participate. We need to collect submissions, hand them over to the committee and demand that public participation must be done. Not this thing. If they want to do their political rally's let them go somewhere else, because we want land.

- Constance Mogale outside the Marble Hall hearings



Figure 3 - Inside the Hall at Marble Hall hearings

After this Constance Mogale stated that as civil society, they are threatening to withdraw from the process. She is seeing the process as insincere politicking and raised concerns that the needs of the people are not being recognized.

SCREENING 2

Kasteel, Bushbuckridge, Limpopo

DATE: 28 June



Figure 4 - Speaker Mahlatse, community leader Bushbuckridge

Estimated number of people who viewed the film: 131

Screening hosted by committee headed by Speaker Mahlatse

The screening was held at the Moreipuso traditional Authority building in Casteel near Bushbuckridge. It was co-ordinated by enigmatic Speaker Mahlatse who is leading a group of land claimants. What was striking about this screening is that, when we asked in our survey at the end, if anyone had been forcibly removed or evicted from their land, the entire audience raised their hands.

Below a summary of comments and discussion:

- Lack of support from other organisations.
- Lack of unity.
- Lack of information.
- Empty promises from authorities

The community here feels marginalised and isolated in their plight. They submitted a land claim 18 years ago and have made no progress. They need legal support for this. It appears that there is more than one claim on the same land.

They will not be able to attend any of the public hearings as there isn't one that takes place in their area. They are disillusioned by this and feel that the nationwide hearings is not "nationwide".

They would like follow up and contact with organizations that can support them.



Figure 5 - A show of hands when asked whether anyone in the room has experienced eviction or forced removal

SCREENING 3

Kuruman, Northern Cape

DATE: 28 June

Estimated number of people who viewed the film: 48

The film screened in a workshop organized by a community activist based in Northern Cape, Kedinametse Maluleke. The workshop took place the day ahead of the Public hearing in Kuruman and was aimed at preparing communities of the hearings. The film screened at the end of a day of discussions, leaving no time for discussion around the film as per the usual format. Informal feedback was overwhelmingly positive with requests for screenings by various people representing their community groups. To be followed up in phase 2.

SCREENING 4

Burgersfort (Ga-Mapuru) & Steelpoort (Sekhukhune Environmental Justice Network)

30 June

The day before the screening I received a warning message from community activist and organizer Tshepo Mokoyane, flagging the fact that there may be mining protests and that would make hosting a screening dangerous. I discussed this with him and Mmathapelo Tobejane from Sekhukhune Environmental Justice network, whose group was to join us for the screening in Ga-Mapuru). We agreed that we were still planning to screen until otherwise advise by them. Later that day, they confirmed that the situation was too dangerous to host a screening and we were advised to cancel.

SCREENING 5

Emlalahleni/Witbank, Mpumalanga

DATE: 1 July

Estimated number of people who viewed the film: 20

The screening was organized and hosted by Elvis Komane from an organization called CULISA. He is a committed community activist who is under-resourced and supporting his work by working on a mine in the Koster area, hence wanting to keep a low profile. He has gathered a group of youth from Emlalahleni to support and work with him. They are working against



Figure 6 - cleaning away the coal dust in Emlalahleni

difficult odds and they are very disillusioned. They would like to opportunity to host more screenings in the area.

Elvis gained permission to screen in a church hall. I quote below my notes from the day:



Today's screening in Emalahleni: We placed our pamphlets on the table at the front of the church at the beginning of the screening. 1 hour later when I wanted to hand them out they were coated in a layer of grey dust. The floors, the windows the chairs - coated in layers of

fine dust. The community here eat, sleep, breathe coal dust. It's in their homes and bodies and water. It's a shattered place. Activist Elvis Komane is working hard against the odds to build CULISA in his community (Council of Land Informal Residence and Family Delopment in South Africa). Our future depends on young men and women like this.

Comments from the screening:

- Lack of support from other organisations.
- Issues portrayed in the film differ with their current situation, there some similarities but they learned a lot from this film.
- More training is needed about activism, often they do not know what to do.
- There are coal and steel mines who are dumping waste where they stay, water is damaged and there are sink holes which make it difficult to develop the area.
- The community reaches out for more information and films to learn more about activism.
- The community members are concerned about their health which is deteriorating radically with no action or
- The community members welcomed the information provided about LARC and ARD.

- Community leader (Ward Councilor) was also present; she shared similar comments with the audience. She was grateful that we had shown the film to youth so that they can take action. She expressed that even in her position it is difficult to resolve these problems alone because it's a long process. She also urged the community to empower themselves.



Figure 8 - Young activists from Culisa in Emalahleni

SCREENING 6

Middelburg, Mpumalanga

2 July

Estimated number of people who viewed the film: 5

The screening in Middelburg was arranged by Bafana Hlatswayo, to take place 2 days prior to the Public hearing in Middelburg. The day turned out disappointing as despite Bafana seeming very organised via email, he wasn't there on the day, and the audience didn't arrive. It transpired that there were transport issues, but it was never communicated to us beforehand that the groups would require transport assistance. Despite lack of attendance we hosted a screening in the Gerard Sekota auditorium at the municipal library and had a very robust dialogue as each person present represented a community and wanted to host a follow up screening there. One of the people present was Gregory Gora a well-known community leader, former ward councilor and leader of the local SACP branch. He introduced me to the PA to the executive mayor, Mpoetse Selala, who then also attended the screening and we discussed follow up possibilities.

Comments from the screening:

- The community has a similar story to what is depicted in the documentary.
- There was a success in their land claims but people misuse the money,
- there is no longer support from the front runners.
- There is a confusion around the land claims as to who benefitted,
- It seems that only one person/family that received benefits intended for the entire community.
- Major donors have stopped supporting their organization because of corruption.
- The community wants to use different approaches now to mobilise people on the ground.
- The issue of the land is cutting across spheres of society: from chiefs, municipalities, rural and urban land.
- There seems to be confusion as to who owns the land.

- People are not fully aware of where to go for assistance.
- From Umhluzi to Tokolo, the drainage system is not working because of the nearby mines which has been dumping steel with no regard of community health.
- Members of the community were forced to sign documents of consent, with no explanation of their rights.
- A community member describes how she was threatened and intimidated by fellow community member and activist who allegedly received funds for land on behalf of the community without sharing it with the rest of the community

SCREENING 7

Rustenburg, North-West Province

16 July

Screening in co-operation with LAMOSA/ARD



Figure 9 - dialogue in Rustenburg

Estimated number of people who viewed the film: 52

The screening was hosted in a LAMOSA workshop attended by community groups and civil society. Since Lamosa and LARC were presenting sections of the workshop there was strong content support for the discussions. There were various community groups who have requested further screenings in their areas and also a documentation of the situation they are facing.

Noted at the screening:

- The irrelevance of traditional leaders in communities, they aren't accountable to anyone and abuse power.
 - Mining projects are sold to the community as something that benefits them in the end; sometimes they are not informed at all
- The film needs to be a series that will expose other land corruption in other areas where this issue also happens
 - Some community leaders pose as activists but are part of the corruption
 - The current government seems like a continuation of the old system.
 - The community asked for a similar film to be shot in their communities to expose corruption.
 - The community member showed interest and willing to assist filmmakers

- The activists were interested in contacting LARC on behalf of their communities

SCREENING 8

Durban Manor, Kwazulu Natal

16 July

Screening in co-operation with LARC/ARD

Estimated number of people who viewed the film: 50

The workshop was hosted by ARD KZN, with people from, amongst others, Pongola, Umnini, Mkhanyakude, Port Shepstone, Babanango in attendance. Many community activists were in attendance, like for example members of the Rural Women's Movement.

The main purpose of the workshop was to empower the attendees with information about the CRC PH, but in KZN the biggest issue that everyone wanted to discuss is the Ingonyama Trust. They were deeply fascinated that people at such a local level (in the documentary) could use their collective power and actually "defeat" such a big mining company as Jindal. Issues that permeated in the discussion revolved around the autocratic nature in which chiefs exhibit their power.

A Port Shepstone community activist complained that their Nkosi was charging them excessive levies; a Somkele activist complained that mining was taking place in their back yards and their air was getting polluted, but they were neither consulted, nor consented to the mining activities. The film highlighted for them the ability to hold power to account, with the most powerful moment being when the prince met the executive at the mountain top with COGTA and for executive to reject the requests of COGTA and the royal family essentially, illustrating the power of ordinary people to shape their own destiny.

SCREENING 9

Bapong, North West Province

17 July

Screening in co-operation with Kholisile Dingiswayo

Estimated number of people who viewed the film: 20

The screening was arranged by community activist, Kholisile Dingiswayo. He initially arranged for 4 screenings in the NW province, inviting 10 clusters to participate.

Unfortunately this plan came with heavy transport costs, which we couldn't support, so we agreed to two screenings with fewer clusters, but also invited some of the groups to the LAMOSA screening in Rustenburg, thereby affording them participation.

We would like to follow up with additional screenings here in phase 2 in order to reach some of the interested clusters that could not be reached this time.

Comments from Bapong Screening:

- The film invoked a pain in those who lost land in the 70s and are still displaced today

- The community is not united and there are those who work in exclusive circles where information doesn't move out.
- There is still a place for traditional leaders as they help preserve identity – the corruption exposed in the film is not a reflection of all kings and ndunas.
- Land is linked to identity and livelihood so loss of land means those aspects are compromised.
- Mining companies in the area have surface rights over Bapong and can at any time remove people should they want to. The community feels that they are at their mercy.
- The community stayed after the session to talk about mobilizing
- Some of the community members in attendance were appointed to be at the hearings this coming Thursday
- The community challenges the leader/partner who was our contact to meet with them often for sessions such as ours.
- The Tswana version seemed to be well-received. The audience engagement was better than yesterday and we can attribute this to the fact that everyone could understand the content.

SCREENING 10

Bokfontein, North West Province

18 July

Screening in co-operation with Kholisile Dingiswayo

Ironically, on the day celebrating Nelson Mandela's centenary, our screening supported by NMF was disrupted purportedly because of centenary celebrations by the local municipality, who cancelled our screening venue at the last minute.

Below a summary by Sunbox Ambassador, Samkelo Donisi, about what happened:

What a stressful day it was! Initially the film was going to be screened at workshop organized by the municipality. They cancelled the screening last minute because they have an eventful day and they could not afford us time to screen. However, with the help of the councilor, community developer and community organizer at Bokfontein, we managed to screen the film to an audience of 28 people. The feedback was amazing. We also discovered that none of the community members have title deeds. Some of them have been moved more than three times and they are expected to be moved soon. They will be in touch with Kholisile for assistance.

Estimated number of people who viewed the film: 28

Comments from Bokfontein Screening:

- The community shares a similar story with the one portrayed on the film, but there is no activism or unity.
- They learned that fighting together can bring about change.
- There is lack of support and unity.
- The film has encouraged them to stand together and unite.
- In the film, the community highlighted that the chief stood together with the people

of Makhasaneni. However in their community activism is not happening. Instead they are scared to voice and stand for their rights because some of the members have been assassinated.

- The community members do not own title deeds; they are expected to be moved at any time.
- The community would like similar films to encourage them to fight for their rights.
- The councillor was happy to organise people and the venue for us at short noticed because the initial plan was aborted by the municipality.
- The councillor, community developer and Co-ordinator were in attendance, they took some of the brochures with them.
- The community members will be in touch with Kholisile for future screening.



Figure 10 - Kholisile Dingiswayo leads discussion in Bokfontein

Below direct feedback from Kholisile Dingiswayo on the screenings:

Enkosi kakhuku Mtase!, this is a good beginning. We should be readying ourselves to meet the up-surge in demand for showing "This Land" in many other communities. News about it is flying like scent in the wind and sparking amazing interest.

I will be in a meeting of the Executive Committee of our CBO (Serodumo Sa Rona) where I will be tabling a report about activities of the immediate past fortnight and including the filming where-after send the collective report to the Miki and everyone.

Thank you very indeed for the "extra-ordinary outreach" with This Land.

- The need for the film is obvious. I picked up that most people had no clue this had happened elsewhere and that something can be done about the threat of future forced removals. Can we look at ways we can return for bigger sessions - maybe partner with a local organization? This would have a lot more voices come out for the report. _Noni Poni after her first week of screenings in training.

Public hearing Rustenburg 19 July



Figure 11 - Rustenburg Public Hearing

In both Limpopo and NW, we allowed time for the This Land team to attend the public hearings, listen to what was being said and experience the context in which the screenings are taking place.

Below a comment from Samkelo Donisi about the Public hearing in Rustenburg:

Public Hearings at Rustenburg were packed to the max. Unlike Limpopo, they were well organized this time. The venue was huge, security was tight and sound was perfect. They started right on time and there was order. We used our media accreditation pass to access the venue, there were no hustles. Likewise, there were contrasting views about the land issue. Mostly, people want the constitution to be changed to accommodate everyone or want the land back.

COMMENT FROM EMILY TJALE, LAMOSA, ABOUT THE THIS LAND SCREENINGS AND DIALOGUE:

I am inspired. Great appreciation from the delegates at the workshop and the screening pumped and tapped up the potential and most of our delegation deliberated at Taung, Mahikeng and Rustenburg with well informed input/substance.

Figure 12 - an emergency venue: a local church comes to the rescue after the film booted from the first venue



SCREENING 11
Cradock, Eastern
Cape
21 July

**Screening in co-
operation with**
SANCO members

Estimated number of
people who viewed the
film: 25

Comments from Cradock:

- The members of the community received the film and the information well.
- The members of SANCO (South African National Community Organizations), they want to be in contact with LARC for assistance.
- Only about 5 family members have been compensated for their land.
- In Cradock, there is an office already existing to help the community.
- The Film has reinvigorated their activism.
- The office of the SANCO will be in contact with LARC for further assistance.
- They would like to see the film again in a bigger audience and workshop on their rights.
- There is lack of financial assistance for their organisation, they don't even have stationery.

