

THE SOCIAL DIMENSIONS OF MINING: EXPECTATIONS AND REALITIES OF MINING INDUCED RELOCATION



By Lea September

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DECLARATION

I declare that this dissertation is my own, unaided work. It is being submitted for the degree of Master of Arts at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination at any other university.

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28 June 2010

THE SOCIAL DIMENSIONS OF MINING: EXPECTATIONS AND REALITIES OF MINING INDUCED RELOCATION

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Abstract

This thesis critically explores a social reality (*i.e.* a resettlement process) from the perspective of a local community through the collection and analysis of empirical data, focusing on the nature of the power relations between affected communities and their traditional leadership, and uncovers some of the deeper dynamics at play between the traditional authority and its constituencies. The nature and evolution of these power dynamics was influenced by 150 years of Bafokeng social and political history, shaped by the discovery of minerals, by repeated challenges of constituencies to the leadership and their respective constant repositioning in the balance of powers, and by the advent of representative democracy.

This thesis argues that the wealth engendered by mining revenues, and the agreements that the Bafokeng traditional authority and mining companies entered into on the one hand; and the fragility of such wealth and contractual arrangements due to growing dissatisfaction within communities as well as competing land claims by individuals within the Royal Bafokeng Nation on the other (threatening the very basis on which this wealth is built), have contributed to shift the leadership style in the Royal Bafokeng Nation from one emphasising participatory democracy and checks and balances, thereby tending to a relatively stable balance of powers; to a more authoritarian and centralised one, stripping institutions such as traditional councils and *lekgotla* of their (counter) powers, and co-opting representatives of communities on the ground such as the *kgosanas* (headmen).

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ACRONYMS

ANC	African National Congress
BEE	Black Economic Empowerment
BIC	Bushveld Igneous Complex
BRPM	Bafokeng Rasimone Platinum Mine
Contralesa	Congress of Traditional Leaders of South Africa
DEA	Department of Environmental Affairs
DME	Department of Minerals and Energy
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
I&APs	Interested and Affected Parties
IDP	Integrated Development Plan
IFC	International Finance Corporation
IFP	Inkatha Freedom Party
MIDR	Mining Induced Displacement and Resettlement
MMSD	Mining Minerals and Sustainable Development
MRC	Mariga Resident's Council
MPRDA	Minerals and Petroleum Resources Development Act
NAD	Native Affairs Department
NEMA	National Environmental Management Act
NGO	Non-Governmental Organisation
OMS	Operational Manual Statement
OP	Operational Policy (World Bank)
PGM	Platinum group Metals
PPP	Public Participation Process
PS	Performance Standard (IFC)
RAP	Resettlement Action Plan
RBA	Royal Bafokeng Administration
RBN	Royal Bafokeng Nation
SAHRC	South African Human Rights Commission
SED	Socio-economic Development
SIA	Social Impact Assessment

Terminology

The argument of this research is built around key terms such as mining, community and participatory democracy and this section describes how these terms are used in the thesis.

Mining: the term mining is used here in a broad sense, encompassing a range of meanings. It can designate mining activities such as exploration, underground and open cast mining, blasting, or disposal of mining waste; as well as mining companies themselves. Although a few mining companies have operations in the Royal Bafokeng Nation, Anglo Platinum will be specifically mentioned in this research, as it is blasting from the Bafokeng Rasimone Platinum Mine (a Joint Venture between the Bafokeng and Anglo Platinum) that led to the displacement and relocation of the community of Lekgoropane.

There are a number of terms used to refer to people affected by mining or having an interest in mining projects or the mining industry in general: communities, stakeholders, civil society, Interested and Affected Parties... All are valid and were used in this thesis. More specifically, people who participated directly in the research are generally referred to as informants, interviewees or participants.

'Community' is a complex and multidimensional concept in social sciences. While it is used to mean anything and everything in the common discourse, it has a range of meanings in social science, defined by a variety of researchers in an array of disciplines. Community "*often refers to groups of people who share values and interests, whether or not they are situated in one specific locality*" (Cheney et al. p.6). Used as an adjective, the term can also describe common interests and values held by particular groups of people. It is a flexible definition however, as there can of course be a diversity of interests and values held by people in one group, even though this group identifies itself as a 'community'. "*Thus the concept of community is complex, dynamic and sometimes contradictory so needs to be interpreted with this in mind.*" (Cheney et al., p.6) In this thesis, the term community has been used to refer in particular to the inhabitants of Lekgoropane who were relocated to Mafenya, based on the fact that as far as the relocation process was concerned, they had the

same interests (although values were not always shared), and simply because people on the ground referred to themselves as a community.

Participatory democracy: democracy in essence signifies government or power of the people by the people and for the people. 'The people's' rule can be enacted in different ways: "*In participatory democracy, 'the people' participate directly in decision-making*". This is unlike representative democracy which entails the selection of representatives (usually through elections) among 'the people' to take decisions on their behalf. (Ife, p.75) This thesis is primarily concerned with the concept of participatory democracy in the framework of traditional leadership, and how people participate in this context.

Land title, in the most legally binding form, is an individual property right that bestows the right to use and dispose of land, usually limited only by contemporary planning and other laws that prevent certain types of use. (MMSD, 2002, p.146)

Royalties are a tax paid by corporations for the right to exploit a sovereign asset – the payment is usually based on an amount per tonne or a percentage of total production or profits. (MMSD, 2002, p.148)

The IFC defines Physical displacement as the actual physical relocation of people resulting in a loss of shelter, productive assets or access to productive assets (such as land, water and forests).

