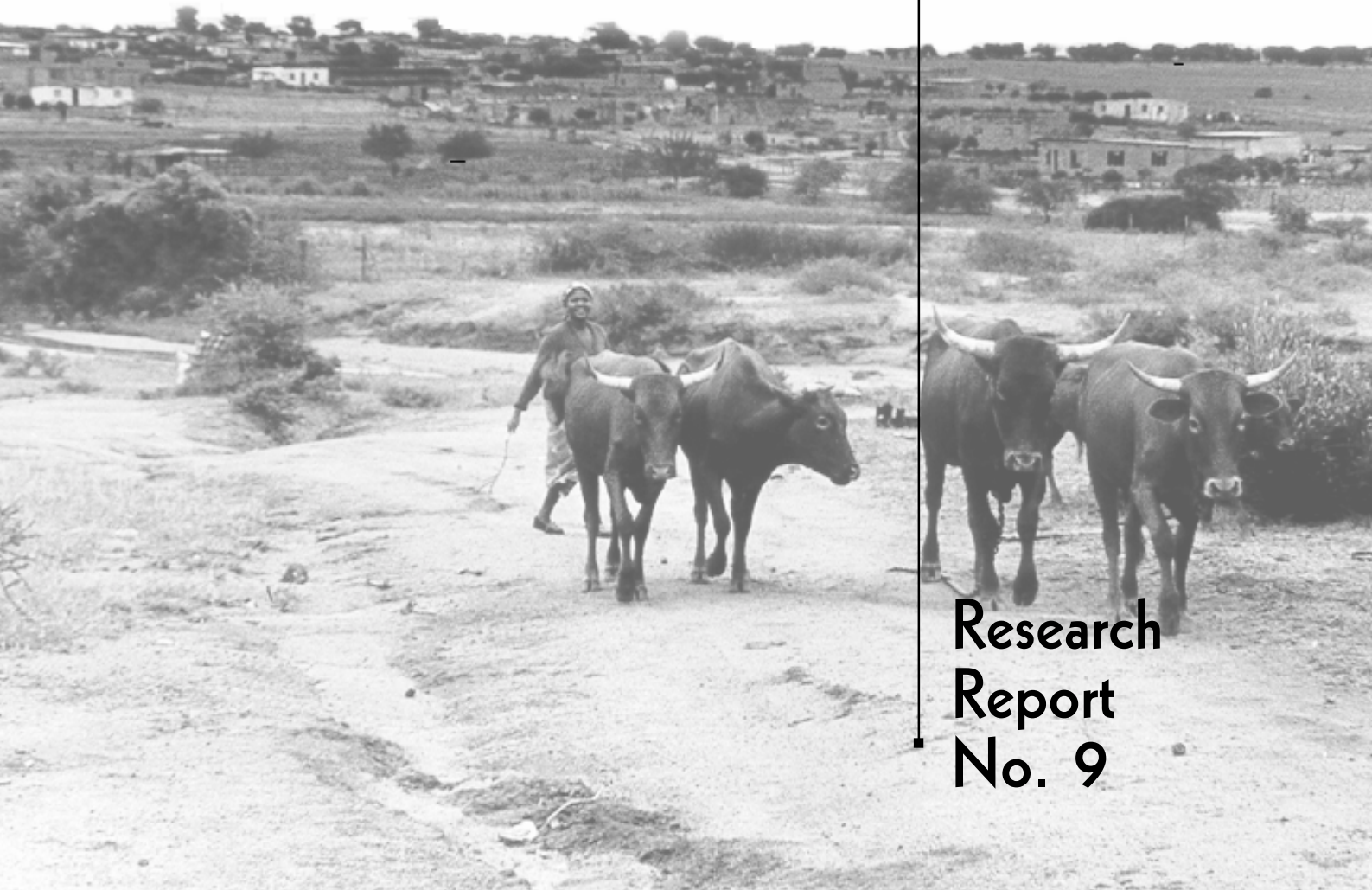




SCHOOL of  
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# 'It is not easy to challenge a chief': Lessons from Rakgwadi

Aninka Claasens



Research  
Report  
No. 9

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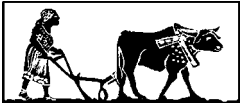
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# Acronyms and abbreviations

ANC	African National Congress
BDF	Bakone Development Forum
Codesa	Convention for a Democratic South Africa
Contralesa	Congress of Traditional Leaders of South Africa
CPA	Communal property association
DBSA	Development Bank of Southern Africa
DLA	Department of Land Affairs
Idasa	Institute for Democracy in South Africa
IPILRA	Interim Protection of Informal Land Rights Act 31 of 1996
LRC	Legal Resources Centre
MEC	Member of the (Provincial) Executive Council
Mofa	Mogaladi Farmers' Association
MP	Member of Parliament
NGO	Non-governmental organisation
OTK	Oos Transvaal Koöperatif ('Eastern Transvaal Co-operative')
PTO	Permission to Occupy certificate
R188	Black Areas Land Regulations (Proclamation R188 of 1969)
RDP	Reconstruction and Development Programme
RWM	Rural Women's Movement
SADF	South African Defence Force
SADT	South African Development Trust
Sayco	South African Youth Congress
TLC	Transitional Local Council
TRAC	Transvaal Rural Action Committee (now The Rural Action Committee)
UDF	United Democratic Front
ULTRA	Upgrading of Land Tenure Rights Act 112 of 1991



# Glossary of Sepedi words

<i>balemi</i>	agricultural extension officers employed by the SADT (plural form)
<i>bogoši</i>	the institution of chieftanship
<i>dikgošana</i>	headmen or lesser chiefs
<i>kgoši</i>	chief
<i>kgoro</i>	ward or clan meeting (see page 30)
<i>kgotla</i>	village meeting or traditional court (see page 30)
<i>koma</i>	initiation (see page 24)
<i>maduma</i>	greeting fees (see page 25)
<i>meraka</i>	cattle posts
<i>molemi</i>	agricultural extension officer employed by the SADT (singular form)
<i>mošate</i>	chief's <i>kraal</i> or headquarters (see page 23)
<i>mothubo</i>	free or tribute labour (see page 25)
<i>ngaka</i>	traditional doctor
<i>nthole</i>	welcome fee
<i>ntona</i>	headman
<i>Pedi</i>	the root word referring to things Pedi, for example <i>Sepedi</i> (the language), <i>Bapedi</i> (the Pedi 'nation'). Pedi ethnicity was used to define the citizens of Lebowa homeland under apartheid
<i>pitso</i>	general meeting
<i>sebeho</i>	tribute offering (see page 25)
<i>sechaba</i>	nation or tribe
<i>Sepedi</i>	the language of the Bapedi



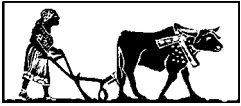
# Acknowledgements

**O**bed 'Mkhulu' Malapane assisted in collecting information in Rakgwadi. I wish to thank him for his astute eye and his generosity. His own life has been intimately involved in many of the issues discussed. He, like many other people at Rakgwadi, is passionate about issues of development and land rights. Notwithstanding his law degree, his writing skills, his evident skills in interacting with a wide cross section of people and his deep commitment to the

development of the community, he and many other young graduates in Rakgwadi remain unemployed. Their loss is the community's gain; they are actively involved in development committees of one kind or another.

Thanks too to Koko Kgobe for having me to stay and for looking after me at Rakgwadi. Finally I would like to thank Lydia Komape for teaching me so much and enriching my life, not only in Rakgwadi, but also over the last 22 years.

***Aninka Claasens***  
***October 2001***



# Author's foreword

**T**he role of traditional leadership and elected local government in systems of communal land rights is controversial in South Africa.

Any study pertaining to the status of chiefs and land rights and to questions of land transfer in communal areas is likely to elicit questions as to the author's background and bias. Is she from the pro-chief lobby or is she in favour of individualising land rights in communal areas? Where does she fit in and whose side is she on? Perceptions about the author's bias are likely to have a major impact on who decides to read the report, and how they interpret its findings.

Given this context, it seems best to declare at the outset certain experiences that have influenced my views regarding the role of traditional leaders in communal areas. During the 1980s I worked for the Transvaal Rural Action Committee (TRAC), an NGO which assisted rural communities who were resisting forced removal, forced incorporation into 'homelands', otherwise known as 'bantustans', and evictions from farms. This was the period when the United Democratic Front (UDF) became active in rural areas and also the period of the State of Emergency. We assisted and sheltered 'comrades' who fled to Johannesburg to escape detention at home. Many of the young men from KwaNdebele and what is now the Northern Province were fleeing from chiefs who collaborated with the state in repressing their communities. We worked with communities where there was strong resistance to removal, but the chief would agree 'on behalf of the tribe' because of personal benefits offered to him by the state. There were also cases where the chief accepted compensation without telling the rest of the community and kept it for himself.

I witnessed the fear that many chiefs inspired and heard repeatedly of chiefs

who extorted levies to buy themselves cars. I met young men who had been lashed at the *kgotla* (village meeting or traditional court) and handed over to the police and subsequently tortured because they opposed their communities being incorporated into a homeland, or homeland independence. I also met middle-aged women who wept that they had not been allowed to attend the *kgotla* hearings at which their sons had been 'sentenced'. Their sons had been unrepresented because there was no father or uncle to send.

During the same years that we worked with communities who were being 'sold out' by collaborator chiefs, we also worked with communities where resistance to removal or incorporation was led by traditional leaders. Just as 'comrades' sheltered in our offices and homes, so too did 'comrade chiefs'. In various communities chiefs and traditional structures played a leading role in resisting the state and the police.

Involvement with these communities and their leaders taught me a lasting respect for traditional forms of social organisation, participation and consultation. I learnt that to counterpose democracy and tradition as opposites of one another hides more than it reveals. In many traditional societies the intricate rules, precedents and procedures which have been built up over generations ensure far deeper levels of public participation and debate than the mechanism of elections can achieve on its own.

I also learnt the value of institutions which provide a measure of stability, predictability and social order (even if flawed and uneven) in neglected and under-resourced rural areas. The police are often far away and the courts inaccessible. Government services are scarce or not available at all. In many areas people have come to rely on traditional institutions as



the only service that is consistently available to them.

My involvement with rural communities in the 1980s taught me respect for the intricate and participatory institutions of traditional society. However, it also demonstrated the number of traditional leaders who co-operated with forced removals and homeland incorporation or independence at the expense of their communities. These leaders were deeply unpopular and had to rely on state support, including backup from the police and army to maintain their positions and personal safety. In the process enormous damage was inflicted on the legitimacy of traditional institutions. Many rural people turned away from traditional institutions because of their experiences of collaborator chiefs.

The role of chiefs in rural societies is hotly contested. Some provinces introduced legislation to minimise the role of chiefs in development soon after the change of government. The recent disputes over the role of traditional authorities in local government is another indicator of contestation. Some favour excluding traditional institutions entirely, others argue that they should have a guaranteed role in rural local government. In my view the balance between the 'old' and the 'new' cannot be imposed. Other countries have tried to impose traditional systems or new democratic institutions on rural society; both options have failed.

On the ground, rural people grapple with the balance all the time. The results vary from province to province. In some parts of the country traditional institutions have all but disappeared, in others they remain strong. In some areas elected committees play a key role in traditional structures. In others, chiefs and traditional structures have long been consulted and involved in decision making within local government.

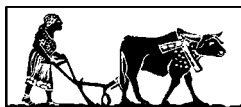
I am of the view that we need a legal and policy environment which acknowledges the diversity of different rural contexts and enables people and

societies to work out solutions appropriate to their circumstances. Critically, the legal and political environment should enable societies to change and adapt over time.

A central factor in the relative power of chiefs and other institutions in rural areas is ownership and control over land. One of the most serious threats wielded by collaborator chiefs was their power to deprive people of land rights. Either people were threatened with expulsion from the area (and thereby their homes) if they challenged the chief, or chiefs could (and did) agree to cede communally-owned land in exchange for state compensation of one kind or another. This is one of the reasons that many people, even those who value aspects of traditional society, aspire to independent land rights. Land is an important asset in all societies; in poor rural societies it is also one of very few assets, and often the most valuable. Control over land becomes the key factor in determining social power relations. Thus the battle over who gets ownership or control over communal land is hotly contested in most rural areas.

There are those who favour the traditional approach; their recommendation concerning tenure reform is to transfer title of the land from the state to 'traditional' leaders or tribes. There are those who favour the 'modern' approach: individualise land ownership in communal areas and establish elected structures to represent communities. Again I must declare an interest and a bias in this debate. During most of the 1990s I worked with the African National Congress (ANC) and then for the Department of Land Affairs (DLA) on land policy issues.

My initial point of departure in relation to land tenure was that it was imperative that the 'paternal' system of state ownership of communal land should come to an end. I believed, as did my colleagues, that the land should be transferred to its rightful owners as soon as possible. We proposed that there be 'rights enquiry' investigations to establish who had *de facto* rights to the land, and that



title should be transferred to the *de facto* owners. In the case of communal land which had been occupied by traditional groups for generations, we proposed that the land be transferred to the traditional groups or tribes. As a caveat we proposed that it be transferred in terms of a law requiring equal rights for women and majority decision-making processes in respect of important decisions.

However, when we tried to pilot this approach in a number of areas we discovered that the prospect of land transfers generated major disputes, counter claims and boundary disputes. The counter claims were not only by residents who objected on the basis that they wanted individual land rights, but by groupings within the tribe who motivated that their sub-groups had specific rights to particular areas and therefore they needed separate title. Furthermore, other sections of the tribes disputed the boundaries of the area to be transferred; long dormant boundary disputes became hotly contested. The rights enquiry processes indicated that land transfers to tribes would not only generate major disputes, it would be extremely time-consuming.

At the same time, the pilot rights enquiries exposed the extent of overlapping rights which can exist in any one rural area. This in turn threw light on the relative nature of land rights. Families had strong rights to their residential plot and fields, but these rights were relative to the larger groups' rights. In times of severe land shortage, fields could be converted to residential plots and allocated to other members of the group. In other circumstances the family had strong rights which could not be interfered with. In the same way we found that different groups often have overlapping rights to the same open areas, but subject to particular uses and systems of permission and exchange.

We increasingly found the Western notion of absolute ownership to be inconsistent with the systems of land rights which exist in most rural areas. These systems are central to a set of social

relationships which provide a critical safety net of mutual support for the very poor.

The dangers of the 'transfer of title' paradigm became increasingly worrying. Not only would transfers spark a series of disputes which had more to do with power than with tenure security, but they would set in stone social relations that existed at a particular point in time. Furthermore, if transfer went to the wrong owner or group, it would be very difficult to undo.

Yet the fact remains, rural people need property rights. These are necessary not only to protect them against the state and other external agencies, but to enable them to benefit from development. The history of land in South Africa has been that of denying black land rights the status of property rights.

Thus by 1999 the tenure team in DLA had developed a compromise. Our solution was the draft Land Rights Bill which proposed that *de facto* land rights in the ex-homeland areas be converted to registrable property rights. Occupation and use rights would vest in the particular families who could show established use and occupation, but these rights would be subject to group rules and procedures. For example, the larger group could, if it chose to, impose restrictions on sales of land rights (such as limiting sale except to approved members of the group) These rules and restrictions (which could be changed by majority decision) would also be registered against the property. The larger group would play a key role in defining the rights and rules applicable in the area and in managing areas of overlapping use rights, for example, grazing land. The group could chose to continue using traditional institutions to play this role or it could, by majority decision, elect to use an alternative structure. Depending on the rules in a particular area, the draft Bill provided that rights to land were to be transferable but not the title to the land itself. This would initially remain vested in the state.



The Bill also provided for a second stage of transfer of title from the state to groups or individuals. It envisaged a form of simple group title called 'commonhold'. Commonhold proposed that the joint owners have certain guaranteed rights in respect of the property. For example, a majority of co-owners could challenge and set aside decisions that they had not endorsed. The draft Bill enabled 'tribes' to own land in commonhold.

The draft Bill envisaged that existing *de facto* land rights would be converted into property rights on a blanket basis when the law was enacted. The second stage of transfer of title could take place only with the consent of the people who now had legally enforceable property rights to the land. In this way it ensured that rights holders would have to be properly consulted before any changes affecting their rights could be made to the title of the land. They would also be able to choose between group-based or individual ownership.

The draft Land Rights Bill was an ambitious endeavour. It was difficult to define the nature of the new-generation property rights and the boundaries of the groups who could determine the rules and restrictions governing the rights.

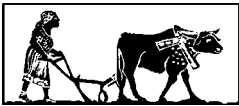
Minister Didiza stopped work on the bill in mid-1999 and I was one of the people whose contracts were abruptly terminated. Two years later, in mid 2001, DLA announced that a tenure Bill was being finalised and would shortly be made available for public comment. Public statements indicate that the Bill is an adaptation of the Land Rights Bill. However descriptions of the Bill by officials indicate that its main purpose will be to transfer title of communal land to 'traditional African communities' or tribes. If this is the case, then it will have very little in common with the draft Land Rights Bill of 1999.

This study is a shift from the nebulous and difficult work of policy formulation and legal drafting. It is an examination of the concrete events surrounding a land

transfer that took place in 1994. At the outset the limited nature of the study should be noted. It cannot claim to be comprehensive of all the implications of the land transfer in the area. Rakgwadi was chosen almost randomly, because I had a friend in the area, and not for any other reason. Virtually nothing was known about the history of the area, and nothing about the circumstances or consequences of the land transfer, except that it had deepened tensions around a housing project. The total time spent on the research and report was four months spread over a 10-month period. The study focuses on disputes and events triggered by the transfers which unfolded during this 10-month period. No doubt some disputes and implications were missed and others will unfold over time. There was year-long delay after the report was written in October 2000. Pressures of other work meant that I did not have time to edit it.

However the imminent release of the new Land Tenure Rights Bill, and the rumours circulating about its content, indicate that the issue of land transfers to tribes remains very relevant. I hope that this study of the process and consequences of just one such land transfer will contribute to the debate about whether such transfers of title will enhance, or further undermine, the land rights of the rural poor in South Africa.

Readers who are interested primarily in this topic may wish to start by reading Chapter 4 which deals with disputes arising from the land transfers. The preceding chapters set out contextual issues and the level of detail may distract those who wish to focus on the debate about the wisdom of the 'land transfer' paradigm. Chapter 2, which deals with the history of the land and events surrounding the 1994 transfer, is also relevant. It transpires that the Matlala 'tribe' is a construct of apartheid, and that the Matlala family's connection with the land began in the late 1950s. The Rakgwadi farms were a bribe to encourage the Matlalas to break with the Sekhukhunes and thereby



undermine the Sekhukhune paramountcy's opposition to 'bantu authorities' and the creation of a Lebowa homeland. This particular history is relevant because land transfers to 'tribes' will often fail to differentiate between situations where historical or indigenous rights would be confirmed, and those where the spoils of collaborators would be formalised and put beyond challenge for ever more. The continuities between collaborator chiefs, homeland politics and the opportunities opened up by the current policy, are also instructive.

### **Note on informant names**

Some of the people interviewed did not want to be named. These include a councillor and a mayor in the area. I have also changed the names of people at Mmotwaneng because of the threats that have been made against them. All the other names are accurate. Most people gave permission for their names to be used. They said the stories had to be told and it would be quite clear who they are, so they may as well be named.



# Chapter 1: Introduction

When Thoko Didiza was appointed Minister for Agriculture and Land Affairs in 1999, one of her earliest policy decisions was to stop work on the draft Land Rights Bill and to announce her intention to transfer the title of state land in communal areas to tribes.

**M**ost land in the 13% of South Africa which was reserved for African people under the Black Land Act of 1913 and the Development Trust and Land Act of 1936 (collectively known as 'the Land Acts') has been owned and controlled by the state for a century and a half. The decision to transfer title of this land to 'tribes' is likely to have far-reaching consequences. This report examines an area in the Northern Province where the National Party hurriedly transferred title to a tribe just before the change of government in 1994. The transfers examined form part of a series of land transfers carried out between 1991 and 1994. A recent Ministry of Land Affairs 'status report' lists these transfers as an 'achievement' for land reform.

*Most of these transfers of land to African traditional communities took place in the Northern Province between 1991 and 1994 in terms of the Upgrading Act<sup>1</sup> and the land so transferred was registered in the Deeds Office in the name of the various African traditional communities. When the new democratic government took over the reins of political power in April 1994, it inherited the land transfer processes initiated by the apartheid government. After this period no other transfers of land to African*

*traditional communities took place. The Minister at the time, Minister Hanekom, stopped further transfers of such land to the African traditional communities on what he stated were political and policy grounds.<sup>2</sup>*

The report laments the fact that no research was undertaken to establish what problems, if any, the transfers created.

This report seeks to examine the effects of the Northern Province land transfers in one area, Rakgwadi, situated between Marble Hall and Nebo and consisting of 21 villages (see Figures 2 and 3 on pages 5 and 9). The area is defined by the fact that it falls under the jurisdiction of one chief, Kgoš<sup>3</sup> MM Matlala. During 1994 (in a deal brokered between Lebowa and the National Party government just before the first democratic elections) 25 farms<sup>4</sup> within Rakgwadi were transferred to the ownership of the 'Matlala tribe'.

The purpose of this report is to examine the consequences of the transfers within Rakgwadi and, from this case study, to extrapolate about the possible implications for other areas if a policy of land transfer to tribes is carried out throughout South Africa.

The report examines the nature and significance of various disputes which resulted from the transfers, in particular the Tladi/Boschoek dispute and the Mmotwaneng dispute. It also examines the



effect of the land transfers on the constantly shifting internal dynamics and boundaries of power within Rakgwadi, particularly the relationship between traditional structures and other forms of local organisation in the area. These internal relationships in turn impact on changing patterns of land use by particular groups. The report attempts to investigate the effect of the transfers on the land use strategies of various groups of poor people from the villages within Rakgwadi.

Another key issue analysed in the report is the impact of the transfers on the fluid and changing roles and relationship between traditional and local government<sup>5</sup> structures in Rakgwadi and the impact this has had on the pace of service delivery and development in the area.

## Background to this report

### Political background

The status of land rights in the communal areas of South Africa has always generated political controversy. Historically, white conquerors, whether Boer or Briton, stole or appropriated most of the land for themselves. The indigenous population was pushed into overcrowded communal 'reserves'. Attempts by black people to protect or expand their rights beyond the reserves, whether by continued occupation or purchase, were constrained by laws such as the Land Acts and decades of forced evictions and removals. Even within the 'reserves' there was a plethora of laws limiting or prohibiting black ownership and independent land rights.

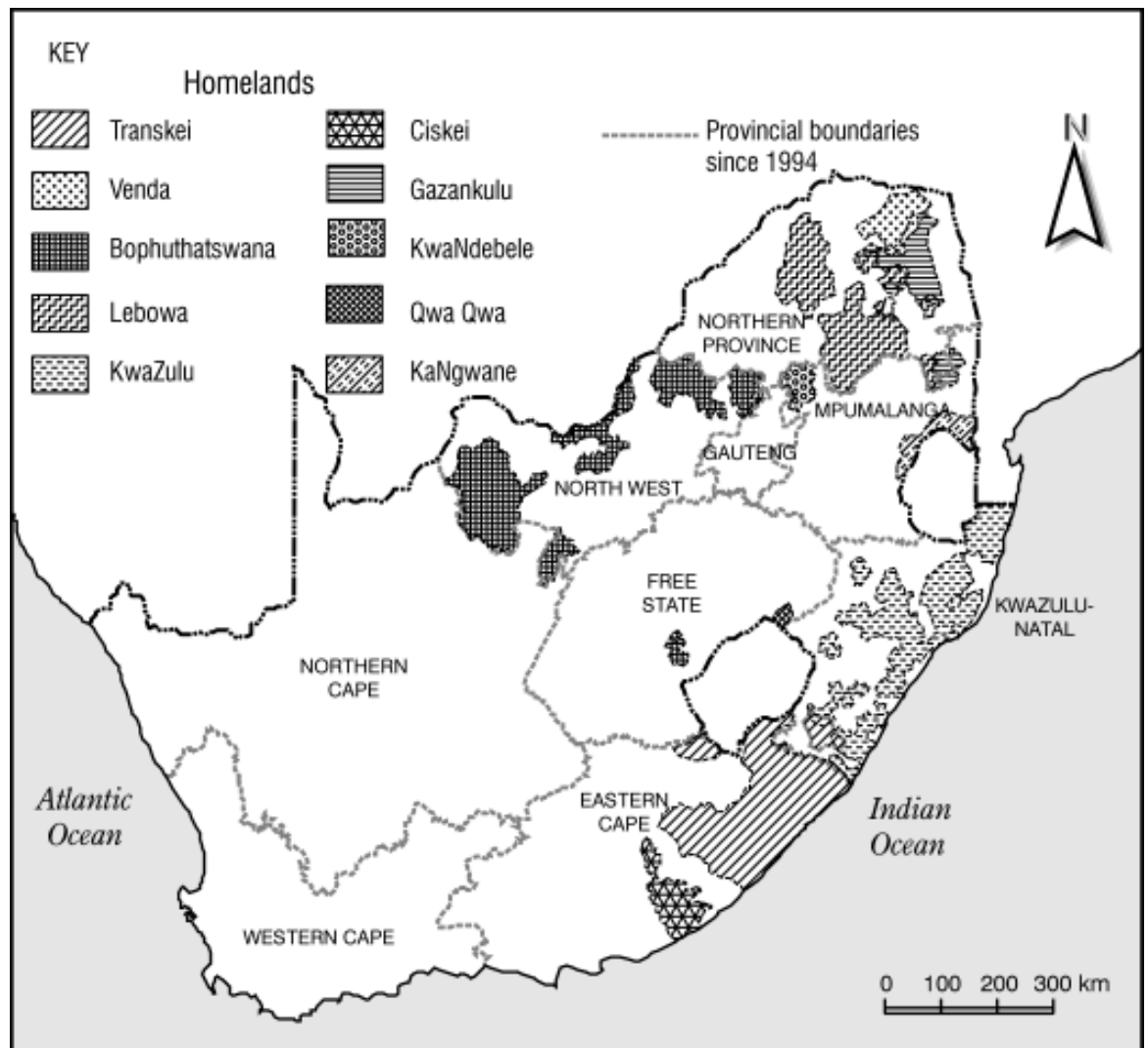
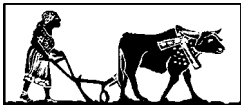


Figure 1: The homelands (bantustans) of South Africa before 1994

Programmes such as the introduction of the 'bantú authorities' system and 'betterment' ('land rehabilitation') were forcibly imposed and fiercely resisted in most provinces.

At the time of the first democratic election on 27 April 1994, the land previously falling within the ten homelands was reincorporated into the four provinces of South Africa. A unitary state comprised of nine new provinces came into being (see Figure 1 on page 2).

When the ANC came to power in 1994 it inherited state ownership of the land in what had been the homelands. It also inherited a land administration system built on the powers of bantú commissioners and bantú authorities. People living in these areas, even people who have used and occupied land for generations, have 'permit-based' rights to land, as opposed to clearly defined rights which can be legally enforced. The new government has been under pressure to do away with the archaic and racially-derived laws which make the State President 'supreme chief' of all black people, and vest ownership and control of virtually all communal land in the state.

The notion that the state should divest itself of its 'feudal' land ownership role has opened up competing demands by different constituencies about whom title should be transferred to. On the one hand there is a strong demand that people get individual title deeds to their household plots and fields, and form democratically-constituted communal property associations (CPAs) to own common areas such as grazing land. On the other, organisations representing traditional authorities have demanded that the title to the land be transferred to chiefs, tribal authorities or tribes.

Both points of view are well-represented within the ANC. The reasons for this lie in recent political history. In the 1950s and the 1980s when rural people mobilised most strongly in the struggle against apartheid, a key feature of popular organisation was resistance against the system of bantú authorities and the

repressive and often extortionist role played by chiefs who co-operated with apartheid and profited from the homeland system. A common feature of the mass rural mobilisation under the umbrella of the United Democratic Front in the 1980s was the 'Away with corrupt chiefs' campaign. In Lebowa this was particularly widespread and saw tribal authority offices attacked and chiefs assassinated. The Lebowa Cabinet called in the army to set up military camps to protect those chiefs targeted in the campaign. These were formative experiences for UDF leaders, many of whom now have leadership positions within the ANC.

In the late 1980s, however, the ANC in exile sent a message to the activists in South Africa that the campaign against chiefs should be suspended.<sup>6</sup> A feature of the newly unbanned ANC's political approach in the early 1990s was its co-operative relationship with senior chiefs and certain homeland leaders. Contralesa, the ANC-aligned Congress of Traditional Leaders of South Africa, became an effective lobby group within the ANC political elite. Traditional leaders lobbied extensively for special powers for chiefs in the Convention for a Democratic South Africa (Codesa) negotiations which resulted in the 1993 'interim' Constitution.<sup>7</sup>

There are thus two different experiences within the ANC in relation to the role of chiefs. On the one hand there is the UDF experience of mass mobilisation against a repressive regime which was often most immediately experienced by rural people as oppression by collaborationist chiefs. On the other hand there is the experience of high-level negotiation and alliances with 'leaders' whom, it was believed, could draw the rural vote for the ANC. These perspectives vary regionally as a result of different regional histories. The ongoing tension between these perspectives is reflected in diametrically opposed views within the ANC as to whether title to land in the former homelands should vest in individuals or in traditional structures.

There are also other more subtle issues to consider, for example, concerns about



the effects of drastic changes on an age-old system of local administration, which, notwithstanding various problems, has been relatively stable. Another fact is that, from the state's perspective, the current system 'runs itself' very cheaply and changes would cost money. There is also the view that old traditions should be valued and asserted in consolidating a new 'Africanism'. The role of the chieftaincy in rural administration is, therefore, a pertinent issue in land reform in South Africa.

The first phase of land reform after 1994 focused on restitution, redistribution and the rights of black people on 'white' farms. The issue of tenure reform in the communal areas lagged behind the other programmes, partly because the problems in these areas appeared less racially defined and therefore not as starkly unjust and potentially explosive, partly because of the complexity of the issue, and partly because the issue is politically controversial within the ruling party.

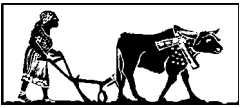
Nevertheless a process of research, consultation, 'test cases', and extensive drafting and re-drafting over four years from 1995 culminated in a draft Land Rights Bill by 1999 (see page ix). However, the ANC took a political decision that the issue of tenure rights in the former homelands was too controversial to debate within the public domain in the period prior to the 1999 general elections. The draft Bill was put on hold until after the elections. The Cabinet reshuffle which took place immediately after the elections saw the appointment of a new Minister of Land Affairs who immediately stopped work on the Bill.

The basic approach to the tenure system taken in the Bill was to create strong statutory rights to land rather than transferring ownership. The decision not to focus on transfer of ownership as the primary method of tenure reform was based on experience from test cases. These indicated that a policy focusing exclusively on transferring state land in the former homelands to private owners was likely to spark major disputes between would-be owners and would generate

boundary disputes on an unprecedented scale. A related concern was that the process of transfer would entail intricate and time-consuming investigations as to the identity of rightful and acceptable owners or ownership structures. The slow pace of restitution delivery had made DLA wary of embarking on a programme that would, in all likelihood, take decades to deliver. Transferring title necessarily impacts on the rights and status of people occupying the land. It is also a process which is difficult and expensive to reverse if mistakes are made. To be done properly and in a way that fairly accommodates the rights of all stakeholders would require intricate legal investigations and extensive and time-consuming consultation processes.

Early attempts to solve tenure problems by transferring land to those with underlying rights soon elicited serious disputes and conflicts between different claimants even in areas which had been relatively stable. Instead, the draft Land Rights Bill proposed the 'blanket' creation of legally-enforceable statutory land rights for people in the ex-homeland areas. These rights were designed both to assert and protect *de facto* rights and, by creating more certainty with respect to the description and status of rights, to enable people to use their land assets more productively. The Bill provided that the majority of rights holders in an area could choose the balance between individual and communal rights and decide whether they wanted the land to be administered by traditional systems or by new structures. It also provided for transfer of title to individuals, groups or tribes, but as a 'second stage' for more organised communities which could show that the majority of their members supported a particular option.

In summary, it provided for the immediate conversion of established occupation rights into 'high content' statutory land rights which would have the status of property rights under the Constitution. It was envisaged that the creation of these rights would address the most pressing development delays caused



by the confusion about the status of land rights in the former homelands. Transfer of title was to be a second stage, and would take place only with the informed consent of affected rights holders.

In contrast, it appears that Minister Didiza's approach will be to use the Upgrading of Land Tenure Rights Act (ULTRA) to resume the previous

government's programme of transferring title to 'tribes', now renamed 'African traditional communities'.<sup>8</sup> The Minister has stated that the process will be driven by the provincial governments. This will provide high levels of continuity for those provinces such as KwaZulu-Natal and Northern Province where previous homeland governments had long

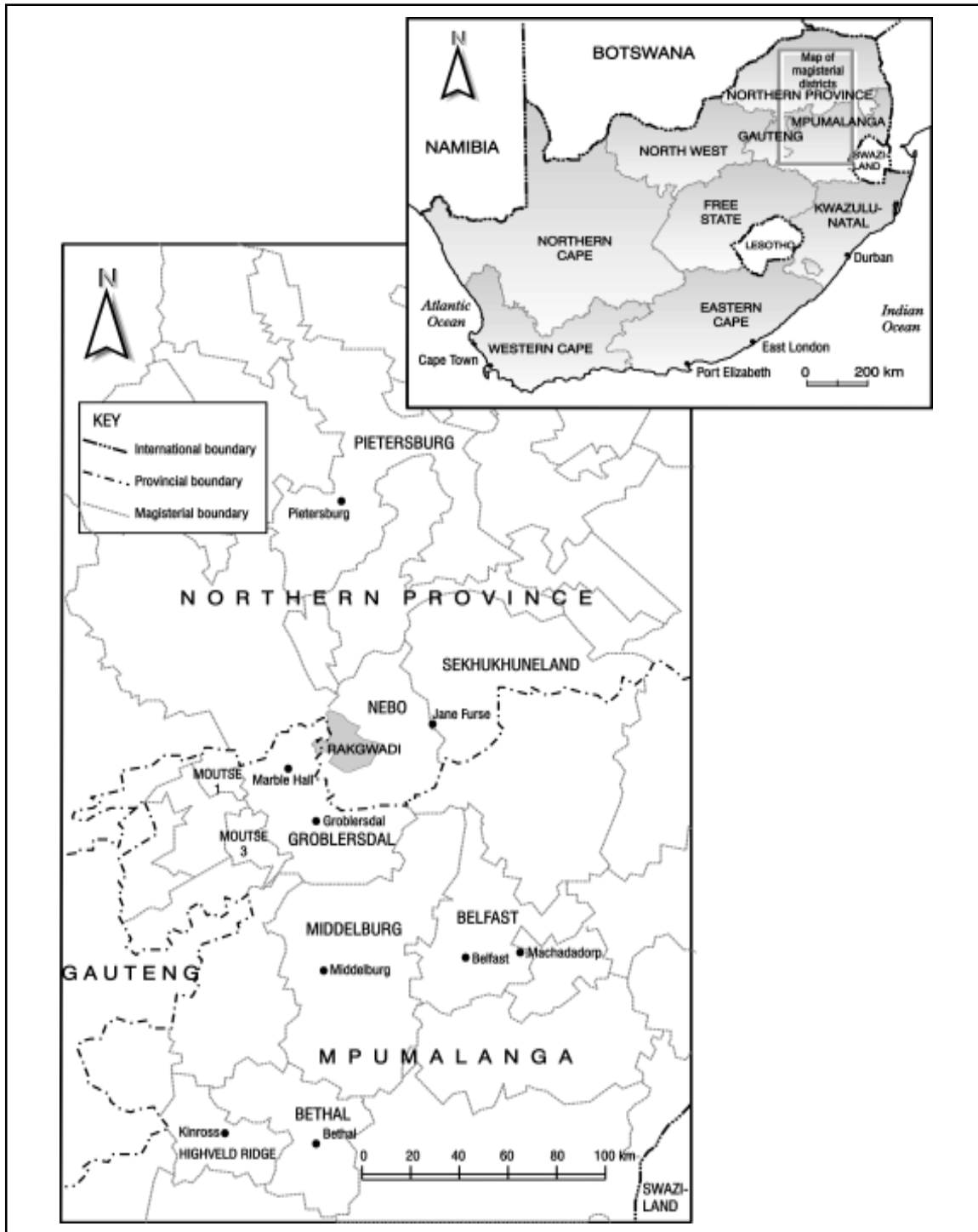


Figure 2: Towns and magisterial districts mentioned in this report

motivated that title to communal land should vest in tribal authority structures.

ULTRA was the legislation used to affect the Lebowa transfers. Chapter 2 will show that the only people who were consulted about the transfers were the chiefs who stood to gain from them. The Lebowa transfers indicate that ULTRA does not provide adequate mechanisms to ensure that the occupants of communal areas are consulted or even informed before land transfers take place.

### Description of Rakgwadi

Rakgwadi is an area of 25 farms which fall under the jurisdiction of *Kgoši* MM Matlala. It falls within the Nebo magisterial district in the Northern Province. It is situated north of Groblersdal and east of Marble Hall, which is the nearest town (see Figure 2 on page 5).

Rakgwadi is a hot bushveld area. Whilst the rainfall of the area is low, there are various rivers and dams in and around Rakgwadi. The Olifants River is close by; three farms added to the Matlala land in 1994 border on the river. Part of the Flag Boshielo dam (previously known as the Arabie dam) falls within Rakgwadi. There are also various irrigation schemes within Rakgwadi. These were 'left behind' when the Rakgwadi farms were expropriated from previous white owners by the South African Development Trust during the 1950s.