Problems:

- The screening was interrupted by the councillor; I ended up losing people who came to watch the film.
- The venue was changed at the last minute due to a, previously undisclosed, high venue fee.

SCREENING 12

Butterworth, Eastern Cape

22 July

Screening in co-operation with Walter Sisulu University, SRC

Estimated number of people who viewed the film: 38

Nokwanda Sihlale and Zenande Booie from LARC in attendance to facilitate dialogue with Samkelo Donisi

Comments

- The students felt there wasn't enough time for this discussion; instead, they requested the full day workshop. They would like to discuss the issue of land holistically.
- Surrounding areas are deeply affected, including the University rents to the chief.
- In Cofimvaba, about 56 kilometres from Butterworth people's health is affected, they started digging the ground because they want tar road.
- The mini workshop was organised in partnership with the SRC. They would like to organise another one to the bigger audience.

SCREENING 13

Mamelodi Gardens, Gauteng

22 July

Screening in co-operation with LAMOSA/ARD

Estimated number of people who viewed the films: 12

Comments

- Traditional leaders are imposed on people and not chosen or placed fairly
- Communities need leaders like Madondo (in the film), who aren't self-seeking.
- There are leaders who still benefiting from apartheid and continue to sell their communities without consulting
- People are afraid to mobilize because they have seen others die for it
- There is still a place for traditional leadership in order to preserve tradition and identity
- The ruling party has lost credibility
- The activists agreed that they are inspired to continue being active

SCREENING 14

Idutywa, Eastern Cape

24 July

Screening arranged to Samkelo's community contacts



Estimated number of people who viewed the films: 50

Comments

- There is no NGO.
- Most people are uneducated so they sign whatever is brought to them as the part of development.
- They community members recently signed to give away their yields as part of development. No down payment made to them.
- They lack support from the educated individuals around, that's why people just sign whatever that is brought to them.
- The community is having a meeting on Wednesday, 1 August 2018 regarding their decision reversed or revised.
- Expecting a call from the community for further assistance.
- The community requested



Figure 13 - when a crèche becomes a film venue
contact with LARC and ARD

SCREENING 15
Chiawelo-Soweto, Gauteng
24 July
Screening in co-operation
with LAMOSA/ARD

Estimated number of people who viewed the film: 38

COMMENTS

- The film showed there's success in unity
- The elderly feel undermined because conversations happen without them or they get spoken over
- One participant said she is facing injustice in her homelands as well as the township she is from and feels hopeless
- Some members in Dobsonville have been moved near a mining site where they get dust from the mines in their lungs and battle illness as a result
- The audience noted the importance of coming together and working in one accord
- A long serving member of the PAC expressed his disappointment at how the issue of land is still spoken about today and at people still being displaced when he fought for the same issues decades ago
- The audience asked if there is a digital portal where the info on the booklets sits so they can share the information with their community
- The community promised to share the information in a meeting they will organize



Figure 14 - the photo that says it all

SCREENING 16
Keiskammahoek, Eastern Cape
25 July

Estimated number of people who viewed the film: 37

Screening in co-operation with Border Rural Committee

Nokwanda Sihlale and Zenande Booie from LARC in attendance to facilitate dialogue with Samkelo Donisi

Comments

- What is depicted on the film has not happened recently, but the members of the community were relocated in the past in order to build a dam. They were told the land belongs to the state.
- The situation is volatile, some members were paid. 50% of the money was donated to Municipality to build Halls, Roads etc.
- The title deeds are not the same as what they have seen in other areas. Some of the community member have PTO's
- They were interested to know who owns the trees.
- Some of the members of the community are going to public hearings.
- They have an organisation fighting for their rights but would like to strengthen the activism.
- The problem is the councilors are not visible; they are just there but never bother to visit the communities to listen to their problems.
- There is a need for brochures to be translated in IsiXhosa or any other Nguni languages.



SCREENING 17 **Diepkloof, Gauteng** **25 July** **Screening in co-** **operation with** **LAMOS/ARD**

**Estimated number of
people who viewed the
film: 25**

COMMENTS

- Communities can beat whatever odds as long as they unite
- The community has tried to mobilize for issues that concern them and there were threats of violence.
- The cost of activism is always death or being shunned
- These conversations about the state of the country are discouraging because nothing ever comes out of them

- One of the audience members is currently in a battle with a mining company – her grandfather's tomb is in the mine yard and they aren't allowed there.
- People of the Eastern Cape said they don't want mines in their areas and fought companies that wanted to build them but continue to move to NW and other mining towns to work in mines that are built unjustly.
- Young people need to be taught the value of land because conversations that are happening right now are only with older people.
- For as long as black people have been displaced or moved by force, poverty has been in those areas.
- The community want to have the movie shown again

SCREENING 18

Moutse, Gauteng

27 July

Screening in co-operation with LAMOS/ARD

The screening did not take place as planned. The factors leading to the cancellation of the screen are as follows:

- Transport to the session had been arranged by our screening partner, Lamosa. The outsourced driver who I was meant to meet at Belle Ombre taxi rank did not arrive as arranged. The partner's plan B driver was driving back from Middleburg and Noni, the Sunbox Ambassador had already been waiting for over two hours. On arrival, the driver informed Noni that he would only reach the venue by 18:00, due to traffic and other constraints.
- The session was scheduled for 15h00
- In discussion with Miki, Noni was advised to cancel the screening
- This is regrettable as time and resources have already been invested in the screening, but the transport for this particular screenings was not to be arranged by ourselves.
- We advised the partner that we would need to reschedule for a later date.



Figure 15 - Sunbox Ambassador in Gauteng, Noni Poni uses any means possible to get to the screening

SCREENING 19

Orange Farm, Gauteng

2 August

Screening in co-operation with Orange Farm Human rights centre

Estimated number of people who viewed the film: 38

COMMENTS

The conversations on land are not sincere - it is a front for the elections

- Winning the the war against the land issue will lead to bloodshed and it requires people to not be fearful
 - In attendance was an activist who was the first resident of Orange Farm. She started a squatter camp - *“ I built two schools that have been now taken over by the government because I don't have a title deed (none of us do). People can come in and do anything here because even with our history, we are like visitor who have overstayed their welcome in our own land”*.
 - The government has claimed to have done lots for the people but with land still mismanaged, they have failed
 - All people working as crèche owners, churches, sheebens and even community projects are operating ‘illegally’ because they don't have title deeds and therefore they have no permits to operate.
 - The film taught us that even as a small group we can do so much as a unit
 - Fraudulent community leaders manipulate unemployed youth
 - Poverty is one of the reasons why people still sell land to white people or foreigners and they take advantage of that.
 - This Land should do a schools tour because the room is full of adults and the people who have the energy to fight this (ie the youth) are ignorant
 - People want to mobilize but are afraid of having their houses burned
 - A church leader, Siphwe Nhlapho said *“ Divide and rule has always been the enemy's tactic. I am sad to have to say this but we will have to die or risk death for land.”*
- Another comment: *“Why are we actually voting next year? In 94 we voted to take a bad power out. And now? I'm not voting if land is still an issue.”*
- People need to mobilize and leave their party T-shirts behind. This issue affects all parties.
 - *“This film has helped us remember how deeply in trouble we are. We can only pray for momentum after these screenings.”*
 - *“We will withhold our votes until something is done. Voting means we are donkeys dragging a carriage of corruption further”*
 - *“Those who sell land don't want to be free, they want to live like white people even if it means selling out.”*
 - The community decided to organize weekly meetings to check in specifically about land



SCREENING 20

De Deur, Walkerville, Gauteng

11 August

Screening in co-operation with Bosco

(Screening was part of a weekend meeting International Labour Research and Information Group had for activists/leaders from different areas in Johannesburg that have been affected by forced removals).

Estimated number of people who viewed the films : 38

Comments

- The are no real efforts to address the land issue - the government looks busy but they are not doing any real work
- Black people were dispossessed of their land - It was not via any legal agreements. Actions to reverse this should be to repossess and not negotiate with those that have the land.
- The current regime has remained at the service of capitalists.
- Without communities organizing and working as a collective, capitalists and corrupt leaders will continue to do as they please.
- A community leader from Eldorado Park - *“ From a Khoisan point of view, the Traditional Khoisan bill has been passed and we as the people rejected it but the government went ahead and appointed kings we the people do not know. This tells us that they have not respect for protocol.”*
- *“The people in the rural areas still have a say because they own the land whereas here in the townships, when we mobilize and resist, we get The Red Ants sent to mow us down.”*
- *“Being dispossessed of land means our dignity, identity and spirituality is compromised”*
- *“African people are disrespected and displaced when they are alive and even in death, their graves are dug and destroyed by mining companies”*
- *“The kings that lead the homelands were placed there by the apartheid goverment and benefited from the regime. They continue to do so even today.”*
- *“The movie reminded me of Bekkersdal where I am from where there are mines surrounded by informal settlements and poverty. Where is the development that these mines are supposed to bring?”*
- *“This expropriation of land without compensation doesn’t speak to our action of direct occupation of land. They want us to wait for them to deal with Section 25 and believe they will get our land.”*

- The partner organization is hosting a bigger conference on Sept 23rd where over a hundred activists will be attending and they want another screening and continuation of the conversation.
- A member of the audience raised the issue of borders in countries like Lesotho and how people of the country are displaced and trafficked into SA. *“Lesotho is in the centre of our country yet their struggle is ignored. We have them here as cheap labour and exploit them.”*

SCREENING 21

22 August

Cissy Goold house, Woodstock, Cape Town

Screening in co-operation with Ndifuna Ukwazi and Reclaim the City

Estimated number of people who viewed the films : 140

Ndifuna Ukwazi (NU) and Reclaim the City (RTC) have been leading the struggle for affordable housing in well-located areas of Cape Town. In March 2017 RTC occupied 2 disused buildings in the CT inner city. Currently there are more than 300 people living in these buildings, including families with children. 3 taxis brought people from Ahmed Kathrada house in the Waterfront to the Woodstock screening. As urban land activists they could find many connections with the story of the people of Makhasaneni. This was also the first screening in this series that was attended by Mbhekiseni Mavuso, lead activist in the film. The engagement was very strong and there was a great deal the young organization could learn from Mavuso's leadership.



Figure 16 Rev Mavuso at Cissy Gool House with NU and RTC

Additional Comments:

- Mavuso's presence gave a sense of reality into the film, now people understand what it means to fight for their rights.
- Mavuso explained the brief synopsis about the Ingonyama Trust and how other activists were targeted in KZN.
- The documentary evoked emotions to strengthen Ndifuna Ukwazi's quest to fight for their rights.
- Mavuso invited everyone to participate in a struggle fully, encouraged them to be united at all times.

- There were connections in how media can be used to undermine unity in a movement
- The need for unity was the over-riding message
- The audience appreciated our visit, they will make use of the booklet should they have any questions. They requested more similar films to be screened at their open space. They inspire them to fight more.



Figure 17 Samkelo introduces the screening at Cissy Gool House

SCREENING 22

23 August

Langa Library

Screening in co-operation with Development Afrika Stratagem

Khululekile 'Azul' Banzi from Development Afrika Stratagem runs weekly screenings in the Langa library. He was very excited that rev Mavuso would be present at the screening and did a great deal of advertising in the area. On the day of the screening there was violent service delivery/housing protests in Langa and the library had to be shut for the day. Our team was on the way to Langa when we were alerted that the screening had to be cancelled.

We have re-scheduled for 13 September.

SCREENING 23

23 August

Tshisimani Centre for Activism, Mowbray, Cape Town
Screening in co-operation with Tshisimani Centre for Activism

Estimated number of people who viewed the films : 55



Figure 18 - Nokwanda Sihlali - LARC

The screening of This Land was used to launch the new Tshisimani cinema. It was a highlight on the screening calendar as Rev Mavuso was present as well as representatives from various activists groups from around the Cape Town metropole. Nokwanda Sihlali from LARC was also present to provide background to the work they do and reflect of the nationwide public hearings she has attended, giving great context to the discussion.

The interaction was superbly chaired by the director of the Tshisimani centre, Dinga Sikwebu, who could bring great insight and leadership into the discussion. He introduced:

In the discussion that we have on Land, sometimes us in the towns, we forget that there are millions of people who live in former banustans, where the land held by the chiefs, and what is happening is that the chiefs are colluding with mining houses.