Economic displacement: results from an action that interrupts or eliminates people's access to productive assets without physically relocating the people themselves.

Finally, involuntary relocation: relocation is considered involuntary when affected individuals or communities do not have the rights to refuse land acquisition that results in displacement. This can occur in cases of: lawful expropriation or restrictions on land use based on eminent domain; and negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail. (cf. IFC PS 5)

Both the terms chief and *kgosi* have been used in this research as both are in use in the Royal Bafokeng Nation. The term chief tends to be used particularly for leaders until the mid-1990s (cf. Bozzoli) while *kgosi* is a newly introduced term used to designate the current leader of the Royal Bafokeng Nation as well as his predecessor.

1. INTRODUCTION

After 1994 the position of traditional authorities was uncertain: criticised for being pawns during apartheid, many thought that they no longer had the legitimacy and support to persist in the New South Africa, or that there was simply no place for traditional authorities in a modern democracy. Nevertheless, traditional authorities were recognised by the Constitution, and after a few years in the dark, their role in the new democratic dispensation was clarified: traditional means of power were entrenched by giving traditional leadership structures land administration prerogatives.

The Bafokeng context is of particular interest with respect to the above mentioned issues, as they exist within a unique set of power relations between the traditional authority, its constituencies, and the mining companies; which is why I decided to venture into the Royal Bafokeng Nation. I have endeavoured to investigate how the traditional authority was assuming its functions (notably with regards to land management and administration) and how power relations played out in these unique circumstances.

These issues were investigated through the study of the relocation of approximately eighty households from the village of Lekgoropane (an extension of the village of Rasimone) to Mafenya, in order to make way for mining operations. Indeed, the relocation process constituted an example of how land management and administration matters are dealt within the Bafokeng's communal land areas, and it involved interactions between the traditional authority and a section of its constituency, interactions through which power relations were revealed.

The fact that the relocation was induced by mining activities not only illustrates the impact of mining on life in the Royal Bafokeng Nation, but also emphasises the inextricable link between the Bafokeng and the mining industry, and its impact on social and political life. As a matter of fact, the Bafokeng traditional leadership was involved in the resettlement process in its capacity as traditional authority and administrator of the land, but also as a party engaged in co-mining with Anglo Platinum, in a 50:50 Joint Venture. This puts the traditional authority in an ambiguous position and significantly affects power relations, not only in the relocation process, but in the Royal Bafokeng Nation at large.

Although the study of the relocation process focuses on one community, at the level of a mining project; the power dynamics between mining companies and the traditional authority on one hand, and affected communities on the other, are a reflection of deeper power dynamics within the Royal Bafokeng Nation, which in turn are partly a resultant of the relationship that has been developed with mining companies.

How did the relocation process unfold and what key socio-political issues were uncovered by the process? More specifically, what did the relocation process reveal about the management and administration of communal land in the Royal Bafokeng Nation?, and about the relationship between the traditional authority, Bafokeng constituencies and mining companies? Within this sub-question, a strong emphasis is placed on the power dynamics at play, their characteristics, and what they are based on.

This research is anchored in South African debates around land management and access to land in rural areas, and the role and legitimacy of traditional leadership in a modern representative democracy; both very sensitive and controversial questions, and extensively researched themes. The rather atypical characteristics of the Bafokeng 'tribe', including private ownership of communal land, access to massive revenues from mining, as well as the resulting presence of an unusually powerful traditional authority, make this research a valuable addition to the existing literature. Indeed, the traditional leadership in the Royal Bafokeng Nation has rather remarkably adjusted to the dramatic changes in its own history, as well as those of South Africa as a whole. The current ruler, *Kgosi Leruo*, is a young, modern, educated chief, managing the 300 000 strong Nation like a big company: juggling with hundreds of civil servants, a few corporate entities, a multi-billion Rand investment portfolio, and major infrastructural projects such as the Royal Bafokeng Stadium. *"The Bafokeng are, in the words of one of [kgosi's] advisers, part tribe, part development agency and part global commodity corporation"* (Financial Times, 28 June 2008)

The research also adds to previous research on the Bafokeng, which is relatively scarce and mostly historical and/or focused on the mode of government. There is very little (published) to no research into the Bafokeng and how their relationship with

companies mining on their land is managed. This research provides insights on the matter.

The research is also embedded within the literature dealing with the social impacts of mining. Indeed, social scientists are contributing more and more to the developing field of research on the social, socio-economic and socio-political dimensions of mining. With respect to resettlement processes, most research papers which deal with the topic are very theoretical and do not explore the intricacies involved with the relocation process. They mostly identify key land use issues and concepts, such as competing land tenure regimes, conflicts around compensation, and violation of indigenous peoples' rights, and provide broad guidelines as to how to deal with them. In other words, by searching for the largest common denominator, this type of research provides little insight into how those issues arise and tend to neglect the importance of history and context in the way those issues should be resolved. The main reason for this is that most of the research on the social dimensions of mining is produced by government or industry funded organisations and is meant to be used for policy making in governments and internally in mining companies, which have progressively acknowledged the social aspects of mining as an integral part of business success.

This thesis on the other hand concentrates on the root causes of conflict and unequal power relations, in order to provide a better understanding of how they can be dealt with.

