

‘We want the bread, not the crumbs’

Challenging traditional authority in the platinum belt¹

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Members of the Bakgatla-ba-Kgafela traditional community have attempted to hold their traditional leader to account for decisions affecting the community. This article describes the interactions between some community members, traditional leaders, the state and courts, as members of the community have sought to challenge unilateral action by the traditional leader with regard to how community assets and revenue are managed and accounted for. The article examines the various actions groups and individuals have resorted to in an effort to confront traditional leadership and appeal to politicians, officials and the North West provincial government.

The Bakgatla-ba-Kgafela Traditional Council Area has been beset by disputes and contestations over the access to, and management of, assets and revenue derived from mining operations in the area, as far back as 2001.² Platinum mining is a significant source of revenue in the area, and some of the most visible contestations have been about to whom the benefits of mining accrue.

The Traditional Council presides over the Bakgatla-ba-Kgafela, a group located in the Pilanesberg, spread across 32 villages that fall under the Moses Kotane Municipality in North West Province, South Africa. This traditional council area was first established in 1953 as the Bakgatla-ba-Kgafela Tribal Authority under the leadership of Chief Tidimane Ramona Pilane. To date, the number of inhabitants in this locality ranges from 350 000 to a conservative 160 000.³ The area is located on some of South Africa’s most platinum-rich land in the western limb of the Bushveld, a site of large-scale mining of platinum

group metals. It is estimated that South Africa holds 87% of the world’s platinum group metal reserves.⁴

As is the case with the neighbouring Barokologadi⁵ and Bafokeng,⁶ Bakgatla-ba-Kgafela territory consists of both syndicate-purchased and state-owned land. This is a product of history. Discriminatory laws, such as the Native Trust and Land Act 1936 and its ‘six native rule’, forced groups of land buyers to associate themselves with tribes recognised by the apartheid government in order to buy land.⁷ In the case of the Bafokeng, the Bafokeng Land Buyers Association is in essence a federation of the descendants of those families and clans that clubbed together to buy farms, such as the Setuke and Thekwane families.⁸ Among the Bakgatla-ba-Kgafela, the subgroups with the most prominent claims have been the Dibeso of Lesetlheng – clans that descend from the original buyers of some of the mineral-rich farms, represented by the Lesetlheng Land Committee; and descendants of 52 original buyers among the Bakgatla-ba-Sifikile, represented by the Bakgatla-ba-Ses’fikile Community Development Association.

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Sub-groups such as those represented by the Lesetlheng Land Committee and the Ses'fikile Community Development Association have objected to the investments on specific farms that were bought by the family syndicates they represent.⁹ They have also objected to the manner in which decisions about these investments have been made; in particular that the decision-making processes have excluded the descendants of the original buyers and those with customary entitlements to land in the area.

The various actions and reactions directed at the traditional leader and the state, concerning the management of mining assets and revenue, came to the attention of the Centre for Law and Society (CLS) at the University of Cape Town following our involvement in a Constitutional Court case against the Bakgatla-ba-Kgafela traditional leader, Kgosi Nyalala Pilane, and the Bakgatla-ba-Kgafela Traditional Council heard in the Constitutional Court in 2012.¹⁰ In this case the complainants, Mmuthi Kgosietshile Pilane and Rabushibidu Reuben Dintwe, sought to have an interdict, obtained by Kgosi Pilane in the North West High Court to prevent villagers in Motlhabe from meeting, overturned. The central point of contention was over the right of members of a traditional community to call a public meeting. I discuss this case in more detail later in the article.

During this case it became apparent that the interdict in question was one of several interdicts that Pilane had obtained to prevent community leaders, including members of the royal family, from holding public meetings, on the basis that only he has the *locus standi* to convene meetings of the *morafe* ('tribe' in Setswana).