There are 21 villages within Rakgwadi, separated by extensive tracts of open land (see Figure 3 on page 9). Each village has an area of ploughing fields where dry land crops such as mealies and pumpkins are grown. The homestead plots within the villages are large and many families also grow vegetables, mealies and pumpkins within their yards. The extensive open areas between villages are used as communal grazing lands, primarily for cattle. However, increasing stock theft during recent years has meant that many families no longer keep cattle for household purposes.

To get to Rakgwadi from Gauteng one drives via Groblersdal and passes

extensively cultivated farms along the banks of the Olifants River. The crops on these farms include grapes, vegetables, citrus and cotton. There is a striking difference between the irrigated land along the river and the dry bushveld which surrounds it.

The communal areas adjoining Rakgwadi are densely settled, the villages are close to one another and there is a marked deforestation of the bushveld. Some of the land beyond the eastern boundary of Rakgwadi is barren scrub land rather than rich bushveld.

Within Rakgwadi by contrast, the trees are thick and the bushveld beautiful. It is possible to drive for kilometres between villages without seeing a single structure, person or beast. There is a wild life reserve<sup>9</sup> within Rakgwadi, but it is seldom visited, except reportedly by local poachers.

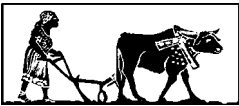
Rakgwadi boasts the Matlala hospital which serves people from surrounding areas. It is situated at Tsimanyane village and is the major employer in the area. It is serviced by a taxi rank which is a hub of activity in the area. Various shops service the taxi rank. The Arabie Agricultural College also falls within Rakgwadi.

### Structure of the document

Chapter 1 is the introduction. Chapter 2 focuses on the history of Rakgwadi. It describes how a portion of the Bakone tribe under *Kgoši* MM Matlala were allocated farms in the 1950s and how they came to acquire the title deeds to 26 portions of the farms in 1994.

Chapter 3 describes the traditional ('tribal') system of land administration in Rakgwadi and how the system has changed, and continues to change, in response to various events. This section focuses on contested 'boundaries' of control between different groupings within Rakgwadi society, and the effects of internal disputes and contestations on development (including numerous community projects) and service delivery in the area.

Chapter 4 analyses in some detail important disputes which have resulted



from the transfers. It focuses on the Mmotwaneng dispute, the Tladi/Boschhoek restitution claim, the Matseding housing project and the Mogaladi land invasion. Figures 3 and 4 on pages 9 and 49 are maps of the areas where the disputes took place.

Chapter 5 examines variables that impact on effective land use in Rakgwadi. It discusses two issues: (a) disputes over the control of natural resources such as wood, water and sand, and (b) the issue of land use, particularly the utilisation of fields and grazing land. The chapter discusses the apparent correlation between relatively tight control of land by specific user groups and higher levels of productivity. It also examines instances where 'centralised' control or decision making by the *Kgoši* has had an adverse effect on effective utilisation of land and poses questions about the likely effects of the new policy direction on land use and productivity in communal areas.

Chapter 6 gives an overview of the impact and effect of the land transfers in Rakgwadi, and concludes with a discussion on the broader implications of a programme to transfer land to tribes on a massive scale throughout the provinces which used to include homelands (see Figure 1 on page 2).

The reader who wishes to focus on the debate about the wisdom of a tenure policy posited on transferring title to tribes may wish to begin by reading Chapter 4. This chapter details the disputes that have arisen as a consequence of the land transfers. The preceding chapters set out contextual issues, but may be too detailed for those who wish to 'cut to the chase'. People familiar with the workings of tribal systems may find that Chapter 3 covers ground that is already familiar to them.

## Endnotes

1. Upgrading of Land Tenure Rights Act 112 of 1991.
2. Ministry of Agriculture and Land status report on land reform, draft 4, June 2000.
3. The Sepedi word meaning 'chief'.
4. Many of the farms are subdivided into different portions. The portions are often large pieces of land which were previously self-contained farms in their own right. During the 1994 transfer some portions were transferred while others remained state land. It is not clear why some were transferred and others not.
5. The local government structure referred to in Rakgwadi is the Hlogotlou Lepelle Transitional Local Council (TLC), in place at the time this research was done. New local government structures were established after the December 2000 local government elections.
6. Interview with Obed Malapane, March 2000. The message was relayed by the South African Youth Congress (Sayco) in 1987. In the late 1980s activists in what is now Northern Province also communicated this information to the author when she worked with TRAC.
7. The 1993 Constitution was the basis for the transition to democracy in South Africa. It was replaced by the 'final' Constitution of 1996.
8. Ministry of Agriculture and Lands status report on land reform, draft 4, June 2000.
9. The reserve has few amenities, few people know about it, and it is not advertised.



# Chapter 2: History of the Matlala chieftancy at Rakgwadi

This chapter describes how Rakgwadi came to be acquired by *Kgoši* MM Matlala and his followers. The policy of transferring state land to 'tribes' is posited on a recognition of the underlying ownership right of indigenous African communities. In many instances African communities have been in occupation of land since long before white people arrived in South Africa. Colonial laws and practices which denied the nature of indigenous land rights did so for the purpose of justifying the imposition of state 'ownership' over African areas and the subsequent granting of the land to white settlers. The Transvaal Boer Republic denied the validity of African rights to land for the same purpose and with the same result. This particular history has set the context for the political imperative to recognise the underlying land rights of indigenous communities. However, to rely exclusively on the construct of 'tribe' or 'African traditional community' as a measure of underlying historical rights is a dangerous path to follow.



**T**he fiercest opposition to the Boer and colonial conquerors came from strong indigenous communities who fought wars to defend their land rights and their sovereignty. Throughout South African history, chiefs who resisted white rule were deposed and collaborators were rewarded with land and recognition of elevated chiefly status. The Native Administration Act of 1927 provided that the Governor General was supreme chief and that he could depose and appoint chiefs at will.<sup>1</sup> The policy of separate development in the

1950s heralded unprecedented levels of interference with African traditional systems. Many 'tribes' which exist today are a product of this history. The land they occupy was allocated as a reward for collaboration or to punish the 'real' tribes who had underlying historical rights based on indigenous title.

A blanket policy of transferring title to 'tribes' without proper historical investigations would in many instances have the effect, not of confirming historical rights, but of dispossessing those with indigenous land rights and ceding

ownership of their land to people who collaborated with apartheid.

The Matlala land transfers are a case in point. The 'Matlala tribe' did not exist before the 1960s. It is a construct created by apartheid. The farms allocated to MM Matlala's father, Shikoane Frank Maseremule, were a reward for his role in undermining Sekhukhune opposition to the imposition of the Bantu Authorities Act and the policy of separate development. Maseremule and Matlala co-operated with Secretary for Native Affairs Werner Eiselen and Prime Minister Hendrik Verwoerd to set up the Lebowa homeland. Matlala was to have been its first Chief Minister, but was defeated in the first elections. He went on to serve in the Lebowa Cabinet for many years. He was part of the Lebowa Cabinet decision to call in the South African Defence Force to put down the 1986 uprisings in Lebowa. He used his position in the Cabinet to push through the 1994 land transfers to the 'Matlala tribe'. There was no consultation with the members of the tribe about the transfers.

There is no doubt that many South African Development Trust (SADT) tenants within Rakgwadi would have opposed the transfer to the 'tribe' and demanded that the residential sites and fields which they had rented for decades be transferred to them.

Furthermore, the transfer of the Boschhoek, Ongezien and Nooitgezien farms to the Matlala tribe in 1994 dispossessed the Tladi yaKgahlane, an 'indigenous community' who had occupied the land since 1870, of their land rights and heralded the beginning of an era of intimidation, threats and sabotage aimed at forcing them to vacate their farms.

### History of the land prior to 1957

The 'Matlala tribe' arrived in Rakgwadi only in 1957. The history of the land in the 19<sup>th</sup> century is not recorded. However, oral history collected at Boschhoek (see Chapter 4) indicates that various African groups lived there and farmed independently. It appears that many of

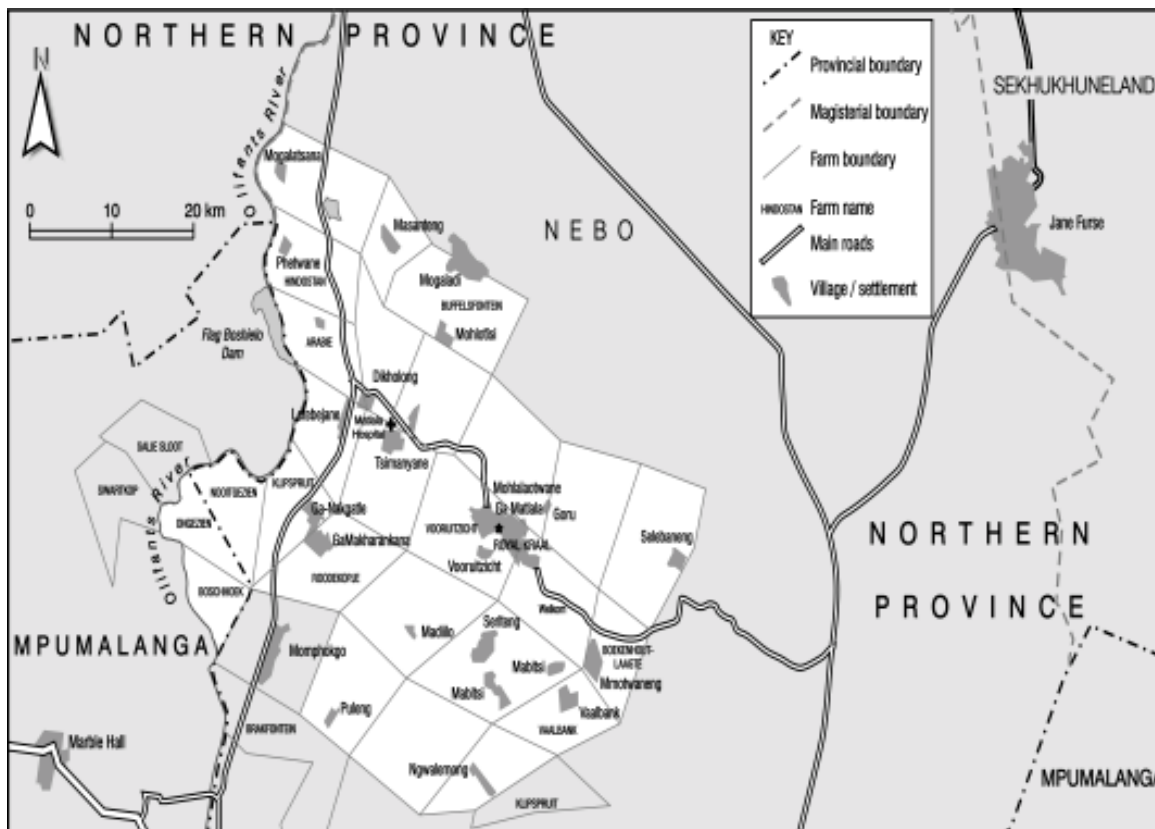
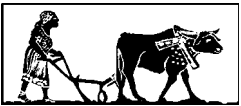


Figure 3: The farms and settlements mentioned in this report

these people spoke isiNdebele. Hence the names of some of the villages in Rakgwadi are derived from isiNdebele words as adapted by Sepedi speakers.<sup>2</sup>

White people began to arrive from the 1870s and were granted farms by the government. From the early 1900s the area was owned by white farmers. Many of the people who had farmed independently before white people arrived, became labour tenants on what were now 'white farms'. Initially many of the farms were 'labour farms'; their white owners had other farms in the highveld areas of Bethal and Kinross and used their bushveld farms near Marble Hall and Groblersdal purely as a source of labour (see figure 2 on page 5).<sup>3</sup> People were allowed to continue living on the bushveld farms, but in return they had to send able-bodied young men to work on the more profitable and developed 'highveld' farms for three to six months a year. The men earned no wages for their labour, they worked long hours and brutal floggings and abuse were common.



The major constraint facing white farmers from the early 1900s was a shortage of labour. There was fierce competition with the mines for labour, and ever stricter laws were introduced to curtail African people's ability to remain farmers or pursue other independent sources of livelihoods. From the early 1960s Labour Tenant Control Boards in the area were restricting black people's rights to farm for themselves, even as labour tenants. Many people were forced to convert to full time wage labour and moved to the relatively densely settled African areas which were being established in the vicinity.

Various farms in the area were declared 'released areas' in terms of the 1936 Development Trust and Land Act. This indicates an intention by government, dating at least from the 1930s, that the area be added to nearby African 'reserves' such as Nebo. One reason may have been the relatively low rainfall and dense bush characteristic of the region which made farming, except in the irrigable areas

adjacent to the Olifants River, a risky business. Furthermore the area was already relatively densely settled by African people because of its history as a 'labour farm' area.

The South African Development Trust began buying farms in the area from white owners from the late 1930s. The farms that were to become Rakgwadi were purchased by the SADT between 1938 and 1959. Furthermore African people whether as individuals, groups or tribes purchased farms in the vicinity during the 1930s and 1940s. Because of the 'released' status of the farms, these purchases did not fall foul of the Land Acts.

### The 'Matlala tribe' arrives from Sekhukhuneland

In 1957 *Kgoši* MM Matlala's father, Frank Shikoane Matlala Maseremule, and his followers arrived in the area. They were provided with 22 large farms, all of which had previously been acquired from white farmers by the SADT (see Figure 3 on page 9). The area they obtained was the biggest block of land in the Nebo district, twice the size of the land allocated to the Ndebele tribe and more than three times the size of any other chief or tribe in Nebo.<sup>4</sup>

Why was such a large area of land – 64 740 morgen – given to a group of people who appear to have had three or four farms in the part of Sekhukhuneland they moved from? The answer lies in the circumstances under which they had left Sekhukhuneland.

During the 1950s the Department of Bantu Affairs was vigorously pursuing the policy of bantu authorities<sup>5</sup> and 'tribal self rule' as intrinsic aspects of the policy of grand apartheid. Black South Africans were to be denied political rights except in 'self-governed homelands'. The department was thus pursuing the creation of these self-governing territories around the major tribal groupings within South Africa. In pursuance of this policy, they needed a leader to co-operate in the

formation of a Pedi homeland in the Northern Transvaal.<sup>6</sup> The obvious choice was the *Kgoši* of the Sekhukhune paramountcy, the most senior traditional leader of the Pedi kingdom.

However there was resistance to the 'betterment'<sup>7</sup> policy of the bantu authorities and the policy of 'tribal self rule' in Sekhukhuneland. Successive Sekhukhune chiefs resisted the bribes and threats of official of the Department of Bantu Affairs (Delius 1996). The department was taking the issue very seriously. In 1954 Dr Hendrik Verwoerd, Dr Werner Eiselen and other senior government figures were sent to a meeting at the Olifants River where they urged chiefs to accept the bantu authorities system, but without success (Delius 1996:109). *Kgoši* Frank Shikoane Maseremula (MM Matlala's father) was at that meeting.

In the late 1950s there was a virtual state of emergency in Sekhukhuneland, there were mass protests, police repression, boys and men had fled to the mountains, a senior tribal leader was assassinated, and other leaders were arrested and deported.

By 1957 it had become clear to Pretoria that no inducements they could offer (and they offered many) would convince the Sekhukhunes to agree to the establishment of a bantu authority in the area. The government responded, on the one hand, with increased repression in Sekhukhuneland and, on the other, by looking for more willing partners (Delius 1996:118). They sought out headmen and offered to recognise them as independent chiefs who would head autonomous bantu authorities. It was made clear to these headmen that part of the deal was that they must immediately implement the hated 'rehabilitation' or betterment programme in their areas. 'While most *dikgošana* resisted these blandishments – not least of all for fear of the wrath of their followers – a minority responded positively. They were derided as '*diKgoši tsa Bothma*'<sup>8</sup> (Delius 1996).

One of the first people to agree was Frank Maseremule who was made chief of

a separately recognised 'Kone tribe'.<sup>9</sup> He was offered 22 farms<sup>10</sup> near Marble Hall as a home for his newly recognised tribe.

Maseremule's impending move to Marble Hall sparked more disputes – it was resisted by Sekhukhune leaders and commoners alike. For the Sekhukhune leaders, it meant the erosion not only of the anti-bantu authority position, but also of the unity and size of their society and sphere of influence. There was also resistance from within the grouping headed by Maseremule – many people insisted on remaining where they were. There are reports that people died in the violence which erupted around the move. A contingent of police and soldiers was provided to protect Maseremule and his followers during the move from Madibong in Sekhukhuneland to the new farms in Rakgwadi.

Six of the farms at Rakgwadi were registered as 'held in trust' for the section of the Kone tribe under Frank Maseremule. These were compensation for the farms which the group had previously purchased and left behind at Madibong in Sekhukhuneland. The other 14 farms were registered as the property of the SADT but they were put under the 'jurisdiction' of the newly-created Matlala Tribal Authority.

All 22 farms were laid out and planned according to the principles of 'betterment'. There were strict limitations on the number of cattle allowed, rotational grazing camps were imposed and ploughing fields were allocated only to specific families. On the SADT farms people also had to register as 'trust tenants' and pay yearly rents for their residential stands, their fields and their cattle. Many people could not afford to pay the yearly rents and they were arrested and served prison sentences as a result. There are stories of people dying in prison or shortly after their release because of the bad treatment they received.

People on some of the SADT farms were resentful of the fact that they had been turned into 'tenants'. At Madibong all adult men had been forced to contribute cattle towards the purchase price of the



farms bought by the group.<sup>11</sup> At Rakgwadi, villages with closer connections to the chief were allocated land in the 'tribal' farms, whilst those who had affiliated later or were less well connected were put on the trust farms. These then became 'buffer' villages around the higher-status villages of the chief and his senior councillors.

According to local information, some of the headmen who accompanied Maseremule in his move from Sekhukhuneland understood that they would exercise the status of independent chiefs in the new area. However, on arrival they found that their status remained that of headmen under Maseremule and that their followers were allocated land on the SADT farms, and absorbed within what was soon to become the 'Matlala tribe'.<sup>12</sup>

However, there were headmen who arrived from Sekhukhuneland after Maseremule and who were accorded the status of independent chiefs in adjoining areas. These were people who followed Maseremule's example and agreed to constitute themselves as bantu authorities on condition that they be given land. They include the current Rahlagane, Mampana, and Phaahla tribes.

They were given smaller areas and their status cannot be compared with that of the Matlala chieftom. There have since been a series of 'royal' marriages between the daughters of the Matlala family and neighbouring chiefs.<sup>13</sup> These marriages are interpreted as an initiative to cement relations in the face of resentment by the neighbouring chiefs at the expanding sphere of power and influence exercised by the Matlala chieftom, and in particular the large and ever-increasing amount of land Matlala has managed to secure, much of it at their expense. His influence and role *vis-a-vis* these other chiefs follows a long-established pattern of chiefs acting to consolidate themselves as 'paramounts' in relation to lesser chiefs.

Maseremule had used the bantu authorities system to extricate himself from under the Sekhukhune paramount and to elevate his own position. Maseremule's

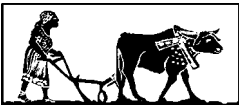
son, MM Matlala has consolidated this 'elevation' by asserting his influence and authority over neighbouring chiefs. The fathers of these chiefs may have had a similar status to his father in Sekhukhuneland, but by the year 2000 Matlala has managed to successfully assert his dominance and sphere of influence over the neighbouring 'tribes' who moved from Sekhukhuneland in the 1950s.

In 1962 the Lebowa Territorial Authority was established with MM Matlala as its head. (The territorial authorities were the bodies established as the precursors to homeland independence). In 1972 Lebowa was given 'self governing' status and *Kgoši* Matlala was groomed to be Chief Minister.<sup>14</sup> He, like Kaizer Matanzima in the Transkei, favoured homeland independence, and Pretoria had high hopes that Lebowa would follow Transkei to become an 'independent state'. However, Matlala was defeated by Dr CN Phatudi in the first elections of 1973. An alliance had been created to block Matlala and thereby independence. The alliance consisted of the majority of elected representatives, the Sekhukhuneland chiefs and Dr Phatudi. The Sekhukhuneland chiefs had consulted with the ANC about the appropriate strategy to adopt with regard to homeland politics, and been advised that the appropriate stance was to block independence.

Despite his defeat in the contest for the position of Chief Minister, '*Kgoši* Matlala who was reluctant to be denied the spoils of office, joined forces with the governing party in 1974' (Delius 1996:173). He held various positions in the Lebowa Cabinet and served as Minister of Finance until Lebowa was reincorporated into South Africa in 1994.

## The 1994 land transfers

Titles of about 400 farms, constituting almost 30% of the land area in Lebowa, were transferred to 'tribes' between 1991 and 1994. The transfers took place in terms of the Upgrading of Land Tenure



Rights Act. The process was agreed in negotiations between the Ministry of Regional and Land Affairs in Pretoria and the Lebowa Cabinet. A further 400 farms were identified for transfer after 27 April 1994 (DLA, undated:1), but the process was stopped by the new ANC government.

Lebowa used the services of Piet Steytler, an attorney of the firm Steytler, Nel and Calitz, to effect the transfers. The Lebowa Farmers Title to Land Trust was established to pay for the associated costs. The trust was set up with an amount of R6 million derived from the proceeds of the sale of fodder which the central government had made available to Lebowa for drought relief purposes. The trust and the money is still administered through Steytler's legal practice in Pietersburg. It has been used to pay his legal fees in effecting the transfers, and to assist tribes to lodge restitution claims. The trustees include Nelson Ramodike, the previous Chief Minister of Lebowa, and various chiefs and former Cabinet ministers from Lebowa.

On 19 October 1994 the newly-established South African Cabinet appointed a technical committee (the Lebowa Land Transfer Technical Committee) to investigate the different aspects of the matter, particularly irregularities in the use of proceeds from the drought relief programme to set up the trust, irregularities in the way in which the trust was established, and the allegation that the trust assets are held in Piet Steytler's firm's trust account, while at the same time the money is used to pay his fees for effecting transfers. In 1996 the committee recommended that the entire process be reversed, the trust disbanded and the transfers of the properties reversed, through expropriation or through some other means.

When Piet Steytler and the trustees failed to respond to the government's request that they disband the trust, the Minister of Land Affairs at the time (Derek Hanekom) instituted legal processes to do so. These legal processes have not reached a conclusion and it not clear whether

current Minister Thoko Didiza will pursue the case.

In 1994, by a process initiated just before the change of government, the title deeds to a large number of farms and portions of farms in Rakgwadi were transferred to the Matlala tribe. There are no records pertaining to these transfers at DLA in Pretoria. All the records are held at Steytler's office.

Two farms which formed part of the 1994 transfer to the Matlala tribe – Boschhoek and Ongezien – were not handled by Steytler. The reason is that these farms were not part of Lebowa, they were located in the part of the former Transvaal which is now Mpumalanga. It was therefore necessary for the Department of Land and Regional Affairs of the time to effect the transfers itself.

Boschhoek, Ongezien and Nooitgezien, a third farm which was not part of Lebowa, are in a bend of the Olifants River and have extensive irrigable river frontage.<sup>15</sup> Their exceptional agricultural potential is, no doubt, the reason why there was strong white resistance when the farms were included in the swath of land that was declared 'released' for black occupation under the Development Trust and Land Act of 1936. Repeated petitions by their white owners supported by local farmer organisations resulted in the farms being excised from the schedule of released land in 1954. However, being on the same side of the Olifants River, and being adjacent to the densely-settled Nebo district, it was geographically absurd for these farms to remain a 'white spot'. They were therefore expropriated by the SADT in 1970s, much later than the neighbouring farms.

The farms were earmarked for use as a resettlement camp during the era of forced removals. At one time they were to be the compensatory land for the Mampuru community from Brakfontein, but white pressure based on the fear of 'political resisters' settling near Marble Hall scuppered this plan. In 1986 they were developed as a resettlement camp for communities from Moutse who opposed



Moutse's proposed incorporation into the KwaNdebele homeland. Thousands of toilets were erected in the veld and roads and a school were built at Boschhoek. However, in 1998 when the Moutse community won their Appeal Court challenge against incorporation into KwaNdebele, the area became a white elephant for government.

Boschhoek and Ongezien border the area under the jurisdiction land of *Kgoši* Rahlagane, who had requested the government at various stages<sup>16</sup> to add the farms to his overcrowded and limited land base of three farms. This was not to be; instead the farms were added to *Kgoši* Matlala's land base bringing the total number of farms under his jurisdiction to 25.

The internal documents which motivated why the Minister should approve the transfers stated that the farms formed a 'natural unity' with Matlala's land, and that because they had been developed for his followers, the transfer was merely the formalisation of a pre-existing reality. The motivation also stated that since the farms were neither occupied nor claimed by others there was no need to refer the matter to the Advisory Commission on Land Allocation.<sup>17</sup>

All of this information was demonstrably false: the farms are claimed by the Tladi community who can trace their history on the land to 1870. Furthermore, representatives of the Tladi family still have homesteads on the farms. The 'development' at Boschhoek was intended for the Moutse people and not for Matlala's followers. The farms also form a 'natural unity' with the adjacent farms of *Kgoši* Rahlagane. Rahlagane is allegedly furious that the farms were transferred to Matlala.

However, when is a Minister to know that memoranda put before him or her contains false information? And how are people affected by decisions based on internal memoranda to contest such information if they know neither what such memoranda say, nor even that they exist?

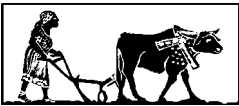
The issue of memoranda aside, it appears that nobody other than the *Kgoši*

and perhaps a few councillors knew anything about the 1994 land transfers until about two years after they had taken place. Many people living in Rakgwadi still have no idea that a transfer of title has taken place. I asked every person interviewed, including the local member of Parliament, local government councillors, business people and teachers whether there had been consultation with the tribe prior to the transfers, and all replied that there had been no such consultation, and that the first they had heard of the transfers was sometime during or after 1996.

In terms of the Upgrading of Land Tenure Rights Act, the tribe must meet to request the government to transfer title to them. A tribal resolution serves as confirmation of this request. It is not possible to examine the 'tribal resolutions' for the parts of Rakgwadi that fell within Lebowa because, if these exist, they are kept at Piet Steytler's office. However, the Ongezien and Boschhoek resolution is available from DLA. This states that on 2 June 1993, 1 190 members of the tribe decided to request the government of the Republic of South Africa to transfer Ongezien and Boschhoek to the Matlala tribe.

Not only do all the informants interviewed deny that any such meeting was ever advertised or took place, they deny that any meeting of that size has ever taken place at the Tribal Authority offices. They insist that it is impossible that they would not have heard about such a meeting, should it ever have taken place. They have examined the six signatures on the resolution with great interest and remarked how strange it is that the majority of signatories are from one village within Rakgwadi.

One man from Mmotwaneng<sup>18</sup> said that he had attended a meeting at the *Mošate* (chief's *kraal* or headquarters) which took place in 1994 just before the elections. This meeting was attended by representatives from all the Rakgwadi villages. At the meeting the *Kgoši* made a statement that the SADT land was going to



be transferred to 'sechaba'.<sup>19</sup> People did not understand the implications and indicated that they wished to ask questions. The *Kgoši* then said there was no time for questions and closed the meeting. He said that anyone who had questions must come and ask them individually. The informant's view was that if people at the meeting had understood what was at issue, they would have opposed the transfers fiercely. He said people from the SADT farms had expectations of receiving individual title deeds because of the rents they had been paying for decades. The man said that people from the six 'tribal farms' might have been more accommodating of the *Kgoši's* intentions. However, no one at the meeting really understood what was being said, and the meeting was suddenly closed. This meeting appears to be closest thing to consultation about the transfers that took place in Rakgwadi.

Even if it could be proved that there was no proper 'tribal' debate of, and approval for the land transfers, and that no meeting of 1 190 people took place in 1993, it would make no difference to the legality of the tribal resolution. The resolution asserts that a Mr Tabudi from Nebo was present and witnessed the resolution. In terms of section 21(a) of ULTRA, a legal presumption is created that a certificate signed by 'any person who alleges therein that he is the magistrate of the district in which any such tribal land is situated and that the resolution in question is a tribal resolution shall, on production of such certificate at any such proceedings by any person, be accepted as *prima facie* proof of the facts alleged therein'.

There are indications that the Boschhoek and Ongezien 'tribal resolution' is not the only one from the former Lebowa which is dubious. The Lebowa Land Transfer Technical Committee appointed to investigate these land transfers and the role of the Lebowa Farmer's Title to Land Trust reported:

*The Technical Committee believes that it should be recommended to the*

*various provinces to launch investigations into the extent to which tribal decision making is democratic. This is regarded as important in the light of the fact that the Tribal Authorities at a meeting with the Minister of Land Affairs appeared to be entirely unaware of the tribal resolutions they had taken (prima facie validly) to accept the deeds of grant from the Lebowa government.*

(DLA, undated:8)

It is extraordinary that even the tribal authorities, being the chiefs and their tribal councillors, did not know about these 'tribal resolutions'. One would expect that at least this small group would have been properly informed about the transfer process. The actual test of course, is whether the majority of the members of the tribe supported and requested the transfers. It appears clear that the chiefs and the Lebowa Farmer's Title to Land Trust were not prepared to take the risk of calling proper tribal meetings to put that question to the people whose rights were to be irrevocably affected.



### **Questions concerning the legality of the 1994 transfers**

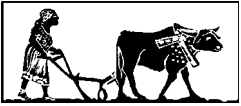
The section in ULTRA which asserts that a magistrate's certificate is sufficient to validate a tribal resolution means that lack of proper consultation cannot be used to challenge the validity of a land transfer. However, there are grounds other than the lack of consultation on which the Boschhoek/Ongezien transfer could be legally challenged.

ULTRA provides that 'tribal' land may be transferred to tribes in ownership. Section 19 of the Act specifies that such 'tribal' land must be controlled by the tribe. 'Tribal land' is defined as land which is either owned by the tribe, held in trust on behalf of the tribe, or allocated for the use of the tribe by the state or the SADT. Given that, at the time of the transfer in 1994, Ongezien and Boschhoek had nothing whatsoever to do with the Matlala tribe, it is difficult to understand how the

farms could be deemed to fall within the definition of 'tribal land'. They had certainly never been controlled, owned, held in trust for, or allocated to the Matlala tribe.

In order to get around this problem (which appears to have been present in at least another nine Lebowa land transfers<sup>20</sup>) the State President, using his colonially-derived powers to appoint and depose chiefs as set out in Section 2(7) of the Black Administration Act of 1927,<sup>21</sup> installed 'Chief MM Matlala as chief of the followers of the Matlala tribe on the farms Ongezien 717 KS and Boschhoek 752 KS in the district of Groblersdal' in October 1993.<sup>22</sup> Within six months the farms had been transferred in ownership to the newly expanded tribes.

And so, with unseemly haste, the government used a 'two stage' process of imposing chiefs and expanding tribal boundaries to create 'tribal' land to thereby conform with the requirements of ULTRA. However, in at least the case of Ongezien and Boschhoek, their manoeuvres were legally flawed.



*Kgoši* MM Matlala had no followers on Ongezien and Boschhoek. In fact the farms were uninhabited except for the few Tladi families who have lived there since the turn of the century. Therefore it was meaningless to give him jurisdiction over his followers on the farm. He had none. This step did not convert the farms into Matlala tribal land. Nor would it have done so if there had been members of the Matlala tribe living on the farms. The National Party repeatedly made the mistake of conflating the issue of tribal authority jurisdictional notices with the vesting of control of land in specific chiefs or tribal authorities.

The historical reasons for this error are easy to understand. The Sekhukhune uprisings of the 1950s are just one example of the rural rebellions with which African rural communities responded to the bantu authorities system. The National Party government in turn responded, as they did with *Kgoši* MM Matlala, by using the Black Administration Act to install

more compliant people as chiefs. They then used the Bantu Authorities Act of 1951 to establish bantu authorities for these chiefs and issued government notices to define the area of the newly created bantu authorities. These jurisdictional notices issued in terms of the Black Administration Act and the Bantu Authorities Act and published in the Government Gazette merely set out the boundaries of the area within which the newly-created bantu authorities have jurisdiction over their followers.

There is nothing in either Act to give the chiefs or the bantu authority ownership of, or rights to, the land. In fact there are various cases (including Rakgwadi)<sup>23</sup> where the land described in a jurisdictional notice is owned by other people entirely. In various such case the owners of the land (generally black people) have successfully challenged controls and allocations initiated by chiefs as unlawfully undermining their ownership rights. The results of these court cases have often surprised the chiefs, who had assumed that jurisdictional notices gave them powers over the land itself. However, in law, all that bantu/tribal authority jurisdictional notices provide is jurisdiction to act as chiefs over their subjects in that specific area. These powers are subject to underlying land ownership arrangements in respect of the land. No section of either the Black Administration Act, nor the black Authorities Act vests any power of ownership or control of land rights in chiefs or headmen. In fact the Black Areas Land Regulations (Proclamation R188 of 1969), which formed an intrinsic part of the trio of rural apartheid land measures,<sup>24</sup> specifically states:

*All Trust land shall, except as may otherwise specifically be provided, be under the control of the Bantu Affairs Commissioner of the district or area.*<sup>25</sup>

The regulations also state that the State President is 'Supreme Chief of all Bantu' and the trustee of the trust, the trust being the registered owner of all SADT land.<sup>26</sup>

The role of chiefs and headmen in the land allocation process was defined as

purely advisory. As the law currently stands, the owner of SADT land is the state and the only people with the legal power to allocate (or cancel) land rights on former SADT land are 'Bantu Commissioners'.<sup>27</sup>

The steps to include Boschoek and Ongezien within the jurisdictional area of the Matlala Tribal Authority were not sufficient to ensure that the farms became 'Matlala tribal land' as required by ULTRA and therefore the validity of the transfers could be legally challenged.

However, in order to challenge the transfers, two things are necessary: money to pay legal costs, and local residents who would be prepared to take the risk of challenging *Kgoši* MM Matlala. The risks involved in such a step cannot be discounted. When the community from Mmotwaneng village took issue with the fact that the title to their land had been transferred to MM Matlala, they were told that their fields would be confiscated and allocated to another more 'loyal' village. Leaders were threatened with eviction from their homes and told that their 'insulting behaviour' meant that 'anything could happen to them at any time' (see Chapter 4).

There are no records of the other Rakgwadi land transfers at DLA, because the files were retained by Piet Steytler after he effected the transfers on behalf of the Lebowa government. A similar investigation to ascertain whether these transfers complied with the provisions of relevant laws would not be possible without Steytler's co-operation. It is instructive, however, that Steytler produced only two tribal resolutions in response to the Technical Committee's request for the tribal resolutions required for the 400 transfers that took place in Lebowa between 1991 and 1994 (DLA, undated:3).

### Local perceptions concerning the land transfers.

The farms transferred in 1994 are registered as the property of the Matlala tribe, not as the property of *Kgoši* MM

Matlala. Yet everyone refers to them as 'Matlala's land'. The common perception is that *Kgoši* Matlala has the title deeds in his own name. That is why the Mmotwaneng community took their courage in their hands and demanded that he 'hand over' the title deeds to their village.

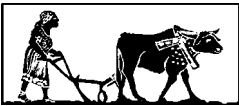
It may be argued from a common law perspective that ownership by the tribe means that the majority of the tribe, as opposed to the chief as an individual, has decision-making powers with respect to ownership issues. However, this assumption is not shared by the tribal council. A prominent local authority councillor who has been locked in disputes with the tribal council over the housing project explains that the tribal council has a different view:

*The councillors believe that the land belongs to the Kgoši. Whatever developments the local authority proposes, the Kgoši's council responds by saying; 'The Kgoši will decide, he has the title to the land, therefore he has the right to control everything that can happen here'. The Kgoši never refers ownership decisions to the tribe as a whole. He refers them to his Council, you must understand that the word 'tribe' has two meanings. It can mean a clan, like the royal clan, or it can mean all the subjects.*

*For the Kgoši's councillors, ownership by the tribe means ownership by the Kgoši. They do not even believe that the Council owns the land, nor that the Tribal Authority owns the land. They firmly believe that the Kgoši owns the land. They believe that he can make 'executive decisions' to re-allocate peoples' fields or expel people or any interference that he wants. The Kgoši himself knows about the law, he understands very well that there are limits to his power, and that he has to accept certain things that he doesn't like. But he uses his*



*councillors in all the negotiations and they really believe that we, the local authority, are trying to rob him of what is rightfully his. For this issue of 'tribal ownership' to work it would have to clearly spelled out that people have rights to their houses and their fields. Their decision-making powers would also have to be very clearly spelled out. And there would have been some over-sight to see if all this worked in practice. Before 1986 the Kgoši used to interfere with peoples' rights, expel them, confiscate their fields, decide what he liked about agricultural projects. But people challenged that. It was a long hard process to challenge those abuses, but eventually the pressure was so great that he stopped those kinds of interferences. Now that he has the title deeds, he will use them to start all that again.<sup>28</sup>*



Just as people refer to Matlala's 'title deeds', so they refer to his '22 title deeds'. It is assumed that there is a title deed for every one of the initial 22 farms in Rakgwadi and that the whole area was transferred in 1994. However, a close examination of the Deeds Registry for the area shows a different picture. Six portions of land have been owned by the tribe since 1961, when they were registered as 'held in trust' for the Matlala tribe. Twenty-six other farm portions were transferred to the Matlala tribe in 1994, but significant areas of land remain registered as SADT or government land. It took many hours pouring over Deeds Registry printouts and maps to establish which areas had been transferred and which remain SADT and government land.