So the question there is the question of the security of tenure, so that the chiefs cannot sell out to these contractors. So then we talk, there is these millions of people for who the question of tenure is important. So we're picking up something from the struggle of Makhasaneni, We have to say: "what should happen to their struggle?" because the political leaders who start saying "Land, Land, land are now taking cover, because the chiefs are mobilizing in the country, right across, not just in Kzn...the chiefs are rising up and it affects the millions who live in those areas. So I think we need to talk about this, which is not just expropriation without

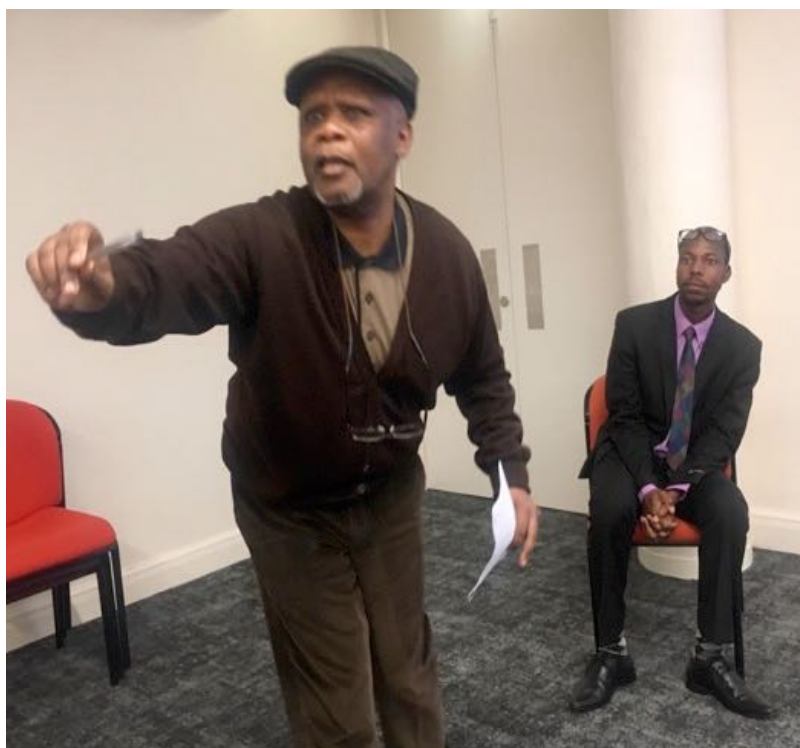


Figure 19 -Dinga Sikwebu & Rev Mavuso

compensation, what about this question of tenure.

Some are saying “the land must be taken over and run by the state”, the question is that if it is taken over and run by the state, how do you have a guarantee that the state are not going to do this with mining houses? How do we assure the issue of tenure for ordinary people. When we say “nationalize the land” are we not shooting ourselves in the foot? So Comrades, how does this documentary influence how we look at this issue of land, beyond now of saying “Umhlaba Izwe”?

Rev Mavuso could also give an update on what has happened in Makhasaneni since making the film. Under the leadership of the Induna’s son the community have put in a restitution claim for 34 farms in the area and they have just heard that they have been awarded 5 farms in their claim.

We claimed that land, we claimed 34 properties, now on the 17th of August, they gave us 5 farms for phase 1...Jindal mining is in liquidation. More than 3 mining companies have tried to come in my area, including fracking, we managed to defeat them.

SCREENING 24

24 August

**Leslie Social Building, University of Cape Town Upper Campus, Cape Town
Screening in co-operation with UCT Film and Media department**

Estimated number of people who viewed the films : 25

Both Rev Mavuso and filmmaker, Miki Redelinghuys were present. The dialogue was facilitated by Samkelo Donisisi, himself a post-grad student in the department. Since this was as student audience, and many of them were film students, there was strong engagement on the issue of film as a tool of activism, filmmaker ethics, the relationship between the filmmaker and subject. There were also questions around the benefits of the film for community featured. We discussed the issue of payment. The filmmaker explained that while subjects are never paid to be in a documentary, the film aims to have a positive impact on the lives of the community as a whole. Benefits to date have included:

- participation in national dialogue
- Broader media exposure through the film
- Networking and solidarity with other activists around the country
- Exposure so legal and research support, through LARC who commissioned the film
- Sustained community engagement, eg a screening planned for 22 September as part of heritage celebrations in Makhasaneni
- Engagement with political thought leaders like Kgalema Motlanthe, Justice Dikgang Motseneke
- Indirect impact and engagement on High Level panel
- Visibility
- Long term vision: support through the film network for a school of activism in Makhasaneni



Figure 20 Mbhekiseni Mavuso, Miki Redelinghuys, Samkelo Donisi

The students thanked Mavuso for sharing his story, they would like to see the film on a national platform. There was a discussion about SABC, who have not screened the film.

- Mavuso invited everyone to participate in a struggle fully, encouraged them to be united at all times.

We need to educate each other, but I don't like to use the word educate, I like to say "sharing information" because when you say "educate, you imply that you are more "forward" than other people. We share information. We don't care about your political party.

SCREENING 25

24 August

Carltonville, Gauteng

Screening in co-operation with ARD

Estimated number of people who viewed the films : 106



- Screening was part of a women's event to wrap Women's month
- To inspire church women to unite against issues around their community
- The programme ran long and the catering ended up happening at the time we screened because of time.
- There was general commotion throughout and this drowned out the speaker as the number in the room was large as is.
- After 3 efforts to quiet the room, we (myself and Connie of ARD) decided to end the session and just summarise the content of the movie and booklet to everyone and passed booklets.
- A few of the people asked that we come back to do the screening for a small group. Did the audience consider the actions they could take as individuals to address the issues raised in the films (such as poverty, inequality, climate change)
In future smaller groups in controllable venues would be better



Figure 21 Sunbox Ambassador - Noni Poni

LAND RIGHTS UNDER THE INGONYAMA TRUST

February 2015

The Ingonyama Trust was the outcome of a deal between the National Party and the Inkatha Freedom Party during the dying days of apartheid just before the transition in 1994. The Trust was established to manage land owned by the government of KwaZulu, and is currently responsible for managing some 2.8 million hectares of land in KwaZulu-Natal. The land vests in the Ingonyama (or king) as trustee, to be administered on behalf of members of specific communities.

While the Trust has wide powers to manage the land, the law also provides that the land rights of individuals and communities under the Trust must be respected by the Trust. This fact sheet seeks to examine the Ingonyama Trust Act, which created the Trust, to consider the nature of individual and community land rights under the Trust.

PROTECT YOUR RIGHTS

- While land rights over land administered by the Ingonyama Trust have strong protection, these rights are not well known.
- If you or anyone you know has their land rights threatened, please immediately contact AFRA at 033 345 7607 or afrakzn@gmail.com, or Michael Clark or Stha Yeni of the Centre for Law and Society at UCT, by phone at 021 650 3360 or by email at cls.uct@gmail.com.

THE INGONYAMA TRUST ACT

The Ingonyama Trust was established in 1994 to manage land owned by the government of KwaZulu immediately prior to the Act's commencement. The Trust was established by the KwaZulu-Natal Ingonyama Trust Act, which was enacted by the KwaZulu Legislative Assembly and came into effect on 24 April 1994.

The trust land vests in the Ingonyama, King Zwelithini, as trustee on behalf of members of communities defined in the Act. The Act was significantly amended in 1997 to create the KwaZulu-Natal Ingonyama Trust Board to administer the land in accordance with the Act. The current chairperson of the Board is former judge Jerome Ngwenya.

Key provisions of the Act

- *Section 2(2)* – “The Trust shall, in a manner not inconsistent with the provisions of this Act, be **administered for the benefit, material welfare and social well-being** of the **members of the tribes and communities** as contemplated in the KwaZulu Amakhosi and Iziphakanyiswa Act.”
- *Section 2(3)* – “The Ingonyama **shall** be the trustee of the Trust which shall be administered subject to the provisions of this Act by the Ingonyama and the board.”
- *Section 2(4)* – “The Ingonyama may, subject to the provisions of this Act and any other law, deal with the land referred to in section 3(1) in accordance with **Zulu indigenous law** or any other applicable law.” (Lawyers advise that “may” probably means “must” in this context)

- *Section 2(5)* – “The Ingonyama **shall not** encumber, pledge, lease, alienate or otherwise dispose of any of the said land or any interest or real right in the land, unless he has obtained the **prior written consent** of the **traditional authority** or **community authority** concerned.”
- *Section 2(7)* – Notwithstanding the provisions of this Act, any **national land reform programme** established and implemented in terms of any law **shall apply** to the land referred to in section 3(1): Provided that the implementation of any such programme on the land referred to in section 3(1) shall be undertaken **after consultation** with the Ingonyama.”
- *Section 2(8)* – “In the execution of his or her functions in terms of this section the Ingonyama **shall not** infringe upon **any existing rights or interests**.”

UNDERSTANDING THE ACT

As seen in the map on the back page of this fact sheet, the Ingonyama Trust administers significant amounts of land across KwaZulu-Natal. The Trust estimates that it administers some 2.8 million hectares. Given the Trust’s wide powers and broad impact, it is important to understand the rights of people living on land administered by the Trust.

Recently, it has become clear that there are two ways in which the Trust is threatening the rights of rural communities:

- by authorising mining activities and other developments on the land, which is frequently done without proper community consultation and could lead to the deprivation of use rights and access to land; and
- by converting people’s land rights (over land occupied and inherited by families over generations) into lease agreements.

These actions affect the community rights and individual rights of people living on Trust land, and will be discussed in more detail below.

COMMUNITY RIGHTS ON INGONYAMA TRUST LAND

As stated above, the Act places a burden upon the Trust to administer the land for the material benefit and social well-being of communities listed in the Act. This places an obligation upon the Trust to not conclude agreements in relation to community land that would prejudice community members. This obligation is enforceable in the courts.

One of the specific protections in this regard is that the written consent of local traditional leaders must be obtained before any steps are taken in regard to land rights. This does not mean that the written consent of a traditional leader is enough to establish that the Trust is acting in the best interests of a community. If the Trust enters into an agreement about land rights that is harmful to the community, it can be challenged.

The problem is that it may be difficult to prove the harmfulness of the Trust’s decisions in some circumstances. While an agreement that is clearly negative for the community can be challenged, many agreements will come with both advantages and disadvantages. As courts will generally tend to leave decision-making to the trustees’ discretion, it seems likely that only decisions that seriously undermine community rights will succeed. Community objections and disapproval will not necessarily be enough to legally challenge a decision of the Trust.

Community consultation

While the content of an agreement may be difficult to challenge, a lack of community consultation may result in possibilities for challenging an agreement on procedural grounds.

Section 2(4) of the Act establishes that the Ingonyama may administer the land in accordance with Zulu customary law. Section 2(8) establishes that the Ingonyama **shall not** interfere with existing rights or interests to the land. According to a study of customary land law in Msinga conducted by the Institute for Poverty, Land and Agrarian Studies (PLAAS), when an outsider is seeking access to land it is not sufficient for them to merely receive the approval of an *Inkosi* or an *Induna*. The demarcation of the land must include the consultation of the *Ibandla* and the potential neighbours of the outsider applying for land. A similar study by the LEAP project found that the agreement of the potential neighbours is essential for an outsider to be allocated land. The *Ibandla* must also be consulted.

Customary land law clearly requires consultation with neighbours and the *Ibandla*. If an agreement is made to give rights to community land to an outsider without such consultation, communities may be able to challenge this agreement in a court. The Constitution upholds rights derived from customary law that are consistent with the Bill of Rights in sections 39(3) and 211(3).

The Promotion of Administrative Justice Act

Apart from the rights under the Trust Act, affected communities may also challenge decisions the Trust makes in regard to land under the Promotion of Administrative Justice Act 3 of 2000 (PAJA). PAJA regulates **administrative action** (the exercise of government power or performance of a public function) to ensure that it is exercised in a just fashion.

PAJA defines administrative action as including action by non-state bodies exercising a government power or performing a public function in terms of law. There is no doubt that the Ingonyama Trust is subject to the PAJA and administrative law.

The PAJA provides for fair administrative action in two sections. Both require that the people affected by the decision participate in the process of making it.

- **Section 3** sets out the requirements for fair administrative action when a person's rights or expectations of fairness are involved. Unless there are clear reasons for not doing so, a person whose rights would be affected is entitled to be informed about the proposed action, to request reasons for the action, and to be consulted regarding the action.
- **Section 4** sets out the requirements for procedurally fair administrative action where a proposed administrative action affects the rights of the public in ways that cause them **significant harm**. If the rights of the public are affected, the trustee must either hold an open public inquiry or give people the opportunity to comment on the action, or both.

Where individual rights are affected, or public rights are adversely affected, the Ingonyama Trust must comply with the public consultation requirements set out above. If it does not, the decisions it makes **may** be set aside if the Trust is not able to justify why it acted as it did.

INDIVIDUAL RIGHTS ON INGONYAMA TRUST LAND

While the claim of community interests may prove difficult, individual rights are easier to protect. Section 2(8) clearly provides a guarantee against the Trust undermining existing rights and interests. This means that if a person currently has a right to occupy land, this right cannot be interfered with by the Trust except as permitted by law, including customary law.

Strong rights in customary law

In reviewing land tenure security under customary law, Professor Kerr notes that in customary law an individual's right to land are very strong in relation to inheritance and law. While traditional leaders played a role in administering land, Professor Delius finds that "once land was allocated to households it was very unusual for it to be reclaimed by a chief or a local leader." In surveying current land rights under customary law in KwaZulu-Natal, the LEAP project found that land tenure security traditionally was very strong and could only be interfered with if occupants committed very serious crimes.

The Trust also recognises that people have very strong rights over the land. The Trust's chairperson, Jerome Ngwenya, has said that "people who live according to indigenous law and custom know that **their rights are not adequately described by leasehold** as theirs is **more than this**". He has even acknowledged that "in reality are **the true owners**. They derive their rights of occupation from historical rights of various clans (tribes)."

It is therefore clear that individuals have strong rights to land that they occupy. If the Ingonyama Trust were to attempt to dispose of occupied land contrary to customary law or other law, it would clearly infringe section 2(8)'s protection against the loss of rights.

Converting land rights into lease agreements

Despite these statements the Trust has increasingly been converting people's customary or informal rights over the Trust land into lease agreements – which is generally a weaker type of right. In fact, since 2007 the Trust has largely stopped providing other forms of tenure security to people living on the land. The Trust has also claimed that lease agreements strengthen the rights of the people living on Trust land rather than diminishing them.