CLS conducted secondary research to understand the scope and nature of the contentions related to traditional leadership, mining operations and land rights in the area. This article is based on an analysis of media articles; on submissions to the national parliament by Mmuthi Pilane, by a representative from Motlhabe village, and by one of the leaders of the Concerned Bakgatla Anti-Corruption Organisation (COBACO); on information gathered during five consultation meetings in 2013 with members of COBACO, representatives from Motlhabe Village, and two members of the Bakgatla-ba-Kgafela Communal

Property Association; and on interviews with a representative of the Lesetlheng Land Committee and an official in the Moses Kotane municipality.¹¹

Largely, the purpose of the consultation meetings was to develop a litigation strategy aimed at enforcing the checks and balances provided for in the North West Traditional Leadership and Governance Act (Act 2 of 2005, or the North West Act), in order to achieve greater transparency and accountability in the management of assets and revenue by the Bakgatla-ba-Kgafela Traditional Council and Administration.¹²

The article begins with an outline of the legislative context from which the notion of traditional community emerged. The simple application of the concept of 'traditional community' conceals diverse histories and identities within traditional communities, and obscures the historical ownership of land by some subgroups within these communities. However, for the purposes of this article the term 'traditional community' is used as defined in the Traditional Leadership and Governance Framework Act 2003 (Framework Act).¹³ In this article, 'traditional community' refers to the collection of the 32 villages that are within the (legal) boundaries of the Bakgatla-ba-Kgafela Traditional Council, headed by Pilane.¹⁴

The article describes the actions taken and demands made by members of the Bakgatla-ba-Kgafela Traditional Community in efforts to hold Pilane accountable, and to demand clarity from the state on matters of land and asset ownership, accountability and the distribution of benefits. The article shows how members of the traditional community adapted their objections and protest action in relation to the contexts in which they were undertaken.

Legal framework: a legacy of apartheid

The Framework Act provides for the recognition of traditional communities.¹⁵ It deems 'tribes' that existed prior to the commencement of this Act as the present-day traditional communities. It also deems tribal authorities established by the Bantu Authorities Act 1951 (Bantu Authorities Act) and recognised as such prior to its commencement, to be traditional councils, provided they meet new composition requirements.¹⁶ De Souza, in this edition of SACQ,

points out how several traditional councils failed to meet these requirements, which brought into question their legal status.

The Act does not undo the contested tribal authorities boundaries established by the Bantu Authorities Act. In an effort to establish 'neat tribes', the Bantu Authorities Act forced together people with varied identities, histories and rights to land.¹⁷ According to Claassens,

People with different identities, who clubbed together to purchase land, lived on mission settlements, moved from distant areas to be near work, or were evicted from 'black spots' and dumped in the reserves, suddenly found themselves defined as the 'tribal subjects' of leaders with whom they had little or no shared history.¹⁸

The current contestations in relation to governance, land allocation and rights in communal areas are indicative of the adverse implications that the apartheid consolidation of Bantustans has had on groups that reside in these areas.

This article is concerned with the ways in which different members of the community have taken action to register their complaints, and to confront and appeal for assistance from the state.

Direct petitions

In August 2008, at a government-convened imbizo,¹⁹ members of COBACO – a grassroots residents forum opposed to corruption – handed President Thabo Mbeki a dossier detailing allegations of theft and the mismanagement of funds that had been taking place in the Bakgatla-ba-Kgafela Traditional Administration (BBKTA).²⁰ The residents forum did not receive a response from the president to the allegations contained in the dossier.