Large villages were not affected by the transfers, but the people in these villages are not aware of this. Those who know anything about the transfers assume the whole area was transferred. Even the most knowledgeable local authority councillors were amazed to realise that some villages and areas of open land were not

transferred. For example, while the Mmotwaneng fields are on land that was transferred to the Matlala tribe, the actual village is situated on a farm that remains SADT land. Nobody, least of all *Kgoši* Matlala, had given the Mmotwaneng community this highly pertinent information.

It appears that accurate and accessible information concerning the transfers has not been made available to anybody apart from Chief Matlala. Without such information it is difficult, if not impossible for local people to effectively engage with land-related matters in their area. To obtain and analyse the information from public sources requires travelling to the Deeds Registry and Surveyor General's offices in Pretoria, money to order deeds printouts and maps, and time and skills to analyse and reconcile complex material.

## Conclusion

The farms transferred in 1994 were transferred to the Matlala tribe. However, within Rakgwadi it is widely believed that the transfers were to the *Kgoši*. This perception is not surprising given the fact that there was no consultation with the tribe prior to the transfers, nor any explanation of what had taken place after the transfers. Most people learnt of the transfers years after they had taken place. Some affected villages still do not know anything about them. The Transitional Local Council (TLC) found out about them only in 1998. Basic information about which farms were transferred and which remain 'SADT land' has still not been provided to anyone but the *Kgoši*.

Just as people had no idea about the transfers, so most people in Rakgwadi have no idea that the title vests in the tribe as a whole rather than in Matlala as an individual. Even if this were communicated to them, the next chapters will show why it would be difficult for people to effectively challenge unilateral 'landownership' decrees made by Matlala.

Matlala was not the only 'bantú authorities' chief to profit from the 1994

Lebowa land transfers. The chiefs around him who followed his father's example in co-operating with the bantu authorities system also had the title to their 'reward farms' transferred to their 'tribes'. It is instructive, however, that many tribes with long-term historical land rights dated back to the 19<sup>th</sup> century did not benefit from the 1994 transfers. One example is that of the Mphahlelele tribe. The factor which appears to have determined which tribes got title and which were left out was the status of their chiefs in the Lebowa Cabinet. It was this ongoing nexus of power and manipulation of state resources by chiefs within the Lebowa Cabinet that was given as the explanation for the attacks on chiefs during the 1986 uprisings in Lebowa.

It is not only in the Northern Province that there was a nexus between chiefs who collaborated with apartheid and the homeland governments. Throughout the country various chiefs played a key role in homeland governments. Their years of experience in homeland governments has skilled such chiefs in using law and opportunities to their advantage. A policy decision to dust off ULTRA and revert to the previous government's policy of transferring title to tribes would provide chiefs with homeland government connections with a golden opportunity.

ULTRA applies only to areas that were part of South Africa at the time of its enactment. It does not apply to homelands which were 'independent' in 1991. The Minister of Land Affairs has proposed an amendment in the General Laws Amendment Bill which will enable her to extend the Act's ambit to the four 'independent' homelands – Transkei, Bophuthatswana, Venda and Ciskei. This is specifically to provide a mechanism for transfer of land to tribes in selected areas. The proposed amendment would enable the extension of the Act by notice in the Government Gazette. It appears that, at this stage, a blanket extension is not envisaged.

The Minister has said that the policy should be implemented at the provincial

level. It is precisely at this level that the connections with the old homeland governments are strongest. In KwaZulu-Natal, for example, the policy dovetails neatly with Inkatha Freedom Party's policy position that communal land should be transferred to tribal authorities. Transfers in that province would merely complete work that had already been started by the KwaZulu homeland government before 1994.

However to the same extent that the policy of transferring land to tribes dovetails with old homeland policies, so it is anathema to many of the people who opposed the homeland system, both in the 1950s and during the UDF influenced rural uprisings of the 1980s. Most comrades from the 1980s favour individual ownership of land as a means of asserting peoples rights as South African citizens and protecting them from abuse by chiefs. Many of the former UDF leaders currently have senior positions within provincial government. There are also people from the old homeland regimes with senior positions in provincial government. It will be instructive to see how the policy directives of the Minister are interpreted and implemented at the provincial level, given the opposing perspectives of key role players and the political issues at stake.

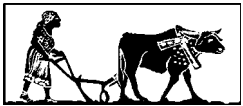


## Endnotes

1. This provision is still in force. The Act is now called the Black Administration Act and the President, as opposed to the Governor General, is now the "supreme chief".
2. For example the origin of the name of largest village, Tsimanyane is believed to be derived from the isiNdebele name *Kunzima-nyana*, 'hard life', and the name of Mohlalaotwane from the isiNdebele phrase for 'living alone'.
3. The Stubbs Commission reported in 1918 that 'the bushveld farms are

owned by absentees and are used as reservoirs of labour for the highveld' (Morrel 1986:390).

4. Nebo is comprised of 105 farms altogether, occupied by 12 different tribes and various individual purchasers. The average number of farms occupied by a tribe would be about seven, as opposed to the 22 allocated to the 'Matlala tribe'.
5. Present-day 'tribal authorities' are governed by the same legislation as the 'bantu authorities' legislation introduced in the 1950s, with only this small name change.
6. The Transvaal was one of four provinces of South Africa before 1994. In 1994 the area referred to as Northern Transvaal became a new province, now called the Northern Province.
7. 'Betterment' was a government-imposed response to control land degradation in the overcrowded homelands. Land use was controlled in 'betterment' areas by designating arable, residential and grazing land, limiting the number of livestock which could be kept there, and limiting the amount of land which could be ploughed. Cattle culling was also practised under betterment (Yawitch 1981:11-12).
8. 'Bothma's chiefs'.
9. It is instructive that by 1994 the name of the 'tribe' was the 'Matlala tribe'. This is the official name registered on the title deeds. In the 1950s government ethnologists had justified the move from Sekhukhuneland on the basis that the Maseremule grouping was historically different from the Bapedi. They had said they formed part of separate 'Bakone' nation. When Maseremule's tribal authority was defined in 1957 it was described as a 'Bantu Tribal Authority for the Kone tribe under Chief Frank Maserumule'. By 1994 the 'Kone tribe' was no longer mentioned; it had become known as the Matlala tribe.
10. The addition of Ongezien, Boschhoek



and Nooitgezien in 1994 brought the figure of Rakgwadi farms under Matlala's control to 25.

11. It was a common practice that members of tribes were required to contribute to the purchase price of land. It was also an established practice that where groups of over six African people together collected the purchase price to buy farms they were required to register the land in the name of either a chief, or a missionary regardless of whether they had any links with either. This practice was called the 'Seven Native Rule' and was strictly enforced by Native Commissioners in the early part of the century. These practices have led to innumerable disputes between the actual purchasers or contributors and the nominal owners of the land. Time and again the lists of contributors are produced to challenge the assertion by chiefs that they are the sole 'owners' of land so purchased. The conflicts arise both in situations where small groups of people were required to 'find' chiefs and where the purchase price was raised by tribal levies. In this latter situation people often challenge the chiefs power to make unilateral decisions with regard to the land, on the basis that their contributions confirm their rights as 'co-owners'. This information was provided by Durkje Gilfillan, attorney at the Legal Resources Centre in Johannesburg, September 2000. Ms Gilfillan was previously the Land Claims Commissioner for the Northern Province and Mpumalanga.
12. Examples given include Mohlotši village, Ngwalemong village and Mmotwaneng village. However, it is unclear how accurate this interpretation is.
13. Examples cited include marriages of the daughters or sisters of Matlala to Rahlagane, Masemola, Ntoane and Phokwane.
14. It was planned that the capital of

Lebowa would be built on one of the Rakgwadi farms. Layout and infrastructure plans were developed for the area that has subsequently become the site of a disputed housing project.

15. Together the three farms make up 3 374ha.
16. For example, at a meeting with the Department of Development Aid on 8 April 1987 (Documents in the National Archives, Pretoria).
17. Memorandum to the Deputy Minister, Department of Regional and Land Affairs *Oordrag van bepaalde staatsgrond aan 14 onderskeie stamme*. Reference CB 6/3/3/1/5, dated 8 February 1994.
18. Interview with Job Moloto, 27 June 2000.
19. 'The nation'.
20. See State President's minute no 539 of 18 October 1993 which applies to the '*kapteins*' of 10 tribes, one of whom is Matlala.
21. This Act is still in force today.
22. Direct translation from Afrikaans: State President's Minute No 539 of 18 October 1983.
23. Government Gazette Notice 1139 of 2 August 1957 defines the area of jurisdiction of the 'Bantu tribal

authority of the Kone tribe under Chief Frank Maseremule' includes two portions of privately owned land, namely 'The tribal portion of the farm Welgelegen no. 77, registered in the name of the Minister for Native Affairs in trust for the Maekutjo tribe Headman Petloane Matlala', and 'the Native portion of the said farm, registered in the name of Julia Pucane'.

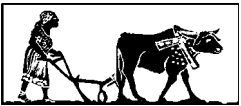
24. The trio were (and remain, with the name changed from 'Bantu' to 'Black') the Bantu Administration Act of 1927, the Bantu Authorities Act of 1951 and the Bantu Areas Land Regulations (Proclamation R188) of 1969.
25. Section 5, Black Areas Land Regulations (Proclamation R188 of 1969).
26. Section 2, Black Areas Land Regulations (Proclamation R188 of 1969).
27. It is ironic, given the content of the trio of apartheid land measures, and the history of resistance to their introduction, that organisations which represent traditional leaders, like Contralesa, are opposed to their repeal. The current legal status of traditional leaders derives in particular from the Black Authorities Act.



# Chapter 3:

## Tribal land administration in Rakgwadi: Challenges and changes

The first section of this chapter focuses on tribal systems and institutions in Rakgwadi, how they operate, and the extent to which the system relies on internal levies, contributions and participation to function. It describes various traditional institutions and arrangements, how many of these institutions and practices have changed, and how they continue to change. It indicates that there have been major improvements since the early 1980s in that residents are no longer required to contribute excessive levies and free labour on threat of eviction or serious sanction by the tribal office. The position of women has also improved in that they can participate more freely in various meetings and development processes and can acquire residential sites under certain circumstances.



**T**he second section examines reasons for the shifts and changes which have taken place in Rakgwadi, including the 1986 uprisings in the area. It posits the view that *Kgoši* Matlala had no option but to allow the changes to take place as his access to direct state and military power decreased in the changing political context of the late 1980s and early 1990s.

### 'Traditional' systems and processes of change

#### The tribal farms and the trust farms

Twenty-two farms were made available to Maseremule in 1957. Six of the farms were registered as 'held in trust' for the Matlala tribe in 1961, and the remaining 16 were owned and controlled by the SADT. The six farms were defined as 'tribal farms', officially understood to belong to the tribe.

The other farms were the property of the SADT and the people living on these farms were defined as 'tenants'. As such they had to pay yearly rents to the SADT for their residential sites, fields, grazing rights and for their animals. There are villages where these rents are still paid to the government offices at Nebo every year, despite the fact that the SADT was abolished in 1991.<sup>1</sup> Notwithstanding these differences in the legal status of the land, all 22 farms were included within the area under the jurisdiction of the Matlala Tribal Authority<sup>2</sup> and are locally referred to as 'Matlala's farms'.

At the time of the move from Sekhukhuneland the Bantu Commissioner's office at Nebo informed people that different systems applied to tribal farms and SADT farms:<sup>3</sup> because people living on SADT farms had to pay yearly rents to the government, they were

not liable to contribute various of the 'tribal' contributions levied on residents of the tribal farms. However, whilst this may have been the official position, it appears that most people living on the Rakgwadi trust farms either did not know this, or else had no choice but to contribute not only their heavy yearly rents to the government offices at Nebo,<sup>4</sup> but also to virtually all forms of tribal contribution.

Notwithstanding the fact that the system of tribal contributions applied to all 22 farms, there appear to be significant contemporary differences between the villages on the six 'tribal' farms, and those on SADT land. People living in 'SADT villages' engage in fewer 'traditional practices' than those from 'tribal' villages. Whether this is because of differences in the historical status of the land, or merely because the tribal villages are clustered together around the royal headquarters (*Mošate*), and perhaps because the *Kgoši* allocated the 'tribal' farms to groupings who were closer to him in the first place, is hard to tell.

### The *Mošate*

There are 21 villages in Rakgwadi. The *Mošate* (royal *kraal* or headquarters) is situated in a village called Ga-Matlala. *Kgoši* MM Matlala's residence or 'palace' is situated there as are the tribal offices and the *kgotla* where cases are heard.

The *Kgoši* plays the role both of chief and of headman in Ga-Matlala. In all the other villages he appoints headmen to oversee the affairs of the village. In most villages the headmen are blood relatives of the *Kgoši*. The headmen, together with other senior relatives, make up the Tribal Council which hears cases and advises the *Kgoši*.

The headmen's role in their villages includes liaising between the Tribal Council and the villagers, convening village meetings (originally attended only by adult men), resolving local disputes, receiving and investigating applications for sites and fields, referring recommended applications to the Tribal Office, and supervising and collecting various forms of tribal contributions and levies.

Other functions are carried out at the *Mošate*. In particular, disputes and cases are heard and decided, in many cases by the imposition of fines payable to the Tribal Council or damages to aggrieved parties. Important ceremonies, such as initiation (*koma*) and placating of the ancestors, are arranged from the *Mošate*. Land allocations originating from the headmen are processed at the *Mošate* and referred to government to issue 'permission to occupy' certificates (PTOs).<sup>5</sup> Registers of births, marriages, divorces and death are kept at the *Mošate* as are records of contributions made or paid by members of the tribe. The general rule is that no land allocation or tribal court application will be processed unless the application is 'paid up' in respect of tribal levies.<sup>6</sup> Nor will any such matter be processed if the person concerned is not registered as a member of the tribe. For this reason, people who do not register family information at the *Mošate* will have major problems in the event of disputes, or when they want an allocation of land

### Levies, contributions and initiation

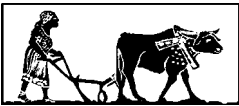
The system of levies and other contributions payable by people living under the jurisdiction of the Matlala Tribal Authority underwent dramatic changes as a result of the 1986 uprisings in Rakgwadi and Lebowa. There have also been significant changes since then and the examples cited in this report will show that contestation around these issues is ongoing. There are also significant variations between different villages within Rakgwadi.

The system, as it originally worked, required people to pay various amounts of money to the Tribal Office. The largest amount has always been the entry fee that new members have to pay in order to be admitted to the tribe and allocated a site. This amount is often referred as the 'price' paid to the chief for a stand. Because the Matlala Tribal Authority has been allocated such a large area of land, it has been able to collect large amounts of money through this levy.



Informants estimate that about 80% of the people in Rakgwadi were admitted as new members rather than as descendants of the original families who moved from Sekhukhuneland.<sup>7</sup> In the early 1960s government officials advised people from white farming areas to move to Matlala's land.<sup>8</sup> Many people came from places like Machadodorp, Ohristad, Tonteldoos and Roos Senekal. There is still a steady stream of people moving to the area and paying the entry fee. Some of these are people evicted from white farms, others are people moving from more overcrowded communal areas, and others are people moving to be nearer their jobs, for example at Matlala hospital in Tsimanyane village.

Another levy is the yearly tribal levy (currently R10 per year) that must be paid by all men who have left school. Unless you are up to date with payment of this levy, you do not qualify for a land allocation, your children cannot be initiated, you cannot take a dispute to the tribal court, and there will be disputes about whether you can be buried at Rakgwadi.



Various other levies are charged from time to time. For example, levies to cover the cost of the purchase price of a new car for the chief,<sup>9</sup> or for gravestones for royal graves, or for travelling expenses to cover the costs of ceremonies to honour the ancestors at the old graves in Sekhukhuneland. Since 1986 many people have refused to pay these levies. An example cited was that of a R3 levy imposed to pay for a tombstone for *Kgoši* Matlala's father in the early 1990s. Only people from the villages near to Ga-Matlala paid.

Even in 2000 people who apply for a site are interrogated about why they did not contribute to previous levies, for example the chief's car levy in 1976. Some people pay up at this point in order to expedite their land allocations.

### ***Koma***

There are also levies at the time of initiation (*koma*). Initiation for boys takes

place every four years, for girls it is a yearly event. All families are expected to contribute to the male initiation process, and the families who send sons are expected to pay R80 per son, plus their food costs.

For many families the initiation of boys remains an important rite of passage. A significant number of people regard the process as a test of manhood and believe that it is an important process for teaching boys to be strong, self reliant and respectful of their elders and society. As with the observance of a wide range of customs, people in the villages closer to the *Mošate* are more likely to send their sons to *koma* than families from villages like Tsimanyane which are on the outskirts of Rakgwadi. In Tsimanyane, many families have their sons circumcised at the Matlala hospital rather than run the risks of the serious infections which are associated with the initiation school. In villages such as Ga-Matlala, boys who are not circumcised in the traditional way are likely to be mocked and denigrated. There are instances where boys run away and join the initiates even when their families do not approve of the custom.

The *Kgoši* and tribal elders play a key ceremonial and magical role in the initiation ritual. In initiation years families who send their sons contribute more levies and *mothubo* (see page 25) than they ordinarily would. The reason given is that they want to safeguard their children's safety while they are in the mountains. The year 2000 was an initiation year, and informants estimate that 500–800 young men attended, compared to the estimated 1 000 youths who attended the previous *koma* in 1996.

By comparison, the initiation of girls is a low-key process. It takes place every year during school holidays and is understood to consist mainly of teaching girls proper 'womanly' behaviour and morals. It is regarded as a less important process, and fewer people send their daughters to be initiated than their sons.

### **Mothubo**

Apart from cash levies there is a system of free or tribute labour called *mothubo*. In most villages 'chief's fields' were set aside in the block of arable land. Until the mid 1980s these fields were ploughed and worked by villagers who then delivered the crop to the *Mošate*. Men were responsible for the ploughing and women worked together in work parties to tend and harvest the crops. The villagers were also required to contribute cash for buying the seed and hiring the oxen or tractor used to plough the fields.

Other forms of *mothubo* existed. Men were required to do physical tasks such as collect and deliver firewood to the *Mošate* and to assist with labour within the *Mošate* when new structures were built. Women were required to clean and cook at the *Mošate*, and annual work parties from different villages were expected to maintain the buildings and smear the courtyards with dung and mud at regular intervals.

Since the late 1980s most people have refused to provide *mothubo*. In the more isolated villages which are nearer to Ga-Matlala the process died out in stages. In those villages women contributed a yearly payment of R10 each to the *Mošate* in lieu of the labour they had previously provided. However, over time they have also stopped paying this amount. In some villages they stopped paying only a few years ago. The refusal to provide *mothubo* has been challenged by the *Kgoši* at various points. For example he sent his son to demand that villagers at Matiilo plough the chiefly fields in 1992. The villagers pointed out that they had not even ploughed their own fields and asked how they could be expected to plough the chief's fields under such circumstances.

During 2000, the *Kgoši* has called for a contribution of R10 per family to pay for laying down cement floors in the courtyards of the royal palace. The reason given is that women refuse to do the annual *mothubo* of smearing cow dung to maintain the floors and so concrete floors must be laid to obviate the need for

maintenance. In Tsimanyane people laugh about the prospects of anyone paying the levy, but in more isolated villages where people stopped paying the R10 in lieu of working in the chief's field only a couple of years ago, women may well pay.

An ever-decreasing number of women from the villages near the Ga-Matlala still assist with housework at *Mošate*. Part of the initiation process for girls is that they must provide domestic labour at the Royal Kraal over weekends. This practice continues, but apparently only initiates attend.

### **Sebego**

Various other forms of contribution were also an intrinsic part of life up until the mid-1980s. For example, any family who slaughtered a beast for a ceremony or feast was expected to deliver a hind or front quarter to the *Mošate*. Similarly, when beer was brewed for such occasions, about 20 litres was delivered to the *Mošate*. This is called *sebego*. It is no longer practised.

### **Maduma**

Migrant men were expected to take a gift of money (*maduma*) to *Mošate* when they came home on annual leave. This was an entrenched practice because the pass laws required the approval of the chief in order to renew their annual contracts. Without the gift, the approval was not forthcoming. Very few people now maintain this custom except in years when their sons are being initiated or they require some special favour from the *Mošate*.

Apart from these levies and contributions which are due to the *Mošate* directly, people also have to provide 'sweeteners' to the headmen when asking them to intervene in certain matters on their behalf. It is still common practice to provide the headman with a chicken and bottle of liquor when negotiating for the allocation of a stand. There are also examples of headmen demanding fairly substantial bribes for allocating sites.<sup>10</sup>

### **Land allocation system**

The system as it is meant to operate is as follows: A person approaches the headman



in the village for an allocation of land. The headman identifies an area<sup>11</sup> which is available and then sends the man, with a letter vouching for his credentials, to the *Mošate*. At the *Mošate* the tribal register is checked to ascertain whether or not the man is registered as a member of the tribe and whether or not he is up to date with his tribal levies (currently R10 per year for every year since he left school). All back levies must be paid to the *Mošate* before the tribal clerk will fill in and stamp a form<sup>12</sup> which is then given to the applicant to take to the magistrate at Nebo. From there the agricultural officer demarcates the site and the magistrate at Nebo fills in and provides the applicant with a Lebowa government form *Register/duplicate register of permission to occupy an allotment*.<sup>13</sup>

An applicant for land from outside the area must first approach the *Mošate* and pay an entry fee to join the tribe. This is currently R450 or R500. He or she will then be referred to the headmen of particular villages to find out what stands are available and start the ordinary application process. An applicant coming from another 'tribal' area must provide the *Mošate* with a '*trekpas*'<sup>14</sup> from the area he or she is leaving. This is a letter in which the chief from the previous area vouches for the family and releases them from his area.<sup>15</sup>

However, significant changes and variations are taking place to the system of land allocation. Women who have children can now also apply for an allocation in their own names. Until the late 1980s, this was unheard of and all allocations had to be in the name of a male relative.

Many young people cannot afford to raise the cash amount, especially those who have never paid the yearly tribal levy and those whose parents were new arrivals who had to pay the entry fee. This fee continues into the second generation, on top of which the back levies have to be paid. Thus people of 40 years of age, who are married with children, continue to live at their parents' houses or build in their parents' yards because they anticipate

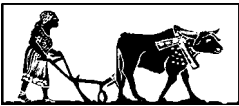
problems in acquiring sites of their own.

Nevertheless, there are various examples of people who refuse to comply with the current system managing to establish themselves on residential stands, even if they do not have 'official' rights in the form of approval from the *Mošate* or a PTO. One such example is that of Obed Malapane (see Box 1 on page 27) Malapane played an active role as a 'comrade' in the 1986 uprisings in Rakgwadi. He has also subsequently played a major role in development projects in the area, for example the Bakone Development Forum (BDF) (see page 34) and the large Flag Boshielo water reticulation scheme. He, like many of the 1986 comrades, is an active supporter of the ANC in Rakgwadi.

Malapane's story of acquiring a site despite not complying with the 'traditional' system is not an isolated one. Other members of the Rakgwadi Youth Congress burned their PTO forms in 1986. There are also comrades who applied for sites in the late 1980s notwithstanding the fact that they had not paid their levies or entry fee. They were sent to the front of the queue at the *Mošate* and their forms were processed and sent on to the government offices at Nebo, despite the fact that it was well known that they did not pay levies. The applicants explain this by saying that they were known to be influential 'comrade' leaders and they were widely known for their development work with clinics, water provision and income generation projects. They say that in the late 1980s (and even now) the tribal councillors are wary of offending them, or alienating their supporters.

Things have changed since the upheavals of the late 1980s and the system is no longer so fluid. Most of the people interviewed (both men and women) who had recently obtained sites did not pay the full amount of outstanding levies. Instead they successfully negotiated compromise payments of less than the full amount with the clerks at the *Mošate*.

Another striking factor is that all the people interviewed who obtained sites in



### Box 1: Obed Malapane's story

Malapane's parents arrived in the area in 1980 and paid a R500 joining fee to be allocated a site. Notwithstanding this payment, Malapane also had to pay a R500 joining fee to the *Mošate* and tribal levies of R40 when he wanted a site of his own in 1983. He was referred to the headman at Tsimanyane village, Moleke Matlala, and together they identified a site. However, before Malapane received the forms for this site, he discovered that it had been allocated to Elester Matlala, a relative of the headman. Malapane then identified another site with the headman which was also subsequently allocated to a relative of the headman.

The headman then identified a steep and rocky site for Malapane on the outskirts of the village. Malapane rejected this site. By this time several years had passed and he had become frustrated. Whenever he enquired about the progress of his PTO forms, he was told that they had been mislaid, or perhaps accidentally burnt.

He thus decided to occupy a well-situated stand in the prime part of the village. He bypassed the headman and went straight to an agricultural extension officer who he asked to measure the site. The extension officer agreed – this was the third site he had demarcated for Malapane, and he too thought the headman was acting unfairly. Malapane then began to build a house on the site. However, while he was still building the foundations, the headman ordered him to stop.

Malapane was a member of the Rakgwadi Youth Congress and also an office bearer of the Bakone Development Forum. He was active in various successful development initiatives in and around Tsimanyane. Various people in the village were concerned about the way he had been treated by the headman. Older residents of Tsimanyane called various village meetings and challenged the headman's decision to stop Malapane from building. These meetings were not held at the village *kgotla* but at Malapane's site. The people who attended said that if he were stopped, the headman should personally refund him for his building costs so far.

By this stage the 'comrade' uprisings of 1986 had taken hold in Tsimanyane and the balance of power in the area had shifted. The headman allowed Malapane to continue building and he finished his house. However he never obtained any PTO forms. He, like most people in Tsimanyane, has not paid his yearly tribal levy since 1986. Recently Malapane extended his yard so that he could expand his extensive vegetable garden. When the headman queried the extension, Malapane replied that the extension had been authorised by the TLC. No steps have been taken against him.



the last five years have still not obtained PTO forms. This is probably because of countrywide breakdown of the PTO system, although the *balimi* (agricultural extension officers) still demarcate sites. The quickest way of obtaining a site is to accept a used residential site. However, in certain villages, new residential areas have been 'opened' and new sites are demarcated in these 'extensions' fairly quickly. In Tsimanyane one of the new extension areas is on a site which was previously people's fields. The owners of

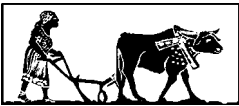
the fields received no compensation when the fields were re-defined as a residential area. The re-definition appears to have been uncontroversial, perhaps because there is very low use of fields in Tsimanyane.

One type of payment remains non-negotiable. This is the entry fee paid by 'outsiders' seeking sites in Rakgwadi. At R450–R500, it is the largest levy charged and probably constitutes a very significant proportion of the income of the Tribal Office.

### Business sites

The Transitional Local Council plays no role in the allocation of residential sites, and councillors say the reason is the lack of local government staff capacity. However, the TLC is responsible for the allocation of business sites. Nevertheless, the new arrangement does not affect the central role played by the *Mošate*, or the *Mošate's* capacity to extract financial levies from the allocation of business sites.

Previously applicants for business sites approached the *Mošate* for approval. They paid an amount of money that varied according to what kind of business was envisaged. Bottle stores and bar-lounges are the most expensive, followed by general dealers. A few years ago the amount paid to the *Mošate* to recommend a general dealer site was R250, plus a yearly renewal fee of the same amount. The *Mošate* then referred the applicant to the government offices for approval. It is generally believed that only long-time members of the tribe, and in particular those close to the chief, will be recommended.



Recently the responsibility for approving business sites was transferred to the TLC. The TLC, however, has maintained the practice of making allocations only on the recommendation of the *Mošate*. Thus the applicant must still first apply to the *Mošate*, and no doubt at this point applicants continue to pay the traditional fee for the approval of the *Mošate*.

I asked two councillors why the TLC had decided to retain this 'traditional' step in the process. One of the councillors said they had had to do this because of MM Matlala's status as a landowner. In other words, it was the direct result of the land transfers in Rakgwadi. The other councillor said that the TLC did not have the capacity to operate at a village level and therefore it had no option but to use the traditional system to draw on local information about competing claims, the trustworthiness or otherwise of the applicant, and what would be acceptable to

villagers. He gave the example of a white man who had applied for a business site in one of the villages. He said the matter had been referred to the headman in that village to call a meeting and ask people whether they would be prepared to admit the man to the community. If the headman vouched that a proper process had been followed, the TLC would process the application. This councillor (who has been locked in many serious disputes with the *Kgoši*) said it would cause 'chaos' for the TLC to approve business sites without the input of the *Kgoši* and the appropriate headman.

### Land allocation aspects of income-generating projects

In Rakgwadi virtually every village has at least one income-generating project of one kind or another, for example, brick making, bread baking, or peanut butter making. All the projects investigated in this study are composed of very poor people who are trying to make a living in the face of unemployment. The first projects were initiated by the Rural Women's Movement (RWM) and they have spread from village to village by example.

The following section shows that some projects have been crippled by fines imposed by headmen on groups because they used communal land for their projects. By contrast, there are headmen who have assisted projects with 'cheap' or flexible land allocation arrangements.

Most of the project members are women and, in many of the projects visited, the members work a full day, five days a week, in an effort to supplement their income. However, people in the projects earn pitifully little for their labour,<sup>16</sup> and in all of them the number of members has dropped to a dedicated core over time as others gave up and left the project. It appears that the projects are sustained by the tradition of 'working together' that was a feature both of *mothubo*, and the practice of work parties where people assisted one another with major tasks such as harvesting of crops.<sup>17</sup> When asked why they persevere for such

small returns, the project members often answer that they have no alternatives and that, anyway, it is better to spend one's days working together rather than suffering at home.<sup>18</sup> They also believe that, through their efforts, things will improve over time.

Members often show extraordinary dedication to the projects. For example, in the peanut butter project in Puleng village, the ten members who remain of the initial group of 30 spend five days a week kneeling down and grinding peanuts<sup>19</sup> with traditional grinding stones. On the weekends and in the evenings they tend their three-morgen peanut field.

They currently work in a cramped outbuilding at the school but, at the time of the fieldwork, had just applied for a site of their own from the *Mošate*. They paid R10 and were told they would be allocated a site. The headman has also allowed them temporary use of a well-situated and established field to grow their peanuts. This field belonged to a person who has left the village. The field cannot be allocated permanently to them because it is reserved for allocation to outsiders who may in future apply to join the tribe. Presumably such an outsider would pay the *Mosate* a hefty 'fee' for the field. A residential site fetches R450 or R500, fields are extra. The headman has allocated them an area which they can make into a field by cutting down trees and clearing shrubs. This will be a big job so they continue to use the temporary field which is beautifully maintained.

All the various 'projects' in Rakgwadi need land for their activities, whether it is a site near water to make cement blocks, or a site for bread ovens, or a place to grind peanuts and fields to grow them. Notwithstanding strong community pride in the projects, and the evident poverty of their members, there are ongoing struggles to secure land allocations for the projects. In various cases the problem can be traced to individual headmen who are corrupt or inflexible. Notwithstanding the fact that complaints about such individuals are

widely known, the *Mošate* appears to take no corrective action. One reason may be that headmen in the Northern Province, unlike chiefs such as MM Matlala, are not paid stipends or salaries by the state. It appears that they do not receive a regular income from the *Mošate* either, merely travelling costs and a share of certain fines.

### Project-related disputes

There is a strong demand for the bricks made by the **Mohlotši Brick-Making Project** which supplies cement bricks to two villages. The members approached the headman to allocate a permanent site to the project in December 1999. The headman is a self-nominated member of the project and insists on a share of the profits, even though he does not contribute in any way. Instead of the requested area, he allocated the project a disputed site where a church group (which have a PTO for the land) intend building a church. The headman is not on good terms with the church group, which is why he allocated their site to the brick-making project. The project members did not want to start a fight with the church group and so rejected the disputed site. Instead they occupied an area of their own choice. The headman then took the matter up with the *Mošate* and the project was fined R500. The women have refused to pay the fine. They are supported by the whole community who have a series of complaints against the headman. The headman in turn complains that development has been politicised by the development committees and by the youth in particular.<sup>20</sup>

The **Ikageng Community Project** at Letebejane is another brick making project. It started with 16 members in 1998. Each member was meant to contribute a joining fee of R50, but only three people could afford this. They began by making and selling tin pitchers as a way of raising the money to buy cement and brick moulds.

The group has found brick making a better proposition than tin pitcher making as it does not involve door-to-door selling and travelling costs. It has more orders



than it is able to fill. The problem has been to make enough money to buy the cement for the outstanding orders. For this reason, no profits have been distributed to members since 1998. As a result, people have left the group and only five members remain.

In February 2000 they had a backlog of orders for 17 000 bricks, some of which had been paid for in advance. The members were determined to meet their obligations to these customers and said that they hoped that they would be able to build up money in their bank account after that. They believed that with more effort they would succeed.

The crisis with the backlog of orders arose because they had been fined R510 for extending their site. This amount had cut deeply into their reserves for buying cement. They had initially consulted with the local headman before beginning the project. He had approved the initial site. However, they had subsequently extended the area and he had fined them. It is not clear whether this fine was paid over to the *Mošate* or kept by the headman. They received no receipt. The headman said that the extension officer would come to demarcate the site, but thus far he has not done so. However, the members firmly believe that, because they paid the fine, the land now belongs to them. They are building a storeroom for their implements on the extended area. Members said that they thought the fine was unfair:

*We are not outsiders, we are people from this place. He knows how we struggle and that we have no money. Maybe he should have pardoned us, or given us a smaller fine. The fine damaged the project a lot. We could not buy cement for our orders. That is how we got behind, but we had no alternative, we had to pay.*<sup>21</sup>

### **Village *kgotla* (*kgoro*) and the changing role of headmen**

The village *kgotla* (or *kgoro*) meeting has traditionally been a place where all matters affecting the village are discussed. The

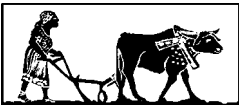
headman calls meetings, and prior to 1986 the meetings were dominated by senior men who were advisers to the headmen. Women were not allowed to speak at the meetings.

However, since the 1986 uprisings in Lebowa there have been major changes to the institution of village *kgotlas*. In many villages, those with flexible headmen, the meetings are now dominated by women and they focus on the development concerns which are raised by the women. Partly as a result of the influence of the Rural Women's Movement, but also because there are so many women's projects in Rakgwadi, women play a leadership role in many aspects of service delivery and development in the area.

In spite of these institutional changes, there are still villages (those closer to Ga-Matlala and mainly those on 'tribal' farms) where the headmen still frown on the participation of women and young people. In these villages women may attend, but seldom speak. Women complain that they are vulnerable if they speak out in front of their headmen. In particular they are concerned that if they are perceived as 'troublesome' they will suffer should cases concerning their conduct ever come before the tribal court. There is a widespread belief that the traditional court system discriminates against women in matters of domestic disputes and divorce, particularly in cases that men bring against their wives.

Such cases are referred to the *Mošate* and are decided by the royal council where village headmen are represented. The person bringing the case pays a fee of R50 to have his or her case heard. The defendants often end up being fined, or ordered to pay damages. There is a strong view that councillors side with men, especially in domestic matters brought by men against their wives. In this context women in some villages are reluctant to oppose the headman. Thus they either do not speak up, or stop attending meetings.

In the more conservative villages the headmen refer criminal matters to the vigilante group Mapogo-a-Mathamaga



rather than to the police. There is a wide spread view that *Kgoši* Matlala has close links with this group. Many local business people in Rakgwadi are members. The practice of Mapogo-a-Mathamaga is to arrive in a large group in the night and beat up people whom they believe to be criminals.

There is a perception amongst many younger people that the some of the 'stricter' headmen do not know how to run meetings properly; they do not use agendas, follow basic procedures or achieve orderly progress in addressing problems. Because women and younger people are not allowed to contribute effectively in these meetings, they have stopped attending.

In many villages the *kgotla* meetings have been effectively replaced by the 'development-oriented' meetings of water and electricity committees. These meetings are generally run by elected office bearers and there is a perception that they are more effective. Even in the villages with 'progressive' headmen who work closely with women, the parallel development meetings called by water committees and other development fora are seen to be replacing *kgotla* meetings in terms of interest and participation. In most instances the development committees inform the headman of their meetings and he attends. In very few villages do the headmen insist on convening or dominating these meetings.

### Explaining change: The shifting balance of power

As this section makes clear, there have been far reaching changes to the powers of the *Mošate* and in the lives of people in Rakgwadi over the last 15 years. Perhaps the most dramatic changes have been for women. If they have children, they can get sites in their own names; they no longer need to provide free labour on the chief's fields or at the *Mošate*. If they do not or cannot pay what used to be incessant demands for various types of levies, they need no longer fear dire and immediate

consequences. In most villages they can speak out at *kgotla* meetings and, more significantly, their contributions are respected.

Life has changed for everyone in certain important respects. There is no longer the same level of fear that families will be evicted if they offend the headman or the *Kgoši*. This is not to say that there is no fear at all – the Mmotwaneng case discussed in Chapter 4 shows that the threat of eviction is still used in some situations. However, there is more leeway in what people can do and what they are likely to be able to get away with without interference from the *Mošate*.