In reality, lease agreements mean that the people on Trust land are paying rental to live on land that they effectively 'own'. This problem is worsened by the fact that there are no clear limitations on the amounts of rental the Trust can claim in relation to the land.

The Trust's reasons for converting people's rights into leases

The Trust has given a number of reasons for converting people's rights into leases. These reasons are will be discussed below.

Previously, permission to occupy certificates (PTOs) were an important form of tenure which people living on the Trust land were provided. Historically, the former homelands had the power to issue PTOs to black people living on Trust land. However, these powers were jeopardised by the repeal of Bantustan legislation after

South Africa became a democratic country in 1994. The only exception was KwaZulu-Natal, where the Minister of Land Affairs delegated this power to the provincial MEC for Traditional and Local Government in September 1998. PTO certificates could therefore be issued by the provincial government in KwaZulu-Natal.

The Trust claims that this created an unusual situation in terms of which someone other than the Trust (the provincial MEC) could issue tenure rights over Trust land, while the Trust had the power to provide all other forms of tenure (provided that the Trust could obtain the consent of the relevant traditional council). The Trust considered this problematic. In response, the Trust concluded an agreement (presumably with the MEC) that no new PTO certificates would be issued over Trust land after 1 April 2007. It thus seems that issuing leases over the Trust land was one of the ways in which the Trust sought to strengthen its own power in relation to holding and administering the Trust land. The Trust has also tried to convert existing PTOs (which remain legally valid) into leases.

Another main reason the Trust is converting people's rights into leases is that rental income is the main income of the Trust. The Trust expects that in 2015, it will receive R15.3 million in rental income. The Trust has often stated that the rental it receives in terms of leases is significantly more than it would receive in terms of PTOs. For example, the Trust received R100 annually in terms of residential PTOs but receives, on average, R1000 annually in terms of lease agreements. The Trust argues that signing lease agreements has therefore increased the revenue of the Trust which is advantageous to the beneficiaries of the Trust, but this loses sight of the fact that it is the beneficiaries of the Trust who have to pay the rental in the first place.

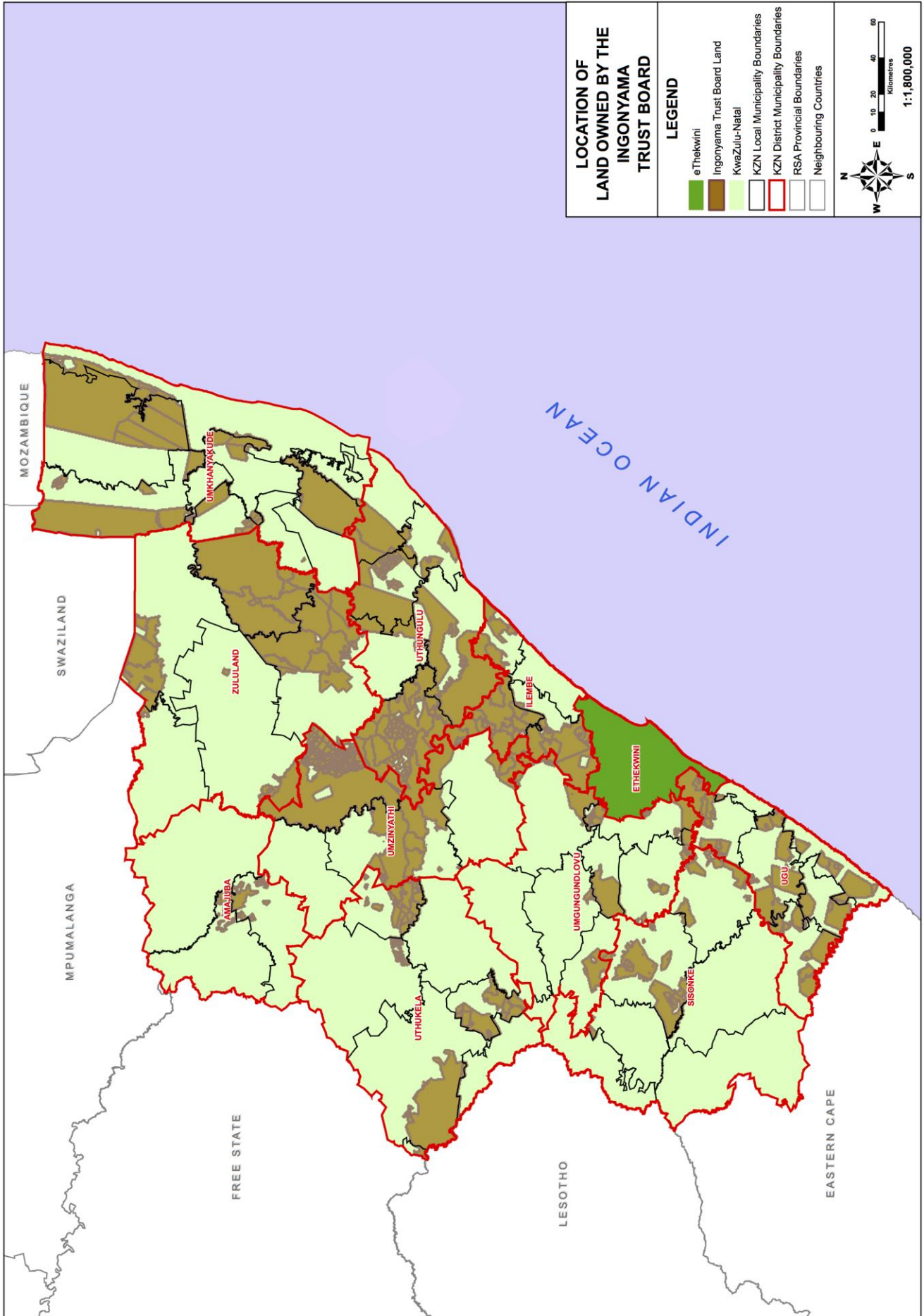
The Trust argues that it encourages people living on the land to conclude lease agreements because lease agreements are formal documents that "can be interpreted in the context of the common law". The Trust thus argues that the customary rights that people have over the land are not registered or documented and that leases would provide more protection to people. This argument is clearly incorrect as leases give people *weaker rights* over the land than they had before as they can be evicted from the land if they do not pay the rental amounts consistently.

Tenure security through IPILRA

Section 2(7) of the Act establishes that any national land reform programme shall apply to the land of the Ingonyama Trust. Section 25(6) of the Constitution provides for an Act of Parliament to ensure tenure security for those who lack it due to past racially discriminatory laws or practices. While it was meant to be temporary, the **Interim Protection of Informal Land Rights Act (IPILRA) has been renewed every year to fulfil** section 25(6) of the Constitution. IPILRA protects "informal rights to land". These informal rights are defined to include rights to use, occupy or access land in terms of customary law in the former KwaZulu and other former homeland areas. It therefore applies to people who use, occupy or access land administered by the Ingonyama Trust.

Section 2(1) provides that people who have such informal rights to land **may not** be deprived of these rights without their consent. They may only be deprived of land without their consent if the disposal of the land is approved by the majority of those who hold such rights within an affected community. If they are deprived of the land based on a community decision, they are entitled to compensation.

It is therefore clear that occupants of land under the Ingonyama Trust have very strong protections in terms of IPILRA.





Four things that rural mining communities need to know about the Traditional and Khoi-San Leadership Bill:

- 1 - The TKLB does not say anywhere that Traditional Councils must consult communities or land owners about decisions affecting their land.
- 2 – The TKLB does say that a Traditional Council must keep proper records. The Council must have its financial statements audited by the Auditor General. And the Traditional Council must meet the traditional community at least once a year to report on its “activities and finances”.
This should include a report on the payment and use of community revenue from mining, but that report only has to be about what has already happened – it is not consultation about what should be done.
- 3 – The Bill does not say what should happen if Traditional Councils do not keep proper records, do not submit their accounts to the Auditor General or do not report to a community meeting once a year.
- 4 - Clause 24 is the most important part of the Bill for rural communities where mining is happening now or might happen in the future. This is why:
 - a. This clause says traditional councils - from Kingship and Queenship Councils right down to Traditional Sub-Councils - may enter into agreements or partnerships with municipalities, government departments and, most importantly, “any other person, body or institution”.
That could be a deal to build a toll road across communal land, put a cellphone mast up in a village or build a shopping mall over community graves. But it is most likely to be a deal to open or expand a mine;
 - b. Clause 24 says such deals must be “beneficial to the community”. But it is the Premier and not the people who decide whether they are;
 - c. The Bill says any such deal must be approved by the Premier of the province. It does not say that the community must approve the deal or be consulted about it, or even informed that it is happening;
 - d. The TKLB says the Premier must tell the minister of Cooperative Governance and Traditional Affairs about deals that are approved, but does not require the province to report to communities on the ground;
 - e. Clause 24 says the Premier must “monitor” agreements or partnerships, but does not require him or her to report to anyone about them.

The TKLB recognises traditional communities and says they must be under a traditional leader, but the only accountability built into the law is upwards from the Traditional Council to the province and the government. Councils do not have to report to people, land owners or communities.

the Premier of the province where the Khoi-San council is situated to ensure uniformity in the provisioning of such administrative support.

(b) The provincial government of a province where a branch of a Khoi-San community has been recognised is responsible for the financial expenditure in relation to the attendance of Khoi-San council meetings by the relevant branch head.

5

Partnerships and agreements

24. (1) The national government and provincial governments may, through legislative or other measures, regulate partnerships and agreements as contemplated in this section.

(2) Kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils may enter into partnerships and agreements with each other, and with—

- (a) municipalities;
- (b) government departments; and
- (c) any other person, body or institution.

Added only in final draft.

(3) Any partnership or agreement entered into by any of the councils contemplated in subsection (2) must be in writing and—

- (a) must be beneficial to the community represented by such council;
- (b) must, in addition to any other provisions, contain clear provisions on the responsibilities of each party and the termination of such partnership or agreement;
- (c) is subject to a prior decision of such council indicating in writing the support of the council for the particular partnership or agreement;
- (d) is subject to ratification by the Premier of the province in which the relevant council is situated and will have no effect until such ratification has been obtained; and
- (e) may not bind the state or any person, body or institution who is not a party to such partnership or agreement.

(4) Any partnership or agreement contemplated in subsection (2) must—

- (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
- (b) be guided by and based on the principles of co-operative governance.

(5) Any council contemplated in subsection (2), may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and any other applicable legislation.

(6) A Premier must—

- (a) monitor all partnerships and agreements as contemplated in this section and may take the necessary steps to ensure the effective and efficient implementation or termination thereof; and
- (b) provide the Minister with copies of all partnerships or agreements contemplated in subsection (3)(d).

(7) (a) A Premier, when considering the ratification of any partnership or agreement as contemplated in subsection (3)(d), must be satisfied that the provisions of subsection (3)(a), (b), (c) and (e) have been complied with.

(b) If a Premier is of the opinion that a partnership or agreement does not comply with the provisions of subsection (3)(a), (b), (c) or (e), the Premier must refer such partnership or agreement to the parties who entered into such partnership or agreement, together with his or her reasons for not ratifying the partnership or agreement, and request them to rectify any shortcomings as referred to in his or her reasons.

(8) The provisions of subsection (3)(d) are not applicable to any partnership or agreement between the parties referred to in subsection (2), entered into in terms of any other national law: Provided that any council who is a party to such a partnership or agreement, must provide copies thereof to the Minister and relevant Premier.

Allocation of roles to kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders

55

25. (1) A department within the national or provincial sphere of government, as the case may be, may, through legislative or other measures, provide a role for a kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders in respect of any functional

Traditional leadership laws

A review of the findings of the High Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change – December 2017

The High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change released its final report in November 2017. The report describes the development of laws about traditional leadership since 1994 and whether they have been successful or posed challenges. The report also makes recommendations about how these laws can be improved going forward.

Problem statement: Have post-1994 traditional leadership laws been working well?

At public hearings hosted by the Panel, many ordinary South Africans spoke about how existing laws affect their daily lives. Some people spoke about how the current Traditional Leadership and Governance Framework Act 41 of 2003 (“Framework Act”) has resulted in abuses and unaccountable conduct by some traditional leaders and councils. They also spoke about how their customary law and Constitutional rights to land, equality, transparency, security, freedom of association and cultural identity have been undermined.

Voices from public hearings

“We all know the homelands and we are still squeezed in within them where whites forcibly moved us to and there is no noticeable change when it comes to land reform. ... That Act [Framework Act] has caused the boundaries that we thought we erased in 1994 to resurface.”
(Eastern Cape)

“We tried to engage the traditional leader, but he does not give us proper answers, he says the legislations empower him to act the way he acted, to enter deals on behalf of the community. ... The royalties that the mine pays to the traditional leader do not trickle down to the people.” (Limpopo)

“Traditional leaders are asking us to pay taxes. Government is giving traditional leaders cars and money, in addition to us paying money to traditional leaders. The traditional leaders are doing nothing for the community.” (Mpumalanga)

“Our government does not understand customary law. They are treating us the very same way that the apartheid treated us, taking our land and vesting it in the hands of traditional leaders.”
(Limpopo)

Some of the points raised by people at the hearings:

1. Legislation on traditional leadership resuscitates apartheid geography in rural areas resulting in divided citizenship and inequality
2. The legitimacy of some officially-recognised traditional leaders is uncertain
3. “Tribal” structures retained from apartheid have not effectively transformed e.g. traditional council election failures
4. The legislation uses distorted versions of customary law and incorrectly assumes that traditional leaders also have authority over land
5. There is uncertainty about the roles and powers of traditional authorities in relation to government, especially local government
6. Some traditional authorities compel rural citizens to pay “tribal” levies
7. Consultation and accountability are lacking in the operations of some traditional authorities and there is a need for training and monitoring
8. The legislation has resulted in conflict and violence

Government proposals

Government has proposed three new laws that deal with traditional leadership, currently being processed by Parliament. Government could use these draft laws as an opportunity to address the problems that people have been experiencing with the Framework Act. Instead, they threaten to make conditions worse for people.