At the centre of these allegations was the traditional leader, Pilane.²¹ Earlier that year, he had been found guilty in the Mogwase Regional Court of theft and fraud.²² He was convicted of defrauding the Land and Agricultural Bank of South Africa (Land Bank) by misrepresenting the annual revenue that would be received by the Bakgatla-ba-Kgafela in his applications for a loan to the bank. In this application,

he had stated that the traditional community would receive an amount of R6 million in royalties but failed to mention that these royalties were pledged to Anglo Platinum for a loan that the company had given him. Three loans were granted to the Bakgatla-ba-Kgafela on the basis of this application. He was also convicted on 39 charges of theft. These charges related to monies that were paid from tribal accounts to his private account and were subsequently used for personal needs.²³ Pilane appealed the judgement, which was successfully overturned in 2010 by the North West High Court in Mafikeng.²⁴

The provincial government had declined, after the first ruling, to suspend Pilane, citing the possibility of an appeal. In response to the provincial government's decision, the royal family, acting on 'behalf of the community', wrote a letter to the ANC secretary-general, requesting the removal of the then Premier, Edna Molewa. According to media reports,

At a mass meeting at Moruleng Stadium, Saulspoort, the tribe decided it would deliver a letter backing its call [for the removal of Molewa] to ANC secretary-general Gwede Mantashe today.²⁵

Pilane was acquitted in 2010 on the basis that it was not 'necessary that a trust of a company conduct business in accordance with section 11 when the monies in question are not provided by the state but involve a commercial concern'.²⁶ The judge did not explain his reasoning in the light of s11(2)(d) of the Bophuthatswana Traditional Authorities Act 1978 (Act 23 of 1978, or the Bophuthatswana Act) that stipulates:

- (2) There shall be paid into the account of the tribal authority --
- (d) all other amounts derived from any source whatsoever for the benefit of the tribal authority including any amounts payable to the tribal authority which the National Assembly may grant for the purpose.

Before 1994, the Bakgatla-ba-Kgafela and other tribal authority accounts of s11(2), also known as tribal trust accounts, were controlled by the Bophuthatswana government. Mining revenue was deposited into these accounts rather than distributed to groups whose land was mined. The North West

Act has preserved these state-controlled accounts for mining and other revenue under the supervision of the premier in s30.²⁷

Litigation

Despite the 2008 case of fraud and theft, Pilane's management of assets and revenue of the traditional community continues to be characterised by a lack of accountability. In their objection to this approach, the Bakgatla-ba-Sifikile and Bakgatla-ba-Kawutlwale have asserted an autonomous identity, rejecting the imposition of a rigid tribal identity that was to a large extent achieved through land acquisition and ownership.

The descendants of the original buyers among the Bakgatla-ba-Sifikile, represented by the Ses'fikile Community Development Association, brought an application before the Gauteng High Court in 2010 that was transferred to the North West High Court in 2011. At the centre of this dispute was the claim that the farm known as Spitzkop 410KQ was bought in 1910 by 52 purchasers who were not of the Bakgatla-ba-Kgafela Tribe, as it was then called. Spitzkop 410KQ is one of the farms on which Anglo Platinum's Union Section Mine is located.

The law at the time prohibited black people from owning land as individuals, and many were thus forced to associate with tribes recognised by the union government to enable them to acquire land.²⁸ Consequently, the purchasers had no option but to request that Chief Ramono Kgamanyane Pilane (1902–1910) of the Bakgatla-ba-Kgafela purchase the land as their nominee.²⁹ In its application, the Ses'fikile Community Development Association asked the court to transfer the ownership of this farm to the association, as a body representing the 52 purchasers. The North West High Court judge ruled against their application on the basis that the association had not proven that its members had historical ownership rights, and had failed to show that their forefathers were deprived of these rights as contemplated by section 25(1) of the Constitution.³⁰

There was a similar revival of historical ownership and of an independent identity in the dispute between Mmuthi Pilane, as a representative of the Bakgatla-ba-Kawutlwale, and the Bakgatla-ba-Kgafela