The shift away from the central role that village *kgotla* meetings used to play, together with the refusal of many people to provide *mothubo* or pay levies, is perceived by some as the death knell of the 'tribal' practices of old. Whether this is the case is open to question. Significant numbers of people in Rakgwadi still take their queries about services and other matters to the *Mošate* and are referred from there to the TLC. However the scale and depth of recent changes is certainly significant. The proposed causes for these changes are discussed below.

### Anti-apartheid struggles of the mid-1980s

An important factor was the resistance to homeland politics, and 'collaborating' chiefs in particular, that swept through Lebowa from 1984. This resistance formed part of the nationwide mobilisation against apartheid that was spearheaded by the United Democratic Front. The story of the 1986 uprisings in the Northern Transvaal<sup>22</sup> is too long to include in this report, and it has been well documented elsewhere.<sup>23</sup> It includes tales of running battles, assassinations, confrontations of chiefs and councillors, young men fleeing to the mountains, repressive counter attacks by the military at the request of the Lebowa Cabinet, witch burnings, trials and extraordinary levels of chaos, as well as extraordinary instances of popular mobilisation.

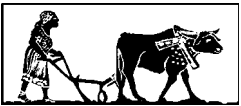


A central feature of the political upheavals of 1984 to 1986 was an attack by the comrades on the institution of *bogoši* (chieftainship). As one comrade put it:

*The chief is doing nothing for the people... but he makes our mothers contribute a lot of money while the government is paying him. He robs them by saying it is the money for this and the money for that but they are not telling us what the money is being used for. The people here are crying because the community's money is being stolen.*

(Delius 1996:188)

In Rakgwadi the youth formed the Rakgwadi Youth Congress which was affiliated to the Nebo Youth Congress, an affiliate of Northern Transvaal Youth Congress. The leader of the Nebo Youth Congress lived in Tsimanyane and was influential in mobilising support for the anti-chiefs campaign of 1986. This campaign, which targeted 'corrupt' chiefs, was prompted by the role played by certain chiefs (including Matlala) in bringing in the South African army to put down the 'rebellion'. A state of emergency was declared for the entire area.



The complaints against 'corrupt chiefs' were fairly uniform throughout the region. They included charges that tribal levies were excessive and exorbitant. A common complaint was that the money was not used for the benefit of the communities, or for the purposes for which it had been collected. In particular people were angry that money collected to improve or build schools was regularly misappropriated. There were also complaints that all schools and public buildings were named after chiefs despite their perceived lack of commitment to the schools.

People were angry that whilst chiefs earned good salaries from the Lebowa government, including salaries as Cabinet ministers in some cases, they still used the levy system to extract free labour and money from the poor. Compulsory car levies to buy Mercedes Benzes for chiefs sparked discontent at regular intervals.

Chiefs were criticised for failing to use their powers within the government to bring about development or improve services in rural areas.

Criticisms against the Lebowa homeland government for co-operating with Pretoria to deprive people of their rights as South Africans also found a local focus in the chiefs. The Lebowa homeland was structured in such a way that:

*Chiefs remained the cornerstone of local government and a dominant element in the central administration. The overlap between their areas of control and those of the various departments of state contributed to the fog that shrouded the administrative system.*

(Delius 1996:173).

People complained about the threat of eviction that hung over their heads if they challenged authority. In Rakgwadi, the 1982 example of a boy whose entire family had been evicted and fined four cattle because he fought with a teacher was still fresh in peoples' minds. There was also resentment of the way in which people, particularly women, were treated at village *kgotlas* and in cases tried by customary courts. Single mothers could not intercede to defend their children from brutal punishments for transgressions.

Dissatisfaction came to a head when young people marched on the *mošates* and made various demands. In some cases they demanded that the chiefs resign from the Lebowa government; in some they demanded that the chiefs work with democratic structures in future; in others they demanded that the chiefs leave the area forthwith. A song that was sung by comrades on their marches was:

*The time is over  
The time of the chiefs  
We will take this land.*

In Rakgwadi things came to a head when an unpopular royal councillor was ambushed and killed by comrades and his house set alight. Ngwato Matlala was the most feared man in Rakgwadi. He was the senior councillor at the *Mošate* and the

'chief whip' of the village headman. As such he played an influential role in deciding cases that came before the tribal court. It was widely believed that he could be bribed with cattle and money to rig the outcome of cases. He was also accused of embezzling tribal funds. In one incident he confiscated bricks that women had made to build a pre-school and used them to build his bottle store.

Ngwato Matlala was feared, not just because of the influence he exerted, but because it was widely believed that he was a powerful *ngaka* (traditional doctor). Most people in Rakgwadi believed then, and continue to believe, that there is powerful magic at the *Mošate*. The *Kgoši* is believed to have magical powers which can be used with devastating consequences against people who oppose him. It is also believed that the *Kgoši* surrounds himself with people (men and women) who have strong magical powers.

By this time the Lebowa Cabinet had signed an agreement with Pretoria to deploy troops throughout the Northern Transvaal. In many areas a contingent of soldiers was established to guard the *mošates*. *Kgoši* MM Matlala, as Minister of Finance at the time, was a signatory (and beneficiary) of the agreement.

After Ngwato Matlala was killed hundreds of young people went into hiding in the mountains. MM Matlala, who had previously relied on Ngwato Matlala as his chief *ngaka* and head councillor, now publicly distanced himself from the excesses of Ngwato Matlala. He assured the parents of the youth involved in the attack that he would obtain good legal representation for the boys if they handed themselves over. The arrangement seems to have been that they would be granted bail if they handed themselves over.

At the meetings called to address the crisis MM Matlala announced that he had been a member of the ANC Youth League in the 1950s and that he had been a friend of Oliver Tambo, Walter Sisulu and Nelson Mandela. He offered his advice to the youth on how to organise themselves and

suggested that they drop their anti-chief strategies.

Whilst there was scepticism about these pronouncements from some quarters, there were those who were grateful for the *Kgoši's* offer to assist the young men. There was also lobbying within the Youth Congress to accept the offer. Some of MM Matlala's sons (he has at least eight wives and many children) and other close relatives had joined the Youth Congress, they argued that the youth should co-operate. An arrangement was made that the community would collect bail and 54 men would hand themselves over to the police. An amount of over R54 000 was collected and paid over to Matlala. The men were granted bail and the case dragged on for three or four years. Subsequently it appears, however, that the case or the charges have been dropped. Some people are still angry that the bail was never refunded to the community, but the exact details of what transpired are difficult to establish.

By late 1986 things had quietened down in the villages. Not only was there severe repression of comrades by the armed forces and the Mbokoto vigilante group, but it was believed that the ANC leadership in exile had sent a message, via the local UDF branch, that the comrades should 'lay off' the chiefs. The instruction was to drop the 'Away with chiefs' campaign and instead focus on measures to make chiefs more accountable and less autocratic.<sup>24</sup> It was understood that the ANC in exile believed that chiefs still commanded a following in rural areas. In any event there were many areas in the Northern Province where the comrades' campaigns had spun out of control and fed into a programme of 'witch' burnings. In many villages, the excesses of the comrades meant older people greeted the state's crackdown with some relief. Rakgwadi was unusual in the Northern Province in that, apart from the murder of Ngwato Matlala, who was in any event widely feared and hated, there were relatively few witch burnings.



Despite the fact that the heyday of the comrades was over, the institutions and practices associated with chieftainship did not return to 'normal'. There was a new attitude of self-confidence and the following years saw the erosion of key customary practices. Men stopped doing *mothubo* for the *Mošate* from 1986, women stopped later and by a more gradual process. The turning point occurred around 1991/92 when women in most villages refusing to work in the chief's fields any more.

The uprisings of 1986 had dramatically shifted the balance of power between the *Mošate* and ordinary people. After 1986 the balance continued to shift, but through a different process. The main focus of change in Rakgwadi after 1986 was in relation to development projects that were initiated by community groupings outside the *Mošate*. Two institutions took the lead in this regard – the Rural Women's Movement and the Bakone Development Forum (BDF). Although some comrades played a key role in the BDF, older people also had key leadership positions. Community organisation and resistance to 'unfair' practices were no longer dominated by comrades; instead strong alliances and forms of co-operation and mutual respect were forged between young and old, men and women.

### The Bakone Development Forum

The BDF started in 1988. It was a co-operative venture between business people, professionals such as teachers and nurses, young people and ordinary community members. In its heyday it initiated agricultural projects, crèches, clinics and a large water scheme. The initial funding came from World Vision, which provided a vehicle, salaries and the funds to run an office. Other donors contributed to specific projects.

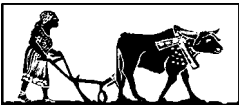
One of its biggest projects was a water scheme designed to provide clean water to all 23 villages. Because the rivers and dams around Rakgwadi are infected with bilharzia, clean water is a health priority.

The aim was to provide clean water within 200m of every household. Ground water was not an option because it is contaminated by certain minerals. Technical advice indicated that the only viable way forward was a large purification and reticulation scheme drawing on the Flag Boshielo dam which borders on Rakgwadi. The scale and expense of the project dictated that the water scheme should also serve villages in surrounding communal areas. The BDF decided to involve as many stakeholders and potential partners as possible. The Development Bank of Southern Africa (DBSA), World Vision, Lebowa Water and other agencies were co-opted into a joint process.

The BDF learnt from the DBSA that large amounts of money had been given to Lebowa in 1975 to implement just such a major water scheme in the area. They made enquiries and discovered that R21-million had been allocated to the scheme during MM Matlala's period of office as Minister of Finance. When confronted with this information, *Kgoši* Matlala explained that R3-million had been already been spent on boreholes, but the remaining R18-million was put towards the scheme.

The scheme covers a vast area, and has taken many years to implement. In time it was taken over by the Department of Water Affairs and Forestry. Most villages in Rakgwadi now have piped water available at a cost of R18 per month per family. The water flows once a week and on that day people fill up drums and other containers to meet their water requirements for the week.

A Central Water Committee, area water committees and village water committees are responsible for maintaining the system and collecting the monthly contributions from members. In some villages people contributed the money and labour to install stand pipes in every yard. In others, there are only standpipes at intervals along the street. In most villages the process has entailed a series of meetings, discussions, work parties and decisions. Water



committees are elected and receive skills training and support. In many areas they, together with electricity committees, have come to be seen as a more viable form of organisation than the village *kgotlas*.

Although the BDF ceased to operate in 1995, it was widely regarded as an effective organisation which mobilised ordinary people to take steps to improve their lives during the early 1990s. It provided training in brick laying, carpentry and community health work. People could use these skills either to get jobs, or to make a living in Rakgwadi. The BDF built three much-needed clinics in isolated villages before it began to decline.

When the BDF was established, the *Kgoši* had been offered an ex-officio position on its committee and he would send his representatives to some meetings. However by 1992, as the BDF gained in popularity, the royal councillors become concerned that the BDF posed a threat to the status of both the *Kgoši* and the *Mošate*.

There were reportedly threats on the life of the chairperson, Victor Maseremule, who also happened to be the son of a senior royal councillor. In an attempt to defuse the growing tensions, the BDF asked for a meeting at the *Mošate* to clarify their aims and objectives. At the meeting they insisted that the organisation was 'not a rival to the chief', that it had no political ambitions, and that its exclusive focus was development.

The *Kgoši* accepted that they could continue operating, but imposed certain conditions. He said that all the office bearers of the BDF must pay their outstanding tribal levies for the period since they had finished school or stopped paying. He also nominated certain people as his appointees on the committee.

Why did the BDF close down in 1995? There were internal disputes about where clinics should be sited, an amount of R30 000 could not be accounted for, and the BDF vehicle was being used for private purposes. World Vision removed the vehicle and withdrew its funding. Some

people blame the *Kgoši*; they say his appointees were the people responsible for these problems. Other people say that to apportion blame in this way is unfair; that internal problems and the beginnings of corruption were the real problems. Be that as it may, it is clear that the BDF had played a role in building initiative, self-confidence and democratic institutions at the village level.

### The Rural Women's Movement

The other organisation to play a developmental role in Rakgwadi was (and remains) the Rural Women's Movement. The movement was initiated in the area by Lydia Komape who is a resident of Tsimanyane, and who became a member of Parliament in 1994.

The RWM focuses on village-level organisation, confidence building and skills training. It has established 32 community-based projects in Rakgwadi. These include sewing and knitting, catering, candle making and communal gardening projects, not to mention the ubiquitous bread, brick and peanut butter projects described above. The leadership of the RWM in Rakgwadi is comprised mainly of poor women rather than professional or business women.

Many people in Rakgwadi now say that women form the strongest most organised grouping in their society. In some instances they have taken over the leadership role that was previously played by comrades. Training and capacity building processes take place on a regular basis.

There has been a fairly co-operative relationship between the RWM and the *Kgoši*. Requests for sites that have been made directly to the *Kgoši* have been approved. The fines that have crippled particular projects have been imposed by individual headmen and not the *Mošate*. However, the *Mošate* has not intervened to resolve such problems in favour of the women's projects, despite the fact that the disputes are common knowledge. Nor have the women 'appealed' against the

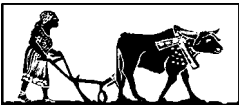


finer to the *Mošate*. They fear the repercussions that would follow 'reporting' their headmen to the *Mošate*, and they also fear the reception they would get from the councillors at the *Mošate*.

In the past women felt the greatest burden of *mothubo* because of amount of time they were required to work in the chief's fields and at the *Mošate*. They were also the people who had to juggle household expenses in order to find the money to pay the *ad hoc* levies regularly demanded by the *Mošate*. Nevertheless it was hard for women in particular villages to find the courage to stop paying the levies and to refuse to do *mothubo* because of their vulnerable status at village *kgotla* meetings and at the customary court.

### Changes to the 'economic base' of the *Mošate*

One of the reasons given<sup>25</sup> for why women stopped participating in the *mothubo* was that the rationale for the old system had steadily eroded over time and people no longer felt that it was appropriate or fair that they should provide the same material support for the *Mošate* as before.



The rationale that had informed the *mothubo* system in the past was that the *Kgoši* worked for the community full time. He was always available to deal with crisis, settle disputes and advance the interests of the tribe. In acknowledgement and appreciation of his efforts, the tribe had a reciprocal obligation to support him materially so that he could continue to play his important role. This included ensuring the tribe survived during periods of crisis and that destitute people were cared for. To this end the harvest from the chiefs fields was collected at the *Mošate* so that the *Kgoši* could dispense it to those in need, as and when necessary.

Visitors to the area, or travellers who were stranded on their way to somewhere else were referred to the *Mošate*. At the *Mošate* they would be given food and a place to sleep. Because the hospitality provided by the *Mošate* was provided on behalf of the tribe, the tribe was under a

duty to contribute food and beer and to provide the labour to cook and clean at the *Mošate*.

However, the rationale for the system fell away when *Kgoši* Matlala became a full time employee of the Lebowa government. On the one hand he was never at home and so could not fulfil his obligations to the tribe, including the day-to-day functions of resolving disputes and hearing cases. On the other hand, he received a substantial salary from government. The harvest from the chief's field was no longer distributed to destitute members of the tribe. Furthermore, times were changing and travellers with cars were less likely to be stranded and require assistance.

Thus reciprocal obligations and duties which had sustained the system had undergone a fundamental shift. Women asked why they should provide free labour to the chief when he was never available to fulfil the needs of the tribe, and when the harvest was used by the chief's family and no longer distributed to the destitute. In any event, the *Kgoši* received a high salary and fancy cars from the Lebowa government. Changes in the system were not uniform however, and were influenced by factors such as location, history and relative development, as illustrated in Box 2 on page 37.

### Broader political changes

Dramatic changes to the political landscape at a national level also influenced the context in which the process of social and institutional change unfolded in Rakgwadi. For example, it was only after the repeal of the pass laws in 1986 that migrant workers could afford to defy the yearly *maduma* 'greeting fee' to the *Kgoši*. Before that, failure to pay the levy would have meant that their yearly labour contracts were not renewed.

With the unbanning of the ANC in 1990 people became increasingly confident that a new political dispensation was around the corner, and that it would herald the demise of the homelands and the dawn of

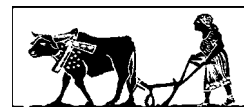
### Box 2: Influences from Tsimanyane

There were villages, for example Tsimanyane, where people stopped doing *mothubo* from as early as 1980. Once the men refused to plough fields at the *Mošate*, there was no planting, weeding and harvesting work for the women to do. The process of pulling out of *mothubo* was slower in other villages. One of the reasons that change has been more rapid at Tsimanyane may be because of its physical position. It is closer to the main road from Groblersdal, and more developed than the other villages in that the Matlala hospital is situated there and so is the big taxi rank. Various shops serve this nexus. A relatively high proportion of people are employed at the hospital, others commute to Groblerdal and Marble Hall. One gets the impression that this village is the first choice of migrant workers from Gauteng looking to obtain a stand in a relatively close by and well-serviced area. It appears to have a higher proportion of 'newcomers' 'buying' stands than other, more isolated, villages.

Another obvious difference between Tsimanyane and other more isolated villages is that in the former hardly any use is made of people's fields, or of the irrigation scheme. There appears to be a stark difference in the composition of livelihoods between Tsimanyane and other areas. In Tsimanyane income from wages forms a higher component of the livelihoods of most people, while in other areas agricultural production plays a greater role.

There is also the fact that Tsimanyane was never a tribal farm.<sup>26</sup> It may well also be that people living in Tsimanyane are more likely to have been exposed to unions and city-based political organisations than people in more rurally based villages.

Whatever the reasons, social changes often appear to begin earlier in Tsimanyane. For example, people in Tsimanyane stopped paying the yearly 'trust rents' to the SADT between 1986 and 1992. In more isolated villages people still deliver the 'rents' to the government offices at Nebo despite the fact that the SADT was abolished in 1991. People from Tsimanyane have also played influential leadership roles in many of the broader processes of change in Rakgwadi. It is striking that many of the leaders in development and change from Tsimanyane are 'newcomers' who arrived in the late 1970s or early 1980s.



democracy and equality for women. This climate made people more confident that they could get away with defying rules and customs which they considered unfair and extortionist. Both older 'Congress' people from the 1950s and the 'comrades' of 1986 began to organise ANC branches in the rural areas, including in Rakgwadi. They were confident that the ANC would back both the branches and the new democratic development committees against chiefs who tried to obstruct the new structures that were springing up.

For the many chiefs who held senior positions in the Lebowa government, the changing climate threatened the continuation of their privileged access to

government resources and their future capacity to rely on the police and armed forces to enforce their power and control. Furthermore, the prominence given to democracy, equality and local organisation by the ANC and especially the UDF, did not bode well for the maintenance of certain customs and systems of control.

The Lebowa Cabinet (which was dominated by chiefs) responded to the advent of democracy in various ways. One response was to rush through a land transfer agreement with Pretoria in October 1992. In terms of the agreement, 380 000ha of land was to be transferred to Lebowa, a large portion of it to 'tribes'.<sup>27</sup> Several of the tribes were headed by chiefs

who were in the Lebowa Cabinet at the time. This was the agreement that initiated the transfer of 26 portions of land to the Matlala tribe (see Chapter 2).

Another response was a game of 'footsie-footsie' with the newly released or returned national ANC leadership. Delius (1996:206–8) describes the relationship between the Lebowa Cabinet and the national leadership of the ANC at this time. On the one hand the ANC:

*confronted the problem of how to deal with homeland based politicians and parties which had long been locked in conflict with both migrant associations and youth congresses, but which in an era of multi-party negotiations might prove important allies.*

At ANC rallies in the Northern Transvaal, Nelson Mandela insisted that prominent chiefs share the platform with him. He also made statements that chiefs had a long and proud role in the ANC and an important role to play in their communities. Some chiefs, including many who had colluded with the army and the police in the crackdowns of the 1980s, 'were quick to grasp the hand of friendship that was being offered to them'.

*In October 1990, a senior delegation from the ANC national executive committee met with the Lebowa Cabinet. Ramodike denounced civics, argued that there was little effective ANC organisation in Lebowa and intimated that he could fill this gap. Kgoši Matlala suggested that 'the ANC does not need to crack its head about organising, the chiefs are there to do the job'.*

(Delius 1996:208).

The national ANC's cordial relationship with Ramodike and other members of the Lebowa Cabinet led to tensions with the ANC's local and provincial leadership. In the end, the prospect of Ramodike becoming Premier was averted. It was during the period while these tensions between different factions within the ANC

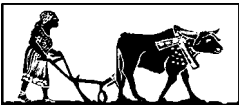
were playing themselves out, that *Kgoši Matlala* announced in various forums that he was a member of the ANC Youth League and a confidant of Oliver Tambo and Nelson Mandela.<sup>28</sup> He has repeated this claim at regular intervals since then, including at an electricity committee meeting in 1999 which was attended by Northern Province Premier Ngoako Ramathlodi.

This was the period when *Kgoši Matlala* showed a new 'flexibility' in tolerating the erosion of old customs, such as the non-payment of levies, and the refusal to perform *mothubo*. It was also in this period that he was relatively tolerant of the emergence of structures representing women and youth, and elected 'development' committees. Given the certainty that the ANC would soon be in government, he may have judged it wise not to be seen to be attacking the values of democracy, participation and equality for women. While hoping to make alliances with the ANC national leadership, he was probably aware of certain vulnerabilities at home. It would have been unfortunate for him if complaints of autocratic repression had led to a closer examination of his history, or focused attention on the 11<sup>th</sup> hour land transfer agreement with the National Party government that he was concluding at the same time.

## Implications of the post-1986 changes in Rakgwadi

The period between 1986 and 1988 saw significant changes to the 'tribal system' in Rakgwadi. A variety of interlocking factors and events contributed to an environment of relative 'liberalisation'. Some of the changes to traditional practices (particularly excessive levies, free labour and the marginalisation of women) were won by direct confrontations challenging the legitimacy of the old order. Others have come about more incrementally as society changes and new institutions and options emerge.

Many of the improvements were hard-won victories from the 1986 popular



uprisings in Lebowa. However, significant changes have continued to take place since 1986. These have come about through the actions of a broader section of society than the comrades who dominated the 1986 revolt. The Rural Women's Movement is strong in Rakgwadi and has engaged in development activities in most villages. Its activities have increased the confidence and capacity of rural woman. The Bakone Development Forum and other development initiatives have made major gains in water and service provision. The RWM and the development committees have created new democratic processes and institutions which have opened up alternative models of social organisation to the previous norm of domination by the chief and his councillors.

One of the key factors contributing to change was the loosening of *Kgoši* Matlala's grip on direct access to state power and privileged access to key resources and political influence. While he has managed to maintain a 'strategic' relationship with parts of the ANC leadership,<sup>29</sup> his current relationship with the ANC cannot be compared with his much closer and more direct relationship with the National Party and Lebowa governments in the past. Once repressive laws and police and military back-up are no longer available to enforce unpopular measures, the only way that a system structured around participation and levies can survive is if it is sufficiently legitimate.

It seems that when the Matlala Tribal Authority had the full backing of the state, it could afford to be unpopular with its 'subjects'. People who challenged the *status quo* faced unemployment, jail or eviction. Before 1986 Matlala was able to impose a system that extorted money, free labour and obedience from his 'subjects' under threat of serious sanctions against people who did not co-operate. He could, and did, expel dissenters from their homes, refused to endorse migrant labour contracts and so rendered people vulnerable to constant arrest in terms of the pass laws and call in the security forces at

any time to deal with 'troublemakers'. People had no option but to pay their levies and provide free labour if they wished to continue living in Rakgwadi.

However, the situation has changed in the post-apartheid era. Women at Rakgwadi explained that people were prepared to perform *mothubo* in the days when they could see that their contributions enabled the *Kgoši* and the *Mošate* to use the harvest for the good of the tribe. They appreciated the *Mošate*'s role in resolving disputes, sheltering travellers and representing the tribe. On this basis they accepted that it was their duty to support the chief, in order to enable him to fulfil these functions on their behalf. However their attitude changed once the *kgoši* was receiving a full time salary from Lebowa and was never at home to fulfil his role. An example they gave was that the *mothubo* harvest was no longer used for the benefit of the tribe, but to supplement the *kgoši*'s salary. However they were forced to continue with the old practices because of his government power and their fear of eviction. From the early 1990s, however, Matlala could no longer rely on the armed forces and the pass laws to extract contributions from his subjects. In order to survive as a levy-based self-financing system, the tribal authority has had to become more flexible and accommodate key changes.

Systems which do not enjoy sufficient legitimacy are unable to collect levies. Without levies, the system as a whole cannot operate effectively because the government salaries provided to chiefs and tribal secretaries are insufficient to sustain institutions such as the court and *koma*, nor can they maintain the network of headmen which is the 'ears and eyes' of the chief at the village level. It is this village level network, particularly with regard to land allocation, that is critical to the survival of the tribal system.

Unless chiefs can rely on repressive powers or state financing, they have no option but to ensure that tribal systems are responsive to basic tenets of legitimacy



and public standards concerning their usefulness and fairness. Otherwise people will simply refuse to contribute the levies and participate in the institutions that keep the system going. It has been argued that *Kgoši Matlala* has had to accommodate changes within the tribal system because he could no longer rely on coercive state power to the same extent as during the heyday of the homeland system. This explains why people managed to get away stopping the payment of certain levies and providing what had been compulsory services to the *Kgoši*. It also explains why people continue to observe some practices and make certain contributions.

The lack of viable alternative institutions to order day-to-day life leaves people with no alternative but to continue with tribal institutions. There is no equivalent village-level capacity in local government. Tribal institutions continue to receive more state financial support than local government. Nevertheless to operate effectively a degree of participation and local financial contribution is required.

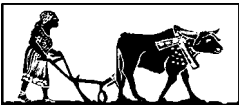
The nexus between legitimacy, levies and survival is a healthy one. It forces systems to be responsive to the changing views and needs of their members. It brings tribal systems closer to their origins as expressed in the proverb '*Kgoši ke kgoši kabatho*' (A chief is a chief by means of the people). However, once this nexus is broken, as it was by the repressive powers given to collaborating chiefs under colonialism and apartheid, then the institution of *bogoši* need no longer be responsive to its 'subjects'.

The next chapter will show that the honeymoon is ending. It describes disputes that have arisen out of the 1994 land transfers. These disputes provide a clear indication that now that *Kgoši Matlala* has managed to secure title to much of the Rakgwadi land, he is beginning to revert to coercive practices. Just as the power of chiefs was artificially bolstered by homeland governments and apartheid, so it is bolstered by the status of 'landowner'. Traditionally a chief's power was derived

from the support of his followers. Under colonialism and apartheid, coercive laws were used to skew the system and prop up unpopular chiefs. Neither popular support nor coercive laws are necessary when chiefs are perceived to 'own' the land. When this is the case, their power shifts to that of being a feudal lord. They can decide what development may take place on the land, how to distribute its benefits, and can threaten to evict anyone who challenges them.

## Endnotes

1. For example Mmotwaneng and Matiilo. There may be other villages as well. However, in Tsimanyane which is also situated on an SADT farm, no one has paid the rents for years.
2. Notice 1139, Government Gazette, 2 August 1957.
3. Interview with a local authority councillor who refused to be named.
4. People were imprisoned for failure to pay their rents, and some died on their release. See the Mmotwaneng case study in Chapter 4.
5. 'Permission to occupy' certificates are issued in terms of the Black Land Areas Regulations (Proclamation R188) of 1969. PTOs remain the most prevalent 'official' form of land rights in communal areas. They are a relatively weak form of rights to land, as they are essentially revocable permits to *use* land. The regulations that govern them are almost certainly unconstitutional, since they discriminate on the grounds of both race and gender. However, they have not yet been legally challenged.
6. The case studies will show a number of exceptions to this rule.
7. They say the Matlalas had only four farms in Sekhukhuneland compared with the 22 they acquired in Marble Hall. Furthermore, many of the people who lived on the four farms refused to move, so the new areas were initially very sparsely populated.

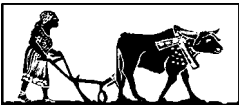


8. This was the period of Labour Tenant Control Boards and widespread farm evictions. Unlike freehold 'black spot' removals, people evicted from farms were not provided with compensatory land, they were merely evicted. They had to find their own alternatives and it was common for officials and magistrates to advise them to settle on 'black' land in the vicinity (Claasens 1991:55).
9. The last time a car levy was strictly enforced was 1976 when each family had to contribute R10. There was also a levy in 1994 but many people did not pay. In the intervening years the levy was not charged because cars were provided to Matlala by the Lebowa government.
10. An example is the case of Ras Masehla. He applied for a site in Mabitsi in 1996. The headman demanded a bribe in order to allocate him a site. He refused to pay and was referred to another village, Seriting, by the clerks at the Tribal Office. In Seriting he was allocated a used residential site. Four years later he has still not received any PTO or forms to confirm his rights.
11. All the informants interviewed said that the headman does this himself, without calling any village meeting or consulting neighbours. I repeatedly queried this because in other parts of South Africa the headman calls a meeting and consults with neighbours before identifying a stand. I came across only two cases where village meetings were called. In both cases the meetings were called to challenge the headman's refusal to approve a stand, in one case to a woman's project and in another to a 'comrade'. In both cases the village meeting constituted itself as a *kgotla* and insisted that the headman desist from obstructing the applicant's use of the stand. While these meetings were successful in that the applicant was able to continue occupying the stand, in neither case did the applicant receive formalised or 'official' approval of allocation.
12. The form is headed *Application for land and residential site*. It includes sections on local tax paid, tribal levies paid (four categories), recommendation of headman, recommendation of *Kgoši*, recommendation of agricultural officer, recommendation of sectional head: development, and, finally the approval or refusal of the magistrate.
13. It is not clear whether the magistrate at Nebo is still issuing PTO forms. The most recent PTO form I saw was dated August 1996 (Government of Lebowa!). Recent applicants describe long delays in getting their PTO forms and so occupy the sites in the interim. It is not clear whether the 'delays' mean that the official system of issuing PTOs has, in fact, ground to a halt in this part of the Northern Province. The easiest sites to get appear to be re-allocated sites. Other sites have first to be demarcated by the agricultural officer.
14. Letters of eviction from farms are also often headed '*trekpas*'. This comes from the period when it was illegal for black families to transport their cattle and belongings from one rural area to another, unless they could produce a *trekpas* 'releasing' them from one farm on the way to another. Failure to produce a *trekpas* led to immediate arrest. It is not known whether the many evicted farm workers who apply for sites in Rakgwadi also have to produce a *trekpas* from farmers, or whether this applies only to people moving from other tribal areas.
15. Mrs Mojalefa had to pay R250 for her *trekpas* issued by a Mpumalanga chief and R500 for her site at Rakgwadi.
16. The Ikageng Brick project at Letebejane has yet to distribute any profits to its members since it started operating in 1998. The Puleng peanut butter project has only distributed profits to members once after two



years. This was R50 to each member at Christmas time. However they bank income and use it for attending meetings and workshops, as well as 'growing' the project. The Matiilo bakery project has never made a profit; it is subsidised by the sale of brooms. This is not to say that the projects generate no returns, the money they make is kept in savings accounts and ploughed back into the projects.

17. Many informants ascribe the demise of the previous strong tradition of 'work parties' to the decrease in the use of family fields over the last 15 years. See Chapter 5 for more discussion on the decrease in agricultural activity.
18. For example, the Matiilo Bread making project which has 20 members. Every day they bake bread in the mud oven they have built in a central area of the village. They make no profits, they bake for their own families and every member buys her bread from the project. The members first started a communal garden project, but this failed because of drought. Then they changed to bread making. Members make and sell brooms to pay for the flour. Part of the day is spent baking bread and part of the day is spent working in their fields. Every member has a family field, for which they still pay annual SADT rents to Nebo.
19. Groundnuts.
20. Obed Malapane interview with headman Mr F Malefo and others, 29 February 2000.
21. Interview with Anika Tsoka and Martin Nkgari 11 February 2000.



22. The area which is now the Northern Province.
23. For example Chapter 5 in Delius 1996.
24. Interview with Obed Malapane and Lydia Komape, March 2000.
25. Discussion with Lydia Komape of the Rural Women's Movement at Rakgwadi, 25 August 2000.
26. Tsimanyane was not included in the 1994 transfers to the Matlala tribe. It remains registered as SADT land.
27. *Gesamentlike mediaverklaring deur Mnr J Scheepers, Adjunkminister van Grondsake en Mnr N Ramodike, Hoofminister van Lebowa, oor grond, 12 Oktober 1992.*
28. When this claim was investigated by the comrades it was 'found' that while he had attended school with various ANC leaders, he had not allied himself with them politically. On the contrary he had responded to his father's call to take over the chieftainship during the Rivonia trial and immediately begun to jockey for position as the head of the Territorial Authority that was to become Lebowa. He went directly against ANC policy in his staunch support for homeland independence.
29. Some people in Rakgwadi attribute Matlala's 'success' with the ANC to the influential role he plays with respect to surrounding chiefs, particularly the group who moved to the area around 1957. Their view is that the provincial ANC is 'careful' with him because of his large sphere of influence and not because it has any illusions as to where his sympathies lie.

# Chapter 4: Disputes arising from the land transfers

This chapter describes key disputes that have either arisen, or taken a particular form, as a direct result of the 1994 land transfers.

The disputes discussed involve the following:

- Mmotwaneng title deeds and demarcation
- Tladi/Boschhoek restitution claim
- Ga-Makgatle cattle project
- Matseding housing project and wood harvesting
- Mogaladi land invasion.

These disputes are instructive at various levels. In the first place, they show how land transfers, if not done with the informed consent of the people affected, are liable to spark conflict, even in areas that would otherwise have remained relatively stable. They also indicate that there would have been large scale opposition to the transfers had affected residents known about them in advance.

They show how, in the Rakgwadi context, land transfers to a tribe have been interpreted as transfers to the chief and how the chief has used them to bolster his own power and material position at the direct expense of the rights of the people living on the land transferred. In this context they illustrate that such land transfers are likely to undermine the rights and economic status of poor people and render them more vulnerable than they were when the land was state-owned.

The Boschhoek and Mogaladi events show how transferring land to a tribe can pre-empt the resolution of pressing counter claims by other groupings, whether claims

based on history or on need and proximity to the affected area (see Figure 3 on page 9). They point to the danger of counter claimants having no option but to turn to land invasions when faced by the finality of completed transfers.

These disputes see *Kgoši* Matlala falling back on threats to evict people, confiscate fields and burn down houses. The assets of very poor people have been impounded, local ANC MP Lydia Komape has been summoned to the *Mošate* for daring to assist restitution claimants, and mysterious fires have burned the grazing land of people whom he had previously threatened. There are also strong rumours that he has given up on the ANC and opened negotiations with the United Democratic Movement.

These recent events indicate that *Kgoši* Matlala is no longer concerned with carefully balancing issues of local legitimacy and political acceptability. It is argued that he is using the tribal title to the land as a means of independent control which enables him to revert to his previously autocratic style of operating.

*Kgoši* Matlala has used the transfer of title paradigm to import Western notions of exclusive ownership and absolute decision-making powers into the communal context. He has taken on the mantle of a private landowner and treats the members of the tribe as tenants or serfs rather than as co-owners of the land.



The relative independence that was so hard-won by ordinary people through political and developmental challenges has been compromised by the transfer of title. Their land rights, whether derived from PTOs, decades of being 'trust tenants' or simply long-term occupation of family plots and fields, are now vulnerable to Matlala's assertion that he, as landowner, will decide who may or may not live on the land.

### The Mmotwaneng title deed dispute

During 1999 the Mmotwaneng community had become steadily more frustrated by a series of interventions by the tribal clerks at the *Mošate* which they perceived as undermining the authority of their headman (*Ntona*) and village council. They had referred various matters to the *Kgoši* Matlala in the hope that he would resolve disputes with neighbouring villages and decide key internal cases involving land allocation disputes. However, there had been long delays and the problems were not addressed.



On 4 January 2000, two busloads and several minibuses of people from Mmotwaneng village arrived at the *Mošate*. When the vehicles reached Ga-Matlala village, the passengers alighted and marched to the *Mošate*. They asked to see *Kgoši* Matlala. They said that they had various grievances which they needed to resolve with him. They were told that the *Kgoši* was not present that day. They had no option but to deliver the memorandum they had prepared to a senior councillor of the *Mošate*. Once the memorandum (Box 3 on page 45) had been handed over, the people got back into the buses and returned home.

### The title deeds

Matters came to a head when *Kgoši* Matlala visited Mmotwaneng in October 1999 and announced that he had the title deeds to Mmotwaneng. He said that the villagers need no longer pay the yearly SADT rents to the government offices in Nebo, as the SADT was no longer the

owner of the land. He also said that he would not be charging people any rent.

People were dumbfounded. Initially they did not believe the information. They went to the magistrate's offices at Nebo and asked whether there had been any change to the system of paying SADT rents. The agricultural officers (to whom they had always paid the rents) said that they had received no documents announcing a change in the system, and therefore they advised people to continue paying.

People are continuing to pay. They do so because they say their rents prove that the Mmotwaneng farms are theirs, and cannot belong to the *Kgoši*. (Point 9 of the memorandum)

Point 1.1 of the memorandum refers to the fact that the parents and grandparents of the Mmotwaneng villagers, like other members of that section of the Kone tribe under Matlala's ancestors, had all been required to contribute to the purchase price of the original Sekhukhuneland farms.<sup>1</sup> Members of the tribe had been required to contribute £10 per family, or a beast. Most of the purchases took place between 1936 and 1938. The Rakgwadi farms were meant to be an exchange for the farms that the group left behind at Jane Furse.