The aim of this thesis is to study the resettlement process in detail, holistically and in context, and use it as a basis to illustrate the role of the Bafokeng traditional authority in land administration and more generally in the management of community resources (including mining revenues), and provide a critical analysis of power relations in the Royal Bafokeng Nation.

This thesis deals not only with the relocation process *per se* and the way it unfolded in Lekgoropane (Rasimone); it also examines the role that the Bafokeng traditional authority played in it, and unveils the power dynamics at place between traditional leadership structures and people on the ground.

The literature review reflects this, and provides *firstly* a conceptual and theoretical framework to examine the linkages between traditional authorities, democratic principles in South Africa and the land question. This Chapter (**chapter 2.**) aims at shedding some light on traditional authorities and their role and relevance in a modern representative democracy, with a focus on the land issue; land tenure regimes in the rural areas of South Africa; and more specifically, how decisions pertaining to the allocation and administration of communal land are taken, since traditional authorities in South Africa essentially derive their power and legitimacy from their land administration prerogatives, and because Mining Induced Displacement and Relocation (MIDR) is effectively a land use and administration issue. The *second* part of the literature review (**chapter 3.**) deals with the literature concerning the theory and practice of mining induced displacement and relocation, which has been the subject of dedicated research recently, and will include the regulatory framework and finally, the social impacts of MIDR.

Chapter 4. describes the methods used in the research, as well as the limitations encountered.

Following a deductive analysis, this thesis investigates the history of land acquisition, and the subsequent fight for a share of the mineral wealth. This, in addition to the traditional authority's land administration prerogatives, will allow the reader to understand the ambivalent role that the Bafokeng traditional authority played during the relocation process (**chapter 5.**).

It goes on to explore the manner in which the relocation process was managed, and the nature of the relationships that were developed between the traditional authority and the affected community (**chapter 6**). From there, these relationships are analysed in the light of the literature and in the context of Bafokeng history, marked by constant readjustments in the balance of power, to highlight the shift that has occurred in powers relations (**chapter 7.**). Explaining this shift involves going back to the fundamental source of power for traditional authorities and the crux of the problem: the control of land, and the increasing importance that such control has taken over the years as the Bafokeng become more and more entangled with the mining industry.

Finally, some views on the 'story behind the story' are proposed in the closing remarks (**chapter 8.**).

2. TRADITIONAL AUTHORITY, DEMOCRACY AND THE LAND QUESTION: CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 THE INSTITUTION OF TRADITIONAL LEADERSHIP AND THE SOUTH AFRICAN CONSTITUTION

Traditional leaders are one of the country's longest surviving structures. Over 16,5 million rural people live under the jurisdiction of approximately 800 traditional leaders (Houston & Somadoda, 1996). Chapter 12 of the South African Constitution describes the role of traditional leadership as "*an institution at local level on matters affecting local communities*", but their powers and role within the newly created municipalities remained unclear. Indeed, no provision was made for traditional leaders at the local tier of government, where the executive and legislative authority is vested in the elected municipal council.

The White Paper on Traditional Leadership and Governance (RSA), adopted in 2003, summarises the role and functions of traditional leaders as follows:

- To promote socio-economic development;
- To promote service delivery;
- To contribute to nation building;
- To promote stability among community members;
- To promote social cohesiveness of communities;
- To promote the preservation of the moral fibre and regeneration of society;
- To promote and preserve the culture and tradition of communities; and
- To promote the social well-being and welfare of communities.

2.1.1 Legitimacy of traditional leaders

The legitimacy of traditional/tribal leaders is based on tradition; encompassing an inherited culture and way of life, a people's history, moral and social values, and traditional institutions serving those values (Keulder, 1998, p.21).

The claim of Traditional Authorities to legitimacy, according to Ntsebeza, is based on their "*control of land administration and allocation process at the local administrative and Tribal Authorities level.*" (Ntsebeza, 2005, p.257)

2.1.2 Rules of succession

The system of traditional leadership is based on primogeniture. In other words, the eldest son of the senior or principal wife typically inherits chieftaincy or kingship after the death of his father who was chief or king of the tribe or nation. In other instances the chief can be succeeded due to ill-health or old age, and relatives other than the eldest son may succeed the chief if the need arises and provided this decision has the support of the people.

2.1.3 Governance and Democratic principles

Traditionally, in the pre-colonial period, whenever decisions affecting the general well-being of a community had to be made, a consultation process was followed with the objective of gaining consensus. Typically, these decisions were taken at the *Lekgotla* or *Pitso* (Tswana for tribal assembly), attended by heads of households, the traditional leader and his council; and people were free to express their views without fear of being censored or punished through fines or exile.

This style of leadership geared towards achieving consensus through consultation progressively eroded during the colonial period and apartheid, as traditional leaders became pawns in the hands of the government who used them to implement colonial policies throughout the country. Those who would not cooperate were deposed and replaced by compliant relatives or power hungry headmen appointed by government (Ntsebeza, 2004 and 2005). In this respect, Mamdani (1996) distinguishes between customary chiefs and administrative chiefs: the former attained leadership positions through legitimate lines of succession and with the blessings of their community, while the latter encompass those who assumed power through the legitimate route but serve the needs of the colonial government, as well as those who attained leadership positions with the aid of the colonial government.