Traditional Council. In February 2010, Nyalala Pilane obtained an interdict preventing the Bakgatla-ba-Kawutlwale from meeting to discuss their intention to secede from the Bakgatla-ba-Kgafela. Some members of the Bakgatla-ba-Kawutlwale thought that with greater independence through secession, they could have direct control over the management and allocation of resources that were due to their village, Motlhabe.³¹ As mentioned earlier, Nyalala Pilane interdicted this meeting, but the interdict was overturned in 2013 in a Constitutional Court case. In their court papers, representatives of the Bakgatla-ba-Kawutlwale claimed that, from the 1600s to the 1900s, they and other subgroups tracing back their lineage to Pilane Pilane had been autonomous and equal in standing. They argued that this had been the case until the consolidation of these groups into one tribe, the Bakgatla-ba-Kgafela under Kgosi Tidimane, by the apartheid government in 1953.³² The subgroup remains part of the Bakgatla-ba-Kgafela and has not set in motion any plans to secede.

In their objections to what they believe to be the mismanagement of revenue, both these subgroups have sought to revive their historically autonomous identity in reclaiming their rights to property. Through the use of the courts, they have attempted to reconfigure current property relations, drawing on histories and identities that were denied by colonial and apartheid legislation. These are not the only subgroups that have made these assertions. The Dibeso in Lesetlheng have, through the Lesetlheng Land Committee, also asserted their independent ownership rights to at least two mineral-rich farms, in an effort to gain direct control and be included in the management of mining benefits. This article focuses on the plight of the Bakgatla-ba-Sifikile and ba-Kawutlwale because in both cases there are court judgements that provide a record of these subgroups' histories and current experiences.³³

Protest action

In May 2012, villagers marched to the office of the Bakgatla-ba-Kgafela Traditional Council to raise concerns about the manner in which the assets and revenue of the traditional community were being controlled, and to present a memorandum of demands. The BBKTA Chief Executive Officer

received the memorandum in which he was given 14 days to respond to the demands expressed in it. The memorandum registered demands that ranged from employment for locals, service delivery and transparency, to matters of local accountability. When the BBKTA failed to respond within the agreed time frame, residents embarked on a protest in June 2012. The second day of the protest turned violent and was marked by vandalism, barricades and the closure of a school. Among other things, a school, a councillor's house and several vehicles were destroyed. A number of protestors were arrested. During the protest, demands similar to those registered in the memorandum that was previously handed to the BBKTA CEO were aired.³⁴

The protest was also fuelled by BBKTA involvement in a number of lucrative deals with some of the big mining houses and public investment institutions in the platinum mining sector; this while residents in the area continue to experience high levels of poverty and unemployment.

In 2008, the Bakgatla-ba-Kgafela converted royalties to a 15% share in Union Mines operations, majority-owned by Anglo Platinum.³⁵ The BBKTA also has 26% equity in Sedibelo Platinum Mines Limited, a consolidation of mining operations in which Bakgatla, Pallinghurst and Platmin hold interests.³⁶ The Independent Development Corporation has invested R3.2 billion in this venture.³⁷ Outside of mining, the group has interests in tourism – with partial ownership of the Pilanesberg Game Reserve and other tourist lodges in the area – agriculture, and manufacturing. However, some villagers maintain that they have not experienced the material benefits of these investments. One villager stated in a media interview that ‘we get to hear in the media about all the multimillion rand deals while our children remain unemployed and communities live in poverty’.³⁸

While the 2012 protest was directed at the traditional leader and council, the protestors also held the state responsible for the poor state of affairs in the area, and demanded that the provincial government assume greater responsibility for resolving the problems that plague the traditional community. The leaders of the protest made it clear that one of the objectives of the protest action was to get

the attention of the state: ‘We want government to take us seriously hence education was interrupted. We want Premier Thandi Modise here,’ said a ‘community’ representative.³⁹

Two demands were central to the protest: preferential employment for locals, one of the expected objectives of social and labour plans (SLPs); and a democratically elected traditional council. SLPs are required by the regulations of the Minerals and Petroleum Resources Development Act 2004 (the MPRDA),⁴⁰ and are one of the key tools designed to regulate contributions by mining companies to local economic development and basic services in mining-affected communities. Yet the Department of Mineral Resources has not held mining companies to account regarding commitments that were undertaken in these plans.⁴¹ The second demand was related to the long overdue elections of traditional councils that kept being postponed. (The elections eventually took place in January 2013.)