Having made contributions at various times to buy farms for the tribe, the Mmotwaneng villagers were outraged to discover in 1958 that the *Kgoši* had sited their village on a 'SADT farm' and thereby reduced their status from land owners to tenants. Moreover, trust farms were patrolled by government 'rangers' who implemented the 'betterment' policy of strict restrictions on numbers of cattle, and collected 'rents' for residential sites, fields and animals. The rents are relatively low today, R2 per year for a residential site. However, in 1957 the residential rent was £1, and worth a great deal more. Many people could not afford to pay the annual rents, which included a much higher amount for fields and a yearly levy on all stock and animals, including chickens and dogs.

**Box 3: Memorandum submitted by Mmotwaneng village to Kgoši Matlala**

**MEMORANDUM**

**TO: KGOŠI M.M. MATLALA COMMUNITY**

**FROM: MMOTWANENG**

**DATE: 04 JANUARY 2000**

*As we have made incessant please [sic] to the Kgoši beseeching him to address the plight of Mmotwaneng Community, and noticing that he is leaving us in the lurch, we are bound to forward our grievances in the form of a memorandum and a march. These entail the following DEMANDS that need to be responded to with immediate effect:*

*1. We are not prepared to allow Kgoši to claim the title deeds for us, to be his, we are here to demand them today.*

*In this regard, Kgoši must remember the following:*

*1.1 We are also responsible for the buying of Mohlalaotwane and other farms. We were denied the residence of these farms but instead we were sold to the apartheid regime by renting both Welkom and Boekenhoutlaagte farms.*

*1.2 We have rented these two farms (Welkom and Boekenhoutlaagte) for 42 years, we therefore demand the title deeds for them.*

*1.3 We were even jailed in 1969 because we were not affording to pay for the rent. Some of us remained in custody and eventually suffered death.*

*1.4 As Kgoši you were silent.*

*1.5 As community (Mmotwaneng) we are saying this is enough.*

*2. The problem of authority in our community is a real one and needs very careful attention.*

*We therefore demand that Kgoši should stop undermining Ntona.*

*3. As Mmotwaneng Community, we are so marginalised by both Kgoši and the government.*

*This must come to a halt.*

*4. The tribal clerk, Mrs Mashoeshoe/Mogashoa is misusing her powers. Instead of helping our people, she is robbing them. This was evidenced in the Molala vs Mogashoa case. We are not going to allow her to ignore and disregard the protocol. She also subverts our Ntona. We demand that she should be removed from office and replaced by a responsible clerk. See attached letter written by her.*

*5. Mr. Mogashoa, the husband of our tribal clerk owes us an apology. He has rebuked our Kgoro and Ntona. He must come to apologise.*

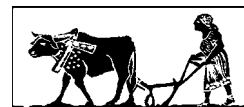
*6. The pending cases involving members of our community should be resolved very soon.*

**The referred cases are:**

*6.1 Malata – Machipa's case*

*6.2 Mogosoane – Manasoe's case*

*6.3 Molala – Mogoshoa's case*

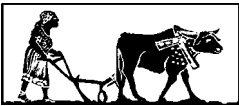


7. *The demarcation between Mmotwaneng and Vaalbank should be revived and be clear immediately.*
8. *Since our Kgoši has asked our community to allow Vaalbank people to join us in our schools, since they were unable to build theirs by then, we are saying Kgoši must now make them aware of this and Kgoši must also tell that we are terminating our relationship with them.*
9. *Kgoši said that this payment for "Molimi" has been repealed "As we are the ones paying, we demand that you furnish us with the documentary proof. We want to keep that document ourselves, do not keep it from us".*
10. *The venue for the cases involving our members should be Mmotwaneng and the stakeholders in these cases should be the Kgoši, this Council, our Ntona, the village Council (Mmotwaneng) those involved in the cases, their friends and interested members of community (Mmotwaneng)*
11. *We have contributed to the building of Mokoneamabula High School. Kgoši has distanced himself from the development of Nyanne and Manyaku schools. Manyaku is named after the "mother of nation" but it is a ruin. We therefore demand that the Queen and Kgoši help in developing Manyaku- otherwise we shall have no alternative but to change the name because the Queen is clean and the school should be clean to depict or portray her.*
12. *Finally, we are saying our Kgoši should respond within \_\_\_\_\_ days starting from today.*

*PS:*

*Over and above these, we are still committed to obey Kgoši as our traditional leader especially in the following instances:*

1. *Koma*
2. *Dispute resolution of civil and criminal cases*
3. *And all matters that are his because of tradition*



As stated in the memorandum (Point 1.3) people were jailed for failure to pay SADT rents. The people who were jailed were mainly very poor women. The conditions in jail were bad. Two women died shortly after being released from jail. Selby Masha says that his mother used to tell him the story of how he saved her from jail. One day a ranger came to arrest her because she was behind with the rent. However, he took pity on her because she had a small baby on her back. The baby was Selby. The anger told her to run away and not come home for several days, and never to mention that he had spoken to her.<sup>2</sup>

Leaders from the community<sup>3</sup> point to the fact that government is currently transferring ownership of township houses to long-time residents who have paid rent

for decades in recognition of the fact that their rents would ordinarily have paid off the houses, were it not for racial restrictions which prohibited black people from being landowners. They insist that, as trust tenants for more than 42 years, they are entitled to ownership on the same basis (Point 1.2 of the Memorandum):

*We want our own individual land rights. We don't mind Matlala being our chief, but each man or woman must have their own land rights. We want to feel that we are South Africans and that we are entitled to the benefits of being South African citizens. As South Africans we are entitled to have rights to our land. The current system dispossesses us and works for the benefit of one*

*man. Matlala says we don't have to pay rent under the new system, yet in practice if you want to open a shop, you have to pay him R200. If you want a residential site you have to be up to date with your tribal levies. And you have to go via him. Now lately the Mošate is interfering in land allocation in Mmotwaneng. Instead of allocations being referred from our Ntona to the Mošate, the Mošate is now allocating our land to outsiders. There is no consultations with us about these allocations, people just arrive, saying they are sent by the Kgoši.<sup>4</sup>*

### **Disputes over the authority to allocate land and the undermining of the Ntona**

Points 2-6 of the Memorandum refer to a series of disputes over the authority to allocate land are perceived as an unprecedented interference by the *Kgoši* in the integrity of the land rights of the Mmotwaneng community. The allocations are also perceived as an attempt to undermine the authority of the Mmotwaneng *Ntona* (headman) and thereby of the village council.

Mmotwaneng is unusual amongst the villages in Rakgwadi in that it has an active and participatory village council. Historically the Mmotwaneng community formed part of the Bataung tribe. However, during the Difaqane they joined the Bakone and so contributed to the land purchases in the 1930s, and they moved with the Bakone tribe in 1957.

Because of their history, their *Ntona* is not a blood relative of *Kgoši* Matlala. He, in common with all other headmen in Rakgwadi, was appointed by Matlala directly, but he is an 'ordinary villager, not from the chief's *kraal*'. People interviewed from Mmotwaneng say that it is easier for them to speak freely at meetings, 'unlike other villages where the *kgotla* is full of blood relatives of the *Kgoši*':

*Thus we managed to make a village council to advise Ntona. We consulted all the kgoros of the village and each selected a representative to be on the Ntona's*

*council. We have a strong council and we have managed to strengthen our Ntona.<sup>5</sup>*

The petitioners believe that the *Kgoši* is neglecting his duties because he has failed to hear cases referred by the village council and the *Ntona*. More seriously the *Mošate* had intervened 'unfairly' to allocate Mmotwaneng land to 'outsiders' from other villages. The memorandum also mentions three specific dispute cases (Points 4-6), which are expanded upon in Box 4 on page 48.

### **The Mmotwaneng-Vaalbank demarcation dispute**

Point 7 of the memorandum refers to the demarcation between Mmotwaneng and Vaalbank. There is a fenced agricultural area between Mmotwaneng and Vaalbank villages. The area had originally been grazing land, but in 1984 agricultural officials fenced the area as ploughing land for the *Kgoši* and some of his 'close associates'.<sup>6</sup> For two years the *Kgoši* and his associates benefited from the crops from this land. Villagers from Mmotwaneng and Vaalbank were required to perform *mothubo* on the fields and deliver the crop to the *Mošate*. However after the riots of 1986 men refused to do *mothubo* and so the area was not ploughed. Another reason it was left fallow was that there had been a high incidence of theft from the fields. Local people were dissatisfied that land so close to them should be used for the benefit of people 'from far away'.

In the early 1990s a dispute arose between Vaalbank and Mmotwaneng about which village could use this land. Initially the *Kgoši* favoured the Mmotwaneng people, in fact at the same October 1999 meeting when he told people to stop paying the SADT rents, he encouraged the Mmotwaneng villagers to go and plough the area themselves. However, after the January 2000 march, he allocated the area to Vaalbank village.

A visit to the Mmotwaneng fields found that virtually all the fields had been ploughed, planted and reaped in 2000.



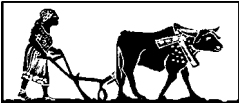
#### Box 4: Disputed cases

##### *Molala v Mogoshoa*

There are two versions of this case. According to the Mmotwaneng leaders, Mr Molala, a resident of Mmotwaneng, was allocated a field by the *Ntona*. The same field was allocated, however, to Mr Mogoshoa by the *Kgoši*. Mr Mogoshoa is the husband of the tribal clerk at the *Mošate*. He and his wife live at Tsimanyane village, which is far from Mmotwaneng. Their version is that for an outsider to be allocated a field is unfair; it happened through nepotism because he is the husband of the tribal clerk at the *Mošate*. The clerk was rude and abusive to the *Ntona* about this (and other) matters.

Mr Mogoshoa has a different version of the case. He says that his parents went to live in Mmotwaneng village in about 1990. They were newcomers and so had to pay a 'welcome fee' (*nthole*) of R450. They also paid 'greeting fees' (*maduma*) of R50. These amounts were paid to the *Mošate*. They were allocated a residential stand and a ploughing field which Mr Mogoshoa inherited after his parents' death. In 1996 Mogoshoa decided to move to Tsimanyane, he 'sold' his site at Mmotwaneng to Mr Molala. Since there are no fields at Tsimanyane, he retained his field for himself. To his surprise, Mr Molala's sister then prepared the field for ploughing. When Mogoshoa took this up with Molala, Molala referred him to the *Ntona*, Mr Mogašana. The *Ntona* said that Mr Mogoshoa had relinquished the field by moving away from the area.

In this context Mr. Mogoshoa opened a case at the *Mošate*. The claimants were called to the *Mošate*, and the case was decided in favour of Mr Mogoshoa. The reason given was that Mr Mogoshoa had the only documentary proof (a PTO) relating to the site. Mr Molala's sister, a widow, referred the case back to the village council. The village council decided that the case had been unfairly dealt with at the *Mošate*, because of Mr. Mogoshoa's marriage to a tribal clerk at the *Mošate*.



##### *Mogosoane v Manasoe*

Mr Mogosoane from Mmotwaneng was allocated a field by the *Ntona* in the ordinary way. However, Mr Manasoe went to the *Kgoši* and claimed the field. Manasoe is a resident of Goru village who has a business at Mohlalaotwane. The *Ntona* reported a dispute to the *Mošate*. The claimants were advised to go to the field on an appointed day and wait for the *Kgoši* to arrive and resolve the dispute *in situ*. They, together with the *Ntona*, waited the whole day. However, the *Kgoši* neither arrived nor sent any explanation. That night Mr Manasoe went to Mogosoane's house and threatened him with a gun. This 'assault' was also reported to the *Kgoši*, but no follow up action has taken place.

##### *Malata v Machipa*

This case does not involve land allocation, it is an internal dispute concerning damage caused by a cow. Mr Malata's cow was roaming the village. He was advised by his brother that he should fetch his cow before it was stolen or before it damaged someone's property, but he did not respond quickly. In the meantime the cow went into Mr Machipa's field and ate his crops. Machipa claimed compensation against Malata, but Malata took the cow and refused to pay compensation. Machipa took the case to the *Ntona*, who deliberated on the matter, and referred it to the *Kgoši*. The *Kgoši* has never set a date for the case.

The complaint by the Mmotwaneng community about both *Malata v Machipa*, and *Mogasoane v Manasoe* is that the *Kgoši* is neglecting to fulfil his obligation to hear cases and settle disputes and thereby to maintain harmonious relations within the tribe. The more serious complaint relating to both the *Molala v Mogoshoa* and the *Mogasoane v Manasoe* matter, is that the *Mošate* is abusing its authority by allocating Mmotwaneng land to outsiders, and in the process depriving Mmotwaneng people of their rights and undermining the customary role of the *Ntona* in the land allocation process.

This is strikingly different from the situation in some other villages, Tsimanyane for example. The evident importance of cropping explains why disputes about access to ploughing land are central to unfolding events at Mmotwaneng and appear less important in other parts of Rakgwadi.

#### Disputes with Vaalbank village over schools

Point 8 in the memorandum relates to the fact that Vaalbank and Mmotwaneng share

certain schools. The Mmotwaneng version is that the Vaalbank community did not have the resources to build their own schools and that the *Kgoši*, therefore, requested Mmotwaneng to share schools with Vaalbank. The request was accommodated but at some cost: the schools had to be sited between the two villages, which means children from both villages have to walk some distance to school. Both villages contributed to building costs.

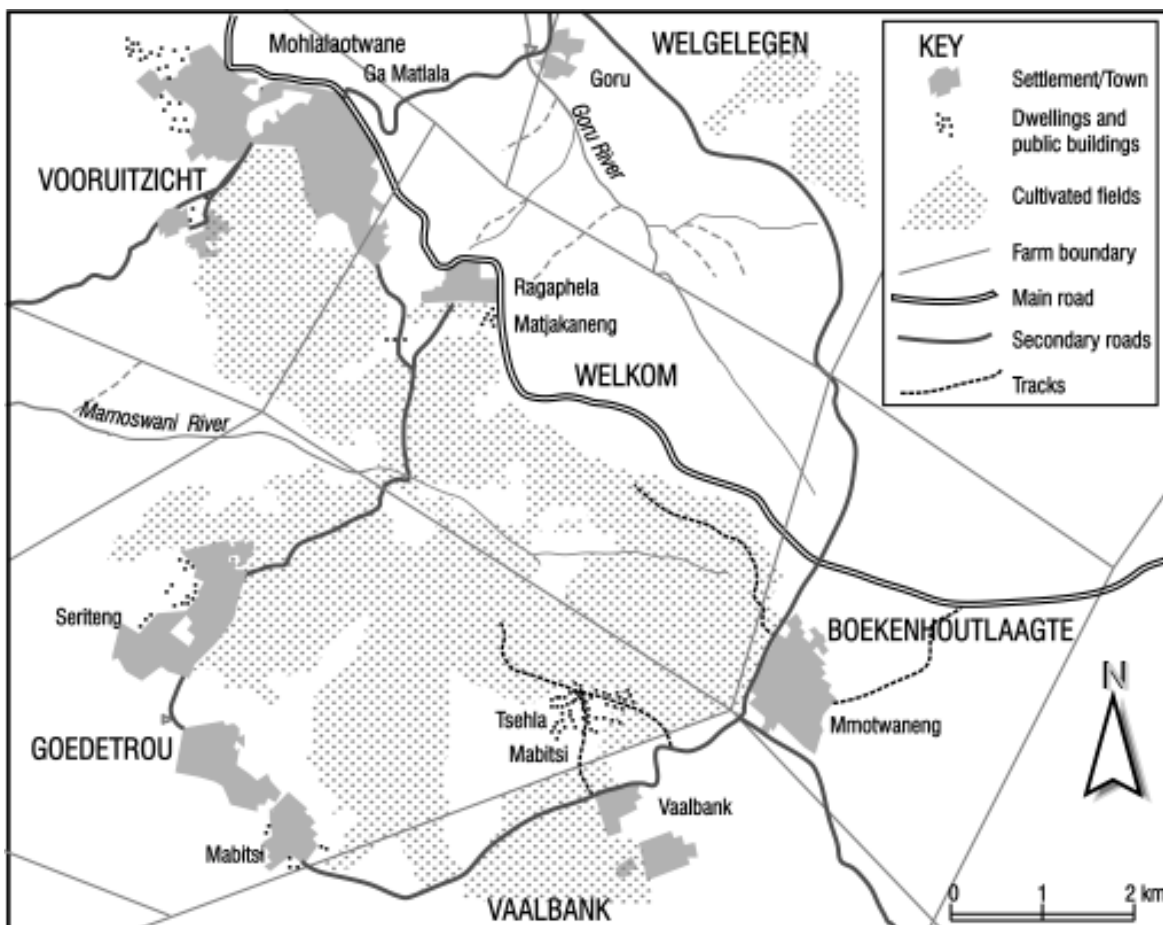


Figure 4: Mmotwaneng village and surrounds

Vaalbank subsequently established its own separate primary school. When the Mmotwaneng community tried to use some of the vacated primary school classrooms as a crèche, the Vaalbank headman arrived at the crèche's opening party and kicked over the cooking pots. He said that Mmotwaneng was not allowed to use the empty part of the school as a crèche.

The Vaalbank headman allegedly refuses to allow any contributions by Vaalbank to the shared high school or to allow Mmotwaneng to develop the primary school.

### Payments to the *molemi*

Point 9 of the memorandum refers to the payment to the *molemi*. The *molemi* is the agricultural official to whom the SADT rents are paid. The issue here is that people want access to accurate information concerning the changes announced by the *Kgoši* so that they will be in a better position to respond. The people I interviewed were sceptical as to whether there had really been any changes to the status of the land. They poured over the deeds office print outs I showed them and asked for copies. Because they had not been provided with accurate information, they believed that the *Kgoši* had been given the title deeds to their farms, and that the problem would be solved if he agreed to hand these over to them. That was the purpose of the march: to demand that he hand over their title deeds.

I pointed out that the deeds office information showed that the farm Boekenhoutlaagte on which Mmotwaneng village is built had not in fact been included in the 1994 transfers and remained registered as SADT land. However, the adjacent farm Welkom, on which their fields are situated, was transferred to the Matlala tribe in 1994. They were extremely interested in this information; they said it explained why Matlala had told them that even if they kept their village, they would starve without their fields. He had said this when

he was berating them for having participated in the march. At the time they were perplexed as to why he had differentiated between the village and the fields, because the context was a threat of general expulsion.

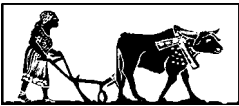
### Maintenance of the schools

Point 11 of the memorandum refers to problems with the proper maintenance of the schools and infers neglect on the part of the *Mošate* despite the fact that the Manyaku School is named after the queen. The background problem is that the school building funds of all 23 villages are collected and held at the *Mošate*. There is a deep concern that the funds are 'eaten' at the *Mošate*, instead of being used to maintain or improve the schools.

### Independent land rights within a tribal system?

The postscript to the memorandum states that the Mmotwaneng community is still prepared to obey the *Kgoši* as 'our traditional leader' and specifically refers to *koma*, dispute resolution and 'tradition'. The people interviewed said they were not opposing the tribal system, all they wanted were independent land rights. They said they were still hopeful that they would get their agricultural PTOs upgraded into title deeds because of recent radio reports in which the MEC<sup>7</sup> for Land and Agriculture Aaron Motsoaledi had announced that the government intended to use the Sectional Titles Act to upgrade PTOs into freehold title.

In fact the Lebowa Land Transfer Technical Committee report contains a section which states: 'The transfer of land to the Tribal Authorities was made conditional on the further transfer thereof to individuals occupying the land as holders of PTO certificates'. This sentence holds out hope for the Mmotwaneng community. However I have not managed to trace the legal source of this 'conditionality'. It is not in ULTRA and is not reflected on title deeds of the transferred properties. Unless it can be traced to some legally competent instrument, it cannot be enforced.



The 'radio statements' attributed to Motsoaledi do not hold out much hope. The Sectional Titles Act applies only to the ownership of portions of buildings and imposes a body corporate and complex requirements. Sectional title cannot apply to fields and individual residential sites.

The reasons respondents from Mmotwaneng village gave for wanting independent land rights were:

1. *In order to qualify for loans*
2. *In order to qualify for the housing subsidy*
3. *In order to have the freedom to express ourselves, and*
4. *We are not secured the way we live at the moment.*<sup>8</sup>

The repercussions of the January 2000 march have shown this last concern to be well-founded.

### Events after the march

The march took place on 4 January 2000. News of the Mmotwaneng community's audacity spread through Ragkwadi like wild fire and people waited with bated breath to see how the *Kgoši* would respond. It is widely believed that he was, in fact, at the *Mošate* that day, and that the marchers were told he was not present because it would have been beneath his dignity to meet with them under such circumstances.

The next public holiday was 21 March and the *Kgoši* called a *pitso* (general meeting) at the *Mošate* on that day so that the 'tribe' could decide how to deal with the 'insults' of the Mmotwaneng community. A public holiday was chosen so that migrant workers could be present. Representatives from Mmotwaneng were neither invited nor allowed to attend the meeting. The meeting was well attended by several hundred men.<sup>9</sup>

Feelings ran high at the meeting. People expressed the view that the Mmotwaneng community had insulted the dignity of the *Kgoši*. They also said the problems at Mmotwaneng were caused by 'migrants and intellectuals'. In particular, they identified people whom they believed had

drafted the memorandum. A group of people proposed that those present at the meeting should go and attack Mmotwaneng village forthwith.

*Kgoši* Matlala intervened at this point to say that such an attack would lead to bloodshed. He advised the meeting that if there were bloodshed he was likely to be arrested, and the tribe would suffer shame as a result. He proposed that instead of an attack, the Mmotwaneng community must be called to the *Mošate* and rebuked by the tribe as a whole.

Accordingly on 2 April, another big meeting was called at the *Mošate*. This time the Mmotwaneng community was summoned to attend and was 'rebuked' by representatives from the 23 other villages. At the meeting<sup>10</sup> Matlala said 'Your fields belong to me. From this year I will re-allocate them to the Mhohlaotwane and Vooruitzicht villages'. He also targeted the old people with his threats. He tried to drive a wedge between them and the others by saying that he knew that teachers had misled them:

*It's OK for the teachers, they can go and buy themselves other houses in locations like Leeuwfontein. But where will you old people get money to buy yourselves houses at this stage of your life?*

He reminded them that he had previously successfully evicted a royal councillor, despite the fact that the councillor had tried to challenge the eviction in court. The villagers were afraid because they remembered that many people had contributed to the legal fees for the councillor, but to no avail. They were especially afraid because Matlala said that if he had had no qualms in evicting his own brother, why should he hesitate to evict 'foreigners' who had insulted him?

Many of the older Mmotwaneng people were shaken by the mood of the meeting, and the threats that had been expressed there. People began to be afraid to associate themselves with the 'secessionists'. The *Mošate* also sent tribal councillors to start 'organising amongst the



villagers'. Since many of the Mmotwaneng leaders are migrants who return home infrequently and teachers posted to other areas, the day-to-day mood in the village began to shift to one of fear and acquiescence.

On 4 June 2000, the Mmotwaneng community was again called to the *Mošate*,<sup>11</sup> this time for a disciplinary hearing. People identified as 'leaders' were made to stand in the sun for the whole day, with no water or food and no chance to relieve themselves. The Mmotwaneng people were told that anyone who demanded the title deeds would be expelled from 'Matlala's farms'. They were also told that people who participated in meetings at Mmotwaneng would be arrested. Various councillors told those whom they had identified as leaders that 'they deserved to die' for the disrespect they had shown the *Kgoši*. They also warned them that 'anything could happen to them at any time'.

The Mmotwaneng community was fined R600 for the disrespect they had shown the *Kgoši*. Some people were so terrified that they apologised there and then. Some of the old people collected R300 and paid it as the first instalment of the fine.

The Mmotwaneng leaders lay low for some months. They believe that their lives are in danger. In June one of them<sup>12</sup> quietly went to the *Mošate* and paid his tribal levies for the last five years. Some are pinning their hopes on the recent radio announcements by MEC Motsoaledi that PTOs will be upgraded to title deeds. However, for a period they were too terrified to risk meeting one another and planning a way forward. It appears however, that they began to re-group during December and are investigating possible legal options to protect their land.

### Legal protections?

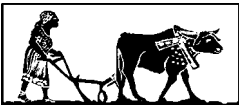
A close examination of the facts reveals that Matlala does not have the legal authority to expel members of Mmotwaneng nor to confiscate and re-allocate their

fields. It may be possible for them to mount a legal challenge to his threats. Ironically their protection does not come from post apartheid legislation, it is contained in the regulations governing PTOs. In terms of the Black Areas Land Regulations (Proclamation R188) of 1969, PTOs for residential or arable sites may be cancelled only by the Minister or by a Bantu Affairs Commissioner after proper notice to the affected PTO holder and an enquiry at which the PTO holder may be present. The transfer of title does not affect the legal status of PTOs and Matlala, as a chief, does not have the legal authority to cancel PTOs.

It is ironic that the Mmotwaneng community's potential legal protection should come from the R188 regulations rather than from the Interim Protection of Informal Land Rights Act of 1996 (IPILRA). The R188 regulations were an apartheid creation and do not conform with constitutional requirements for racial and gender equality. One of the purposes of IPILRA was precisely to protect people with informal land rights in the interim period before permanent tenure reform laws were enacted. IPILRA provides that people living in communal areas may be deprived of their rights only 'in accordance with the custom and usage of the community'. There is a proviso that:

*the custom and usage of a community shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate.*<sup>13</sup>

This proviso does not help the Mmotwaneng community. In the first place, the threatened evictions do not arise from a disposal of the land, and the proviso is limited to situations where



people lose their land rights because the community has chosen to dispose of 'the land or a right in land'. In the second place, a majority decision would not protect the Mmotwaneng community because it would be a majority of the tribe as a whole, as opposed to a majority of the affected village. It would be virtually impossible for people from one village to mobilise people from 22 other villages to protect them, especially operating under circumstances where they have been forbidden to hold meetings and fear for their lives. Finally there are ample precedents for the *Kgoši* to cite in making the case that eviction by the *Kgoši* conforms with the 'custom and usage' of the Matlala tribe.

Be that as it may, the R188 regulations may be sufficient to enable the Mmotwaneng community to interdict *Kgoši* Matlala from depriving them of their fields and evicting individuals. As staunch ANC members, they could also approach provincial or national politicians who have land portfolios to assist them in their struggle for security of tenure.

### Wider implications of the Mmotwaneng march

Some people in Rakgwadi believe that the Mmotwaneng community took on the *Kgoši* because they were originally from a different tribe. They see the march as a secession issue and say that other villages with similar more 'separate' identities will follow suit if Mmotwaneng ultimately succeeds in 'getting back' its title deeds. I put it to the Mmotwaneng leaders that their stance in challenging *Kgoši* Matlala was inspired by the fact that historically they were originally a separate group. They acknowledge that they were from a separate tribe, but say this was before the turn of the century. They also say that it is well known that groups with histories like theirs were allocated the farms around Ga-Matlala to serve as 'buffers' in the event that the *Kgoši* was ever attacked by outsiders. But they deny that their history had anything to do with the march. They

insist that the reason for the march was that their land rights were threatened by *Kgoši* Matlala. The threat took the form of the *Mošate's* unprecedented and unilateral allocation of Mmotwaneng land to outsiders. Matlala's October 1999 announcement that he holds the title deeds made them suddenly see a pattern in the series of disputes of the previous period. They believed that he was using the power of the title deeds to undermine their internal rights and systems. The only solution they could see was to 'retrieve' their title deeds from him.

Mmotwaneng leaders say the same problems are experienced equally in all the villages in Ragwadi, irrespective of their histories. This view is confirmed by other people in Rakgwadi who say that the reason the *Kgoši* responded to the march so decisively is because, had it succeeded, many other villages would have been inspired to follow suit. Their view is that the majority of villages, not just those with 'separate' origins, would have jumped on the bandwagon.

An experienced land activist from a nearby area says it is not surprising that Mmotwaneng had 'gone quiet' after their initial bravery.

*It is not easy to challenge a chief. In our area we are struggling to do the same. We have various advantages, we can prove that our forefathers purchased the land and have the title deeds. That concept of Mong mabu, the owner of the land, is a challenge to the chiefs' power. Also we all came from different areas, we are people with different chiefs. That means it is easier for us to oppose Chief Sekwati who claims authority over Mabitsi (the area where they purchased the land). Yet even for us it is not easy to challenge the authority of the chief. In Mmotwaneng it is harder. Matlala has got the title. They are not sure of their legal status. Some of them are not even sure if they are doing the right thing. They feel vulnerable. Also they are used to living with the*



*chief's power, and after all he is their chief. Plus they live right next to him. So what they are doing is very hard. Even if they know they are right, they will have doubts sometimes and sometimes they will be terrified.*<sup>14</sup>

## The Tladi/Boschhoek restitution claim

Chapter 2 describes the flawed process in which three rich farms bordering the Olifants River were transferred to the Matlala tribe in 1994. The transfer of these farms – Boschhoek, Ongezien and Nooitgezien – has had serious consequences for the Tladi yaKgahlane group, whose connections with the farms go back over 130 years.

A few of the Tladi yaKgahlane families have managed to maintain occupation of one of the farms, Ongezien, over the past 130 years, and they live and farm there today. However the majority of families were evicted in terms of labour tenancy control laws during the 1960s. Many of them live in the adjacent Mamphokgo village which falls under *Kgoši* Rahlagane. Others live in nearby communal areas, some in Rakgwadi villages.

The current occupants and the evicted people have joined forces to lodge a restitution claim to all three farms. They are a well-organised group of people who meet regularly to support one another and attempt to push the restitution claim to resolution. The group lodged its claim in October 1995. At that time these people did not know that the farms had been transferred to the Matlala tribe. They say that just as they did not know about the Matlala transfers, they doubt that *Kgoši* Matlala knew about them, their connections to the land, or their restitution claim until after the claim had been lodged. Contrary to the Ministerial submissions motivating the transfers, Matlala had no real connection with the farms before they were transferred to him, which is why it is doubtful that he knew of

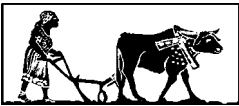
their existence or the long history connecting them to the land.

After the Boschhoek farms were expropriated from their white owners in the mid-1970s, they were developed as resettlement camps for various groups facing forced removals. Thousands of tin lavatories were erected in the veld for the Moutse people. However, when the Moutse people won their Appeal Court case challenging the incorporation of Moutse into KwaNdebele, the toilets and schools that had been built there were 'mothballed'. *Kgoši* Rahlagane, whose area borders Boschhoek, was made caretaker with the responsibility of ensuring that nobody damaged the buildings or settled on the land.

In this role he would have been aware of the Tladi families living on the farm. He would also have known about the historical connections of the wider group of Tladi yaKgahlane families to the farms, because the majority of families live in Mamphokgo village which falls under his jurisdiction.

Because of *Kgoši* Rahlagane's proximity and care-taking role, officials had promised that the Boschhoek farms would be transferred to Rahlagane in the 1994 transfers. Another reason was that his area is small (three farms) and overcrowded compared with Matlala's vast lands. Furthermore, he received no compensation for land he had released land for the Leeufontein township. Thus in 1987 Department of Development Aid officials recommended that Boschhoek be added to his area as compensatory land.<sup>15</sup> However, *Kgoši* Matlala used his influence as a Lebowa Cabinet Minister and his close connections with Pretoria officials to snatch the farms from under *Kgoši* Rahlagane's nose in the course of the transfers. Rahlagane is reportedly furious with Matlala, who is his father-in-law, about the pre-emptive way in which the farms unexpectedly turned up as 'Matlala' property.

However, Matlala's satisfaction at having finessed his son-in-law, and



secured the title to these exceptionally rich, well-watered farms, was short lived. The restitution claim was a thorn in his flesh, probably particularly irksome because it was brought by poor people, ex-farmworkers with no chiefly or political connections. Perhaps he thought that, as such, they would be easy to deal with. Over the next five years he was at the centre of a sequence of events that would have intimidated less courageous people into turning tail and fleeing. However, the Tladi yaKgahlane have stood their ground. They laugh and say they are not going anywhere else. They say they have hung on to the farms through periods of far worse brutality than this, and they are not about to give up now when the law is finally on their side.

### The history of Tladi yaKgahlane on the farms

Six families arrived in the area in about 1870. They had left Mohlaletsi in Sekhukhuneland because of internal wars within the Sekhukhune kingdom.

*When our ancestors arrived this area was empty and so they settled here. In those days people did not buy land. They found an empty place and occupied it and it became theirs because they defended it against other people. Our area was called Kanana and it covered the area which is now composed of the farms Nooitgezien, Ongezien, Boschhoek, Swartkop, Salie Sloot and Roodekopje.<sup>16</sup>*

The six original families founded six *kgoros* or clans and future generations and other arrivals were incorporated into these *kgoros*. In the late 1800s the settlement was very isolated. The nearest African settlement was at Marishane in Sekhukhuneland and there were no white farms nearby. Internal disputes within the Tladi group were referred to *Kgoši Tseke Marishane* far away at Marishane. His grandson, the current Marishane chief, has vouched that he grew up knowing of the Tladi people's historical connections with

the area. A priest visited the community every three months to hold church services. There were no accessible schools, shops or medical services and the community was entirely self sufficient, living from farming. The original families had large herds of cattle, running into hundreds per family.

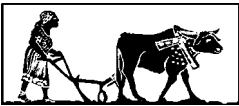
However, the self-sufficient way of life on the farms changed dramatically in the early 1920s when a white man, people think his name was Chris Jan, arrived on the farms from Bethal in the highveld and announced he was the representative of a company which owned these and other farms. Jacob Maeebello gave this account of Chris Jan and other the white farmers' dealings with the Tladi people:<sup>17</sup>

*He imposed a system in terms of which people had to go and work on farms around Bethal for no wages for three months of every year. The whites did not farm on Boschhoek in the early days. Our families were the only people living here. We were forced to go and work on those other farms as 'payment' for continuing to live on our own land which he said belonged to the whites. He insisted that we cut back the number of our cattle. He said that each man was allowed only four oxen for ploughing, one cow and one bull, six cattle in all. His cattle culling programme caused severe problems. For example Ramakgolo Tladi had that name precisely because he had hundreds of cattle.<sup>18</sup> So people, including Ramakgolo, refused to get rid of their cattle. The white man said that he would kill the cattle. Our forefathers were terrified because they knew of beatings and atrocities which white people were inflicted on black people in the surrounding areas. They believed that the white man would bring soldiers to support him. They were very isolated in those days because there were no nearby African communities, so some people left with their cattle.*



One example is the story of Ramakgolo Tladi the second. His father, Tati Tladi, had died in 1924. Ramakgolo was now the head of a family that was composed of about 10 households. He would not accept to get rid of his cattle so he was forced to leave. First he moved to Salie Sloom because this was still part of Kanana. There was a farmer there known as Moesimane because he was an Englishman. This farmer went off to the Second World War and never returned. Before he left he said he was going to war and that Ramakgolo should continue living there in peace.

However, after the war, another white man arrived. He never proved he was the new owner. He said that Ramakgolo's herds were too big and that he must leave. There was a fight and Ramakgolo hit the white man. The white man called the neighbouring white people to come and counter attack. Ramakgolo had to run for his life. It was a difficult journey because he had to take the 10 households and all his cattle. They journeyed by ox wagon and hid at various places for the first six nights. Mr. Ramakgolo Tladi's daughter is still alive, she remembers the journey well.



From there they went to Roodekopje (Lepitleng) and asked a white farmer for a place to live. However, the contractors who built the furrows for the Olifants River killed some of Ramakgolo's goats. Ramakgolo asked the farmer to intercede with the contractors on his behalf, but the farmer refused. So Ramakgolo moved again, this time to Witfontein (Molane) where again he had to work for a farmer. He stayed there only two or three years because of disputes about the number of his cattle. He ended up being evicted again and moved to Thabana Pitse/Mphane which was also under a white farmer in those days, although it later became trust (SADT) land. He was chased away from there and eventually took refuge in Marishane.

This is just one example of how families had to keep on moving in an effort to secure grazing for their cattle.

Various Kanana families moved to different places. Because Ramakgolo Tladi was the head house at Kanana, communication between members of the community was disrupted after his departure. In time the cruel white who had started the problems at Ongezien left and he was replaced by other whites. Some families had managed to survive while he was there, others returned once he had left.

Many of the whites who came after Chris Jan were also brutal in their treatment of the people living on the farms. I interviewed six old men who told the stories of how their families had moved from farm to farm in a cycle of endless abuse and eviction. Time and time again they had returned to the Boschhoek farms, and so their stories all feature the same owners and their particular rules and behaviour. Many of the whites were known by African names like 'Matjesa' meaning hot tempered and rude. Box 5 on page 57 gives an account of this history from Solomon Nkadimeng.<sup>19</sup>

The group of people I met at Ongezien took me around the farms and showed me the remains of the ruins where the various *kgoros* had had their villages. They also showed me different graveyards and pointed out the graves of their ancestors. Some of the graves have tombstones with inscriptions, but many of the older graves are mounds of rocks showing no record of who is buried there. The Tladi people however, point out who is buried in each grave and explain their history and relationship to other members of the community.