2.1.4 Traditional leaders under Apartheid

Traditional authorities were recognised by the Constitution and given a role to play in the New South Africa even though “*a large number of traditional authorities became “stooges” of colonial and apartheid regimes.*” (Ntsebeza, 1999, p.83) As a matter of fact, the catalogue of collaboration by traditional authorities, their autocratic abuse of power and corruption, especially during the apartheid period after the introduction of

the Bantu Authorities Act of 1951, self-government and “independence” of some Bantustans, is well documented. (Ntsebeza, 1999, p.83)

An essential feature of rural local government during the apartheid period, and to some extent the colonial period, was the concentration or fusion of administrative, judicial and executive power in a single functionary, the tribal authority. This fusion is well captured by Mamdani in his delineation of what he calls “decentralised despotism” or the “bifurcated state,” namely, the Native Authority:

“Not only did the chief have the right to pass rules (by-laws) governing persons under his domain, he also executed all laws and was the administrator in “his” area, in which he settled all disputes. The authority of the chief thus fused in a single person all moments of power, judicial, legislative, executive, and administrative. This authority was like a clenched fist, necessary because the chief stood at the intersection of the market economy and the non-market one. The administrative justice and the administrative coercion that were the sum and substance of his authority lay behind a regime of extra-economic coercion, a regime that breathed life into a whole range of compulsions: forced labour, forced crops, forced sales, forced contributions, and forced removals.” (Mamdani, 1996, p.23)

The 1951 Bantu Authorities Act indeed granted traditional leaders far-reaching administrative and judicial powers such as the allocation of land held in trust, the preservation of law and order, the provision and administration of services at local government level, social welfare administration and the erection and maintenance of schools. The implementation of Bantu Authorities firmly enlisted chiefs in the local arm of the central state, it strengthened the position of chiefs, but it eroded their legitimacy in the eyes of their subjects: *“as the apartheid state became vicious, so did traditional authorities. From revered and legitimate leaders, most traditional authorities became feared leaders by the majority of rural people.”* (Ntsebeza, 1999, p.83)

2.2 TRADITIONAL AUTHORITIES IN THE SOUTH AFRICAN DEMOCRACY

Post-1994 South Africa moved from an authoritarian apartheid regime to a democracy strongly influenced by liberal democratic values that include representative government.

Yet, the South African Constitution as well as legislation flowing from it send conflicting messages: on the one hand, it enshrines a bill of rights including democratic principles based on elected representative government; and on the other, it recognises the role of unelected traditional authorities without any clarity regarding their functions and powers. This is, as Ntsebeza argues, a fundamental contradiction: *“the two cannot exist at the same time for the simple reason that traditional authorities’ claim to power is by birthright and their subjects are not afforded the opportunity urban-based South Africans enjoy of choosing or electing their leaders.”* (2005, p.256)

2.2.1 Roles and functions post-94

While the Constitution failed to define the role of traditional leadership post 1994, some had their idea of what it should be. On the one hand, traditional leaders themselves, represented by the Congress of Traditional Leaders of South Africa (Contralesa), thought they should be the primary form of government in rural areas, instead of local municipalities. On the other hand, authors such as Ntsebeza have been critical of the institution of traditional leadership itself, and of the value it could add in the effective operation of rural areas.

Traditional leaders are typically responsible for the allocation of land for small-scale farming, grazing, and residential purposes; the preservation of law and order (including adjudication over minor disputes of a civil nature); the provision and administration of services at local government level; social welfare administration in their communities (including processing applications for social security benefits and business premises); and the promotion of education, including the erection and maintenance of schools and administration of access to education finance (*i.e.* scholarships and study loans for learners) (Nthau, 2002).

As Ntsebeza (2005, p.256) points out, for nearly a decade the ANC-led government did not commit to a strong position with respect to the roles and powers of traditional

authorities in the South African democracy, but in 2003, two pieces of legislation were passed by parliament, which would eventually clarify to an extent the position of traditional authorities in the new South Africa: the Traditional Leadership and Governance Framework Act and the Communal Land Rights Act. The former makes provision for the establishment of 'Tribal Councils' by traditional authorities; and the latter gives these Councils the authority to administer and allocate land in the rural areas. According to Ntsebeza, these laws "*effectively [resuscitate] the powers [traditional authorities] enjoyed under the notorious Bantu Authorities Act of 1951.*" (2005, p.257) In other words, after all these years of tergiversation as to the role of traditional authorities in the not so new democratic dispensation, the ANC-led government has ended up giving traditional authorities the same powers the apartheid state granted them.

The Traditional Leadership and Governance Framework Act (RSA, 2003) makes provision for traditional leadership to play a role in all three spheres of government. Section 3 (1) of the Act makes provision for the establishment of traditional councils in an area which has been recognised by the Premier as a traditional community. This would take place, in terms of the preamble, within the context of transforming "*the institution of traditional leadership [...] in line with constitutional imperatives [...] so that democratic governance and the values of an open and democratic society may be promoted*".

Nonetheless, as Ntsebeza (2005) argues, these councils are still undemocratic in nature, as the majority of the members are not popularly elected. Indeed, only 40 per cent of members should be elected, which leaves traditional authorities and their appointees with a majority. Ntsebeza suggests that the establishment of traditional councils dominated by traditional authorities and their appointees could have been a trade-off to dissuade traditional authorities to push for a constitutional amendment (Ntsebeza, 2005, p.286).