- Traditional and Khoi-San Leadership Bill 23 of 2015 (“TKLB”): This law will replace current national laws on traditional leadership and introduce legal recognition for Khoi-San communities and leaders for the first time. However, the TKLB’s provisions potentially give traditional authorities extensive roles without ensuring that they are accountable and consult with ordinary people. The TKLB also gives new life to previous “tribal” boundaries and structures but fails to ensure that they are legitimate and transformed according to the Constitution.
- Traditional Courts Bill 1 of 2017 (“TCB”): This law will govern dispute resolution in forums recognised as “traditional courts”. The TCB has a long and controversial history in Parliament, with previous versions widely criticised in public hearings and by civil society. This new TCB is an improved draft by the Department of Justice which, for example, now includes a mechanism for opting out of traditional courts. However, some aspects of the TCB – such as the status of the courts – remain unclear, concerning or difficult to implement.
- Traditional Leadership and Governance Framework Amendment Bill 8 of 2017 (“TLGFAB”): This law proposes a few changes to the existing Framework Act. For more than a decade government has failed to transform “tribal authorities” into traditional councils with 40% elected and one third women members, as the Framework Act required. Thus, traditional councils have largely been operating invalidly. The TLGFAB proposes a new chance for traditional councils to transform, but also threatens to disguise the consequences of their past unlawful operations.

High Level Panel recommendations

1. Proposed laws such as the TKLB and TLGFAB should be urgently reviewed or withdrawn from Parliament because they threaten social cohesion, Constitutional rights and equal citizenship.
2. Existing law, namely the Framework Act, should be amended to:
 - Emphasise that customary law is a voluntary and living system
 - Define “traditional communities” as groups with shared affiliations, identities, governance structures and laws, rather than being based on previous “tribal” boundaries
 - Strengthen accountability and consultation mechanisms (for example, the Code of Conduct)
 - Apply the Interim Protection of Informal Land Rights Act to decisions about communal land
 - Clarify that for traditional councils to make valid decisions, a customary consultation process must first be followed, the council must be correctly constituted and financial accounting and reporting duties must be maintained
 - Prohibit “tribal” levies and only allow voluntary contributions
 - Clarify that small groups and individuals hold rights and can participate in court cases – not just traditional leaders, councils and large “traditional communities”
 - Increase proportions of elected and women members on traditional councils
 - Set limits on the roles and powers of traditional authorities
 - Require the Disputes Commission to report regularly and make findings public
3. Parliament is encouraged to pass new legislation that clarifies the different roles and status of structures with authority over land versus political authorities.

4. The position of women in traditional communities should be improved by repealing existing patriarchal laws, consulting women about new laws, ensuring women's equitable representation and tailoring laws to women's lived realities.

Conclusion

The Panel's report suggests important methods for addressing challenges in existing and proposed laws about traditional leadership. Are the Panel's recommendations appropriate and will they achieve necessary changes within traditional communities? This will have to be informed by the experiences and views of citizens. Since the recommendations are broad, the details of how they will be implemented must also still be decided. This presents an exciting opportunity for innovative solutions. However, it remains to be seen if Parliament will adopt the recommendations and if there is political will to support shifts in traditional leadership laws that benefit ordinary South Africans. If not, can the Panel's findings be used in other ways to claim back people's power and hold traditional authorities, government and private actors accountable?

Tenure Reform: Ingonyama Trust

A review of the findings of the High Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change – December 2017

In terms of s 25(6) of the Constitution, parliament must enact legislation that would provide security to “a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices”. The HLP report acknowledged submissions made that in spite of the Constitution and tenure rights legislation, tenure continues to be insecure in communal areas, farms and urban informal settlements; and that tenure insecurity contributes to social, spatial and economic inequality and perpetuates divisions across race, class, gender and habitation.

Key issues at a glance

Core problems	Principal HLP recommendations
<ul style="list-style-type: none"> ● The Ingonyama Trust Act is fundamentally flawed. ● The Trust seeks to convert PTOs into lease agreements eroding the tenure security of rights holders. ● Lease revenues do not benefit people on the land managed by the Trust. ● The Trust has entered into agreements with outsiders with rights holders being denied the protections afforded by IPILRA. 	<ul style="list-style-type: none"> ● Repeal or substantially amend the Ingonyama Trust Act. ● If opting for repeal the Repeal Act should provide for the repeal of the Ingonyama Trust Act of 1994 and for the disestablishment and dissolution of the Ingonyama Trust. It should include provisions for the transfer of the Trust land, assets, liabilities, rights and obligations to the Minister responsible for land affairs as custodian on behalf of the members of the communities and residents concerned. ● If opting for amendments these must secure the land rights of the people affected, and ensure that the land vests in a person or body with proper democratic accountability. ● A Repeal Act or Amendment Act should provide mechanisms by which an aggrieved person, community or resident may lodge a dispute or institute proceedings. ● Ensure that revenue or compensation from mining and other development activities shall be paid to land rights holders.

Problem statement

The Act is full of deficiencies and ambiguities and its amendments and the ramifications thereof have had a far-reaching effect on the communities and residents on the land concerned. The Trust is currently trying to convert PTO's into lease agreements. This conversion of existing land rights into leases undermines the tenure security of the people. There is little evidence that the revenue generated by leases is used for the benefit of communities or their material well-being. Some of the people have complained that they are being victimised by the developmental projects that have concluded lease agreements with the Trust. The actions of the Trust undermine section 25(6) of the Constitution and the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA).

Voices from public hearings

One speaker at the KZN hearing lamented the victimisation of citizens by developmental projects. He argued that when developmental initiatives are introduced, poor citizen's lives are disrupted without their consent. A businessman described how his business was shut down because of outstanding rental fees to the Ingonyama Trust. This was in spite of his having a Permission to Occupy Certificate and having made payments to the traditional leader. A speaker from Jozini submitted that in 2012, Jozini community members were invited to the Jozini Thusong Centre and asked to bring their identity documents. Without explanation, they were told to 'join' the Ingonyama Trust. He now receives monthly rental statements reflecting mounting debt to the Ingonyama Trust. Other speakers complained of the Ingonyama Trust having authorised quarries and other forms of development on their land without their consent. They complained that the benefits from these developments go to the Ingonyama Trust, as opposed to themselves.

Government proposals/responses

Government has not made any proposal regarding the strengthening of the rights of the people who are occupying the land that is currently owned by the Ingonyama Trust.

HLP Recommendations

Amendments, repeals, implementation

The Panel motivates for the repeal of the Ingonyama Trust Act to bring KwaZulu-Natal in line with national land policy, and to secure land tenure for the communities and residents concerned. If repeal is not immediately possible, substantial amendments must be made. They must secure the land rights of the people affected and ensure that the land vests in a person or body with proper democratic accountability. There is also a pressing need to create mechanisms to investigate and resolve complaints by people whose rights have been infringed by the Trust, or whose rights may be infringed in the future.

Ownership of this land vests in the Ingonyama as trustee. If the Act is either amended or repealed, this will not result in automatic transfer of ownership to the people on the land, which is a complex process. The ownership will vest either in the national government or in some other body designated for this purpose. Currently, the ITB and some traditional councils claim the right to the benefits from the land (for example rental or compensation for use of the land by others.)

This is not correct: the people who are entitled to those benefits from the land are the people who use the land, and who lose that use. Many (but not all) of them have a claim to customary law ownership of the land. If the Act is either amended or repealed, the repealing or amending Act should state explicitly that the holders of rights to the land (users and occupiers of the land) are deemed to be the owners of the land for the purposes of any revenue from the land or any compensation for use of the land, which would otherwise flow to the registered owner. Any such revenue or compensation shall be paid to them and not to the Ingonyama, the Trust (if it continues to exist) or the state. For example, where a mining company uses land in terms of a mining right granted in terms of the MPRDA, it is obliged to pay compensation for surface rights to the owner. Such compensation should be paid to the people who are deprived of the use of the land, and not to the state or the Ingonyama (the registered owner).

Repeal: The Repeal Act should provide for the repeal of the Ingonyama Trust Act of 1994 and for the disestablishment and dissolution of the Ingonyama Trust. It should include provisions for the transfer of the Trust land, assets, liabilities, rights and obligations to the Minister responsible for land affairs as custodian on behalf of the members of the communities and residents concerned.

Amend: An Amendment Act should provide for the amendment of the Act to ensure that trust land (including all land registered in the name of the Ingonyama as trustee for the Ingonyama Trust) is administered for and on behalf of and for the benefit of the members of the communities and residents concerned. It should also include provisions amending the composition of the Ingonyama Trust Board, which should fall under the auspices of the Minister responsible for land affairs, to provide that trust land shall be subject to national land programmes, to reiterate that the Act shall not apply to land in all townships, to provide for a trust fund, and to preserve the records of the Trust and establish a 'land register'.

Trust Land Register: A Repeal Act or Amendment Act should provide for the preservation of the records of the Ingonyama Trust and the ITB. A 'Register of Trust Land' should be established, which should contain the prescribed information. This should be available for inspection by any person during ordinary office hours and it should also be accessible to the public by electronic means (see Chapter 2 for Land Records Act proposals).

Dispute resolution: A Repeal Act or Amendment Act should provide mechanisms by which an aggrieved person, community or resident whose existing rights or obligations were affected by the administration of the Trust or ITB may lodge a dispute or institute proceedings. It should provide that the aggrieved person, community or resident may within five years lodge a dispute with an 'Ingonyama Trust Administrator', or institute proceedings in the magistrate's court or the Land Claims Court. If all the parties consent thereto, proceedings may be instituted in the High Court.

Conclusion

It is recommended that Ingonyama Trust Act be scrapped or amended enormously in order to strengthen the rights of all of the people who are occupying the land that belongs to Ingonyama Trust.

Mining

A review of the findings of the High Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change – December 2017

These notes key findings and recommendations of the HLP report and review new developments of relevance since the release of the report.

Key issues at a glance

Core problems	Principal HLP recommendations
<ul style="list-style-type: none"> ● Historically mining has been a root cause of poverty and dispossession. ● Mining policy and law post 1994 has favoured elite enrichment. ● Where minerals have been discovered and mined on land in the former homelands customary land rights have been extinguished. ● Mineral exploitation has proceeded without adequate consultation and prior informed consent of customary rights holders. ● The provisions contained within Interim Protection of Informal Land Rights Act have not been implemented. 	<ul style="list-style-type: none"> ● IPILRA should be amended to become a permanent act that provides meaningful protection to vulnerable groups in former homeland areas faced with external mining or other investment deals that will negatively impact on their land rights. ● Such rights holders must be properly consulted, and their consent obtained for others to use the land they occupy and use. ● If they withhold their consent, the investment company must be required to apply to court for the expropriation of their rights. ● Communities that have already been dispossessed through mining must be compensated. ● The MPRDA must be amended to ensure that both revenues from mining-related activities and opportunities generated by such mining activity are shared in an equitable and transparent manner among people whose land rights are directly affected.

The HLP report

The report has identified mining as a root cause of poverty and dispossession, amounting to violation of human and peoples' rights which has not been addressed in post constitutional legislation by parliament. Mining, a backbone of South Africa's colonial and apartheid economies, is at the root of spatial inequality and racialised income and wealth inequality exclusions in South Africa. Historically, only white landowners were able to benefit from mining. Black people were doubly disadvantaged by mining: where minerals occurred on their land, they were dispossessed.

Where they did not, land scarcity was engineered in order to force people to provide labour to the mines for limited compensation and intolerable working conditions.

The HLP report:

- notes “recent land policy is being driven by opportunities for political alliances and elite enrichment (particularly in mineral-rich areas) rather than focusing on the structural drivers of enduring inequality in ownership and control over land”;¹
- “proposes specific amendments to the MPRDA to address the way it is being implemented to undermine customary land rights and customary accountability requirements in the former homelands”;²
- “makes recommendations for amendment in relation to compensation for loss of land and livelihoods, for the transparent sharing of benefits accruing from mining, and for explicit compliance with IPILRA before the granting of a mining-related right”.³

Voices from hearings

The HLP report records that:

“the public hearings indicate that people on the ground attribute their current tenure insecurity to collusion by government officials who have failed to enforce existing legal checks and balances, so that elites are enabled to profit from land and mining deals.”⁴

HLP recommendations

The report deals with the shortcomings of the MPRDA and finds that urgent amendments must include addressing the legacy of mining and accountability of communities and mining companies:

The report recommends that:

- “The most urgent task in the current context is to provide meaningful protection to vulnerable groups faced with external mining or other investment deals that will negatively impact on their land rights. Such rights holders must be properly consulted, and their consent obtained for others to use the land they occupy and use. If they withhold their consent, the investment company must be required to apply to court for the expropriation of their rights, and the court must then balance the interests of the rights holders with those of the investment company within the parameters of Section 25 of the Constitution. IPILRA should be amended to make this explicit”.⁵
- “For communities who have already faced dispossession, clear provisions regarding compensation are required”.⁶
- Where mining has already taken place on communal land and the directly affected community has not benefited, the MPRDA must provide for compensation for

¹ HLP report page 55 and 304. REPORT OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE, Nov 2017

² HLP p 60

³ HLP p 60

⁴ HLP p 264

⁵ HLP report p 268 Recommendation 3.4 read with page 507

⁶ HLP p 504

individuals, households and communities to be calculated to put affected persons in the position that they would have been in had the mining not occurred.