They have a letter from a Mr Muller, the grandson of PP van den Berge who owned Ongezien and Boschhoek before they were sub-divided into different farms. The Van den Berge family farmed Ongezien and Boschhoek for three generations whilst the Smit/Human family farmed Nooitgezien for many years. Portions of Ongezien and Boschhoek were sub-divided for different heirs, particularly Van den Berge's daughters and sons-in-law. All the people interviewed can describe which portion

### Box 5: Solomon Nkadimeng's story

*I was born here [Ongezien] in about 1918. At the time of the three-day sickness I was a little boy. My father was Moriti Nkadimeng. He came here from Sekhukhuneland to find a place for his cattle. He is buried at Boschhoek. My mother was not born here, she was a Maseeme. My oldest brother was Kleinbooi, he was about nine years older than me. He is dead now and his grave is at Klipspruit.<sup>20</sup>*

*When we grew up there were no schools and no hospitals around here. I started to work in 1942 when I went to PP van den Berghe's farm near Kinross. The farm was called Christaminfontein no 1. It was eight miles from Kinross. I had to work for free for three months of the year. I went there every second year, swopping with my brother. We got no wages there. We worked so that we could keep the grazing and the fields that we had on this farm. If you didn't work they gave your family a 'trekpas' and chased you away from Boschhoek. PP van den Berge threatened to kill us if we refused to work. In those days people were often beaten up by the farmers. Everyone was beaten, no-one escaped beating. PP van den Berge used to beat us, he said we had to know 'who is the baas'.*

*I worked at Christaminfontein for four years. Then one year, when Van der Berge arrived to collect people from Boshhoek for the three months labour at Kinross, I was not there that day. At the time I was working at another farm for wages. So he left a trekpas for me. I was very scared of that trekpas so I left.*

*In about 1951 I moved to Klipspruit where I worked for Lucas Botha. I built a house and worked there. I stayed there for about seven years and then I was evicted so I moved to Nootgezien where I went to work for Human. I am not sure when that was, my third child was a baby. I stayed at Nootgezien about four years. Human lived in Pretoria he came to the farm only once a month. He made changes to the farm. We took out lots of trees to make ploughing fields.*

*The system was that we had to work three months for free and then the other nine months we were paid. We were allowed to keep six cattle and we had fields that we used to plough for our families. There was a very vicious manager there at the time. He was cruel to us. In those days it was very unusual for a person to be able to stay in a place for ten years. The whites fucked us up.*

*That manager evicted a big group of people from Nootgezien in 1961. He said there were too many black families living on the farm and that the law did not allow this. He said he had to reduce the number of people. I left in late 1962 because I could not take the manager any more. I moved to Minnaar on a farm that used to be part of Nootgezien but which is now called Salie Slood. I stayed there about four years. After that I moved back to Ongezien which was then under Bessie Oosthuizen.<sup>21</sup> I built a house for my family and we worked according to the three-month system. I worked on the fields for no wages for three months and then for wages for the other nine months. But the wages were very low.*

*I left in 1967 and moved to Mamphokgo. I could no longer accept the system of working for free. That system really irked us. It was too heavy working for nothing and being treated like animals. The whites used to say that if you live on the farm without working, it shows the farm is yours. They said that you can't have two owners on one farm, so if we refused to work for free, then they evicted us. We did not want our children to grow up living the same way that we had suffered.*



they lived on when, and which son-in-law they worked for. Muller's letter confirms a list of families and that those families had

lived on the farms for three generations from his grandfather's time until Muller was expropriated by the SADT in 1974.

Muller continued to farm Ongezien after the expropriation; he rented Ongezien back from the SADT until 1994 when he retired to one of the family's Kinross farms.

While I was at Ongezien one of the Tladi committee members phoned Muller in Kinross on his cell phone. After exchanging happy greetings with Muller in Afrikaans he said that I should speak to him. Muller expressed his willingness to be interviewed by the Commission on the Restitution of Land Rights or any other part of government so that he could explain the Tladi people's long historical connection with the land.

I was somewhat taken aback as I had just been told stories of how Muller himself had evicted various families from the farm. The Tladi committee is quite sanguine about dealing with Muller, they see him as a potential asset. The man who phoned him is Bofane Stefaans Nkgudi whom Muller refers to as 'Tsotsi'.<sup>22</sup> Mr. Nkgudi's mother was evicted from Ongezien by Muller in 1961. Nkgudi was working in Johannesburg at the time and he phoned Muller and asked him why he had evicted his mother. Muller's reply was that as Nkgudi's brothers refused to fulfil their free labour stint in Kinross, he had had no option but to evict the family.

Nkgudi, who is an old man now, explains that he looked after Muller when he was a little boy. He says they grew up together and this may explain why Muller was never rude or violent to him, although he treated other people badly. Nkgudi left the farm and went to work in Johannesburg from 1952. He and Muller have kept contact with one another through all the intervening years.

The Van den Berge family (Muller's in-laws) had petitioned for years to have the farms de-scheduled as a 'native area', they had also opposed the SADT plans to buy out the farms. However now that their loss of the farms is a *fait accompli* they have told the Tladi community that they do not think it fair that a 'newcomer' like Matlala should get the farms. They have offered to

help them prove their historical rights to the farms.

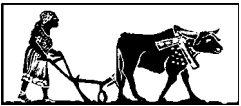
Documents in the National Archives in Pretoria show that the Boschhoek, Ongezien and Nootgezien farms were included in the schedule of areas 'released for native occupation' by the 1936 Native Trust and Land Act. The Van den Berge family, backed by the local farmers' association, petitioned for years to have the farms de-scheduled. Their argument was basically that the farms, being situated in a curve of the Olifants River, were too valuable for black people. Despite opposition from various Native Commissioners<sup>23</sup> they finally succeeded with their petitions and the farms were de-scheduled in 1954.

#### **Basis of the Tladi restitution claim**

To qualify for restitution, the Tladi community has to prove that they had rights to the land, and that they were deprived of these rights after 1913 by a law or practice which was racially discriminatory. In situations where people had title to the land and were removed in terms of the policy of forced removals, it is relatively straightforward to prove that they qualify for restitution. It is more difficult to prove that labour tenants had underlying land rights and that a process of 'individual' labour tenant evictions which took place over 50 years qualifies as a racially discriminatory practice.

Oral histories taken from a cross section of old people, together with circumstantial evidence, clearly show that the Tladi community were in undisturbed occupation of the farms from 1870. Land in that area was carved up into farms and allocated to white people between 1880 and 1890. However, because of malaria and the tsetse fly, and because a large area of land was granted to a small number of whites, very few of the farms saw white people set foot there before the 1920s. Many of the farms were traded in the meantime, and by the 1920s some were owned by companies.

At that time there was a severe labour shortage as farmers competed with the mines for labour (Morell 1986). This



shortage was felt most acutely in the more temperate zones where intensive agriculture was practised. One such zone was the highveld area around Bethal and Kinross. Many of the highveld farmers acquired bushveld farms as a place from which to source labour (see Chapter 2).

In an attempt to force independent black farmers to work as labourers and to spread the available labour more evenly, the 1936 Native Trust and Land Act imposed restrictions on the number of black people who could live in 'white' farming areas. Because the Boschhoek farms were 'released' in terms of the schedule to the 1936 Act, many of these restrictions did not apply. Thus, although the people living there were forced to become labour tenants by the whites who arrived from the 1920s, there were no strict restrictions on the numbers of people living on the farms.

However, after the farms were 'de-scheduled' in 1954, the restrictions on labour tenants contained in Chapter 4 of the Native Trust and Land Act applied to them too. Labour Tenant Control Boards were set up in terms of Chapter 4 from 1960, and these boards imposed restrictions on the number of labour tenant families who could live on any farm. In 1960 major farm evictions started throughout South Africa (Morris 1977). More farm workers and labour tenants were evicted than any other category of people who were forcibly removed (Platzky & Walker 1985:10).

In the Tladi case, large numbers of families were evicted from the three farms in and around 1961. The manager from Nooitgezien said he had to reduce the number of people living on the farm 'because of the law'.

In 1974 the next wave of evictions took place, but this time only from Nooitgezien. The farm had been included within the Lebowa homeland and the removal was carried out by people who came in government trucks with Lebowa government number plates. Old people who were present at the time say that when

the officials arrived they showed the people a 'removal order' and started loading the trucks. Many things were broken because of overcrowding on the trucks and many things were left behind, for example ploughs and other agricultural implements. The trucks took the people to an area under chief Marishane.

In an effort to provide documentary evidence to back their restitution case, in 2000 the Tladi yaKgahlane committee went to the offices of the Department of Agriculture in Pietersberg to try to trace the removal order. The Director there did not find the order itself, but showed them an entry in the Register book for 1974 which confirmed that the Department of Agriculture had been responsible for the removal. He made a copy of the entry for them.

In the same year as Nooitgezien farm was incorporated into Lebowa, Ongezien and Nooitgezien farms were purchased by the SADT. This meant that the Act's Chapter 4 controls on the numbers of black families allowed to live in 'white areas' no longer applied. But by this time it was too late for most of the Tladi yaKgahlane families. Everyone apart from the seven households who still reside there had been evicted or forced off in the preceding years.

The Tladi's restitution claim rests on the fact that they had been the beneficial owners of the land until whites arrived in the 1920s. They never sold or ceded their rights. These rights were simply ignored by a government which granted their farms 'in ownership' to white settlers, on the basis of race alone. The de-scheduling of the farms in 1954 opened the way to government-enforced restrictions on the number of black people occupying 'white' land. This led to the slew of evictions around 1961. Then in 1974 one of the farms was incorporated into Lebowa and Lebowa forcibly removed the people living there.

All of these events were precipitated by racially discriminatory laws. The de-scheduling of the farms and the application of the Chapter 4 controls, both of which



stemmed from the Native Trust and Land Act of 1936, are sufficient to bring them within the ambit of the Restitution Act because they show dispossession caused by 'racial laws and practices'. However, much of the information that the community has painstakingly collected may not qualify as 'hard evidence' in a court of law. The legal process is long drawn out and not sympathetic to oral history. As such it has caused extensive delays and created inappropriate barriers to the effective implementation of the restitution programme. A 1999 amendment to the Restitution of Land Rights Act enables cases to be referred to the Minister for settlement where the Minister is satisfied that the claimant is entitled to restitution. A lawyer from the Legal Resources Centre has advised the Restitution Committee to refer this case to the Minister for her decision rather than pursue legal action through the courts. The matter is still pending.

#### Conflicts arising from the claim

The restitution process moves painfully slowly and, in the years since they lodged the claim, the Tladi yaKgahlane have been vulnerable to the demands of yet another state imposed 'owner' of their land. This time the 'owner' is not a white farmer but *Kgoši* MM Matlala.

Late in 1995 the Bakone Development Forum started an agricultural project at Nooitgezien. The project was to make use of the extensive fields along the banks of the Olifants River that were lying fallow. Members from various Rakgwadi villages joined the project, a pump was installed and a 'project building' erected. The project had the blessing of *Kgoši* Matlala. However it was short-lived. There was a flood that year and the pump and the crop were washed away. The next year nobody arrived to plough. This project did not create any tensions with the Tladi community who live and farm at Ongezien rather than Nooitgezien. The project did not affect the Tladi agricultural activities and relations between all the parties were cordial. In 2000 the disused two-roomed

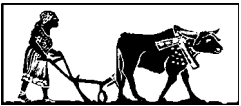
project building was being used by the Tladi as one of the storage sites for their bumper mealie harvest.

However, after it became known that the Tladi had lodged a restitution claim for the three Boschhoek farms, Matlala proposed that Rakgwadi people should go and occupy these farms. From 1996 he encouraged Rakgwadi people to establish a new village there, saying it was the richest land in the vicinity. People were reluctant to move however because they knew that the area was contested and feared that they would become caught up in endless disputes. It was not just the matter of the Tladi people who had lived on Ongezien for decades that worried them – *Kgoši* Rahlagane's fury about the Boschhoek transfer was also widely known.

In 1996 a big fire swept through Ongezien, Boschhoek and Nooitgezien, but was stopped at the boundaries. All the grazing was burnt and this, together with the drought of 1997, meant that the Tladi and Maseeme families living on Ongezien lost large numbers of cattle. They believe, as do many other people, that the fire was a deliberate attempt to 'burn' them off the land.

At a big meeting in Rakgwadi, *Kgoši* Matlala announced that he was opening the farms for settlement. He stressed the rich agricultural potential of the area and said that applicants would be allocated large irrigable fields. He said that applicants should go to the *Mošate* to apply for stands. It is believed that the fee per site was to be R200. Some of the members of the Tladi yaKgahlane committee living in Rakgwadi attended this and other meetings where he made the same invitation.

It appears that people remained reluctant to take up the offer. In 1996 and 1997 very few people, if any, knew about the land transfers. They probably did not believe that Matlala had the authority to settle the farms. The Tladi say that around this time there was a day when 'soldiers' arrived at the farms to guard the area to



enable Matlala's 'subjects' to cut trees and clear the land for farming.<sup>24</sup> However nobody settled there or established fields.

The Tladi yaKgahlane were becoming more and more concerned about Matlala's efforts to settle Rakgwadi people on the land they had claimed. They sought assistance from local MP Lydia Komape who helped them to set up a meeting with the Land Claims Commissioner for the Northern Province early in 1997. The Commissioner sent a letter to *Kgoši* Matlala advising him that, in terms of the law, he must desist from new developments which might adversely interfere with the claimants' rights pending the outcome of the claim.

### Legal options open to the Tladi people

I pointed out to the Tladi people that various legal options were open to them. Given the slowness of the restitution process, they could also apply to court to have the transfers set aside on the basis of the various irregularities set out in Chapter 1 of this report. They immediately vetoed this suggestion. They said it would make Matlala furious if they challenged the legality of the transfer process and that, even if they won, they would never be secure. They said that I must remember that he lives across the road from them and they have to be able to survive in the future.

They said they preferred restitution, however slow, because it is a government programme and it is difficult for anyone to say that he or she opposes the principle of restitution. They said that many people support restitution because it is a policy of the new government and they think it would be easier for Matlala to accede to a restitution claim than stomach a challenge to the 1994 transfers.

Be this as it may, Matlala was not shy to summon Lydia Komape, an MP residing at Tsimanyane, to appear at the *Mošate* to explain her 'betrayal' in assisting the Tladi yaKgahlane to meet the Restitution Commission in 1997. He said that there were rumours 'from bars and shebeens' that she had assisted the Tladi people. He

asked her why she, as his subject, had assisted them. He advised her to think of the future of her son. He said that Boschhoek and the other farms were exceedingly rich and this wealth could benefit her children rather than be wasted on the Tladis. He said that he would not evict the Tladi families who lived on Ongezien; they were welcome to remain, as long as they agreed to be his subjects. Mrs Komape said that she was surprised that he listened to rumours from bars and shebeens and left.

Another possible route for the Tladi community would be tenure reform. The families living on Ongezien could prove that they have had beneficial occupation for decades not just of their houses, but also of the grazing and ploughing areas. However, this route would be limited to the eight families who currently live on farms. Department of Agriculture officials maintain strict controls which restrict other families from establishing themselves on the farm. There are even restrictions on the current families being able to extend or renovate their houses. The tenure reform route would therefore exclude the other 80 claimant families, and therefore is unacceptable to the Tladis.

### Efficient land use as a basis for the Tladi restitution claim

A factor which the Tladis believe is important in justifying why they should get the farms is their skill and commitment as farmers.

The difference between their fields and others in Rakgwadi is striking. There are four irrigation schemes in Rakgwadi which were left behind by white farmers when the SADT bought the farms in the 1950s. The Tsimanyane scheme is not used at all whilst the other schemes are used for dryland crops. In Ongezien, by contrast, eight families have established a 4ha field of vegetables. In the middle of winter 2000, the area was beautifully maintained with rows and rows of cabbages, beetroot, potatoes and *merogo* (Chinese cabbage). The families say that they would extend this area if they could, but are limited by



the amount of water they can pump out of the Olifants with their small diesel pump. They had applied to have electricity reconnected to the farm so that they could install a bigger electric pump, but Eskom told them that it could not reconnect unless they produced the title deed, or a letter of authorisation from the registered owner of the land.

The Tladis have no problem marketing their produce because of the nearby densely settled villages. They send out messages when the crops are ready for harvest and traders arrive in bakkies and load up the crops for sale in the villages. A massive tomato crop was grown by Christmas 1999 and the tomatoes were sold 'still in the fields'.

They also farm extensive areas with dryland crops, particularly mealies and pumpkins. I was taken to various buildings on the farm, including the shell of Muller's old house and the old BDF 'project' office. These were piled roof high with dried mealies.

There are 120 cattle, 80 goats and 33 sheep on Ongezien. This number takes into account the cattle which died during the disputes with the cattle project people and a recent cattle sale forced on the group by lack of grazing. Members of the Tladi yaKgahlane claimant group also have about 100 head of cattle grazing illegally on Boschhoek. They sent the cattle there during the bad drought of 1997, because they say the cattle would have died if they did not do so.

In contrast, the Rakgwadi people, the official 'owners' of the land, have left the vast irrigable fields in Nooitgezien unused for five years. Nor have they taken up *Kgoši Matlala's* repeated inducements to move to the area and farm there. This may partly be attributed to the disputes which abound, and people being reluctant to invest in an area which is likely to be unstable.

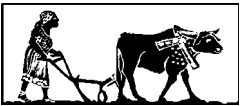
However nowhere in Rakgwadi itself is there evidence of the kind of agricultural skill and commitment that is manifest on Ongezien. The Tladi yaKgahlane leaders

attribute their success to the fact that they have always been farmers.

*We are farmers. We know how to be farmers. Before we were under pressure from the whites and, our work benefited them. Now we want to benefit ourselves. This is our forefathers' place. It is a very rich area. We can do well here. We are right on the Olifants River and the Arabie [Flag Boshielo] dam is right here. This is our future, we have no future in the villages where we stay now, we can't get fields and there is too much cattle theft. With 80 families and a proper pump we can plough all the river fields with vegetables, have mealies on the other fields and use the bushveld parts for our cattle. We have developed our own constitution and plans for how we will lay out the villages and where we will farm. Why does the government say that we are too few to qualify to get this big area? Before it belonged to **one man**. You can't farm properly in a big crowd of people. We are not a big group of people, but we will use the area well because we are farmers, we know how to farm and we especially know about farming in this district because this is where we learned to farm. Why was this farm okay for one white man but when we claim being 80 families we are told we are too few for such a big area?<sup>25</sup>*

### Disputes arising from the Ga-Mkgatle cattle project on Nooitgezien and Ongezien

Tensions subsided for a while but then another problem began to develop. A group of people from Ga-Makgatle, one of the Rakgwadi villages, established a cattle-farming project. The project currently has 30 members who own 700 cattle between them. From 1996 they began to look for a separate and independent area of land on which to expand the project. They argue that the large areas of communal land around their village are not suitable



### Box 6: Letter to the Commission for the Restitution of Land Rights from the Tladi and Maseeme land claimants

- 1 *We are hereby lodging complaint concerning the people of Chief Mokgoma M Matlala. We are the residents of Boschoek, we are Stock Farmers but we have no grazing place because of the people of Chief MM Matlala. Their cattle graze on our land. So our cattle have no place to graze. They (our cattle) graze on small portion of about eight (8) hectars.*
- 2 *Last year we lost 43 cattle because of starvation. We as residents of Boschhoek we have tried to write a letter to the stock farmers of Chief Matlala in order to discuss the issue of grazing instead Chief Mokgoma Matlala sent Police to us. We were prepared to discuss with them in good terms, because we were still waiting the results from the Government in terms of claiming this Area. The claim number is KRP 6/2/2/F/9/0/0/10(9899).*
- 3 *The people of Chief Matlala are not good at all, they destroy nature, chop down green trees, cut fencing wires. We as the residents of Boschoek we are requesting the Government to delegate people to come and survey this Area which we are talking about.*  
(June 1999)

because there is open access to this land by anyone from Rakgwadi and so they cannot exercise sufficient control to stop stock theft. Local politicians advised them to try to get land in the nearby block of Immerpan state farms.

In 1998 *Kgoši* Matlala advised them to expand their project into Nooitgezien. He said they could use the whole farm. It is interesting that he advised them to use Nooitgezien rather than Boschhoek or Ongezien. Whilst Boschhoek and Ongezien have been transferred to the Matlala tribe in their entirety, only the remainder of Nooitgezien (677ha) was transferred to Matlala, and the remaining four portions (totaling 703ha) still belong to the state.

The cattle project members say they have never had to pay anything to the *Mošate* for the use of the land. In fact the *Mošate* did not even check whether or not they were up to date with their tribal levies before they got the go-ahead to use the farm. According to some, 'we do not pay anything, because we are helping the *Kgoši* by looking after that farm for him'.<sup>26</sup> Their employees sleep at Nooitgezien to guard the cattle, as do some of the owners.

At first there were no problems between the cattle project people and the Tladi people. The cattle project people used Nooitgezien and the Tladi people used Ongezien. However, neither group had sufficient grazing for their cattle and every winter cattle would die. In late 1998 the cattle project people cut the fences between Nooitgezien and Ongezien and sent their cattle into Ongezien. They said that *Kgoši* Matlala had told them to do this as all the farms belonged to him.

The Tladi people called on the local authority to assist them. The local authority investigated the status of Matlala's right to the area and found that he had title to the farms. The Tladi interpreted this to mean that the local authority had betrayed them.

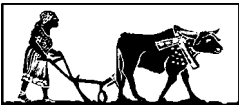
There were repeated fence cutting episodes, disputes and more fires in the Tladi grazing area. The Tladi and Maseeme families wrote a letter to the Commission on the Restitution of Land Rights in June 1999, setting out their complaints (Box 6 above).

Tensions between the Tladi community and *Kgoši* Matlala mounted throughout 1999. There were disputes not only about the cattle project, but also about firewood. There is a gate at the entrance to the



Boschhoek farms which is controlled by employees of the Department of Agriculture. The only people allowed through the gate are the Tladi families and other people with official permission. *Kgoši* Matlala was issuing people with receipts which they used to gain entry through the gate. The R4 receipts 'entitled' the holders to collect as much firewood as they liked. They arrived with bakkies and tractors and loaded them high with wood from the farms. This incensed the Tladi farmers, who have a strict policy of not cutting green wood and conserving the natural resources on the farm. They went to lawyers in Pietersberg with the receipts that they had collected from the guards. However, *Kgoši* Matlala did not respond to the lawyer's letters and the Tladi community did not have the resources to pursue the matter.

Matters came to a head over the New Year period in 1999/2000. Robert Maseeme, one of the Tladi residents on Ongezien, described the following sequence of events:



*On the 27<sup>th</sup> December 1999 I went to fix the fence between Ongezien and Nooitgezien which had again been cut by the cattle project people. I found one of the cattle project people there and I asked him to take his cattle out of our area.*

*Later that day there was a severe thunderstorm and the roofs of our houses were blown off. The next day when we trying to fix the damage some radio and TV people came, they were doing a story on the floods and disasters that were taking place at the time. We appeared on radio and TV.*

*On the 29<sup>th</sup> December government people came to estimate the damages. Whilst I was showing them what had happened, three vans arrived with people from *Kgoši* Matlala. They summoned me under a tree and demanded to know why I had said that their cattle should be removed from their own farm*

*(Ongezien). They demanded to know why I thought I had the right to fix the fences that they had cut. This led to a dispute between them and me and they said that they were going to call the *Kgoši*, as he was the person who had told them to cut the fence. The *Kgoši* then arrived with a large delegation on the 2<sup>nd</sup> of January 2000. He was accompanied by police with firearms and by 42 people.<sup>27</sup> The *Kgoši* told us that this place belongs to him and there is nothing that we can do about it. He informed us that as from March he would be sending people to settle here. He said that this would 'stop our pride', of calling this place our own. He said that he would be calling us to explain ourselves at the kgotla.*

*We were very worried by these threats and so we went to see the Restitution Commission in Pretoria on the 12<sup>th</sup> of January 2000. We explained what had happened. We said we were scared about what would happen to us at the kgotla. We asked the Commission to convene the meeting, not the *Kgoši*. The Commission said they would appoint a mediator, they also said that they would send a letter to the *Kgoši* telling him that he should not convene any meeting with us. They promised to deal with the matter before the end of January.*

*Nothing has happened so far. *Kgoši* Matlala is quiet but the cattle project people are still cutting the fences and driving their cattle into Ongezien.*

*We have always had good relations with the Matlala people. There were no disputes in the past. The *Kgoši* is just using the cattle project people to create a fight so that he can get hold of these farms. But we believe that we can live with them as neighbours in the future once the restitution process has been finalised.*

The Commission on the Restitution of Land Rights did send a letter to *Kgoši Matlala*, suggesting mediation. So far no mediation has yet taken place, but Matlala has not pursued the threatened *kgotla* hearing either, and no people have arrived to settle in the area.

## Matseding housing project dispute

As noted in Chapter 2, the TLC found out about the 1994 land transfers only in 1998. The information came to light in the context of a dispute with the *Kgoši* about an RDP housing project undertaken by the TLC. The housing project is situated on one of the Rakgwadi farms, Hindostan. It covers an area of 48ha and will provide 500 low-income houses. The stands are very small, 15x25m. However, there is demand for the sites, both because the houses are 'free' and also because the project will enable grown 'children' to establish their own homes outside their parents' yards.

The area was earmarked and planned as the future Lebowakgomo,<sup>28</sup> before Dr CN Phatudi defeated MM Matlala in the polls in 1973 and became Chief Minister of Lebowa. Some basic infrastructural development was done at that time.

The TLC's negotiations with the *Kgoši* about the proposed housing scheme were very tense. Repeated deadlocks caused a two-year delay. Initially the *Kgoši* countered the scheme on the basis that the *Mošate* had earmarked the area to be developed as a palace for the heir to the chieftainship. MM Matlala's son was to establish a home there, surrounded by a village of '400 loyal subjects'. The TLC and the RDP committee insisted on proceeding with the scheme. They argued that in all his years in the Lebowa Cabinet, Matlala had failed to develop the area. He should therefore not thwart their efforts when they had successfully secured a budget and development partners.

The tribal councillors opposed the scheme fiercely. They insisted that it amounted to a theft of land from the tribe by

the TLC and the provincial government. They would not deviate from this perception, despite the committee's explanations that the project would benefit members of the tribe. The TLC pointed to nearby RDP housing projects on communal land where the chiefs had given their blessing to development. At this point *Kgoši Matlala* made it known that he had the title deeds not only to Hindostan, but to 22 other farm portions as well. The tribal councillors insisted that the title deeds meant that the *Kgoši* had an absolute right to veto the housing project.

The information concerning the transfers was greeted with amazement and consternation by the TLC who interpreted it as the death blow of the housing project. However, an MP assisted them to obtain a meeting with senior officials in DLA. The officials confirmed that the transfers had, in fact, taken place but that the land vested with the tribe as a whole and not with the *Kgoši*, and that therefore decisions concerning the land could be challenged by a majority of the tribe. Armed with this information, the TLC councillors informed *Kgoši Matlala* that if he continued to refuse to sign the land availability agreement for the housing project, they would call a general meeting and announce at that meeting that he opposed development in the area.

There followed a series of tense interactions between the Tribal Council and the TLC. The members of the Tribal Council said that they would be prepared to reconsider their decision if the *Mošate* were solely responsible for vetting and approving applicants to the scheme, and the scheme were administered on the same basis as any other tribal land. The TLC would not agree. They knew that this would mean two things: (a) the *Mošate* would continue to collect tribal levies and 'entry fees' from applicants, and (b), the housing scheme would not be able to provide title to the beneficiaries.

They were, however, prepared to concede that the housing project fall under the joint administration of the TLC and the *Kgoši*, and that the *Kgoši* would play a role



in naming the streets and blocks within the scheme.

Negotiations deadlocked with the *Kgoši*, as landowner, refusing the sign the land availability agreement. Finally the RDP committee and the TLC decided to proceed with a 'public' hearing to put the matter to the community at large. The hearing was arranged and advertised. It was to take place at the *Mošate*. The *Kgoši* was informed that the TLC had no option but to put the matter to the tribe and ascertain whether or not they were in favour of the housing scheme. The *Kgoši* waited until two days before the meeting, by which time it was clear that the meeting would be well attended and that tensions were running high. He then sent for councillors from the TLC and signed the land availability agreement.

The dispute caused a two-year delay in implementing the housing project. Another result is that most of the beneficiaries are people from outside Rakgwadi. Any people from within the area withdrew their names as tensions around the project mounted. They feared that their parents, who continued to live in Rakgwadi villages, would be victimised because of their participation. Thus it is estimated that applicants for only 200 of the 500 sites are from Rakgwadi. The others are from neighbouring areas which fall within the Hlogotlou-Lepelle TLC area.

The housing project dispute did not end with the signing of the land availability agreement. Two other problems have recently come to light. One is that the 1994 transfer process imposed restrictive conditions on the title deeds of the farms that were transferred – no portion of the land may be transferred into the ownership of a person who is not a member of the tribe for a 10-year period from the enactment of ULTRA. This restriction has its origins in Section 19(2) of ULTRA which applies to all land transferred to tribes in terms of the Act. Its effect in the Rakgwadi case is that the process of township establishment for the housing project has to be delayed yet again,

because the individual sites may not be transferred to the beneficiaries until 2001.

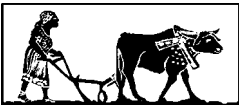
## Wood harvesting and the women's bakery project.

There is another dispute between a Rural Women's Movement bakery project and the *Mošate*, centred around wood harvested from the housing project site. Towards the end of August 2000, the TLC announced that building at the housing project site would commence shortly. The area was to be cleared of the fairly dense bushveld trees that grow there. The TLC announced that people could come and help themselves to firewood, which would in turn assist with clearing the site.

Various individuals and groups of people took up the offer enthusiastically. One of them was a bakery project whose members are very poor women from Mamphokgo village. This bakery project is well known locally as it is situated along the main tarred road between Groblersdal and Rakgwadi. The women bake bread daily in mud ovens that they built themselves. The ovens are heated by wood fires and, since the village falls within *Kgoši* Rahlagane's crowded and small area, firewood is relatively scarce. Thus the offer of free firewood was a godsend. The women hired a man with tractor to go and collect wood for them at the housing project site.

The tractor driver was intercepted by 'Matlala's guards' who took the driver and the tractor to the *Mošate*. The full load of wood that had been collected was confiscated and the tractor was impounded. The women asked *Kgoši* Rahlagane to intercede with *Kgoši* Matlala on their behalf. Rahlagane, who is also *Kgoši* Matlala's son-in-law, explained that the women were very poor and they were struggling to make the bakery succeed. In addition, they had done nothing any different from the many other people who had collected wood at the housing site in response to the TLC's invitation to clear the site.

*Kgoši* Matlala insisted that the women pay R500 if they wanted the tractor back.



The women had no option but to pay the fine. Many people believe that the women were unfairly treated. They are angry that Matlala, who has so many farms, refuses to relinquish control of a mere 48ha, even after he has signed the land availability agreement.<sup>29</sup>

## Local-level obstacles to rural development

What obstacles to rural development do the examples thus far identify, and what general issues do they illuminate?

The dispute over the Matseding housing project is fairly typical of many disputes over housing projects and other developments on tribal land that are being fought out between tribal authorities and local government bodies throughout the provinces which used to contain homelands (see Figure 1 on page 2). These disputes typically stir internal tensions between tribal 'loyalists' and 'pro-democracy' forces within communities and cause long delays in implementing any kind of rural development.<sup>30</sup> Because the government lacks the political courage to clearly delineate the roles and spheres of responsibility of the respective institutions, skirmishes over power and authority will continue to be fought out on the ground rather than in the political arena. The result is that virtually all development in rural areas is delayed or does not take place at all.<sup>31</sup>

In the Rakgwadi case the dispute was complicated, and the delays increased by the transfer of title to the tribe. Yet ultimately the perception in the area is that the TLC 'won' this particular battle. Strangely this does not seem to have changed the dominant perception that the 1994 transfers were to Matlala personally rather than to the tribe as a whole. Only members of the TLC and the RDP committee seem to be aware that Matlala's assertion of ownership is limited by the rights and decisions of the tribe as a whole.

It can be argued that the housing project dispute proves that 'tribal ownership' can be used to assert the 'will

of the majority' over the excesses of particular chiefs. However that argument has merit only in situations where people are organised and strong enough to seek out expert advice and carry through contentious processes. There are many areas where people do not have the same courage, organisational capacity and access to sources of assistance as in Rakgwadi. Even in Rakgwadi only certain issues can be successfully challenged in this way; those that affect a wide cross section of people from different villages, rather than only people in one village or locality. A majority of people in one village can always be out voted by the 'tribe as a whole', especially when people from other villages either do not care about the disputed issue or stand to gain from it.

Perhaps it is in the context of the imperative to re-assert the perception of his power and control as 'unilateral owner', that *Kgoši* Matlala's actions against the bakery project women can best be understood.

## Mogaladi land invasion

Mogaladi is a village outside Rakgwadi, but adjacent to its northern border. The people there are the descendants of a group who bought land during the 1940s. Their land base has always been small and, over time and with population growth, their land has become extremely overcrowded. It is no longer sufficient to support the community. Their village looks over a well-watered fertile area of land with two dams that was acquired from white farmers by the SADT in 1950. For decades the Mogaladi community has targeted this area as ploughing land. They would be able to walk to the fields from their current homes.

In 1957 the land in question was divided between the tribal authority areas of two of the newly created 'Kone chiefs' who had moved from Sekhunkhuneland – Chief Frank Maseremule and Chief Kaifas Mampane.<sup>32</sup> In 1994, unknown to the Mogaladi community and indeed to most people in Rakgwadi, the ownership of the land was transferred to the Matlala tribe.



In the meantime farmers at Mogaladi formed the Mogaladi Farmers' Association (Mofa) and approached DLA in Pietersburg to assist them in acquiring land so that they could farm properly.

In 1997 they were advised that each member would qualify for the R16 000 Settlement and Land Acquisition Grant if they could find land to buy in the Marble Hall/Groblersdal area. They were advised to look for unoccupied state land, or for privately-owned land that was on the market. They could pool their grants to acquire a farm. The first land they targeted was the fertile well-watered plain directly adjacent to their village which had never been used by anybody. They knew that this was state land which had been purchased by the SADT and they had always hoped to acquire it. However, when DLA investigated the status of this land at their request, they informed them that the land was the property of *Kgoši* MM Matlala. The Mofa members were initially disbelieving: how could this be? Nobody in the area knew about the 1994 transfers.

On seeing proof that the title to the land did in fact vest in the 'Matlala tribe', they approached Matlala to offer to buy the land. At the meeting with the *Kgoši* they explained about the land shortage at Mogaladi, and their plans for utilising the land. They further said that no one from Rakgwadi had used the land in 40 years, not even for grazing.

*Kgoši* Matlala rejected their offer, so they were forced to look for other land for sale in the Marble Hall area. They found no land at all and became steadily more frustrated over the next three years. There were endless delays with the provincial office of DLA, and it became clear that the promised redistribution project would become a dead end.

Tensions rose amongst the 30 members of Mofa. They describe themselves as 'locked in like a bee' with nowhere to farm. Every day they look out at the vista of fallow fertile land in front of their houses. They are angry that the land was somehow transferred to Matlala in a process which gave them no opportunity to motivate their own claim to the land. It

is especially painful since, like so much of Rakgwadi, this is fertile watered land which has not been used by anybody for decades.

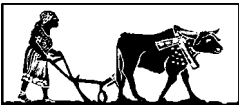
In late August 2000, the members of Mofa agreed that they had exhausted all avenues of acquiring land through the government. They decided that Buffelsfontein farm was the most appropriate land to use for three reasons: it is right next to where they live; it is not utilised by anyone; and Matlala obtained it by what they perceived as an illegitimate process using his position in the Lebowa Cabinet. They said government should clarify how much Matlala paid for the land and then refund him that amount from their pooled subsidies so that they could become owners of the land. Mofa later discovered that all the 1994 transfers were 'free', so Matlala paid nothing for the land.

The members of Mofa began to clear the land of trees in order to prepare the soil for ploughing by the October planting season. The nearest Rakgwadi village to Mogaladi is Mohlotši. It is also situated on a portion of Buffelsfontein farm. The headman from Mohlotši reported the tree-cutting activities to *Kgoši* Matlala. The *Kgoši* advised the headman to call the Mogaladi people to a *pitso* at Mohlotši where they should be told to stop clearing. He said they should be warned that if they didn't come to the *pitso*, or if they didn't stop clearing, he would send soldiers<sup>33</sup> to deal with them.

The Mogaladi Farmers' Association refused to attend the *pitso*. They said that the date set clashed with an important ANC meeting they were attending. According to members of Mofa, support for their stand is growing throughout Mogaladi village. They say that if they attend any meeting, they will be accompanied by the whole village, and the reason why they would attend would be to discuss how Matlala acquired the land in the first place.<sup>34</sup>

## Contested citizenship and ownership

The disputes described in this chapter all arose from, or were exacerbated by, the



1994 land transfers. Disputes which were not connected with the transfers, for examples the fines imposed on the income-generating projects, are described in other chapters.

The disputes described here all unfolded during the 10-month period when I happened to be conducting research in the area. It is possible, given the short time spent in actual field research, that I may have missed transfer-related disputes which were playing themselves out in the more isolated villages. Given that most people in the area only learnt of the transfers from about 1998 and the research was conducted in 2000, it is likely that the disputes recorded here are the tip of the iceberg. There may well be other disputes and tensions that will unfold in future.

The disputes are perhaps the best indicator of the consequences of the Rakgwadi land transfers for the lives and livelihoods of ordinary people living in the area. They show how the transfers tipped people into challenging the *Kgoši* – an extremely risky and stressful step for them to take.

The main actors in all the disputes are poor people. They have in common their belief, that as citizens of South Africa they are entitled to protect their rights and take steps to improve their lives. In Mmotwaneng people asserted the rights to freedom of association, security of tenure and independent land rights. The Boschhoek people assert their right to restitution. The Mogaladi land invaders are asserting their right to equitable access to land. The housing project beneficiaries are asserting rights to housing and their right of access to the housing subsidy. These are all rights consistent with the South African Constitution.