The Communal Land Rights Act (RSA, 2003) specifies the role of traditional authorities in land administration. Traditional councils (established in terms of the Traditional Leadership and Governance framework Act) were given land allocation and administration powers and functions in communal areas by an amendment to the draft Communal Land Rights Bill (2002). Since the claim of Traditional Authorities to

legitimacy, according to Ntsebeza, is based on their “*control of land administration and allocation process at the local administrative and Tribal Authorities level*” (Ntsebeza, 2005, p.257), the Communal Land Rights Act perpetuates this. The traditional councils do not require magistrates and district commissioners to make the final decision with respect to the land allocation process; even though, as Ntsebeza observes, that had been the practice during the colonial and apartheid periods (2005, p.296).

In terms of Section 21 (2) of the Communal Land Rights Act: “*If a community has a recognised traditional council, the powers and duties of the land administration committee may be exercised and performed by such council.*” These are enormous powers for an essentially unaccountable structure. This means that traditional authorities “*will be decentralised and indeed despotic in so far as they will be unaccountable.*” (Ntsebeza, 2005, p.287)

It is interesting to note that the original draft Communal Land Rights Bill (gazetted in 2002) divested traditional authorities of their land administration functions in favour of democratically elected administrative structures and proposed the transfer of registrable land rights to individuals, families and communities (Ntsebeza, 2005, p.287). ‘Legitimate’ traditional authorities were accorded *ex officio* representation not exceeding 25 per cent (without however clarifying the meaning of ‘legitimate traditional authority’). “*The draft Bill clearly attempted to strike a balance between the constitutional obligation to extend democracy to all parts of the country, including rural areas, and accommodating the institution of traditional leadership, which is recognised in the constitution.*” (Ntsebeza, 2005, p.287) Traditional authorities represented by Contralesa and the House of Traditional Leaders, rejected the 2002 draft Bill. Cabinet amended the Act in October 2003 and gave traditional councils the prerogative of land administration. Despite protests by civil society organisations, gender and land rights activists, the Act was passed unanimously by parliament in January 2004.

This highlights the lack of effective organisation in rural communities to influence decision-making: “*civil society has not been as organised as traditional authorities. Without a strong and organised voice, rural inhabitants are going to find it hard to influence government.*” (Ntsebeza, 2005, p.291)

While the struggle against the racial state was for democracy and the recognition of full citizenship rights to all South Africans; these two pieces of legislation together give unelected and unaccountable traditional authorities a dominant role in land administration in rural areas, suggesting the entrenchment of rural South Africans as 'subjects' (cf. **section 2.3**). However, despite their image of archaic governments, their unpopularity, their role in the implementation of apartheid policies, and their lack of defined role in local, provincial and national government, traditional authorities have survived and even seen their powers reinforced through recent legislation.

2.2.2 The persistence of traditional authorities in the democratic dispensation

The title of traditional leaders inherently absolves them from the fundamentals of rigorous accountability and performance management, as described in the Municipal Systems Act of 2000. While elected local government officials can be voted out in an election, or jailed if they misappropriate funds or display nepotism, there is no tangible sanction should a chief do the same. Some of the key factors contributing to the persistence of traditional authorities in the South African democracy will be outlined in the following paragraphs.

As we have seen, traditional leaders are well organised (through organisations such as Contralesa and the National and Provincial Houses of Traditional Leaders), whereas on the other hand, rural inhabitants are typically less organised and are organised on a smaller scale, which makes it difficult to influence decision-making, especially at a national level in debates around legislation.

Secondly, traditional leaders and their representative organisations are well connected in the ANC government and seem to be able to pull some strings in order to influence decisions to their advantage. According to reporter Christelle Terreblance (*Cape Time*, 28 January 2004), the amendment by cabinet to the above mentioned draft Communal Land Rights Bill (giving traditional councils land administration powers) was made shortly after a meeting involving then Deputy President Zuma, King Zwelithini and IFP's Chief Buthelezi, suggesting that the amendment was a deal.

Thirdly, electoral promises and the introduction of 'developmental local government' raised expectations, but the poor performance of local government structures and elected councillors with respect to infrastructure development and service delivery has cost them the support of rural people who had hoped for a transformation in their lives, and conversely appears to have strengthened the position of traditional authorities and headmen (Ntsebeza, 2005, p.291).

Finally, traditional authorities have simply benefited from the ANC's ambivalent position, coupled with the political and economic conditions of the early 1990s (including the need to garner support for the 1994 elections), when the political negotiation process was underway (Ntsebeza, 2005, p.294). "*The recognition of the institution of traditional leadership was by and large influenced by political and reconciliation considerations, rather than influenced by popular support.*" (Ntsebeza, 2005, p.295)

2.2.3 Eliminating the divisions between citizens and subjects: a new framework?

As far as the election of municipal councillors is concerned, urban and rural South Africans enjoy the same citizenship rights (*i.e.* the right to elect local government representatives). However, when it comes to the vital and sensitive issue of land allocation and access to land, rural people become 'subjects', as those decisions are by law in the hands of traditional councils, dominated by unelected traditional authorities and their appointees; in other words, structures that are unrepresentative and unaccountable.

The recognition of traditional authorities under the new political order has far-reaching implications on concepts of citizenship and democracy. It effectively creates two classes of citizens, or, in Mamdani's words: citizens and subjects.