- “The MPRDA must be amended to ensure that both revenues from mining-related activities and opportunities generated by such mining activity are shared in an equitable and transparent manner among people whose land rights are directly affected.”
- “The MPRDA must be amended to include clear and binding financial and administrative protocols for entities that purport to represent community interests and companies that do business with them, including accountability mechanisms that align with customary law principles of transparency and accountability.”
- “The MPRDA must be amended to provide for a Charter to protect and promote customary and artisanal small-scale miners and set a framework for the participation of communities in the sustainable and equitable exploitation of the resources of their communal land”.⁷

The report states upfront that IPILRA must apply to all new mining applications:

“The MPRDA must be amended to expressly require compliance with IPILRA as a condition for the grant of a mining-related right. (IPILRA rights are routinely ignored so compliance with IPILRA before a mining right is granted must be made explicit.)”⁸

“Should mining commence or a right be granted without the consent of the community, that community shall have the right to set aside the licence and to be paid compensation for the full damages suffered, or to consent to the mining retrospectively through the process to be set out in the MPRDA - including the negotiation of compensation, and to recover all compensation that would have been owed to it had the community's consent been received from the outset.”⁹

Intervening developments

World Bank guidance notes on free prior informed consent

On 1 November 2017 the World Bank issued a draft guidance note on conditions for free prior informed consent. Borrowers must comply with strict requirements and report on consultation with and consent by communities affected by mining.¹⁰

This ESS recognizes that Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities have identities and aspirations that are distinct from mainstream groups in national societies and often are disadvantaged by traditional models of development. In many instances, they are among the most economically marginalized and vulnerable segments of the population. Their economic, social, and legal status frequently limits their capacity to defend their rights to, and interests in, land, territories and natural and cultural resources, and may restrict their ability to participate in and benefit from development projects.

When the FPIC of the affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities cannot be ascertained by the Bank, the aspects of the project

⁷ HLP p 506

⁸ HLP p 507

⁹ HLP p 508

¹⁰ World Bank's 2016 Environmental and Social Framework. Guidance Note for ESS7 Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities.

relevant to those affected Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities for which the FPIC cannot be ascertained will not be processed further.

Operation Phakisa

The Operation Phakisa draft report on “Agriculture, Land Reform and Rural Development” of October 2017 ignores the impact of mining and the resulting challenges for land reform. It provides for a presidential war room on water redistribution and district land reform committees.

SAHRC report

The SAHRC draft report on “National Investigative Hearing on the Underlying Socio-Economic Challenges in Mining-Affected Communities in South Africa concludes with a weak recommendation:

8.11. Meaningful Participation, Consultation and Consent

The DMR must, within 6 months from the release of this Report, develop a clear policy for the assessment of the adequacy of consultations, which assessment must be conducted prior to the granting of mining rights.

Within a period of 6 months, the DMR must establish a working group to include the CoM, SALGA, civil society, community-based organisations, and other relevant stakeholders with a view of establishing best practice guidelines and/or formal binding standards for the establishment of community engagement forums within mining affected communities. These guidelines and/or standards must provide for the inclusion of diverse representation, democratic elections, set roles and responsibilities and clear reporting and transparency obligations. Within a period of 12 months, the DMR must report back to the SAHRC on progress made.

SONA 2018

The SONA of February 2018 did not address the recommendations of the HLP report. It stated that the MPRDA Amendment Bill should be passed in the first term.

It should be noted that the current Bill is very controversial in terms of process and content:

- The Bill was sent back to Parliament by the President on the issue of lack of recognition for customary law and lack of proper public participation in the legislative process.
- The Portfolio Committee of the NA made some adjustments to the bill while the Department and the Phakisa process introduced 54 new amendments ostensibly through the provincial legislatures. These amendments are unconstitutional in terms of process and are open to legal challenge.

As highlighted above the content of the Amendment Bill remains highly problematic. It further limits consultation on new mining to a bare minimum. It fails to address the historic legacy of dispossession caused by mining. A proper process of consultation is required to engage with the HLP recommendations and address the fundamental flaws in the existing Bill which facilitate capture and continue to deprive communities from meaningful benefits from mining.

Conclusion

The HLP report makes far reaching recommendations for the overhaul of the MPRDA. Most importantly it recommends that “The MPRDA must be amended to expressly require compliance

with IPILRA as a condition for the grant of a mining-related right”. This recommendation needs to be read with proposals for strengthen IPILRA and transform this into the Protection of Informal Land Rights Act (PILRA).

Restitution

A review of the findings of the High Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change – December 2017

The High Level Panel found that:

The poor outcomes and slow pace of restitution have been confirmed by numerous government reports. The public hearings testified to the divisions and disappointments restitution has sown on the ground.¹

Key issues at a glance

Core problems	Principal HLP recommendations
<ul style="list-style-type: none"> ● Currently there are 7000 unsettled and 19000 unfinished old order claims which will take 35 years to finalise at current rates of progress. ● New order claims lodged to date will take 143 years to settle. ● The Commission is overloaded with functions, lacks capacity to settle claims and provide post settlement support. ● Institutional systems are in disarray. ● Administrative settlement of claims has been vulnerable to corruption. ● Overlapping and conflicting claims are complex to resolve. ● Claims have been amalgamated and diverse claimants pushed into dysfunctional CPAs. ● Settled claims lack adequate support ● Economic and developmental outcomes of Restitution very poor. 	<ul style="list-style-type: none"> ● Prioritise settlement of old order claims consistent with LAMOSAs judgement. ● Restore statutory independence of Commission from DRDLR and appoint regional land claims commissioners as per the Act. ● Strengthen institutional systems and capacity of the Commission. ● Appoint permanent judges to the Land Claims Court. ● Urgent amendments to the Act to more tightly define community and prevent appropriation of claims by persons not qualifying for Restitution. ● Unbundle dysfunctional CPAs ● Require Land Claims Court scrutiny of settlement agreements to ensure just and equitable compensation. ● Clarification of the concept of ‘feasibility’ ● Create strong and enforceable duties on the DRDLR and on other departments and spheres of government to provide a full range of technical, financial, resource, administrative, accounting and other support to claimants who receive restoration of land.

¹ HLP, 2017: 36

Problem statement

There are still over 7000 unsettled and over 19000 unfinalised “old order” claims. At the present rate of finalising 560 claims a year, it will take 35 years to finalise all old order claims, new order claims that have already been lodged will take 143 years to settle, and if land claims are re-opened and the expected 397,000 are lodged, it will take 709 years to complete Land Restitution.

The Commission was not set up to deal with the number of claims lodged. The Commission has poor capacity: staff lack the legal and historical skills and knowledge necessary to do their job; the filing systems and digital database of the Land Claims Commission are in disarray; and high staff turnover contributes to poor institutional memory.

In 1999 the Commission was given the capacity to settle claims administratively, out of court, in order to speed up the process of settling claims. This decision had unforeseen consequences. Administrative settlement made the process “personality driven”, ad hoc, and vulnerable to corruption. Many speakers at the public hearings identified corruption as a key concern, with government officials described as “vultures”. Claims were “bunched” together and artificial Communal Property Associations created in the process, thus ignoring the definition of “community” eligible to apply for restitution. CPAs are often dysfunctional, a key issue noted in the public hearings. Furthermore, the Commission has not been effective at researching claims, and has frequently settled claims despite a lack of credible research. Unsurprisingly, there are many unresolved overlapping and conflicting claims, which contribute to ethnic and tribal tension, and xenophobic attitudes. Because of extremely poor information systems, overlapping claims are even discovered *after* claims to the same land have been “settled”. As a result, claimants cannot develop the land and often have to hire their own lawyers to fight the case, which is a significant financial burden. Unable to adequately process claims despite their legal powers, the Commission has referred many cases to court. The Land Claims Court is overwhelmed with cases regarding the validity of claims, the nature of just and equitable compensation and feasibility. Despite the enormity of the task, there are no permanent judges of the Land Claims Court.

The economic and developmental outcomes of restitution have been very poor. However, the focus on “post-settlement support” has not dramatically improved outcomes and places an unreasonable burden on the Commission to perform duties that are in the mandate of other government departments. A fundamental issue identified in numerous reports on the performance of land restitution, is that the Commission has been given, or has taken on, too many responsibilities outside of its remit. (Genesis Analytics, 2014) This further compromises the Commission’s ability to keep up with core tasks, such as records management, communication, and research. It also has budget implications.

Many restitution awards are inconsistent and do not provide real redress, particularly when claimants are compelled to take smaller cash settlements, or the emphasis on keeping land productive compels claimants to enter into strategic partnerships against the wishes of some. Many claimants feel disempowered by the process.

HLP Recommendations

1. Land claims lodged on or before 31 December 1998 need to be resolved expeditiously, consistent with the order of the Constitutional Court in the LAMOSI judgment.



2. The statutory independence of the Commission from the Department of Rural Development and Land Reform needs to be restored and regional land claims commissioners appointed in terms of section 4(3).
3. The capacity of the Commission needs to be rationalised.
4. The Land Claims Court needs to be stabilised by the appointment of permanent Land Claims Court judges.
5. Create an independent panel within the Commission to research claims.
6. Amendments to the Restitution Act that are urgently required include –
 - 6.1. amendments to the definition of “community” to –
 - Incorporate the principles established in the Kranspoort judgment; and
 - Ensure that the interests of those truly dispossessed are not diluted by piggy-backing on claims by persons not dispossessed of rights in land, including traditional communities or traditional leaders not dispossessed in the manner contemplated in the Constitution and the Restitution Act;
 - Ensure that the definition of community keeps with the initial intention of the Restitution Act, which was not intended for pre-1913 tribal claims.
 - 6.2. re-enactment of the provisions requiring Land Claims Court scrutiny and approval of settlement agreements, with specific criteria for the Court to consider, including criteria for approving –
 - just and equitable compensation paid to current owners; and
 - joint ventures, lease-backs and similar arrangements forming part of settlement agreements;
 - 6.3. ensuring consistency of treatment of claimants and claims;
 - 6.4. substantive provisions to allow decisive and effective intervention where CPAs and trusts have become dysfunctional;
 - 6.5. terminating the role of the Commission following a restoration award or order;
 - 6.6. clarification of the meaning and application of the concept of “feasibility” of restoration as referred to in section 33(cA) of the Restitution Act, including the introduction of clear criteria for the adjudication of feasibility of restoration;
 - 6.7. provisions imposing strong and enforceable duties on the DRDLR and on other departments and spheres of government to provide a full range of technical, financial, resource, administrative, accounting and other support to claimants who receive restoration of land and relieving the Commission of any duties in this regard;
 - 6.8. provisions ensuring the co-ordination of the provision of such support;
7. The question of equitable redress needs to be revisited.
9. Serious consideration should be given to making the restitution process document-based.

10. Serious consideration should be given to bringing the Commission more under the direct control of the Land Claims Court once the issue of the appointment of its judges has been resolved. Alternatively, liaison arrangements between the institutions should be legislated.
11. Where a claimant dies subsequent to the lodging of a claim and without leaving a will, section 2(3)(b) of the Restitution Act is unclear as to whether only the oldest descendant in each line of descent may be substituted as claimant or all living descendants may be so substituted. This needs to be amended to clarify that only the oldest surviving descendant in each line of descent may be substituted.
12. Speculation by persons in government and leadership positions about revisiting the 1913 cut-off date must end as this:
- fails to take into account that it is constitutionally entrenched in section 25(7) of the Constitution;
 - raises false expectations; and
 - if implemented through a constitutional amendment would flood the Commission with profoundly difficult claims that would prejudice existing claimants.
13. The Act must be amended to provide for formal reporting by the Commission and the Minister to Parliament and to the Judge President of the Land Claims Court at specified intervals on progress in the implementation of the Restitution Act as amended.

Conclusion

At the current rate of settling claims it will take between 35 and 43 years to finalise old order claims, before land claims can be re-opened. This unacceptable timeline cannot be wished away by setting unrealistic deadlines such as those announced by the Land Claims Commission and the Private Members Draft Bill. Steps need to be put into place urgently to address the fundamental problems causing the poor performance of land restitution so that the process of settling and finalising claims can be sped up. The Commission needs to be made ready to tackle the potentially 397,000 new claims that the RIA estimated it would receive, and avoid perpetuating the dismal performance of the last twenty years, which has sowed discord, disappointed the hopes of claimants, enabled corruption, and wasted significant government resources, with little economic benefit.

Annexure O

Court victories for individuals and communities living on traditional land

Rights of people and communities vindicated by
courts

*Maledu v Itereleng Bakgatla Minerals
Resources at the Constitutional Court
(Lesethleng Community)*

&

*Baleni v Minister of Mineral Resources
(Xolobeni Community) PTA High Court*

“[f]or a colonised people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity”.

Thus, strip someone of their source of livelihood, and you strip them of their dignity too.

Maledu facts:

- Lesetlheng village community, which forms part of the Bakgatla-ba-Kgafela traditional community in the North West approached the Constitutional Court to seek an order reversing an eviction order that had been granted by the North West High Court against them on land that had been in their families for almost 100 years.
- The people that approached the Court were descendants of 13 families that were members of the Lesetlheng Community that had purchased the Wilgespruit farm for purposes of farming and rearing cattle
- However, in 1919 it was not possible for land to be registered in the name of a black purchaser where there were six or more purchasers.
- This became known as the “six native rule”.