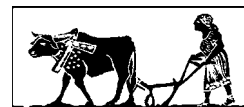
Matlala on the other hand, is asserting his status as chief and landowner. His response to them is that, as his 'subjects', their rights are dependent on his decisions. He has said he will allow the Boschhoek people to remain on Ongezien, but only if they recognise his authority and agree to

be his subjects. He has threatened to evict the Mmotwaneng people and allocate their fields to other people, because they insulted him by demanding title to their land. His message is very clear: if people do not abide by his rules they must leave the area. Their land rights are subservient to his power.

The 1986 uprisings in Lebowa fundamentally challenged this power, as did the demise of Lebowa and the privileged access to resources and military support for those in positions of power that went with it. However, *Kgoši* Matlala now has a new trump card to use in re-asserting his control: his status of landlord. This can be used to veto developments on the land, to re-invigorate the tribal levy system, and, most seriously, to threaten people with eviction. His powers as chief have been shored up by the powers that derive from landownership. The result is a sticky mixture of customary law as interpreted by colonial and apartheid judges, and the 'feudal' powers exercised by lords over their landless serfs and tenants.

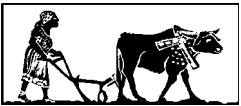
A central feature of the disputes described in this section is a battle over identity. Matlala asserts that his opponents are his subjects and must behave accordingly. They, on the other hand, assert that they are South African citizens, and as such are entitled to pursue their rights, whether to restitution, equitable access to land, housing or tenure security.

The issue of identity, and whether rural people are primarily citizens or subjects, is fundamentally affected by the current policy stance advocated by Minister Didiza that communal land will be transferred into the ownership of 'tribes'. Once the title to the land where they have their houses and fields has been transferred to the 'tribe', their land rights become dependent on, or subservient to, their 'tribal identity'. Yet many rural people do not see their primary identity as being that of 'tribesman' or 'tribeswoman', they see themselves primarily as South African citizens. Once title to the land has been transferred to the tribe, it follows that their land rights will be



defined by the 'customary law' of the tribe. This locks them into a tribal identity for as long as title is registered in that way, no matter how their society changes and re-defines itself.

Indigenous customary law was not premised on title and landownership rights vesting in chiefs. It was premised on the notion that '*kgoši ke kgoši ka batho*' (A chief is a chief by means of the people). Chiefs' powers were derived from popular support. Tribal systems were participatory, at least for men, and important decisions were not taken by the chief, but referred to a general meeting (*pitso*). When a chief overstepped the mark, his followers withdrew their support, they moved away or he was killed or deposed. A modern expression of withdrawal of support in times of land shortage is that people stop paying levies, and cease to acknowledge the authority of the chief in any way. The demise of traditional systems in many parts of South Africa has occurred in this manner.



However, customary law, as defined in the Bantu Authorities Act and interpreted by colonial and apartheid judges, gives the chief-in-council sweeping decision-making and personal powers over tribal assets. Those judgments make up the case law which continues to guide present court cases. Furthermore, the Bantu Authorities Act of 1951, now renamed the Black Authorities Act, is still on the statute book, as is the Black Administration Act of 1927.

In this context, to assert that the transfer of land to tribes does not re-define rural power relations in favour of chiefs, is formalistic and either naive or dishonest. Proponents of this position argue that the land vests in the tribe as a whole, not in the chief, thus the chief cannot make important decisions with regard to the land or land rights, except insofar as the majority of the tribe agrees.

This position ignores the reality of the power imbalances that exist in many rural areas. It requires that ordinary people must take great risks and devote large amount of time to organisational challenges to

unilateral decision-making processes and abuse of chiefly powers.

It also provides no protection for sub-groups within the tribe in relation to issues affecting only their sub-area. Sub-groups do not constitute a majority of the tribe and so cannot challenge decisions which may impact negatively on their land rights unless they can mobilise support within the larger entity of the 'tribe' as a whole. This is particularly difficult to achieve when other sections of the tribe stand to gain materially from their misfortune. The Mmotwaneng and Boschhoek disputes discussed in this report illustrate this problem. The housing project dispute was easier to resolve because people from all the Rakgwadi villages potentially stood to gain from the project.

It is instructive that, in the Rakgwadi disputes, people were most confident to fight issues where they felt that clear political direction has been provided by the state. The Boschhoek restitution issue and the housing project fit into this category. People believed government institutions were available to back them up, and therefore that they were more likely to win their battles with the *Kgoši*. The Mmotwaneng people were entirely disheartened when they heard that the Minister of Land Affairs had announced that she intends to pursue a policy of transfer of land to tribes. After they heard this they stopped trying to find lawyers to help them, and ceased contacting provincial politicians.

Neither state programmes such as land restitution nor state institutions provide a space which is entirely protected from intervention by the *Kgoši*. This is graphically illustrated by the fact that Matlala proceeded to summon Lydia Komape, an MP residing in his area, to the *Mošate* to explain why she had assisted the Tladi community with their restitution claim. He did this regardless of the fact that she is an elected ANC member of Parliament, and regardless of the fact that her role as an MP is to assist people in her constituency to realise their rights. In

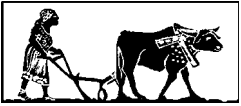
Rakgwadi she is Matlala's subject, and as such can be called to account for daring to act in a way which is contrary to his interests, regardless of what the national law says.

## Endnotes

1. For example, Boschpoort, Vergelegen and Goedgedacht.
2. Interview with Selby Masha, 27 June 2000.
3. Interview with Job Moloto, Josiah Rankoe and Selby Masha, 27 June 2000.
4. Interview with Job Moloto, 27 June 2000.
5. Interview with Job Moloto, 27 June 2000.
6. Referred to as *impimpis* (informers).
7. Member of the (Provincial) Executive Council.
8. Interview with Job Moloto, Selby Masha and Josiah Rankoe, 27 June 2000.
9. Obed Malapane attended the meeting to observe what would take place. The account of the meeting is drawn from his observations.
10. Account of the meeting from an interview with Josiah Rankoe, 27 June 2000.
11. Account from interview with Josiah Rankoe and Job Moloto, 27 June 2000.
12. Interview with Selby Masha, 27 June 2000.
13. Section 2, Interim Protections of Informal Land Rights Act 31 of 1996.
14. Interview with Mayor (name withheld), 25 August 2000.
15. Minutes of Department of Development Aid meeting of 8 April 1987, National Archives, Pretoria.
16. Interview at Ongezien with Jacob Maeabelo, chairperson of the Tladi yaKgahlane committee, 7 June 2000. The heartland of Kanana was Boschhoek, Ongezien and Nooitgezien, the other areas were *meraka* (cattle posts). See Figure 3 on page 9.
17. Interview with Jacob Maeabelo, 7 June 2000.
18. Ramakgolo means 'Father of hundreds', in this case, hundreds of cattle.
19. Interview with Solomon Nkadimeng at Ongezien, 26 June 2000.
20. Klipspruit became one of the Rakgwadi farms.
21. One of PP van den Berge's daughters.
22. 'Tsotsi' is township slang for a street thug.
23. In response to one of the early attempts to have the area de-scheduled the Assistant Native Commissioner for Pokwane wrote in 1937: '*Dit is duidelik dat die eienaars die grond net vir winterweiding aanhou en as 'n arbeidbron vir hulle hoëveldse plase*' [It is clear that the owners only keep the land for winter grazing and as a source of labour for their highveld farms]. He said that if these farms were excised, the adjoining African area would have no potential access to the Olifants River which would be undermine its future viability. (Letter to the Secretary for Native Affairs, 12 April 1937. National Archives, Pretoria (1798/308)).
24. Meeting at Ongezien on 24 August 2000, attended by the Tladi yaKgahlane committee and other claimants.
25. Interview with Lydia Komape, 6 September 2000.
26. Interview with Hendrik Nkgudi, Stanley Bogopa and David Tshehla at Ga-Makgatle, 2 March 2000.
27. The Maseemes have a list of the names of all of the people who accompanied the *Kgoši*. This includes policemen and soldiers.
28. The name of the capital of the Lebowa homeland. Lebowakgomo was established in another location as a result of Matlala's electoral defeat.
29. Interview with Lydia Komape, 6 September 2000.



30. A very similar dispute between the TLC and a tribal authority is described in Ooman (2000).
31. 'And now there are two bulls in one kraal. The elected council, its young ANC members moulded by the struggle, who suddenly have to make million-rand decisions in an office which frequently doesn't have electricity. And the Tribal Council, often a strange mix of royal advisors and other men assumed knowledgeable, where the tribal secretary still gets paid by the government and knows how to type a birth certificate, a business permit or an application for a water pump. In



- most of the area the two councils are at loggerheads and the saying rings true: "where two bulls fight the grass underneath suffers".' Ooman (2000:39)
32. Notice 1139, Government Gazette, 2 August 1957.
33. It is difficult to adequately identify 'Matlala's soldiers', those who were sent to Boschhoek in January 2000. It is not known why and how he has the ability to direct a contingent of armed people to do his bidding; only that he has this power.
34. Bear in mind that this report was written in September 2000 and the situation may have developed since then.

# Chapter 5:

## Variables which impact on effective land use in Rakgwadi

This chapter looks at two issues: agricultural land use and the use of village-based natural resources, such as building sand and firewood. It describes problem areas where land is being left idle and unused, and examples of relatively good agricultural land use. The examples indicate that land is better used when there is an effective local system of land rights control. On the other hand, there is a decrease in land use when local rights and systems are threatened or pre-empted by the centralised interventions of the *Kgoši*. Natural resources such as firewood and building sand are important resources for poor rural people. Village-based rules governing the conservation, use and distribution of these asserts are increasingly under threat from the chiefs in the region.



**I**t appears that the 1994 land transfer has skewed the balance between village-based and centralised systems of land rights and natural resource management in favour of the chiefs. *Kgoši* Matlala is not the only chief to assert that, as the land title-holder, he will decide who may use the land, and who may profit from the resources.

### Land use patterns in Rakgwadi

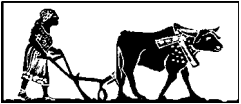
Within and around Rakgwadi there are striking contrasts with regard to land use. The dominant impression is that there is very little agricultural activity taking place. In some villages fields are not ploughed at all. There are irrigated areas which have been unused for years. One can drive for long distances without seeing a single beast in the grazing areas.

However, there are some areas where impressive farming initiatives are being undertaken. In more isolated villages such as Mmotwaneng and Puleng, virtually all the fields are regularly ploughed and planted. Some of the irrigation schemes are fully utilised, albeit with dry land crops such as mealies. On Ongezien, the Tladi group is making full use of water from the Olifants River to grow irrigated vegetables. At Groblersdal a group of people from nearby communal areas have occupied and are farming an abandoned irrigation scheme. Their extensive fields of vegetables are the talk of the area. They sell speciality crops such as *mange tout* peas and *petit pan* squashes to luxury shops in Gauteng. The Ga-Makgatle cattle project people too, notwithstanding their fights with the Tladi, have managed to build up an impressive herd of 700 Afrikaner cattle in four years.

Without research focused on this issue, it is not possible to understand all the reasons for the low intensity of land use generally found in an area where success is clearly possible under certain circumstances. However, one factor stands out as possibly contributing part of the explanation. The groups who are managing to use their land consistently are groups which have managed to maintain and enforce internal rules and systems pertaining to land use. On the other hand, land is not well used in situations where there is no secure and specific user group exercising control over the land.

In some of the examples discussed, the *Kgoši* has failed to devolve control to specific villages – apparently to avoid hard choices and conflicting claims. In other instances the *Kgoši* or the *Mošate* has interfered with, or undermined, local systems of land rights.

As people are denied, or lose, local rights and control, so agricultural production drops and opportunities are lost. This has serious consequences given the poverty in the area, and the dire land-hunger around Rakgwadi.



## Problem cases in Rakgwadi

### Tsimanyane irrigation scheme

There is an irrigation scheme in Tsimanyane. One and a half morgen plots were allocated to 32 of the first families to settle the area. The families had to pay a rent of £6 per year for the use of the fields. Until 1981 people used the fields to plant wheat, mealies, sweet potatoes, pumpkins and watermelons. As a two older residents noted, the scheme supported the community and its agricultural tradition and skills:

*These were sufficient for the needs of our families and we could survive. We also sold some.<sup>1</sup>*

*We grew up believing that agriculture is the backbone of our survival. We had a keen interest in agriculture. We used to store our harvest with the co-operative and so*

*we did not pay for our mealie meal. We did not have to use money to buy food at all. We also had a system of sharecropping which helped the farmers who did not have plots and provided food for the old people who could not plough.<sup>2</sup>*

All this changed in 1981 when *Kgoši* Matlala, assisted by local agricultural extension officers, entered into a lease with white farmers from the Oos Transvaal Koöperatif (OTK) in terms of which the irrigation scheme would be used to grow cotton. The OTK farmers ploughed and planted the fields and the plot holders were required to provide labour for weeding and picking. They were not consulted about the arrangement with the OTK, merely informed by the chief at the *kgotla* that these new arrangements would apply. An agricultural officer said the reason the plot holders was not consulted was 'the fear that then they would not agree to the cotton project'.<sup>3</sup>

The cotton scheme worked relatively well for the first three years. However, the OTK farmers then insisted that the furrow irrigation system that had operated for 25 years be replaced by a sprinkler system. The furrows were dug out. At the same time a drought struck. For the next two years the plot owners received no benefits from the sale of the cotton; instead they had to pay in for the costs of the seeds, tractor, insecticides and wages for people they had hired to help with the harvest. Old people had no option but to use their old age pensions to pay for these costs. They were plunged into financial crisis. Not only did they now have to pay for food, but their only source of cash income was 'eaten up' as well.

The OTK farmers pulled out of the scheme in 1985. Since then a few people have made sporadic attempts to plough the area without success. The destruction of the furrows means the area is no longer irrigated. People complain that the soil is also no longer fertile. Some people believe that the OTK farmers poisoned it when they left. Both young and old people say

there is no point in investing in agriculture. They fear that any improvements they make could be confiscated in future. As one old lady said:

*What is the point? First they took away our cattle then they came back to take away our fields. Both times it was the same. It was done by the same people, the Kgoši, the balimi and the whites.<sup>4</sup>*

### Mapotong agricultural area

Another irrigable area which is not being used is the Mapotong agricultural area near Letebejane village. This is an area irrigated by canals from the river which was previously used by the Tompi Seleka Agricultural College. The College was established in 1958 on land that formed part of the parcel allocated to the Matlala Tribal Authority. The tribal authority had welcomed the establishment of the college in its area of jurisdiction. By 1992 the college had stopped using the irrigated area and people from the adjacent village of Letebejane applied to the *Mošate* for the area to be allocated to them. The plan was that particular people with a keen interest in farming should be allocated individual fields. The group took various steps to try to secure the land: they collected money to prove their commitment and they even marched to the *Mošate* to ask the chief to make a decision.

Eight years later the land still lies fallow. With every passing year it becomes more overgrown and trees now grow on what were once irrigated fields. In February 2000 there was a meeting about the future of the land at the *Mošate*. At this meeting the chief and the Bakone Development Support Committee recommended that a Section 21 company be formed. The company would raise investment money and farm the area on a 'commercial basis for the benefit of the entire Rakgwadi community'. The chief has said that he is on the horns of a dilemma: how can he allocate the land to one or two nearby villages, when he must ensure that tribal assets are used for the equal benefit of all his subjects? The

Letebejane would-be farmers are up in arms; they say that irrigation schemes and arable areas have always been allocated to the nearest village. They say that not everyone is equally interested in farming and that the fields should be allocated to those who are. They insist that no one in the village would object to this.

### Stock theft

Another problem in Rakgwadi is stock theft. It affects people who have large herds of animals as well as those who have only five or six cattle for household purposes. As a result, many people say that it is no longer worth trying to keep cattle. People interviewed believe that a stock theft syndicate operates in the area. They point to a particular butcher whom they say buys the stolen cattle from unemployed youth. They say that people have found the hides of their cows spread out behind this man's shop. The police have been called and presented with this evidence but have failed to arrest the man or act against particular youths identified by the community. The explanation given is that the man has bought off the police and that the 'powers that be' in the area must get a share of the profit from his activities.



### Success stories

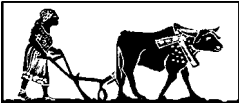
#### Phetoane irrigation scheme

The Phetoane irrigation scheme is one of four irrigation schemes attached to particular villages.<sup>5</sup> As in Tsimanyane, irrigated plots were allocated to early settlers who in turn paid a 'rent' of £6 per year. These were presumably SADT rents. The Phetoane scheme is used only for mealies and wheat and to this extent it is not a success. On the other hand every plot is used and the members derive considerable benefit from their crops. There are 48 members and they each have a 1.5 morgen plot. The chairperson of the farmers group, Mr Mamahlodi, says that in a good year a plot holder can reap 80 bags of mealies. In 2000 Mr Mamahlodi reaped 37 bags. He says that these 37 bags are

enough to provide for himself and his two grandchildren for an entire year.

The members have a joint bank account. They pay the electricity costs for the pump from this account. They have built a 'wheat shed' next to the project with the proceeds of their wheat sales. They also club together to hire tractors to plough the entire area every year. They used to plough with oxen but, because of high levels of stock theft in the area, most people have lost all their cattle. Mr Mamahlodi, for example, has lost 60 cattle and 30 sheep and goats. His sole livelihood now is his old age pension and crop farming.

Old people dominate the scheme and Mr Mamahlodi is sceptical about young people's commitment to farming. However he concedes that all the fields are properly farmed, including those inherited by young people. Young men nearby said that they wanted a bigger role in the scheme. They said that unemployment has made them look to farming as a way to survive, but the old people are biased against them.



#### **Ga-Makgatle cattle project**

This cattle project has managed to amass a herd of 700 impressive-looking Afrikaner cattle whose ownership is spread between 30 members. The number of cattle per member varies from two to 60, with most people having about 30. They sell the cattle for R1 800–R2 000 per animal. They say they are making a profit but that they need to have their own land in order to improve.

The members started the project in 1996 at Ga-Makgatle, one of the Rakgwadi villages. There is ample grazing land around Ga-Makgatle on the farm Klipspruit which is 1 566ha. It seems the adjacent Rakgwadi farm of Roodekopje (2 200ha) is hardly used, but project members says that it is a problem for them to graze on tribal land:

*There is a problem of theft in this area. We cannot control the people who pass through Matlala's farms. Any person who is under the tribe*

*has the right to go where he likes on this land. We cannot stop that.*

*Already many of the village people are jealous of us. They prefer to buy cattle from ordinary villagers who have cattle, not from us. They say our cattle are too expensive.*

*Relations would be worse if we tried to control the area where our cattle graze. We cannot interfere with other people. Even if very few people are grazing this area, it is no good for us.<sup>6</sup>*

As set out in the discussion in the Tladi/Boschhoek land claim (Chapter 4), the cattle project members were allowed to extend their grazing onto the farm Nooitgezien by Kgoši Matlala from 1998. Some project members say this too is not good enough.

*There are people passing through the area, fishermen and other Matlala people. We cannot stop them, so they get a chance to look at our cattle and make plans to steal them. There are already people cutting the fences, not just Matlala people, but people from other Kgošis as well. There is no future for us to get security on this land. If the Kgoši gave it to us others would complain. There is already jealousy that it was allocated to us. Now some people are demanding to join our project. There is not enough grazing to expand, the cattle will die. So we refuse these people, even though according to custom we are not supposed to. There is a big residential area set out at Boschhoek. One day people will move there. Those people will need grazing for their stock. The only land they could get is the land we are using now. That land will only ever cause fights.<sup>7</sup>*

Thus they believe that the only answer is for them to acquire ownership of other uncontested land in the area. They have looked for state land or land for sale in the area, but found none except the block of

Immerpan state farms. They approached the officials who are looking after this land, but came back disheartened. Part of the area has been invaded by a group under the leadership of a man who has set himself up as a chief. Neighbouring chiefs, including Matlala, have also demanded that the area be given to them. They have the impression that there is no hope for a group such as theirs to use land reform grants to buy a farm there.

The aim of this project is to buy private land, even if it is far away from Rakgwadi. They say they will set up *meraka* (cattle posts) on any new land they manage to acquire. This view may not however, be representative of all project members. On another occasion an older member of the group said that it would not work to acquire land far away. He said that members would fall out if the cattle were far from their homes. He proposed instead that the *Kgoši* should allocate them a specific area of extensive unused grazing land under his control. It is not clear whether this land would be instead of, or in addition to Nooitgezien. It appears that there may be a divergence of interests between older and younger members of the project.

### Groblersdal agricultural area

The most impressive agricultural production in the area is on irrigated plots near Groblersdal. The plots formed part of a scheme irrigated by the Olifants River which was initially used by white tenants. However, the plots have lain fallow for many years. It appears that the area was bought out by the SADT but then never allocated to black farmers.

In 1997 the plots were occupied by a group of 33 families from neighbouring communal areas. The group is called the Tafelkop Farmers' Association. They must have been well organised because they invited various interest groups, including *Farmers Weekly* magazine, to come and witness them moving onto the land and ploughing the first fields.

The families occupied the dilapidated houses on the plots and began to farm.

Three years later most fields are full of vegetables, even in the middle of winter. An NGO called Africare has assisted eight of the member families to plant and market speciality vegetables. This agricultural support, which is in stark contrast to the absolute neglect of local farmers by the government agricultural officers stationed in Rakgwadi, may be an important factor in the success of the project. The families, who do not form part of the pilot group of eight, sell their vegetables on the main tarred road that passes next to the plots.

When we visited the area we found whole families working to harvest and sort vegetables. The children explained to us that it was school holiday time. The work is clearly hard and the families live precariously in houses which are broken down and only partly roofed. However, the family we spoke to<sup>8</sup> has already saved enough from their 5.29ha plot to buy a second hand tractor.

They explained that they had joined the association when they were still living in the nearby communal area of Tafelkop. People had joined together to try to find some way to survive in the face of unemployment and poverty. Many of them were trying to farm by sharecropping fields in tribal areas. However they saw 'there was no chance to improve like that, we could not get good land to plough'. For three years they held regular meetings to try to find a way forward. In the end they decided there was no alternative but to invade the irrigation scheme land. The family we met had grown up on the farms, 'that is where we learnt all about farming', and had moved to Tafelkop after they were evicted.

They are anxious about their future because they still do not have security of tenure. They say that Derek Hanekom once visited them and he encouraged them a lot. But that since then there have been long delays although people from DLA keep visiting them and promising to help. Other examples of successful land use (albeit under different circumstances) include the Tladi farming on Ongezien and



the extensive use of family fields in some Rakgwadi villages.

### Local land use systems or centralised control?

It appears from the examples above that the best agricultural use of land occurs when *de facto* control of the land vests in relatively small user groups. The *Kgoši*'s power to intervene in internal land use systems has led to under-utilisation of land, with potentially rich irrigable areas not being used at all despite the fact that many people in the area want to farm and have the necessary skills.

The underutilisation of tribal land has led to many people rejecting communal systems in favour of individual ownership. However, the Rakgwadi examples show that those small groups farming effectively were those who have managed to secure or maintain an adequate (even if informal) level of control over the land used by the group.

These systems of local control are, however under threat from the *Kgoši*. The Mmotwaneng crisis was provoked partly by the *Mošate* intervening in the village level land allocation system under the headman. Decades of farming practice on the Tsimanyane irrigation scheme were destroyed by his imposition of the OTK cotton project. The Section 21 company that will use the Mopotong irrigation area will be under *Mošate* control and it is not difficult to predict where any profits will go, nor that the scheme will not last long. It appears that the transfer of title of the Rakgwadi farms has reinforced Matlala's sense of ownership and his belief that any land rights that people may have within Rakgwadi are subservient to his decisions.

### Village-based natural resources

The tension between village level control of resources, versus *Kgoši* Matlala's power to intervene and appropriate rights from the 'centre', is simultaneously playing itself out in another arena; that of the 'ownership' of natural resources such as wood and building sand. Tensions over

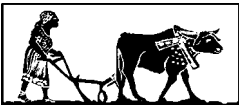
whether these assets 'belong' to the village-based user groups who have used and conserved them over time, or to *Kgoši* Matlala and the *Mošate*, are likely to explode in the near future.

The Hlogotlou Lepelle TLC has received various complaints about the way in which *Kgoši* Matlala and other chiefs within its boundaries are 'selling' these crucial assets to men who arrive in bakkies and load up vast quantities of sand, firewood and rock. They are struggling to find out the respective legal status of the villagers, the *Kgoši* and the TLC with regard to the control and conservation of these resources.<sup>9</sup>

Villagers complain that strangers come to their areas and proceed to dig up and cart away all their building sand. When they object the men produce receipts from the *Mošate* as proof of payment and permission. The TLC believes that these assets belong to the villages and should be under their control. However they cannot find a legal means to stop the various chiefs who engage in this practice, especially since most chiefs in their area were beneficiaries of the 1994 land transfers. The chiefs argue that since they own the land, they also own the sand, the rocks and the trees that are part of the land.

An obvious rebuttal is that the chiefs do not own the land, it belongs to the tribe as a whole. But this is precisely the problem. The land was not transferred to the village-based user groups who have historically controlled and conserved the land they share – it was transferred to an entity composed of 23 villages, represented by one man, the chief.

There is a divergence of interest between the village-based user groups and the *Kgoši*. It is in the interests of the user groups to conserve natural resources for their future use. The *Kgoši*, on the other hand, makes money every time he gives permission to outsiders to load up wood or sand. In the same way, it is in the *Kgoši*'s interests to 'welcome' more and more people into the area. For each new subject he receives a payment of R450 or R500. In



virtually every village of Rakgwadi, arable fields have been converted to residential areas. The people whose fields are 'eaten up' in this way receive no compensation. It would be one thing if the people being allocated the sites were the children of the original families, but in many cases they are outsiders moving to the area. Outsiders pay much more for sites.<sup>10</sup>

There is another tension between the interests of the *Kgoši* and those of the user groups engaged in agricultural activity. Often people need a 'closed' system to be able to use land effectively. The old irrigation schemes all had a set number of plot owners. In the same way, both the Ongezien and the Groblersdal vegetable farming initiatives, and the Ga-Makgatle cattle project have a limited and defined membership. The Ga-Makgatle people stress that they cannot operate effectively because of other people passing through the land, and because there is no prospect that tribal land will be allocated for the exclusive use of a specific group.

The *Kgoši* has to be seen to be treating all his 'subjects' equally and fairly in order to retain his standing throughout Rakgwadi. He gives this as the reason why he cannot allocate 'tribal' resources to 'closed' groups, no matter how effective they may be as farmers. This rationale may overlap with other motives; centralised control in the name of the 'common good' pre-empts the emergence of strong individual and group rights vesting in land users. It 'saves' the land for future 'sale' as residential plots. Whatever the balance of reasons, potentially rich land is not allocated to potential agricultural users, with the result that vast areas are under-utilised and irrigable areas lie fallow.

Another factor which contributes to the under-utilisation of the land in Rakgwadi is its relative abundance. The fact that neighbouring groups, many of whom have long expressed their desperate need for agricultural land, use land better than it is utilised in Rakgwadi, is one of the most telling indictments of the 1994 land transfers to the Matlala tribe.

#### 'Nesting' of levels within tribal systems

An intrinsic feature of tribal systems is that decisions and systems operate at different levels. These systems 'nest' within one another. Decisions and disputes are dealt with first at the most local level and referred 'upwards' only when necessary. Thus a group of neighbours will first attempt to sort things out between one another. If they fail, the matter will be referred to the headman and the broader village should decide. If the issue still cannot be resolved at this level, it will be referred to the *Mošate* for the *Kgoši*'s attention. In principle, critical decisions should be taken by the tribe as a whole, convened at a *pitso* (general meeting). This is where the notion of 'tribal resolutions' comes from.

The system is premised on the fact that families have clear 'individual rights' to residential plots and fields. These are bequeathed from generation to generation. Critically, land use and allocation systems are generally managed at the level of the village and the headman, and referred to the *Kgoši* only insofar as they may impact on the interests of a neighbouring village, or if a dispute cannot be resolved locally.

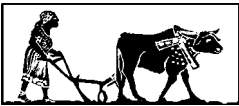
A *Kgoši* should not be able to confiscate individual land rights arbitrarily, nor should he be able to unilaterally intervene in a village's land allocation system. The perception that the *Mošate* had intervened in the village level allocation issues is what sparked the Mmotwaneng dispute.

There are rules and customs governing the flexible interaction between the different levels of decision making and authority nested within the tribal system. The relationship between different levels adapts and changes according to particular events and disputes. This ongoing process of internal adjustment and adaptation over time is pre-empted and deeply skewed by the transfer of title to one or other level of authority within the system. The process of land transfer must always define the boundaries of the land at issue, as well as who the owner(s) of the land will be.



In this regard tribal systems present a series of dilemmas. Should the land be transferred to the village-level group? After all, it is at this level that residential plots and fields are allocated. It is also at this level that user groups apply rules pertaining to the use and conservation of common property resources. Or should the land be transferred at the level of the larger tribe? If it is transferred to the tribe as a whole than village level users can always be 'outvoted' in decisions pertaining to the resources which they share and which previously had been under their control. If, on the other hand, the land is transferred at the level of village user groups, chiefs will complain that their power and status have been undermined.

Transferring title will therefore skew and alter the 'nested' nature of customary systems. Furthermore, the results will be set in stone. Transfer of title has always upset the balance within tribal systems. One example is the system of imposing levies in order to purchase land that operated in Sekhukhuneland (and other parts of the former Transvaal) in the 1920s.



*The imposition of special levies by the chiefs was a recurring source of conflict.... Although this fund considerably expanded the amount of land under the authority of the Paramount, it was far from universally supported. The payment of the levy ran counter to the long-standing popular conviction that 'the land belongs to us, we cannot pay for our own ground'.... Some of the dikgošana also chafed against a system which expanded the power of the Paramount but did little to enhance their own positions.*

(Delius 1996:27)

Transferring title to land at the level of senior chiefs or paramounts has the effect of undermining the integrity of other levels of the tribal system. In particular, it undermines decision-making processes at the local level. It is at the village level that critical land use and conservation decisions have traditionally been made.

Furthermore it is only at this level that users can effectively participate in decision-making processes affecting the resources they use and share. This is one of the reasons that the scrapped Land Rights Bill proposed an alternative to transferring title as the primary method of securing land rights in communal areas.<sup>11</sup>

### **Recent policy proposals from the Ministry for Agriculture and Land Affairs**

The land transfers in Rakgwadi appear to have exacerbated an underlying problem of centralised control over village-based resources. There is a contradiction between the *Kgoši's* interests and the interests of people engaged in farming activity. The *Kgoši* stands to gain financially from 'selling' residential sites and fields to outsiders and from 'selling' natural resources to businessmen. Village- and user-based systems of controlling agricultural land and conserving natural resources are under threat. So are people's individual land rights to their homes and fields. Rampant stock theft is being allowed to go unchecked. The *Kgoši's* power to undermine local systems of land rights and confiscate individual land rights has been boosted by the land transfers.

All these factors contribute to the evident under-utilisation of agricultural land in Rakgwadi, a tragic reality in an area where people are desperately poor and seeking ways to try to make a living.

Instead of examining the reasons for the under-utilisation of land in communal areas and taking steps to protect and assert the rights of user groups, government proposes two contradictory solutions. On the one hand it favours individual ownership for entrepreneurial farmers, but on the other it proposes that title in communal areas should be transferred to 'tribes'.

In order to ameliorate this patent contradiction, it developed a bizarre proposal for communal areas which is custom-made to bolster chiefs who are

greedy and corrupt and which will lead to further dispossession of the poor. The proposal ignores the existence of individual land rights within communal systems. An early version of the Integrated Programme of Land Redistribution and Agricultural Development expressed it thus,

*Some communities holding land under traditional tenure arrangements may wish to address proposals of their members to upgrade the tenure of their holdings. Similarly, members of the community may seek to access land now held under traditional tenure but, lying under-utilised or vacant...*

*Communities and traditional leaders who wish to respond to sectional title requests within their communities could offer the land for sale to members under the programme.*

*Receipts from the sale of land would go into revenues of the community to be used for investments in schools, clinics, productive enterprises, and other infra-structural projects yielding benefits to the community....*

*Members purchasing land under the integrated programme for purposes of tenure security would apply for the grant in the normal way. The traditional authority would be the seller in the transaction, and with the exchange of money, the title would be transferred to the name of the buyer.*

(Ministry for Agriculture and Land Affairs, undated)

It is ironic that at the same time as DLA proposed to use the Upgrading of Land Tenure Rights Act of 1991 to transfer land to tribes, it proposed that members of tribes should have to **buy** land rights within communal areas. ULTRA provides that land should be upgraded free of charge. The Act was premised on the assumption that government was under an obligation to 'upgrade' underlying land rights into ownership. Thus the 'tribes' (an alias for the chiefs) would get the land for free,

whilst the members of the tribes would be required to buy the portions they wish to own. True, they would be assisted by state subsidies, but these subsidies would be paid straight over to the traditional authorities who got the land for free.

To assume that the money from the 'sales' will be properly accounted for and used for schools, clinics and 'infrastructural projects yielding benefits to the community' is to ignore the long history of misappropriation of funds in many tribal areas.<sup>12</sup> One of the primary reasons for the 1986 uprisings throughout Lebowa was precisely the misappropriation of community funds by tribal authorities. There are areas where money is properly accounted for by tribal authorities, but this is not always the case. DLA's proposals are silent on mechanisms to ensure that the proposed 'sales' to entrepreneurial farmers do not dispossess people of their fields, homes or rights of access to grazing. They say nothing about imposing checks and balances to ensure that the money generated by the sales is properly accounted for and used for the benefit of the community, rather than for projects approved by the chief.



The effect of the proposals would be to transfer rights and powers which vest in individuals and village-based user groups to the centralised control of traditional leaders. The proposals ignore the history of abuse at this level. They also ignore the dynamics which have mitigated against the rural poor being able to use land effectively. They ignore the tradition of relatively small groups of users joining together to add value to the farming activities that they practice on their individual plots. They focus entirely on elites – the chiefs who would sell the land, and the emergent individual farmers who would buy it. Too bad about the land rights of the poor which, after all, are the 'invisible' assets that would be traded in the transactions between the chiefs on the one hand and approved emergent farmers on the other.

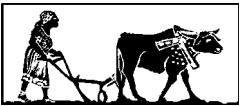
The section on tenure reform in the early draft of the Integrated Programme ends:

*In all the communal tenure cases described, the general character of communal property would not be altered fundamentally.*

One is left to wonder at the meaning of this conclusion. Does it mean that the authors believed that it is part of the general character of communal systems that people should pay to own their land, and that traditional leaders intrinsically have the right to sell land? Is it their view that it is consistent with communal systems that individuals be given grants to buy land from chiefs where other people may have rights? This section does not appear in later drafts of the programme, it disappeared without comment or replacement. However it is indicative of the thinking of senior policy drafters in the Ministry.

### Endnotes

1. Interview with Mrs Nape Mogadima (80 years old) conducted by Obed Malapane, 17 February 2000.
2. Interview with Mrs. Maile Makgetsepe (pensioner) conducted by Obed Malapane, 17 February 2000.
3. Interview between Obed Malapane and the *Molemi*, Mr Skosana, 29 February 2000.
4. Interview with Mrs Maile Makgetsepe (pensioner) conducted by Obed Malapane, 17 February 2000.
5. The other irrigation schemes are at Goru, Mogalatsana and Tsimanyane.
6. Interview with Hendrik Nkgudi at Ga-Makgatle, 2 March 2000.
7. Discussion with Hendrik Nkgudi, Stanley Bogopa and David Tshehla at Ga-Makgatle, 2 March 2000.
8. This family was friendly but refused to give its name. They said that they were not allowed to speak to outsiders. All interviews had to be conducted with the Chairman. They directed us to his house, but he was away. (Visit to the irrigation scheme



- with Lydia Komape, 3 July 2000.)
9. Interview with Moses Radingwana, Chairperson of the TLC, 2 March 2000.
10. This phenomenon is not peculiar to Rakgwadi. Barbara Ooman quotes a Mamone (Sekhukuneland) inhabitant as saying: 'Strangers have to pay more than local people, so the Jane Furse headman now prefers them because he can make more money out of them' (Ooman 2000:30).
11. See Claasens (2000a) and Claassens (2000b).
12. See, for example 'Tribal area mismanagement exposed' in *Business Day* 10 October 2000. The article refers to the Auditor-General's report on the 286 tribal, community and regional authorities in KwaZulu-Natal for the previous two financial years which 'reveals a litany of mismanagement of public funds': *It is particularly ironic that while traditional leaders this week threaten the holding of democratic elections and demand more power for themselves, the report concludes that unauthorised and over-expenditure, theft, mismanagement and general lack of financial control abounds, with traditional leaders themselves also being cited as responsible.'* said Lowe [Democratic Alliance spokesman]. The chairperson of the National House of Traditional Leaders, Mpiyezintombi Mzimela, said this view betrayed a western mind-set. *'This is an insult to traditional leaders. The comment is in keeping with the misconception held in many heads that we are a bunch of fools who cannot manage anything. We represent the people and the problems raised in these reports are of an accounting nature which traditional leaders have never been capacitated to handle',* said Mzimela.

# Chapter 6:

## The lessons from Rakgwadi about democracy and land rights in communal areas

This conclusion draws together lessons from what has happened at Rakgwadi and considers the implications for other communal areas if the policy of transferring land to tribes is implemented throughout the country.