The Framework Act requires that a traditional council should consist of 40% democratically elected representatives and 60% members appointed by the traditional leader. A third of the total number of council members should be women.⁴² In March 2011, the North West Department of Local Government and Traditional Affairs issued a circular, calling on traditional councils not to enter into any contracts or conclude any commercial deals, as these might be invalid given that traditional councils at the time were not properly constituted.⁴³ On 25 January 2014 elections were held in an attempt to reconstitute traditional councils in the North West, including those of the Bakgatla-ba-Kgafela and the Bapo-ba-Mogale.⁴⁴

The manner in which grievances and demands were framed in the protest action points to how they are contextualised and thereby validated. For instance, residents demanded recognition and preferential employment on the basis of their status as ‘community members’ or ‘locals’ amid the state’s emphasis (or rhetoric) on local development: ‘We’re not benefiting at all from these mines that are extracting wealth from our own land,’ said one resident.⁴⁵ They also relied on the language of employment creation, a topical issue in South Africa.

This collective action took place in a context of increased use of social protests as expressions of local indignation, grievances and marginalisation.⁴⁶ Tapela observes that despite the greater attention given to violent protests in urban and peri-urban areas, there has been of late an expansion of violent and non-violent protests to rural areas as well.⁴⁷ The South African Police Service's more comprehensive data show that in 2012 there were 1 214 incidents of public violence across the country. Increases were recorded in seven provinces, with significant escalations in the North West (76%), Eastern Cape (60%), Gauteng (38%) and the Western Cape (31%).⁴⁸

Parliamentary submissions

Along with court action, appeals to authority and protest action, local representatives from the traditional community also used institutional avenues to register their complaints and assert their rights. As mentioned above, two submissions were made to members of Parliament in 2013.⁴⁹ A representative from Motlhabane and one from COBACO made submissions to Parliament about the denial of land rights and the traditional leader's unilateral approach to the management of mining assets and revenue.

In 2013, a COBACO representative made a submission to Parliament's Ad Hoc Committee on the Legacy of the Native Land Act of 1913 that conducted an oversight visit in the North West in September 2013. The committee's objective was to 'interact with the beneficiaries [of land reform]' in order to understand the challenges they face.⁵⁰

While his objective was to raise concern about corruption, which is central to COBACO's mandate, the representative was unable to approach the committee as a member of COBACO, as the meeting was focused only on the performance of communal property associations and the challenges they experience. However, since he was a member of the CPA, he was able to assume this status in order to address the committee. He raised concerns about the challenges the community had experienced in trying to get the BBKTA to account for the revenue and assets of the traditional community. He was also able to recount the difficulties they had experienced

with the local office of the Land Claims Commission. This was couched in an account that foregrounded the failures and constraints experienced in the CPA's co-management of the Pilanesberg Game Reserve, rather than expressing the concerns of the traditional community regarding allegations of theft and the mismanagement of funds in the BBKTA that persisted even after Pilane was acquitted in 2010.

The oversight visit had been prompted by a submission made in Cape Town by Mmuthi Pilane.⁵¹ This submission, made at a parliamentary workshop on 'Redressing the legacy of the 1913 Land Act', emphasised the ways in which the MPRDA pre-empts comprehensive restitution for those who were historically dispossessed of land.⁵²

The MPRDA does not provide restitution claimants with the right to claim the minerals that they lost with land dispossession. Although, under the MPRDA, landowners were allowed to apply for the conversion of old order rights to new order rights, this was only advantageous to those (largely white owners) who possessed the old order rights to minerals to begin with. Those who did not have title deeds and were therefore without 'legal' rights to the minerals prior to the enactment of the MPRDA, could not participate in the conversion.