By establishing democratically elected local government with development functions, and democracy in decision making regarding land, the intention of post-1994 South Africa is to introduce separation of powers and democracy in the form of elected representation in local government and land, even in rural areas. This is a major departure from tribal authorities, where power is concentrated in a single functionary, and almost no official is democratically elected; and where patriarchal principles

prevailing in the institution mean that major decisions on land allocation and local government, are almost invariably taken by men only*.

Traditional authorities see rural elected councillors and the extension of democracy to land issues as deeply threatening attempts to undermine their political and economic powers (Ntsebeza, 1999, p.83). Indeed, the widespread view among traditional leaders (including the IFP and Contralesa) with regard to local government in rural areas is that tribal authorities should be the primary structures, a far cry from the ceremonial role that the ANC had hoped they would accept in the democratic dispensation (Ntsebeza, 2005, p.295). It is this fusion of power which Mamdani argues lies at the heart of decentralised despotism. Separation of powers, he suggests, is a necessary condition for democratization in rural areas. Ntsebeza adds that it should be coupled with the principle of elected representation. *“The need for both separation of powers and elected representatives, is confirmed by the resistance of traditional authorities to anything that even remotely challenges the power of Tribal Authorities.”* (Ntsebeza, 1999, p.92)

Ntsebeza argues that a new form of democracy, that would combine the participatory elements of pre-colonial indigenous institutions and the representative aspect of liberal democracy, is necessary to eliminate the divisions between urban and rural South Africans, and allow rural people to enjoy full citizenship rights (Ntsebeza, 2005, p.299).

Traditional authorities derive their power and legitimacy for a significant part from their land allocation and administration prerogatives. The conditions thereof are detailed in the following section.

2.3 TRADITIONAL LEADERSHIP AND LAND ADMINISTRATION IN RURAL AREAS

2.3.1 Land administration

The homelands might have officially been reintegrated in the new South Africa but traditional authorities are still in charge of ‘communal lands’ that cover almost

* The Traditional Leadership and Governance Framework Act however specifies that women should represent a minimum of 30 percent of members in the ‘Traditional Councils’.

13 per cent of the country; and they “*continue to play a role in land allocation, local government and dispute settlement*” (Nthau, 2002, p.2).

“*Democratising land administration after 1994 was an integral part of the process of tenure reform [...] in rural areas.*” (Ntsebeza, 2005, p.279) The 1997 White Paper on South African Land Policy concentrated *inter alia* on people living in rural areas and their rights in land. It made a distinction between ‘ownership’ and ‘governance’ and specified that “*the Tenure Reform Programme will separate these functions, so that ownership can be transferred from the state to the communities and individuals on the land*” (RSA, p.93).

In line with their aspiration to be the only primary structure in rural areas and play a central role in rural development, traditional authorities insist on preserving their function in land administration. Therefore, with respect to land tenure reform, “*they reject the notion that where land is held on a group basis, the administration thereof should be transferred to democratically constituted and accountable structures.*” (Ntsebeza, 2005, p.281) If that view prevails, and should traditional authorities be transferred land that is property of the state and administer it, ordinary rural residents would be legally excluded from decision-making processes, including land allocation.

2.3.2 Land allocation procedure

Although legally most communal land is nominally owned by the state, it is “*generally held in trust for specific tribal communities and allocated by chiefs to people living under their jurisdiction on a usufructuary basis.*” (Lahiff, 2000, p.47)

Usually only male ‘household heads’ (*i.e.* married with their own homesteads) have a right to land under customary law, but in practice, women, including unmarried women, are considered to be entitled to apply for land. However, a minimum age at which women become eligible can apply (Lahiff, 2000, p.57). In former Transkei, “*anyone who was married and was a permanent resident of any of the areas under [the chief’s] jurisdiction was qualified to apply for land. In addition, all unmarried females who had children could also apply for land if they were permanently resident*” (Solinjani, quoted in Lahiff, 2000, p.49). “*This combination of requirements (i.e. membership of the community and head of a household, together with some discrimination between men and women) recurs throughout the homeland areas, with minor local variations.*” (Lahiff, 2000, p.49)

People who qualify for land would then approach their village headman who may refer the application to the tribal authority (*i.e.* the tribal council). According to Lahiff's research, "*the ultimate power to allocate land rests with the chief*", even though chiefs are expected to consult the community on important matters and to protect the interests of all community members (Lahiff, 2000, p.56).

"Land for arable and residential purposes is usually obtained through the tribal chief or, more commonly, the village headman acting on behalf of the chief, who may allocate plots from whatever land is currently available." (Lahiff, 2000, p.49) Plot holders who have obtained land in this manner are given a right to the use and benefits of that land; the land can be transferred to another family member with permission of the tribal leaders, but cannot be sold (Lahiff, 2000, p.50). In principle, chiefs and Tribal Authorities have the "*power to repossess land if it is abandoned, if it is needed for another purpose such as a road or a public building, if it is deemed surplus to the needs of the holders, or in order to punish a landholder for some offence*"; nevertheless, "*outright dispossession is rare, and the communal system is generally seen as a reasonably secure form of tenure*" (Lahiff, 2000, p.50).

"Once allocated, residential and arable plots are generally reserved for the exclusive use of the occupying household." (Lahiff, 2000, p.49) Unallocated land is usually available to community members as a common pool resource, and is used for cattle grazing as well as for natural resources such as fruits, plants and timber (Lahiff, 2000, p.49).