Facts cont.:

- The farm was registered in the name of the state on behalf of the whole Bakgatla-ba-Kgafela traditional community
- The rights of the people that actually purchased the land were not registered at all.
- But there was an understanding between the BBK community and the purchasers of the land that the 13 families that had purchased the land would have exclusive use and control over the farm
- The farm was subdivided into 13 plots and further subdivided for the families. They controlled who could use and access the farm

Facts cont.:

- The Wilgespruit farm is part of the vast platinum-rich geological formation of the Bushveld Complex
- In 2008, Itereleng Bakgatla Minerals Resources (PTY) Ltd (IBMR), a company partially owned by the Bakgatla-ba-Kgafela Traditional Council applied for and received a mining right over the Wilgespruit farm
- Also in 2008, IBMR signed a lease agreement with the Bakgatla-ba-Kgafela Traditional Council to allow for mining operations to occur on the land.

Facts cont.:

- The mining right application and the conclusion of the surface lease followed a *kgotha kgothe* (community meeting) of the entire Bakgatla-ba-Kgafela community convened by the council to inform it of the mining right and to get it to support the lease agreement.
- Thousands of people that form part of the Bakgatla-ba-Kgafela traditional community were called upon to make decisions in relation to land used and controlled by 13 families.
- When the Lesetlheng community refused to allow mining to commence, IBMR applied for and was granted an eviction order.

Maledu decision:

The question before the court:

- Was IBMR the mining company entitled to getting an eviction order against the Lesetlheng Community when it refused to let them commence mining operations on Wilgespruit Farm?
- Was IBMR supposed to use section 54 of the Mineral and Petroleum Resources Development Act (MPRDA) before trying to get an eviction?
- Was IBMR supposed to comply with the Interim and Protection of Informal Land Rights (IPILRA) before trying to evict the community?

What does a right in terms of MPRDA give?

In terms of section 5 a mining right is a limited real right in the mineral and land:

- It lets you,
 - Enter the land with whoever you employ
 - Build whatever you need to build to let you prospect or mine
 - Gives you access to what you need on the land to let you mine effectively
 - Take whatever minerals you find on the land

Does getting mining right entitle mining company to an eviction order?

An eviction order is granted against people that have no rights to whatever land or property is in question

A mining right does not destroy the rights to land or property that were previously held by an owner, occupier, or other interested person

So **NO**, a mining company **cannot** just evict people just because they have a mining right

What rights did the community have over the farm?

The Lesetlheng community were not the registered owners of the land and this was because of past racist laws that prevented black people from having land that they bought registered in their names

- Land was instead registered in the name of the government for a whole 'tribe' and no record was kept recognising who actually owned the land

But the Constitution recognises this history and protects people that hold land in terms of systems that were not recognised by the law

- **Section 25(6)** of the Constitution: A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- **Section 25(9)** of the Constitution Parliament must enact the legislation referred to in subsection (6)
- Interim Protection of Informal Land Rights Act (IPILRA)

What rights are protected by IPILRA?

The Court found that the Lesetlheng community hold rights as envisioned by section 25(6) and IPILRA

IPILRA recognises the right of people to use; occupy; and access in terms of their land administration systems*

IPILRA provides that no one can have these rights to land taken away from them without their consent

IPLRA says that if land is owned by a community then a person who holds rights to that land can only have that right taken away by a decision of his or her community if the **decision is taken in accordance with the rules and custom of that community**

If a person's rights to land are taken away by a decision of his community then that person must be **compensated** for the loss of his or her rights to land

Where a community makes a decision then a meeting **must** be held to **specifically** make a decision about the land. At the meeting a majority of the people in the community whose land rights are directly affected must agree to dispose of the land - everyone must be given a chance to take part in the meeting

What must a mining company do when someone else holds rights to land it wants to mine on?

The MPRDA has section 54 which sets out the process of determining how much compensation a mining company must pay the owner or holder of rights over land that the company wants to mine.

The Court found that section 54 of the MPRDA must be triggered by a where the mining company is unable to conduct mining because of a dispute with the owner or lawful occupier

The Court also said that the process set out in section 54 must be concluded BEFORE mining can commence or continue*

- Section 54 provides that compensation can be determined either through negotiations and therefore by agreement; or if agreement can't be reached by an arbitrator; or a court.

Who is able to trigger section 54?*

- The land owner or lawful occupier can trigger a section 54 process by approaching the relevant Regional Manager to prevent mining from starting or stop mining from continuing so that compensation can be determined for loss that is suffered or that could be suffered
- The loss does not need to have happened yet, it is enough if a community or person thinks they might suffer loss as a result of the mining operations**

What does this mean?

- If a community is scared that mining operations will result in loss then they can approach the Regional Manager at the DMR to trigger section 54
- This will stop mining operations until compensation is determined

What does the law say compensation?

- Generally, the law requires that the person being compensated be put in as good or better position than they were before
- Compensation does not necessarily mean money, it can be land or a combination of that - it just needs to **adequate***

The Court also found that compensation must be determined in terms of IPILRA

- Meaning the **consent** of the people that are directly affected rights holders to land must be obtained*
- The Court also made it clear that compensation paid to traditional councils will not be valid unless the people that hold rights in terms of IPILRA have consented to it
- Therefore, traditional councils cannot sign agreements that relate to compensation on their own
- Be very careful about what you consent to. Once consent is given that's it. Make sure you get proper compensation for consent you give

Court said mining must comply with other laws including IPILRA.

Though it's not explicitly stated for this context but before the mining company can try and exercise its mining right it must comply with IPILRA and obtain the **consent** of an informal right holder*

What must consent in terms of IPILRA look like?*

- **Free, Prior, and Informed** consent is required
 - “free” consent is given voluntarily and is not coerced, induced by misrepresentation or undue influence
 - “Prior” consent should be granted before any decision is taken.
 - “Informed” consent is when all the information relevant to the decision to which consent is required must be given to the person from whom consent is sought.

We know how often people consent in circumstances when they are coerced; mining has already started and pressure is placed on them; or they are not given all the relevant information

The surface lease that was signed by the Bakgatla-ba-Kgafela Traditional Council:

- The Court found that IPILRA must be complied with before any lease is concluded
- So the people that are actually directly affected rights holders to the land in question must be consulted and their free, prior, and informed consent be obtained
- So no surface lease can be concluded between a traditional council and a mining company unless IPILRA is complied with

Baleni Facts:

The Xolobeni
Community
live in the
Wild Coast in
an area
called
Umgungundlovu.



Baleni Facts:

- The beautiful coastline the community calls its home is also rich in titanium.



Titanium

Baleni Facts:

- The applicants live within or close to the area mining company Transworld Energy and Mineral Resources wants to conduct open cast mining operations.



Baleni Facts:

The community does not want mining to happen on their traditional land.



Baleni Facts:

- They say that mining will destroy their way of life
 - Their source of income
 - Their social fabric
 - Their environment
 - And they will suffer all this loss with little to no benefit deriving to them from the mining
- The chief has agreed to the mining and says that he represents the people but they say they want to represent themselves

The Xolobeni community approached the North Gauteng High Court for an order declaring that:

- ❖ The Minister of Mineral Resources does not have the power to grant a mining right over land held in terms of customary law as provided for in IPIIRA unless IPIIRA has been complied with
- ❖ No mineral right can be granted unless those directly affected rights holders in IPIIRA **consent** to the award of a mining right
- ❖ The consent required by IPIIRA must be obtained in terms of the living customary law of the Xolobeni and similarly placed communities.

- ✓ The North Gauteng High Court has held that no mining right can be granted unless IPILRA has been complied with
- ✓ Like *Maledu* it says that IPILRA and MPRDA must be read together and both must be complied with before a mining right can be granted and exercised
- ✓ The Court held that IPILRA requires that the **full and informed consent** of the directly affected holders of rights must be obtained before a mining right is granted over land held in terms of IPILRA and customary law

Baleni Judgment:

- A mining right cannot be granted by the Minister unless the consent of people that hold rights in terms of customary law as recognised in the Constitution and IPILRA have given their consent
 - Consent must **be free, prior, and informed**



Difference between two cases – facts on the ground

- **Maledu** about dispute between mining company and Lesetlheng community
 - Appeal against an eviction order
 - Government not involved
 - Judgment: mining companies can't just evict people. Compensation must be determined first
 - If people lodge complaint in terms of section 54 then compensation must be determined before mining starts or continues
- **Baleni** an application by Xolobeni community to clarify the law (declarator)
 - Xolobeni claimed IPILRA must be complied with before a mining right can be approved
 - Judgment:-no mining right can be granted before consent obtained in terms of IPILRA and customary law

What about clause 24 of TKLB?

- It would undermine these court victories because it wants to empower traditional leaders to sign deals with third parties
- But the implication of the two judgments is that TKLB would also have to be read alongside and in combination with IPILRA - there IPILRA would have to be complied with anyway
- Which means traditional leaders would also be bound to obtain the consent of those directly affected rights holders to land before signing such deals
- Unlikely to survive Constitutional scrutiny in the long run but would have massive negative consequences in practice for the years it would take to get a challenge heard by the Con Court

Victories and Threats

- Both judgments relate to interpretation of MPRDA and IPILRA and say both must be complied with
- Cogta trying to get around these judgments by amendments to clause 24 of TKLB
- New amendments proposed to exclude IPILRA



**NOTES ON THE
TRADITIONAL AND
KHOI-SAN LEADERSHIP
BILL [B 23–2015]
September 2016**

BACKGROUND

The Traditional and Khoi-San Leadership Bill ('TKLB') was made available to the public in September 2015. The national Department of Traditional Affairs published a notice in the *Government Gazette* on 18 September 2015, saying that the Minister of Cooperative Governance and Traditional Affairs would introduce the Bill in Parliament. On 23 September 2015, Parliament announced that the Bill had been introduced by the Minister and said that the Bill was referred to the Portfolio Committee on Cooperative Governance and Traditional Affairs.

The TKLB has been given an official number, namely B 23–2015, and interested persons will soon be invited to submit comments on the Bill. A full public participation process can be expected in Parliament, with opportunities for people to send in written submissions and attend public hearings. The National Assembly, National Council of Provinces and provincial legislatures are all required to provide the public with a chance to have their say on the Bill.

This Bill follows on another draft Bill, called the Traditional Affairs Bill, which was published by the Department of Traditional Affairs for comments in 2013. The Department made some adjustments to the wording of the 2013 Traditional Affairs Bill and changed its name to the Traditional and Khoi-San Leadership Bill. However, many of the concerns that were raised about the Traditional Affairs Bill are still relevant to the TKLB. In order to prepare for public participation opportunities provided by Parliament, it is important to be aware of certain aspects of the TKLB that have a negative impact on democracy, particularly for people living in the former homelands. The aim of this document is to discuss some of these aspects of the TKLB and the concerns that they raise.

THE PURPOSE OF THE BILL

Although there are already laws on traditional leadership in South Africa, the Traditional Affairs Department has said that this new law is needed for two main reasons:

- to put the various traditional leadership laws that currently exist into a single law, while at the same time solving problems that exist in the current laws, and
- to provide recognition to Khoi-San communities, leaders and councils – since this recognition has been absent until now.

However, there are concerns that government has other motivations for creating the TKLB. These include an attempt to head off the kind of opposition that saw the closely related Communal Land Rights Act struck

down by the Constitutional Court, and resulted in Parliament being unable to pass the Traditional Courts Bill. In addition, there has been such widespread failure to meet the few protections contained in the Traditional Leadership and Governance Framework Act 41 of 2003 ('Framework Act') that many traditional councils are not validly constituted. The TKLB does not address government's failure to transform traditional institutions as required by law. It uses the same mechanisms as the Framework Act for trying to achieve transformation, except this time the consequences of non-compliance are weakened. A close reading of the TKLB is required to ensure that the types of unaccountable and centralised powers enjoyed by traditional leaders under apartheid are not being revived through the Bill's provisions.

KEY FEATURES OF THE TRADITIONAL AND KHOI-SAN LEADERSHIP BILL

1. Keeps the boundaries of the 1951 Bantu Authorities Act

In 2003 Parliament passed the Traditional Leadership and Governance Framework Act ('Framework Act'). This Act recognised 'tribes' created in terms of the Native Administration Act of 1927 as current 'traditional communities'. It also recognised 'tribal authorities' created in terms of the Bantu Authorities Act of 1951 as 'traditional councils'. The sum of the tribal authority boundaries made up the Bantustans under apartheid. The TKLB has used these controversial boundaries to define the area where the Bill will operate. This means that, in effect, except for the provisions about Khoi-San groups and leaders, this Bill applies only to people who live in the former Bantustans.

The popular saying 'kgosi ke kgosi ka morafe' or 'inkosi yinkosi ngabantu' shows that traditional leaders are supposed to gain their authority and legitimacy from the people they lead. Because of its reliance on the Framework Act boundaries, the TKLB starts with the opposite idea that traditional leaders' authority is based on territory, rather than on people. The implication is that everyone within the former Bantustans is subject to a traditional leader as per the apartheid laws. The TKLB goes so far as to specify that in order for a traditional community to gain recognition, it must first have a senior traditional leader. Traditional leaders are put at the centre of a traditional community's customary law identity. The TKLB's assumption is therefore that traditional leaders create traditional communities, contrary to customary law which states that traditional leaders exist because of traditional communities.

These imposed, apartheid-constructed boundaries undermine the consensual nature of the relationship between traditional leaders and the people that they govern. The boundaries do this by removing traditional leaders' accountability to the people. Because traditional leaders are recognised and paid by the government, they become accountable more to government than to the people that they serve. This is particularly a problem in cases where the content of customary law is contested between traditional leaders and ordinary people. Some traditional leaders commit abuses against people or are involved in corrupt practices, and try to justify their actions in the name of customary law. By allowing for the broad allocation of roles to traditional leaders, the TKLB could enable traditional leaders to enforce these controversial versions of customary law. These versions of customary law then favour traditional leaders' interests above people's customary entitlements.