The submission recounted a history of the Bakgatla-ba-Kawutlwale, one of the subgroups in the Bakgatla-ba-Kgafela Traditional Community, explaining that their current strict association with the overarching Bakgatla-ba-Kgafela group is a relatively recent construct. In the 1800s, the tribes under the leadership of Kawutlwale, Tshomankane, and Mandries were separate, independent and equal in standing. They were then placed under the leadership of Tidimane, in no small part because of his cooperation with the apartheid government. The consolidated tribe that he came to lead, established in 1953, is today known as the Bakgatla-ba-Kgafela. The submission described how the forefathers of some Bakgatla-ba-Kawutlwale families acquired land in 1909 and 1926, and how they were dispossessed of that land when they were forcefully removed in 1932. It described the occupation and use of this purchased land prior to dispossession, and how it has become the site of one of the biggest open

cast mining operations in the North West today. The submission outlined the layers of dispossession, and simultaneously highlighted the degree and need for a nuanced approach to restoration, in a context where 'land restitution laws and policies have underscored the importance of origin and ancestry'.⁵³

Although these parliamentary forums provided the local representatives from the Pilanesberg with the opportunity to formally and publicly register their grievances,⁵⁴ and while there was at the very least an acknowledgement of the state of affairs in their area in the final outcomes of the two submission processes, no public action has been taken to resolve the conditions that have given rise to these grievances.⁵⁵

Discussion: actions, claims and meaning

Contrary to a trend in urban townships of resorting to protest action, groups and individuals in Bakgatla-ba-Kgafela territory have primarily relied on institutional channels to express and register their grievances.⁵⁶ They have also used formal and direct petitions to question the manner in which Pilane controls their assets and revenue, and to appeal to politicians, officials and the North West provincial government to resolve the challenges in the area. Through these petitions, local residents have sought to bring to the attention of government the extent of unaccountability and the scale of unilateral action by Pilane and the BBKTA.

Two local representatives, a member of COBACO and a leader from Motlhabe village, had the opportunity to present similar grievances before Parliament. While the invitation gave the COBACO representative an opportunity to address members Parliament, the expectations of the Ad Hoc Committee on the Legacy of the Native Land Act of 1913, expressed in their agenda, constrained the representation, his form of expression, and the claims and demands that he could make.

The agenda defined what could be said and how it should be said, reminding us that 'as "invited spaces" the institution of the participatory sphere is framed by those who create them'.⁵⁷ Nevertheless, the matters he raised in his submission made it into the Ad Hoc

Committee's report that was tabled in the National Assembly.⁵⁸ The inclusion of the local representatives in the parliamentary workshop and oversight visit indicate that these formal participatory spaces hold the potential to influence decision-making processes.

Through the use of courts, members of the Bakgatla-ba-Kgafela traditional community have sought to challenge those in power and strengthen their access to community resources by asserting counter claims, rights, histories and identities. Select representatives from the area have made submissions to Parliament in an attempt to make parliamentarians aware of how the ownership rights of subgroups are affected by legislation, in particular the Restitution of Land Rights Amendment Act 2014 and the MPRDA, and the context in which these laws are enacted.

However, it is the march and protest action that took place in 2012 that starkly illustrate the connection between the attitude and behaviour of authority, and the action citizens take in response. The response by the provincial government and its inaction, in spite of petitions imploring it to intervene, also demonstrate how groups might be compelled to turn to the courts to hold traditional leaderships accountable.

Yet even court action has been unsuccessful in resolving the intractable problems that this traditional community has been faced with. Instead, Pilane has used the courts to prevent residents and members of the royal family from meeting, on the basis that they don't have the *locus standi* to convene public meetings.⁵⁹ The provincial government's reiteration of its official recognition of Pilane's status as traditional leader has only served to embolden his claim that he is the only person with the *locus standi* to call meetings of Morafe. A local activist told a newspaper reporter that,

Frustrated community members have been unable to hold public gatherings to discuss these and other issues they face, as their gatherings are routinely dispersed by police officers from the Mogwase police station, who claim the chief had an interdict to stop the community from holding public gatherings.⁶⁰

Mnwana, in this volume, shows how Pilane's use of the law, which is reminiscent of the actions of his

predecessor Kgosi Tidimane Pilane, has undermined opposing and dissenting voices in this community.