**N**o doubt the rejoinder from those who favour tribal transfers will be that one should not generalise from one example. They may also say that Rakgwadi should be considered exceptional because of *Kgoši* MM Matlala's history of co-operation with senior apartheid officials. It is correct that we should be careful about generalising from only one example. However one study is better than none. No studies of the results of the Lebowa land transfers were commissioned or undertaken before the decision was made to resuscitate the policy to transfer communal land to tribes. And while Matlala may be a particularly wily politician, he is surrounded by chiefs who, like his father, were allocated land in the 1950s because they were prepared to establish bantu authorities. Many of these chiefs benefited from the 1994 transfers in exactly the same way that he did.

### Is Matlala an exceptionally bad chief?

Another possible rebuttal of these conclusions may be that one should not generalise from events at Rakgwadi

because other chiefs are less repressive and Matlala is exceptionally 'bad'. It is certainly true that there are some traditional leaders who exercise their power through participatory processes and that such leaders, together with the traditional system, are loved and respected by the majority of their followers. It is however, also true that Matlala is not considered exceptionally bad by local standards. In fact Rakgwadi people point to neighbouring chiefs as much worse.

I was told that there is a notice in the vehicle licensing office in Groblersdal that states that licenses cannot be issued to people from *Kgoši* Mahlangu's area unless the applicant produces a letter from the *Kgoši*. It is obvious to everyone that such letters come at a price. Mahlangu has also started to give permission for 'outsiders' to load up sand and other natural resources from the villages under his jurisdiction if they pay him R10 a time. An ANC member has also been threatened with eviction from Dichoeung because she participated in a 'private meeting' in the chief's area.<sup>1</sup> There are many such stories and nothing to indicate that what is happening in Rakgwadi is atypical of the neighbouring areas.



## The effect of land transfers on the flexible nature of traditional systems

The 1986 uprisings in Lebowa and in Rakgwadi targeted abusive and extortionist behaviour by chiefs. The year 1986 was a turning point in terms of practices like *mothubo* (free labour for chiefs), and chiefs' capacity to extract excessive levies on pain of eviction or punishment. The political changes of the 1990s, in particular the demise of the Lebowa homeland, heralded a period when chiefs could no longer rely on the armed forces and access to state resources to subjugate people living in their areas.

As outlined in Chapter 3, the 1990s in Rakgwadi was a period of relative 'liberalisation' in terms of the tribal system. Various factors contributed to the period of liberalisation. Extraordinary political tensions and changes were taking place at the national level. Furthermore, traditional leaders and institutions were not receiving anything like the same degree of state backing as before. The less they can rely on direct state power, state finances and repression, the more they have to be responsive to their members in order to survive.

The state and the broader legal context plays a key role in determining the balance between 'coercion' and voluntary participation. Laws governing land allocation fundamentally affect the relationship between rural people and chiefs, so too do budget lines that provide more money for salaries for traditional leaders than for rural local government. It is for these reasons that there has recently been such active lobbying of government by traditional leaders with regard to the respective powers and functions of traditional authorities and local government. And it remains unclear where the lines will be drawn with regard to legal powers and budget allocations.

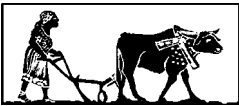
Pre-existing tribal systems have certain advantages over new local government structures. For one thing, people are used

to them. Familiarity, predictability and a measure of stability are important benefits in rural areas where there is minimal police presence and restricted access to the judicial system. Alternative mechanisms to protect people from violence, chaos and social breakdown hardly exist in rural areas.

In this context, the old system of tribal authority 'jurisdiction' together with the state's failure to invest in viable alternative in the rural areas enables tribal systems to continue to operate. However, the degree of support they enjoy varies greatly from area to area. It remains to be seen whether national government will repeal the Black Authorities Act and what legislative mechanisms it will put in place *vis-à-vis* the allocation of communal land. The choices of national government will have a profound affect on the delicate and unstable equilibrium between the legitimacy of the institution of traditional leadership and its coercive underpinnings.

Changes to the status of land ownership are likely to have a greater impact on the relationship between traditional leaders and rural people than any other variable. Land transfers to tribes effectively provide chiefs with ownership rights to communal land. The Rakgwadi case shows a chief using 'his' title deeds to threaten people will eviction, and threatening to confiscate fields not only from individuals who have owned them for over 40 years, but from whole villages. He has used the title deeds to attempt to thwart a restitution claim, to 'grab' land promised to an adjacent, less powerful tribe, and to delay a housing development. Thus, the events of the last few years have seen a reversion to the strong-arm tactics that characterised the pre-1986 period. Who needs the backing of the Lebowa homeland when you own and control the land?

Chapter 4 describes some of the courageous and vulnerable steps that Rakgwadi people have taken to try to oppose Matlala's assertion of unilateral ownership. They will probably win some of these battles. But however hard they



fight and whatever risks they take, they can only win isolated victories. The terms of the overarching conflict have been set in stone by the land transfers; the land belongs to the tribe. Their land rights in the area have become defined exclusively by their tribal identity. Any battles they fight with Matlala will have to be on the basis of customary law. Their rights to their homes and fields are dependent on them remaining 'tribesmen' and 'tribeswomen'. It is striking that many of the people engaged in the disputes with Matlala explain and justify their actions on the basis that, as South African citizens, they are entitled to independent land rights.

It is patently obvious that people who live on land belonging to powerful owners are vulnerable to various forms of human rights abuse. Farm workers on white farms are a case in point. The Department of Land Affairs, by deciding to proceed with tribal land transfers, will further compromise the enforceability of the land rights of millions of poor South Africans.

The land transfer policy is also likely to enable tribal systems to revert to the repressive practices of the homeland days. Chiefs will once again be able to threaten people who challenge them with eviction and to claim a monopoly on development decisions in the area. Not all chiefs would abuse their powers in this way. However, it is a sad fact of life that the chiefs likely to pursue the land transfer route most actively are those who need title to prop them up because they are vulnerable at home.

What would have happened to the tribal system in Rakgwadi if Matlala had not secured the title deeds to the area? There are people there who believe that it was in the process of disintegrating. They point to the fact that lots of people no longer pay levies and that village development committee meetings have replaced *kgotla* meetings in many villages. Another view is that the system was merely changing as it had changed in the past, and that it would have slowly modified as fewer young men went to *koma* and most people got ownership rights to their fields and houses.

In support of this view is the fact that many people continue to use the *Mošate* for a variety of purposes.

A major factor that will influence the future of tribal systems is what alternatives, if any, exist for rural people. The Hlogotlou Lepelle TLC simply did not have the resources to fulfil many of the functions currently carried out by the *Mošate*. Very few people are employed by the TLC, which services an area much bigger than Rakgwadi. The relatively few councillors are, in any event, part time. They earn just over R1 000 per month. There is simply no TLC capacity at the village level where land allocation processes are carried out. The lack of capacity has worsened since the December 2000 municipal elections. There are now fewer councillors for an even bigger 'cross-border' local authority.

As long as the government continues to under-fund rural local government, tribal authorities are more or less guaranteed an ongoing role in rural areas. In the Northern Province, negotiations are currently underway to secure salaries or stipends for headmen. Under the old Lebowa homeland, and until now, they have not been paid. Payment of headmen would bolster traditional systems substantially.

Tribal systems are relatively cheap to support because of the fact that they are partially self-financing through the levy system. Their relative 'cheapness' makes them attractive to government. Just how important a factor this is was forcibly brought home during debates within DLA about the implementation of the proposed Land Rights Bill.

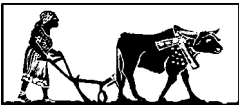
The Bill proposed that 'land rights officers' be employed throughout the ex-homeland provinces to assist in the enforcement of the statutory land rights that would have been created had the Bill been enacted. It proposed that land rights vest in individuals but imposed limitations on the rights in certain instances. In order to maintain the communal system, rights would have had to be exercised in accordance with group rules. The rules



were to be made by a majority of those whose rights were affected. Land rights officers would have played a key role in enforcing the rights and monitoring group processes in contested situations.

The personnel costs associated with land rights officers and the Bill as a whole would, however, have cost DLA R37-million rand a year. Minister Didiza rejected the Bill out of hand. She said there was no reason to employ people to play this role and no reason at all to interfere with the tribal system. Why replace a self-financing system with one which would cost the government money?

This was not the first time the question of the relative costs of the introducing the Land Rights Bill compared to relying on the tribal system alone had been raised in DLA. Before Didiza had been made Minister of Land Affairs, senior officials argued in favour of scrapping the Bill and transferring land to tribes instead. Their argument was simply that the Bill would cost money to implement and that there are huge savings in using the pre-existing tribal system to administer land rights.



## Land transfer and land use

As a result of the 1994 land transfers, *Kgoši* MM Matlala has a land base even bigger than the one his father was given in 1957. This is because of the addition of the three valuable Boschhoek farms. Another result of the transfers is that counter claimants both to the Boschhoek farms and to areas within Rakgwadi lost out. The counter claimants are not only people such as the Tladi yaKgahlane, Chief Rahlagane and the Mogaladi community. They are also Rakgwadi people who believe that their PTOs should be upgraded into ownership, and Rakgwadi user groups who need improved security and tighter control over agricultural areas. The land transfer process provided no opening for them to motivate their counter claims before the transfers became a *fait accompli*.

The transfer process has not only increased the size of Matlala's land base.

It has also increased the degree of centralised control he exerts over Rakgwadi areas which were previously 'SADT farms'. Chapter 5 posits that this centralised control by the *Kgoši*, and interference in village level systems of land rights, is a major factor in the under-utilisation of agricultural land in Rakgwadi. It argues that the land transfers have exacerbated the under-utilisation of land because they have boosted the *Kgoši's* confidence in interfering with land use systems controlled by user groups.

The mere fact that the farms were added to Matlala's extensive area rather than transferred to people who have dire need to use them, for example the Tladi and Mogaladi farmers, is a factor which mitigates against their effective utilisation, now and in the future.

The effect of the transfers has been to compromise effective land use and to expand Matlala's power and revenue base. Whenever land is transferred to tribes as opposed to user groups, it will bolster the revenue base of chiefs because they will be able to 'sell' land to 'newcomers'. This will create a powerful disincentive to support strong internal land rights by members of user groups. People with enforceable rights would oppose the 'sale' of their fields and grazing areas to people from whom traditional leaders collect 'entry fees'.

## Land transfers and elites

The land transfer paradigm opens up tailor-made opportunities for chiefs and other elites to pursue their personal interests at the expense of ordinary people.

The Maseremule/Matlala family have managed to work various political contexts to their advantage over decades. Their collaboration with the bantu authorities system yielded them an initial six 'tribal farms' plus jurisdiction over an additional 16 SADT farms. Matlala survived the setback of being defeated at the polls by Dr CN Phatudi, who was then able to become Chief Minister of Lebowa. He was ensconced as a cabinet minister in Lebowa

relatively soon after this defeat. He used his position as a minister to profit from the 1994 transfers, by acquiring title, not only to many of the Rakgwadi SADT farms, but also to three vacant exceptionally valuable riverfront farms. Through the process he has consolidated his power and sphere of influence over nearby chiefs who were originally his equals.

Despite his history, including his participation in repressive decisions taken by the Lebowa Cabinet to put down the 1986 uprisings, he has managed to establish fairly cordial relations with the ANC and the new government. In fact, in 1997, the Director of the Northern Province Department of Land Affairs introduced him to me as her close advisor and a member of her 'think tank' on land policy. Given this situation, it is more than likely that if the 'transfer of land to tribes' policy is revived in the Northern Province, the transfer of the outstanding Rakgwadi 'SADT farms' to Matlala will be completed. The Lebowa Farmers' Title to Land Trust set up by the Lebowa Cabinet still holds drought relief money which it could use to pay attorney Piet Steytler to take the necessary steps to transfer the land.

The Rakgwadi story shows how a consummate survivor has managed to play a changing political context to his advantage over decades, and looks set to flourish under the new dispensation. Canny individuals always have, and always will, work government systems. However some policies provide more scope than others for such manipulation. The transfer of title option opens up unprecedented opportunities for elites who either know how to work the system, or who have political connections.

Transfer of title raises the stakes. Land ownership provides an abiding set of powers in relation to the land. Once chiefs have secured 'tribal' title, they will have secured a strong set of rights irrespective of possible future changes to the law that may affect their status. They have also secured a very useful set of powers in

relation to ongoing battles with elected local government.

A key factor is that the land is transferred free of charge. This makes it a high prize indeed. There is a good reason for why the land should be transferred 'for free'. The transfers are meant to normalise and recognise the fact that the people living in communal areas are in fact the underlying historical owners of the land. This assumption is correct; the issue, however, is how the transfer mechanism affects the rights and relationships which exist on the ground.

### How transfer affects underlying rights

Transfer of title can easily (and unwittingly) make its intended beneficiaries more insecure than they were before. A case in point is the transfer of houses in urban townships. In the early 1990s, the government of the time provided mechanisms to transfer township houses to residents. The rationale was to create a class of urban black homeowners from people who had been forced to be tenants rather than owners for decades. In many cases the residents had paid rent for the houses for such long periods that they would have long-since paid off mortgage bonds and become the outright owners had racial restrictions not prohibited black ownership of land in 'white' areas.

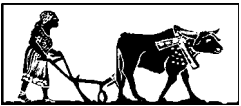
However, the transfer process required that the houses be transferred to one individual, generally the 'head of household'. That person thereby acquired unprecedented powers over other family members who shared the house. This led to internal evictions. Moreover, new owners could sell their houses and legally pocket the proceeds for themselves. Family members (wives, brothers, mothers) who had been equal in their (nominal) insecurity were not equal in ownership. Those who did not get title were rendered much more insecure than they had previously been. Within a relatively short space of time, urban civics were lobbying government to stop the



transfer process because of the evictions and family disputes it had sparked.

In Rakgwadi Matlala has used the title deeds to assert unprecedented rights over fields and houses that people have 'owned' for more than 40 years. The security of the Mmotwaneng community has been threatened for the first time in four decades. It is a damning indictment of the transfer process that people are continuing to pay rents to the now-defunct SADT as a statement that they were more secure under the apartheid-era SADT than they are now that the 'tribe' owns the land.

Free transfer of title in order to 'recognise' underlying land rights cannot work unless it pays closer attention to the question of who exactly the holders of the underlying rights are. For example, who is the underlying owner of a field or a house in Rakgwadi – the family who has passed it down from generation to generation, or the tribe as a whole, personified by the *Kgošī*? This kind of question opens up complicated issues; what happens if a family leaves? Can the site be reallocated to someone else? If so, by whom, the village council or the *Kgošī*?



### Overlapping and nested rights

Western ownership models dictate that the owner must be defined before title can be transferred. This does violence to the African reality of overlapping and nested systems of rights. To opt for the 'tribe' as the owner is to undermine the rights of the individual family and the powers of the village council. On the other hand, to opt for the individual family as the exclusive owner violates the spirit of the communal system.

Tenure models based on title will always skew and violate customary communal systems. They will also, thereby, open an arena for people at different levels within customary systems to push for title to be transferred at the level which entrenches their interests. Thus headmen have sometimes supported the transfer of land to village-based communal property associations whilst more senior chiefs have intervened to oppose CPAs.<sup>2</sup>

Traditional leaders are not an organised force at the level of headmen. They are organised at the level of chiefs, whether in the Houses of Traditional Leaders, or in Contralesa. Thus there is a vocal political demand for land transfers to chiefs, tribal authorities or tribes, while no equivalent national or regional voice is making the case for village-level transfers. However, in particular cases where land transfers are an issue, headmen and members make the case for village-level transfers and transfers to individuals.

### Land grabs and boundary disputes

The transfer of title requires not only the definition of the owner of the land, but also that the boundaries of the land be defined. Time and again pending land transfers open up space for 'land grabs' by particular groups or particular chiefs. It can be predicted that when the decision to transfer an area is under consideration people will try to ensure that nearby areas which are 'up for grabs' be included. This is how the three Boschhoek farms came to be included in the 1994 Rakgwadi transfers, even though there was no previous link between Matlala and these properties.

In other cases, there are clear links between 'peripheral' areas and a core area claimed by a group seeking transfer. This makes the process inherently complicated. For example, there will often be areas around the periphery of a tribe which are disputed. They may be areas that the group originally occupied which were subsequently 'stolen' by white farmers or they may be areas that were put under the jurisdiction of a more 'politically acquiescent' tribal authority. In such a case, when transfer of title is mooted, the chief will feel duty-bound to ensure that such areas are not excluded. Furthermore chiefs are likely to motivate that nearby vacant or disputed areas be 'thrown in' with the transfer. A case in point here is the example Phokeng in Box 7 on page 89.

The Bafokeng transfers did not go ahead in 1997 for various reasons, one of

### Box 7: Land transfer to the Bafokeng

The Bafokeng tribe near Rustenburg has motivated that DLA transfer title of farms that they bought between 1882 and 1906, but which were registered as 'held in trust by the Minister of Native Affairs'. They have a strong case: they bought the land, and the reason that the land was not registered in their name was simply because they were black. However, they are requesting transfer not only of the approximately 52 purchased farms, but of approximately 50 others which are SADT farms. These are farms which they argue are occupied by people who support the Bafokeng, or are needed by the Bafokeng to extend their agricultural activities.

In 1997 DLA investigated the claim. They were met by people on the SADT farms who were picketing against the proposed transfers in certain villages.<sup>3</sup> The people explained that they had received the land as compensation for forced removals and they vehemently opposed the proposal that it now be transferred to the 'Royal Bafokeng Nation'. They had not previously objected to falling under the 'administration' of the Royal Bafokeng. The tribe, which has rich platinum resources, provides far better services to rural people under its 'administration' than does the government. However the picketers said that they had never anticipated that, by accepting these services, they would one day be called upon to agree that the ownership of their land be transferred to the Bafokeng.

which was local opposition, another was strong objections to the notion of tribal transfers from local ANC branches<sup>4</sup> and certain ANC Cabinet ministers, and another that the Minister of Land Affairs at the time believed the proposed Land Rights Bill would provide a better avenue for resolving the problems at Phokeng.

However, the new policy approach is bound to resuscitate demands for transfer of land to tribes. Another claim waiting in the wings is that of the Mphahlele. This also illustrates the fact that the transfer process is bound to elicit claims to peripheral areas. The Mphahleles bought land before the turn of the century. As in the Bafokeng case, the farms were not registered in their name. Now they are claiming that the state transfer not only the nine farms which they purchased, but an additional 118 which were subsequently put under their jurisdiction. In 1997 I was told that local ANC branches would object to the inclusion of the jurisdictional farms in the transfer.

The process of transferring title will inevitably create or inflame boundary disputes, even in areas where some degree of mutual accommodation had been

hammered out in practice. This is graphically illustrated in KwaZulu-Natal. Long before the change of government in 1994, the Inkatha Freedom Party had proposed that title to communal areas be transferred to the ownership of tribal authorities. The KwaZulu legislative authority had initiated the process of surveying tribal authority boundaries in preparation for the transfers. These had to be put on hold in 1994 because the Constitution defines land as a national competence and such transfers are not consistent with the 1997 DLA White Paper on South African Land Policy.

Under the new policy the transfers seem set to proceed, but there is a problem. The surveyor's report indicates that more than half of the tribal authorities boundaries are internally disputed. These disputes would have to be resolved before the transfers could go ahead.

### Who benefits from land transfers? Continuity with homeland beneficiaries

Free land transfers create high stakes. They are also likely to generate disputes where none may have existed before. Under such



circumstances there is a danger that people with power and resources are more likely to succeed than people who are poor and organised only at the local level. The Rakgwadi case indicates that the rural people in the best position to work the new systems to their advantage are likely to be people who learnt their skills and consolidated their power under the homeland system.

The land transfers to tribal authorities initiated by the KwaZulu government are a case in point. The new policy parameters provide an ideal opportunity for the people involved in that process to 'seize the moment'. The Lebowa Farmers Title to Land Trust and Piet Steytler are also presented with a golden opportunity. The trustees were appointed by the Lebowa Cabinet and include former Chief Minister Ramodike and various chiefs.

The key role given to agricultural extension officers in the Integrated Programme of Land Redistribution and Agricultural Development will also strengthen the continuity with the old homeland system and their beneficiaries. There are many areas where extension officers played a central role in 'projects' which deprived people of their land rights. The Taung irrigation scheme and the Bethanie agricultural project initiated by *Kgoši* Mamogale are but two examples. In all the homelands extension officers were required to work very closely with tribal authority structures. Of course, there are some excellent extension officers who see ordinary people as their primary clients, and make every effort to support optimum land use. However the imprint of decades of homeland policies and practice which favoured chiefs and elites over the poor cannot be discounted.<sup>5</sup>

### Lack of clarity assists elites

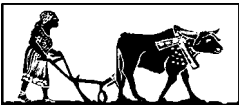
Apart from the content of the policy itself, there is another factor which gives elites the edge over ordinary people in being able to work the system to their advantage. This is public confusion about the actual content and status of government policy

and programmes, let alone the status of existing land laws, many of them inherited from various homelands. The 'transfer of land to tribes' pronouncements of Minister Didiza are full of contradictions. On the one hand there is the sectional title option described in the Integrated Programme of Land Redistribution and Agricultural Development in South Africa. A detail that appears to have been overlooked is that sectional title applies only to the ownership of parts of buildings, and cannot be used as a mechanism to vest ownership of fields and scattered residential sites in individuals. Moreover it requires the existence of a 'body corporate' and imposes complex rules and systems on local authorities.

Minister Didiza is also reported to have said on Radio Zulu that chiefs should desist from the practice of *ukukhonza* or taking money in exchange for accepting new members and allocating stands to them. This is quite an ambitious injunction. It cuts to the heart of the economy of tribal systems. Moreover the injunction is not accompanied by any concrete enforcement mechanisms.

At the same time as the new policy of transferring land to tribes is set out in DLA policy documents, the MEC for Agriculture and Land in the Northern Province, Aaron Motsoaledi is reported to have announced on Northern Province radio stations that the new policy is that PTOs will shortly be 'upgraded' into sectional title. People in Rakgwadi follow such announcements with keen interest, but struggle to reconcile them with one another. While confusion reigns in the minds of ordinary people, elites and insiders can get on with the job of using their connections to find out the detail of specific legal mechanisms, and use this information to secure their interests. Potential counter claimants may only discover what has been going on when it is too late and the transfers have gone through.

It is not just in South Africa that lack of clarity with respect to land rights and policies provides a space for elites to use the system to their advantage:



*Confusion surrounding land rights favours powerful players, particularly the political-administrative class and some local elites who are the only ones able to master the legal and administrative complexities. They take advantage of the situation to various degrees: using their influence to acquire land.* (Delville 2000:104)<sup>6</sup>

## Political tensions within government

Minister Didiza favours a decentralised approach and it is envisaged that the new policies will be driven at the provincial level. This will certainly favour the continuity with homeland players in some provinces, for example KwaZulu-Natal. However there are also provinces where the provincial legislatures and MECs have taken a strong anti-chief position in the past. In North West and the Eastern Cape, for example, legislation was introduced that significantly curtails the powers of chiefs. These are both provinces controlled by the ANC. Various provincial land and agriculture MECs are people whose political views were moulded in the days of UDF mobilisation against homelands and chiefs. It is difficult to imagine such MECs pursuing the policy of transferring land to tribes with any real commitment or vigour.

There are other indications that senior ANC leaders would not support the transfer of SADT and state land to tribes. For example, in 1998 senior ANC ministers were opposed to the possibility of transferring land around Phokeng to the Royal Bafokeng Nation. In 1998 President Nelson Mandela told chiefs in the Transkei that he did not agree with their demand that land should be 'returned to their ownership'. He said 'rural residents and not traditional leaders must decide what type of land ownership should prevail in rural areas'. He told traditional leaders that the present government belongs to the

people and that it will listen to the people on issues pertaining to rural land. He told traditional leaders 'not to become a law unto themselves and to respect the views of the people on land issues'.<sup>7</sup>

There have clearly been shifts within parts of the ANC on the question of the appropriate status of traditional leaders. One clear indication is the negotiations with traditional leaders which delayed the announcement of the date for the 2000 local government elections three times during October 2000. However the rather bumpy course of these negotiations also indicates that the issue is controversial and that there are different views within government.

The Minister of Land Affairs must know that key ANC leaders from the rural provinces cut their political teeth during the anti-bantu authority rebellions of the 1950s and during the UDF anti-chief campaigns of the 1980s. It is inconceivable that she has not anticipated the potential political explosiveness within the ANC of a policy of transferring communal land to tribes. One must therefore assume that she has senior political backing for her approach.

However, political backing alone will not make the policy easy to implement. On the one hand, some provincial MECs and governments will be reluctant to enforce it in their provinces. On the other, individual land transfers are likely to generate severe local conflict in many areas, assuming that proposed transfers are made known to those potentially affected. Residents, ANC branches and local government councillors will come out against transfers in many areas. In other areas, proposed transfers will exacerbate boundary disputes between neighbouring chiefs. People with counter claims to the land will assert their rights. And because of the finality of land transfer processes, and the close impact they have on people's lives, all these stakeholders are likely to be vociferous in their demands. The only way to avoid transfers triggering disputes is to do them in secret as the



Lebowa transfers were done. However, as the Rakgwadi disputes show, this will only delay the disputes.

Apart from the fallout of having to manage disputes, the implementation of the policy is likely to be a time-consuming process. For the process to be fair, all the potential stakeholders have to be informed and given the opportunity to represent their views. Who will play this role and mediate the inevitable conflicts? The Department of Land Affairs is understaffed.

In any case, the role of DLA officials has been downgraded by the Minister. This leaves the matter in the hands of agriculture officials and officials from the provincial departments which deal with traditional affairs. It is fairly predictable where their sympathies would lie.

Regardless of who manages the process, achieving consensus among affected parties will be time-consuming. Ignoring stakeholders will trigger conflict and disputes. The problem is that land transfer is final. It is not easy to undo mistakes once the land has been transferred. The only way to correct mistakes once transfer has taken place is by expropriation. To expropriate land from tribes would open up a whole new set of issues, problems and disputes.

It is in the ex-homeland provinces that the ANC has won the highest proportion of votes. Some people within the ANC attribute this success to alliances with chiefs. Other people believe that the revolts during the 1950s against bantu authorities and UDF campaigns against homelands during the 1980s built the ANC in these provinces. They also think that rural people support the ANC precisely because they are sick of homelands and wish to share in the benefits of South African citizenship and our new democracy.

Conflicts triggered by transferring ownership of communal land to tribes may illuminate which of these two views is more accurate.

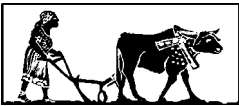
## Traditional systems and democracy

It is shortsighted and inaccurate to counterpose chiefs and democracy and assume that the former are corrupt and unpopular and the latter heralds a golden age. There are traditional systems which are far more participatory than some self-styled 'democrats'. Many rural people have had bad experiences with new 'democratic' structures. These structures have shown that they are not immune to problems of corruption and abuse of power. The 1986 Lebowa uprisings may have changed much of what was bad in abusive tribal systems, but they also terrified many people with their excesses which included 'witch' burning.

In Rakgwadi many people are disappointed by the TLC. They say it cannot solve their problems. The old system may have its shortcomings, but for many people it is at least predictable and relatively stable. Furthermore, many people still deeply support old traditions and values. *Koma* remains an important rite of passage for many young men, and initiates them into the secrets of a shared history and identity. It is instructive that the Mmotwaneng petition specifically states that the community is committed to obeying the *Kgoši* in relation to '*koma*, dispute resolution and tradition' (Box 3).

It would be a mistake to underestimate the depth of fears and beliefs about magic powers and witchcraft across all sections of society. The *Kgoši* is believed to have strong ritual powers himself, and access not only to important ancestors, but also to powerful witches. Even the people most disaffected with the *Kgoši* and the tribal system respect this source of strength.

There are tensions in Rakgwadi society between the 'old' and the 'new', and between the good and the bad aspects of both systems. A mistake that governments have repeatedly made has been to try to mould society into one or other model. Societies change at their own pace and in their own ways. There are enormous differences within rural society in different



parts of South Africa. These reflect the different traditions and histories that have unfolded in different parts of the country.

Just as the forced imposition of bantu authorities across the country was a mistake, the attempts of various provincial governments to strip chiefs of all powers and development functions after 1994 was also mistaken. Communities should have the freedom to determine which system or balance of systems is most appropriate to their circumstances. Such a 'determination' will never be a single choice made on a specific day, it takes place by constantly shifting processes of pressure, accommodation, and change over time.

However, for the process of change to take place, there cannot be massive legal impediments in its way. And there are looming impediments to an open-ended process of change taking place in the rural provinces of South Africa. In the first place, chiefs have autocratic and peculiar powers in terms of the Bantu Authorities Act (renamed the Black Authorities Act). In the second place, they have privileged access to government, including the President. They are using this privileged access to propose changes to the law and the Constitution that would compromise rural people's right to a system of elected local government. Finally the Minister of Land Affairs has announced her intention to transfer the ownership of communal land to 'tribes' thereby making the land rights of millions of South Africans vulnerable to abuse by chiefs, and locking them into a tribal identity for evermore.

It is a telling indictment of the chiefs currently being courted by government that they argue for the retention of the Bantu Authorities Act. The reason the Bantu Authorities Act was so fiercely opposed by rural people and anti-apartheid chiefs is because it turned traditional systems on their heads. The authority of chiefs no longer came from the people, but from the government. Decades of collaboration with the state and with the homelands has made many chiefs reliant on the powers they derive from this Act,

and unwilling to forfeit its protection. One of the reasons they need its protection is precisely because of the role that many chiefs played in the homelands and the legitimacy they lost in the process.

The chiefs are not currently negotiating for the integrity of the traditional system. They are negotiating for the retention of their privileged position within it. If they get what they want, it will be at the expense of the integrity of traditional systems. Land transfers to tribes will weaken rights that vest in members, and control at the village level. This will cause rifts, not only between chiefs and members of tribes, but between chiefs and headmen.

The Rakgwadi example shows how tribal ownership can be interpreted and exploited as ownership by the chief. Chiefs, bolstered by land ownership powers, no longer have to be responsive to the views and needs of members of the tribe. In many areas they will fall back on the abusive practices of old. It is these practices, and a history of state collusion, that has harmed the institution of traditional leadership far more than elected local government in rural areas. By bolstering the power of chiefs artificially, the government will inevitably further compromise the integrity of the institution.

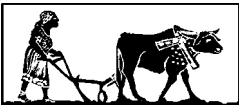
The ANC has long been ambivalent about the role of chiefs in rural areas. For the moment, the balance appears to be shifting in favour of political alliances with senior chiefs. A combination of these alliances and a desire to save money in the rural areas makes it unlikely that there will be any meaningful focus on the problems of centralised control and open access systems which mitigate against effective land use by the poor. Thus rural poverty continues to deepen and the stereotype of hopeless communal systems is reinforced. Bureaucrats become even more wary of investing resources in the poorest parts of the country and the rural development strategy degenerates into a list of physical infrastructure projects rather than a strategy to enable the poor to control and use their assets more effectively.



## Land invasions – a route for the excluded?

The policy of transferring communal land to tribes excludes many types of claimants, for example people with a specific historical (but non-tribal) connection with the land, and user groups who want enhanced control over the land in the interests of agricultural production. The policy focuses on the two extremes of 'tribe' on the one hand, and 'individual' on the other. It provides no room for the recognition of other types or sizes of groups as rights holders on communal land. It does not recognise user rights, only ownership.

Yet the Rakgwadi example shows that there are many other self-defined groups within rural society, and indicates that effective land use systems are generally best practised by smaller use-groups. What avenues does the transfer policy provide to these self-defined groups? In a nutshell, none. Their existence is ignored and their identity subsumed into a government-imposed 'tribal' identity.



In and around Rakgwadi these smaller groups have resorted to land invasions as the means of securing their rights. Some invasions are clearly in response to the 1994 transfers – for example, the Mogaladi farmers clearing fields on Matlala's land and the Tladi farmers sending cattle into Boschhoek. Other 'invasions' cannot be blamed on the transfer process. However, a policy which excludes specific interest groups is bound to deepen the alienation from government that has led to groups of people occupying land rather than waiting for ever, or watching, excluded, as land they claim is transferred to others.

The other examples of land invasion near Rakgwadi are the Tafelkop farmers on the irrigated plots near Groblersdal, and the Mashabela invasion of some of the Immerpan farms. Mashabela is a 'would-be' chief from the Jane Furse area who needed land on which to set himself up. He and an expanding group of followers have settled on farms with a very similar

history to Boschhoek. These farms were also occupied by long-term labour tenants before being purchased by the SADT. The descendants of the labour tenants are horrified that Mashabela and his followers have moved onto 'their' land. The National Department of Agriculture, which controls the Immerpan farms, has made desultory attempts to evict Mashabela at various times, but he is still there and the settlement grows month by month.

The land invader groups around Groblersdal are very different from one another. But they have in common the desire to negotiate for land from a position of possession, rather than forever waiting on the sidelines for government to 'deliver'. Land invasions can have positive and negative consequences. Most people who visit the Tafelkop farmers at Groblersdal will be impressed, whatever their ideological stance on land invasions. Tony Leon, leader of the Democratic Alliance, has for example gone on television saying that it is a disgrace that such committed farmers were compelled to take the law into their own hands as the only way of acquiring farming land.

The Mashabela invasion is more worrying. It appears that Mashabela did not inform his followers of the risks they took in occupying the land. They were given the impression that his actions were condoned by government. Unscrupulous people who lead land invasions can easily prey on the vulnerability of 'settlers' to extract levies and protection money.

In South Africa land invasions so far have not followed the same stark racial lines as in Zimbabwe. In fact, in many instances it is black land or state land which is invaded. Examples include the invasion of the Dunn reserves and other 'coloured' rural areas in KwaZulu-Natal. The ANC/Inkatha Freedom Party conflicts in KwaZulu-Natal have also seen the invasion and counter invasion of both communal and township areas. White holiday makers have 'invaded' communal areas along the Wild Coast *en masse* by bribing chiefs and headmen.

Often black land is easier to invade than white land. This is partly because communal land is more difficult to defend as a result of legal difficulties concerning who has the right to sue for eviction. Black rights holders also tend to be less violent and less litigious than white owners in keeping others off their land. Another factor is that black areas are often situated close to existing settlements. People do not have to move far and disrupt their social networks to occupy nearby areas which they need, or believe they have a right to. Mogaladi is a case in point.

The land transfer paradigm provides no viable avenue or protection to groups with claims to specific areas of communal land, nor does it accommodate the needs of small user groups. Their only option would be to apply for subsidies and offer to buy the land from the chiefs who got it for free. This will stick in many people's throats, and most chiefs will reject such offers, just as Matlala did in the Mogaladi case. It would take a massive cultural shift for chiefs and tribes to contemplate selling land, except in little plots, to new 'subjects'.

The transfer policy is likely to increase rural land invasions, precisely because it will cut key stakeholders out of the loop. Invasions can be expected to happen both before and after transfers. They will take place in an attempt to pre-empt transfers, partly as a means of staking a claim on the land, and they will take place after the transfers. The finality of the land transfer process, and the great difficulties and expense entailed in trying to undo them, will make invasions the only route available to those whose rights and needs may have been abrogated in the process.

This scenario may be perceived to be alarmist and far-fetched. It is true that if all affected interest groups are consulted and accommodated in the process, the land invasion scenario would fall away. In fact the land transfers themselves would probably fall away.

The greatest challenge to the transfer policy will not come from objections such

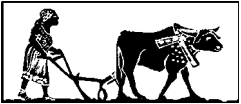
as those raised in this document. It will come from attempting to implement it. The process of implementation is likely to be illuminating in many ways. It is also likely to refocus debate within the ANC on the vexed question of its relationship with rural people and traditional leaders.

## Endnotes

1. She was told to pay a fine of R350 for attending the meeting or face banishment. So far she has refused to pay the fine and has called on various ANC representatives to assist her. The matter has not been resolved and she says she does not sleep at night because she is worried. (Interview with Lydia Komape, ANC MP, September 2000).
2. The Northern Province House of Traditional leaders included the following remarks in their submission to the National Portfolio Committee on Land Affairs on 19 February 1998:  
*Tribal Authorities must be recognised as legal entities capable of acquiring title deeds on behalf of the Tribal Community. There is no need for a Tribal Community or a Tribe to register as a communal property association in order to acquire, hold or manage property. The Communal Property Act, 28 of 1996, must therefore not apply to Tribal Land.*
3. Tantanana, Mamerotse, Robega and Tlapa.
4. A report from ANC branches in the 'Affected Areas in the Bafokeng' dated 16 March 1998 states:  
*Both faction groups should understand that first and foremost they are South Africans of Setswana speaking community before they are Bafokeng and non-Bafokeng. And resolute leadership is required in this regard to carry through the message and inculcate this form of thinking.*



5. Not only does the integrated programme provide a key role to agricultural officers in approving new projects, it envisages that many of them will benefit from it directly themselves: 'A number of people presently employed by the agricultural extension service can be expected over time voluntarily to leave the public service to acquire land under the land reform programme' (Ministry for Agriculture and Land Affairs, undated:12).
6. Delville (2000) quotes Mathieu as follows: 'Hence, this confusion and the non-application of land rules are not simply accidents, or unfortunate imperfections, and their role is not a negative one for everyone concerned'.
7. Transcript of SAFM Radio news item prepared by Manelisi Dubase and broadcast at 18h00 on 27 February 2000.



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