2. Imposes identities

The TKLB's use of the Framework Act's terms 'traditional community' and 'traditional council' means that the TKLB adopts many of the categories created under apartheid to define African people. These categories ignore the reality that rural areas are not made up of neat, separate 'tribes'. Instead, in many places people from different backgrounds live together, but were labelled 'tribes' under apartheid. This top-down understanding of identity ignores that tribes and tribal authorities were created under apartheid through forced removals, land dispossession, and the imposition of compliant traditional leaders and governance structures.

In many places people dispute official tribal boundaries, or some people do not identify themselves with the traditional community or traditional leader that they have been assigned to. In other places people who are independent landowners are forced under traditional leaders who were imposed during apartheid. Thus, distortions created under apartheid are reinforced by the TKLB. The boundaries do not allow people to 'opt-out' from the traditional council or the traditional leader that they have been placed under, or reconstitute their identities and groups as they choose.

3. Re-entrenches tribalism and divided citizenship

In 1994, when apartheid was defeated after major anti-Bantustan rebellions, South Africans were promised equal rights in a unified country. The unequal legal system that oppressed black people was replaced by the Constitution, and the full rights and protections of citizenship were expanded to all South Africans. Yet the TKLB takes us back to the 'tribal' classifications of the apartheid-era, and entrenches stark legal divisions between the former Bantustans and the rest of South Africa. After 20 years of democracy, the TKLB proposes a separate legal system for the poorest South Africans – those living within the boundaries of the Bantustans. This mimics the governance frameworks that past administrations used to divide, control and exploit people. The adoption of rigid, colonially-constructed tribal identities not only starts from a flawed position, but freezes this position in time. It denies people who live within the former homelands the rights enjoyed by citizens in the rest of the country to practice the culture of their choice. This reliance on pre-democratic identity categories contradicts the consensual nature of customary law, including definitions of custom put forward by the Constitutional Court.

4. Attempts to side-step the failure of the Framework Act's existing transformative mechanisms

The Framework Act includes two primary mechanisms to transform all old apartheid and colonial traditional leadership structures in line with democratic values. Parliament justified retaining discredited institutions on the basis that provisions of the law would force these institutions to transform. The first mechanism was that traditional councils had to include 40% elected members and one third women by a certain deadline. The second mechanism was the Commission on Traditional Leadership Disputes and Claims (popularly known as the Nhlapo Commission). This Commission had to assess claims stating that in some areas illegitimate persons were holding official traditional leadership positions, or that legitimate positions had been undermined by the colonial and apartheid governments.

Yet, both of these mechanisms have failed to achieve broad democratic transformation of traditional leadership structures. Most provinces have failed to hold proper traditional council elections, while in Limpopo there have been no elections at all. Provinces have failed to meet the deadlines set for transformation in the Framework Act and many traditional councils still do not include one third women

members. The Disputes and Claims Commission has been unable to deal with the enormous volume of cases brought to it, and provincial committees have been set up to distribute the load. Meanwhile, those cases that have been dealt with by the Commission are being challenged in court. For example, in June 2013, the Constitutional Court said that the dethronement of an amaMpondo king based on a decision by the Commission had no legal effect.

Against this background, in clause 70 the TKLB gives recognition to both: (a) traditional institutions as they existed in 2004 before the Framework Act, and also (b) any institutions that have been developed under the Framework Act after 2004. Since the wording of the provision is quite confusing, it is unclear how this recognition will be implemented in practice. What is important to note is that exactly the same transformation mechanisms are kept in place for traditional institutions, even though these have proven to be unsuccessful under the Framework Act. A new mechanism for reviewing the status of all existing headmen within three years after the TKLB becomes law is also created. Furthermore the TKLB removes the protection in the Framework Act that resulted in old tribal authorities having a vulnerable legal status when they failed to meet the election and gender composition requirements. Although the TKLB still says that compliance with the composition requirements is mandatory, there is no real consequence for traditional councils who fail to meet the requirements in time. All that the TKLB says is that the Minister of Traditional Affairs can intervene to make sure that traditional councils obtain the correct number of elected and women members.

5. Provides for discretionary allocation of roles to traditional structures

The Framework Act allows national or provincial government to give roles to traditional leaders or traditional councils in section 20. This resulted in laws based on rigid colonial and apartheid understandings of customary law being introduced in Parliament, such as the Communal Land Rights Act 11 of 2004 (CLRA) and Traditional Courts Bill (TCB). Government has been unable to implement these laws because people opposed them in court, Parliament and in the media.

The TKLB also allows roles to be given to traditional leaders and councils (clause 25), but gives government departments even more scope than in the Framework Act to do so. The TKLB does not provide guidelines on what roles can be given or how this should be done. Instead, the TKLB says roles can be given to traditional structures that deal with any of government's functions (for example, health, housing, agriculture and education), and it is up to a government department to decide the process. There is the possibility that roles could be given through opaque administrative decisions – called 'delegations' – as opposed to public laws like the CLRA and TCB. This would be very difficult for people to challenge and could result in different traditional leaders having different roles across the country at the discretion of departments. The TKLB also does not make it clear what the relationship will be between elected local government and traditional structures if these roles are given to them.

This is questionable in light of the Constitutional Court's finding in 1996 that the Constitution does not provide traditional structures with governmental powers and functions. The Constitution also says that traditional leadership can only be recognised as it exists in customary law and always remains subject to the Constitution. If the TKLB is an attempt to give some of government's powers and functions to traditional leaders and councils, then it is a dangerous and unconstitutional proposal. It could have the effect of creating a fourth tier of government, despite the Constitution's provision for only three tiers.

The latest version of the TKLB introduced in Parliament includes a condition that tries to prevent an unconstitutional scenario where traditional institutions take over elected government's place in the former Bantustan areas. It tries to do this by saying that although traditional structures can be given roles, those

roles must not include any 'decision-making power'. However, it is difficult to understand how traditional institutions will be able to perform the roles that they have been given by government without making at least some small decisions along the way. The TKLB's wording also does not say how government is going to monitor that traditional structures are not making decisions that should actually be made by government. Finally, by leaving the scope of roles so vague, in practice this clause in the TKLB is open to misinterpretation and abuse by some traditional authorities in practice – making government's attempt to impose a limit on their power meaningless.

6. Closes down spaces for community consultation

The Constitution protects democratic values of equality, human dignity and freedom for all people in South Africa and says that the people will decide how the nation is governed. The Constitutional Court has said that in South Africa this requires more than just voting for a political party every five years. Instead, South Africa's democracy relies on the participation of people in all political processes and decisions that will affect them – the voice of the people must be heard. To be democratic, these processes must also be open to the public and people must be aware of how the processes are going ahead. If a political process or decision leads to some kind of harm, then those responsible must answer to their mistakes.

Customary law also includes many of these democratic principles. People must be involved in decision-making within traditional communities and be free to have their say at public meetings. Traditional councils and leaders must be accountable to their people if they make mistakes or act against the interests of people in traditional communities.

In contrast, the TKLB excludes ordinary people from being consulted on decisions that will affect them. This includes some decisions about which groups or sub-groups of people should be recognised, who should be recognised as traditional leaders and how many members there should be in traditional councils. Often, the TKLB does not even provide for ordinary people living in traditional communities to be notified of decisions that have been taken that will affect them. Instead, the TKLB highlights consultation with powerful elites such as the Houses of Traditional Leaders, royal families and traditional councils. The TKLB therefore goes against the values of public participation in both the Constitution and customary law and privileges the voices of those people or groups who already have an advantage in rural and traditional politics.

7. Supports rural elite's access to wealth and resources

In many parts of the former homelands valuable minerals have been, and are currently still being, discovered. In several cases, this discovery of minerals has generated disputes around the management of revenue from mining, the environmental impacts of mining, and the accountability of traditional leaders to the people on whose land the mining is taking place. Cases have been reported around the country of traditional leaders making decisions regarding mining that do not reflect the wishes of the community. In these contexts mechanisms that hold leaders accountable to their people are crucial. Many people have been excluded from decision-making roles by traditional leaders acting as the sole community representatives on the boards of mining companies. In the North West, where people have challenged traditional leaders making unilateral decisions around mining, they have often faced court orders punishing them with payment of the substantial costs of their court challenges.

The TKLB will worsen these disputes as it allows traditional councils to enter into deals with municipalities, government departments and “any other person, body or institution,” without consulting or attaining the approval of the community (Clause 24). Furthermore TKLB has the potential to worsen cases of abuse by traditional leaders by allowing them to be allocated roles that are difficult for community members to trace. This top-down approach to traditional leadership greatly impacts the access of ordinary people to land, resources and basic services.

8. Strays from Constitution’s understanding of customary law

Section 211(1) of the Constitution recognises traditional leaders ‘according to customary law’. While the Constitutional Court has interpreted customary law to be ‘living law’ that adapts and develops in practice, laws such as the Framework Act, CLRA, TCB and now TKLB take us backwards. This is because these laws use the colonial and apartheid governments’ understanding of customary law as a starting point.

The Constitutional Court has said that the Constitution does not protect this old official government version of customary law. Instead, the Constitution protects a dynamic ‘living’ version of customary law that also looks at the history and practice of people, not just what is written in old government laws and textbooks. Despite this understanding of customary law, the TKLB falls into the same trap that the Framework Act did by adopting the old official structure of traditional leadership and councils as a basic structure for today’s traditional governance systems.

While the Constitution allows Parliament to make laws that regulate customary law, Parliament has the responsibility to ensure that such laws do not undermine customary rights or go against the underlying nature of customary law as a ‘living’ source of law on its own terms. Parliament will therefore have to ensure that the TKLB does not entrench official versions of unaccountable traditional governance.

The Constitution’s recognition of customary law and the right to exercise culture is limited to expressions of custom and culture that are consistent with the Bill of Rights. Because the TKLB offers traditional leaders such far-ranging roles, it has the potential to conflict with rights guaranteed in the Bill of Rights, and therefore to deny constitutional protection. There are furthermore serious questions about whether you can have one system of law apply to 16 million people who live in the former homelands and not the rest of the country.

9. Treats African traditional and Khoi-San leaders differently in respect of jurisdiction

The TKLB makes an important distinction between Khoi-San leadership structures and other ‘traditional’ leadership structures. For the former Bantustans, the TKLB puts in place a hierarchy of traditional communities that occupy a geographical area over which traditional councils have jurisdiction and that are headed by traditional leaders. In other words, leaders and councils in the former Bantustans will have authority that is connected to a particular piece of land and whoever lives on it.

On the other hand, Khoi-San leaders and councils do not have authority that is connected to a particular piece of land – instead, their jurisdiction extends only over people who are considered part of the Khoi-San community. Khoi-San leaders and councils will have administrative seats based in one central location, not expanded areas of authority that go beyond an office. In contrast, in the former Bantustans, traditional leaders and councils do not only have authority at the traditional council office; the authority extends to all those living on the land included within the geographical jurisdictional boundaries derived from apartheid.

As stated earlier, the government has said that a new law like the TKLB is needed to include Khoi-San leadership institutions in the official South African legal system. Yet, the provisions of the TKLB make it clear that, in respect of jurisdiction, government is not giving Khoi-San leadership structures the *same* recognition. This is especially relevant in light of government's recent promises to Khoi-San groups that changes in the law will allow them to claim back land that was historically taken away from them.

It is important to note that the TKLB establishes a system of affiliation for Khoi-San communities, where membership is based on self-identification. To practically implement this, the TKLB requires Khoi-San community members to put their names, identity numbers and contact details on a list when applying for recognition as a community. While this rigid procedure may lead to problems, government has shown that it is possible to base customary community identity on affiliation rather than on territory. It is arguable that a similar system could be put in place for traditional communities in the former Bantustans. This would do away with the imposed apartheid and colonial tribal boundaries that currently form the basis for traditional governance under the Framework Act and TKLB.

10. Allows House of Traditional and Khoi-San Leaders to influence the making of government laws

The TKLB envisions that a National House of Traditional and Khoi-San Leaders will be given a special chance to make comments whenever Parliament is processing certain laws. The laws referred to are bills about customary law, customs or the powers and structure of local government.

According to the Constitution, Parliament, provincial legislatures and municipal councils are the primary law-making bodies in South Africa. While the House of Traditional and Khoi-San Leaders is likely to be a stakeholder in bills about customary law, customs and local government, it is questionable that the House is privileged with a special comments period above other stakeholders. The time period given to ordinary members of the public to submit comments on new bills is often short, while the House will be given 60 days in which to make comments. Furthermore, the TKLB seems to assume that traditional leaders are best-placed to answer questions about customary law. However, it has been recognised by the Constitutional Court that customary law is found in the everyday practice, values and history of ordinary people – not declared unilaterally by traditional leaders. The role of the House of Traditional and Khoi-San Leaders in making laws under the TKLB should therefore be further interrogated.

WHAT ACTIONS SHOULD BE TAKEN?

After TKLB was introduced in Parliament in September 2015 a joint committee of the National Assembly and the National Council of Provinces held stakeholder hearings in February 2016. A schedule of public hearings has also been released for September 2016 and interested persons will be able to submit their comments on the Bill to the National Assembly. The National Council of Provinces is also expected to conduct its own round of public hearings on the bill. Provincial legislatures are also likely to call for submissions on the Bill and hold extensive public hearings across the country. Individuals and organizations are encouraged to consider what impact the TKLB could have on their daily experiences and prepare submissions accordingly. This preparation is important because the timeframes for submitting comments to legislatures are usually quite short.