The provincial government's response, exacerbated by the expedient manner in which Pilane has used the courts in the North West, has fuelled perceptions of impunity, and has led residents to believe that the traditional leader has undue protection from key figures in the judiciary and the ruling party. Given this perception, some local activists resolved to appeal to opposition parties. One activist explained this, saying 'we have realised that the ANC [African National Congress] is behind the problems in our communities. We needed a political figure to represent us just like Chief Nyalala has the ANC under his wing'.⁶¹ The African People's Convention (APC) has become another mobilising agent and has lent its support to 'community' requests for an investigation by the Public Protector.⁶² According to reports by the *New Age*, it is the APC that 'lodged a complaint with the Public Protector on behalf of the Bakgatla-ba-Kgafela communities'.⁶³

Conclusion

At the centre of the collective and individual actions that this article has examined, are grievances about the lack of accountability, and the opaque deals involving property *belonging* to the traditional community. These grievances have also been about the marginalisation of members of the traditional community as a result of unaccountable authority in a context of poverty and high levels of unemployment.

In their reactions to these challenges, subgroups, representatives and activists have appealed to and confronted Parliament, provincial government, the courts and traditional leaders on numerous occasions. Through these actions and in interactions with politicians, provincial officials, Parliament and the courts, they expressed and registered grievances, claims, demands and expectations, framed in ways that were defined by the contexts in which the actions took place. While these actions have been successful to a degree in providing the space to register complaints, assert rights and attract attention, they have not led to a resolution in favour of those groups and individuals in the traditional community that have complained and instituted legal

action against the traditional leader. Instead, with the infrastructure and service developments that were launched in the area in October 2013,⁶⁴ and with an expanded public role in mining as a shareholder, the Bakgatla-ba-Kgafela Traditional Community is regularly held up in the media and by government as a model of rural development and revitalisation for other traditional communities to emulate. In particular, the provincial government's inaction, and its attempts to distance itself from the challenges raised by local stakeholders, raise questions about the openness of the state to the voices of citizens. Its failure to enforce the accountability measures contained in the North West Act also exposes the limited ability of the law to protect those that do not have direct access to institutional power.



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Notes

- 1 This is translated from a Setswana saying used by one of the leaders of the Concerned Bakgatla Anti-Corruption Organisation (COBACO) during an interview.
- 2 G Maxaulane, The economics of the Bakgatla-ba-Kgafela Tribal Authority: changing forms of chiefly appropriation on the platinum belt, unpublished Masters thesis, University of the Witwatersrand.
- 3 Bakgatla ba Kgafela Traditional Administration, A viable and sustainable Morafe, Corporate Brochure, <http://bbkta.net/wp-content/uploads/2014/06/CSI-BROCHURE.pdf> (accessed 5 September 2014) and S Mswana in this volume.
- 4 G Capps, Victim of its own success? The platinum mining industry and the apartheid mineral property system in South Africa's political transition, *Review of African Political Economy* 39(131) (2012), 63–84.
- 5 R Turner, Continuing divisions: 'tradition', land restitution, and Barokologadi communal identity, presented at 'Land divided: land and South African society in 2013', Conference, University of Cape Town, 24–27 March 2013.
- 6 GJ Capps, Tribal-landed property: the political economy of the BaFokeng chieftaincy, South Africa, 1837–1994, PhD thesis, London School of Economics and Political Science, 2010.
- 7 A Claassens and B Matlala, Platinum, poverty and princes in post-apartheid South Africa: new laws, old repertoires, in D Pillay et al (eds), *New South African review 4: a fragile democracy – twenty years on*, Johannesburg: Wits University Press, 2014.
- 8 Bafokeng Land Buyers, Factsheet, <http://Bafokengcommunities.blogspot.com/p/fact-sheet.html> (accessed 12 September 2014).
- 9 Union of South Africa, Report of Native Economic Commission 1030–1932; *Bakhatla Basesfikile Community Development Association and Descendants of Molefe Molemi*