Research shows that there is generally "*a high degree of satisfaction among plot-holders, traditional leaders and elected local councillors with the manner in which people acquire land [and] the conditions under which people hold land [...]*." (Lahiff, 2000, p.63) Lahiff's research found that elements within the community studied were unhappy with the power of tribal leaders and the way it is exercised in the area of land allocation (Lahiff, 2000, p.64) and Lahiff concluded that this could indicate "*a need for a more democratic or inclusive process whereby different elements within the community, not only those on good terms with the chiefs, could be involved in decisions regarding communal land.*" (2000, p.65)

The linkage between chieftaincy and the control of the land allocation process is key to understanding how traditional leaders derive their authority. During the apartheid era, traditional authorities played a central role in the administration of land, in addition to their executive and judicial powers, thus substantiating Mamdani's thesis of a "clenched fist." Policies established in post-1994 South Africa entrench democratic principles and distinguish between ownership and governance of land (cf. White Paper on Land Policy). This is incompatible with recognising traditional authorities, as they are both landowners and administrators of the land, in spite of the non-democratic origin of their position. As Ntsebeza (2004, p.87) argues: "*Democratic decentralisation, with its insistence on elected representatives, is incompatible with the recognition of a hereditary institution of traditional leadership.*" Government's reluctance to resolve this contradiction meant that while South Africans in urban areas enjoyed full rights as citizens, in rural areas, in the former Bantustans, residents continued to be subjects.

2.4 LAND TENURE IN RURAL SOUTH AFRICA

2.4.1 Tenure debate and access to land in South Africa

The debate over access to land by black people in South Africa under colonialism, apartheid and democracy centres on individual versus collective ownership of land (Lahiff, 2000, p.45). While the trend is towards the extension of individual property and the principle of 'one man one lot', some stress the benefits of communal land ownership, as a way of fostering social equity. Indeed, as the Department of Land Affairs' *White Paper on South African Land Policy* states that:

"communal systems provide free or very cheap access to land for the poor. The social structure which goes with communal ownership also provides an important survival safety net function to the poor, as does the fact that the land cannot be sold to raise cash in emergencies or foreclosed debt." (RSA, 1997, p.73)

Historical context

State policy on land during apartheid was based on the communal form of tenure, the tribal administration, and forms of rural planning and development known as 'betterment'. As Lahiff (2000) argues, the "*forms of land-holding and land use in the former homelands have been directly influenced by the policies and actions of the*

South African state (in its various forms) in pursuit of racial segregation and the promotion of an oppressive migrant labour system.” (Lahiff, 2000, p.46) Indeed, with the discovery of minerals, of gold in particular, in the 1880s, the white colonialists revised their policy towards Africans from one that promoted African farmers, to one aiming to convert them into wagers (Ntsebeza, 2005, p.297). A new form of local government and land tenure system supported that policy change. As a matter of fact, communal land tenure facilitated the concentration of Africans in the homelands, while preventing the emergence of a class of rich peasants and farmers, and ensuring a high degree of social control through compliant tribal leaders who controlled access to land (Lahiff, 2000, p.47).

As early as 1855, the settler government of the Transvaal prohibited anybody who was not a ‘burger’ from owning land in the Transvaal, and at the same time precluded Natives from burger rights (Lahiff, 2000, p.47). For nine years, between 1905 and 1913, Africans in the Transvaal were allowed to buy land in their own names. However, after 1913 and until the advent of democracy, Africans in South Africa were denied full rights of land ownership. To this day, most black people in rural areas continue to live under some form of communal land tenure.

2.4.2 Forms of communal land tenure

Communal land tenure in South Africa combines elements of individual and collective property rights. There are three categories of land administered under the communal system. The first is ‘tribal land’, *i.e.* land occupied by tribes prior to the 1936 Native Trust and Land Act, and in many cases, from pre-colonial times. Nominal ownership of this land passed to the South African Native Trust in 1936, but with little or no change to the inhabitants (Lahiff, 2000, p.48).

The second category is constituted by land purchased by the Native Trust (later the South African Development Trust) from 1936 onwards, for addition to the reserves. This land was allocated to specific ‘tribal communities’ and was held in trust by the State President. *“In addition, the Trust acquired nominal ownership to state land earmarked for inclusion in the homelands (released areas) and all tribal farms (scheduled areas) not in private ownership.”* (Lahiff, 2000, p.48)

Finally, the third category is constituted by privately owned land, bought in the scheduled areas prior to 1913, outside the scheduled areas until 1936, and from the Trust after 1936 (Lahiff, 2000, p.48). This land was bought in undivided shares by groups of named black farmers. Some purchasers were successful in having title deeds issued in their own names, while *“others were obliged by the racial laws of the day to register the land in the name of a tribe or state official, to be held in trust for the named purchasers. Over time, the sense of private ownership would appear to have faded (if indeed it ever existed), and today most such land is used and administered in such a way that it is indistinguishable from other communal land.”* (Lahiff, 2000, p.48)

Other forms of land tenure in former homeland rural areas include freehold land held by individuals and groups like church missions, and state land.