- and Others v Bakgatla ba Kgafela Tribal Authority and Others* (320/11) [2011] ZANWHC 66 (1 December 2011). Also see SLR Consulting Africa (PTY) LTD, minutes of a focused meeting held with representatives of the Lesetlheng community, 26 July 2012.
- 10 *Pilane and Another v Pilane and Another* (CCT 46/12) [2013] ZACC 3 (28 February 2013).
 - 11 Personal interview with a representative of the Lesetlheng Land Committee, Pilanesberg, 8 August 2013; personal interview with an official in the Moses Kotane Municipality, Pilanesberg, 7 August 2013. The names of both interviewees are withheld on the basis of a confidentiality agreement.
 - 12 The North West Traditional Leadership and Governance Act 2005 (Act 2 of 2005, or the North West Act), replaced the Bophuthatswana Traditional Authorities Act 1978 (Act 23 of 1978), but the sections on tribal accounts are essentially the same.
 - 13 Traditional Leadership and Governance Framework Act 2003 (Act 41 of 2003). Pretoria: Government Printer. Section 2(1) of the Act stipulates that: a community may be recognised as a traditional community if it (a) is subject to a system of traditional leadership in terms of that community's customs; and (b) observes a system of customary law.
 - 14 Kgosi is the Setswana word used to refer to senior traditional leader.
 - 15 Section 2 of the Traditional Leadership and Governance Framework Act 2003.
 - 16 Bantu Authorities Act 1951 (Act 68 of 1951), Pretoria: Government Printer, A Claassens, Contested power and apartheid tribal boundaries: the implications of 'living customary law' for indigenous accountability mechanisms, *Acta Juridica, Pluralism and development: studies in access to property in Africa* (2011), 174–209.
 - 17 Claassens, Contested power and apartheid tribal boundaries.
 - 18 *Ibid.*, 188.
 - 19 Periodic mass consultation meetings convened by the South African government.
 - 20 Bakgatla ba Kgafela Traditional Administration is an adjunct to the Bakgatla traditional council. It is responsible for the administration of development initiatives and services.
 - 21 *National Director of Public Prosecutions v Pilane and Others* (692/06) [2006] ZANWHC 68 (16 November 2006).
 - 22 *Pilane and Another v State* (CA 59/2009) [2010] ZANWHC 20 (17 September 2010).
 - 23 *Ibid.*; Maxaulane, The economics of the Bakgatla-ba-Kgafela Tribal Authority.
 - 24 *Pilane and Another v State*.
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 - 27 The North West Act replaced the Bophuthatswana Traditional Authorities Act 1978, but the sections on tribal accounts are essentially the same. Section 30 of the North West Act stipulates: (1) The Premier shall cause to be opened for each traditional council a trust account, into which shall be paid such amounts as are hereinafter specified and from which all expenditure incurred in connection with any matter specified within the duties and functions of the traditional community concerned shall be met. (3) There shall be paid into an account opened as referred to in sub-section (1) and (2) – (b) all cash proceeds derived from any property or right to title of the traditional community; (d) any other amounts derived from any sources whatsoever for the benefit of a traditional community.
 - 28 *Bakhatla Basesifikile Community Development Association and Descendants of Molefe Molemi and Others v Bakgatla ba Kgafela Tribal Authority and Others* (320/11) [2011] ZANWHC 66 (1 December 2011); Claassens and Matlala, Platinum, poverty and princes in post-apartheid South Africa.
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