The sense of community ownership on tribal farms tends to be the strongest, *“based on uninterrupted occupation [...] and relative lack of state interference over the years.”* (Lahiff, 2000, p.48) On Trust farms, the state is the nominal owner but many believe that permission given to the community to occupy is equivalent to a transfer of ownership (Lahiff, 2000, p.49). The small category of land bought outright by tribal groups or others constitute a separate category of full (individual or collective) private ownership, with no state involvement. However, *“in practice, popular perceptions do not differ greatly between these three categories.”* (Lahiff, 2000, p.49)

Findings from Lahiff’s research show that the legal status of land ownership and perceptions of land ownership often diverge: *“In popular perception, virtually all categories of land in the [former] homelands are believed to belong to the community or the chief (whether in a moral or a legal sense), despite the fact that formal title (in the form of deeds) is, in most cases, held by the state.”* (Lahiff, 2000, p.47)

2.4.3 The communal tenure system

“The communal tenure system found in South Africa is ‘communal’ in the sense that an individual’s entitlement to land flows from membership of a socio-political community (a village or tribe), rather than from private ownership” (Lahiff, 2000, p.49). It does not entail collective agriculture, and it does not imply that the whole

community is involved in decision-making regarding the allocation of land (Lahiff, 2000, p.49).

For Lahiff (2000), the merits of communal land tenure are two-fold: firstly, land administered by traditional leaders is cheap/free for housing and farming, and secondly it cannot be sold or confiscated. However, it appears that “*people fail to secure bank loans to build houses due to the conditions of insecure [...] land tenure*”, which do not allow them to use their land as collateral (Nthau, 2002, p.66). Other disadvantages include the fact that businesses are reluctant to invest on the land as they would not have any option to get a return on investment by selling the developed land (the value of land is largely determined by the development that is put on it). And finally, land allocation is biased against women, as they cannot be given land if they are under 35 years old and not married (and even then, only household heads have the right to a plot for residence and farming). Furthermore, a woman cannot dispose of her property when her husband dies as the in-laws remain in control of/custodians of the household (Nthau, 2002, p.71). This of course is contrary to the principle of non-discrimination (in this case on the basis of gender) that is enshrined in the Constitution (Chapter 2).

This chapter has presented traditional authorities and their roles and powers in the South African democracy; highlighting their powerful remit in relation to land use, allocation and administration. The next chapter focuses on a particular land use and administration issue: that of the displacement of local communities (from communal land) to make way for mining. This will provide the basis to understand the relocation process explored in **chapter 6** and the role that the Bafokeng traditional authority played in it.

3. THEORY AND PRACTICE OF MINING INDUCED DISPLACEMENT AND RESETTLEMENT (MIDR)

Mining is a defining feature of the South African economy, and in many places across the country, it is a defining feature of the physical landscape too. Besides the swathes of land scarred by the industry, mining activities contribute to the pollution of surface and groundwater resources; long term soil contamination; the generation of huge amounts of waste^{*}; the consumption of large amounts of energy produced from fossil fuels; the depletion of non renewable mineral resources; and are the source of health and safety hazards.

But while the environmental impacts of mining are well known and documented, less is known of the social dimensions of mining and notably about the relationships that form and develop between mining companies and neighbouring communities. Those relationships are established wherever an existing or proposed mining project impacts directly or indirectly on surrounding communities. This naturally includes the relocation case examined in this research (see **chapters 6 and 7**) Research into these relationships exposes the complexity of 'the social' and is specifically relevant for this research, as conflict over the development of resources, and the distribution of impacts and benefits, can be significant. The study of such relationships is key in identifying power imbalances and providing a framework for addressing much of the grievances expressed in relation to resettlement processes. The following sections examine Mining Induced Displacement and Resettlement (MIDR) and its effects on social sustainability, concentrating on what displacement specialists call the 'resettlement effect'. Finally, the regulatory framework regarding MIDR is discussed.

3.1 COMMUNITY - MINING RELATIONSHIPS

"Knowledge of society and relationships between humans depends on subjective judgements and experiences. Thus any given social reality can be seen from a range of individual and shared perspectives." (Cheney et al., 2002, p.4)

^{*} Over 80 per cent of waste disposed on land in South Africa is mining waste.

There are two sides in a mining – community relationship and hence, (at least) two perspectives on the subject. From a mining company perspective, poor community - mine relations can lead to tension and violence and hinder progress towards long-term sustainability. In view of that, over the last decade or so, the minerals industry internationally has become progressively concerned with the expectations and implementation of sustainable development ideas, and the ‘triple bottom line’ of economy, environment and society (see Cheney et al., 2002, for a more detailed take on company views on relationships between mining and communities).

This research focuses for a great part on the point of view of local communities on mining induced relocation; the process that bound them temporarily to the mine; and the extent to which they have felt enabled to influence the outcomes in negotiation and decision making processes. As such, the community perspective on mine - community relationships is the main focus of this section.

This section is mainly based on Cheney et al.’s research (2002), which explores relationships and participatory processes in the mining context by examining three case studies in the Australian province of Victoria, and which has a strong resonance with the relocation case studied (see **chapters 6 and 7**). The ‘Victorian studies’ seek to shed some light on key social issues such as power and social conflict from the perspective of people affected by mining at a local level. Cheney et al.’s research examines people’s participation in mining – community relationships, their reasons to participate, the values they defend and how they experience these relationships.

3.1.1 Public participation processes: involving people in mining projects

Mining issues can be discussed in a variety of forums, formal or informal: residents’ associations, focus group meetings held during the environment assessment process, or even consultative committees formed by industry. To a large extent though, mining - community relationships take place through formal, legislated public participation processes. As a matter of fact, over the past twenty years or so, public participation in environmental authorisation processes has increasingly become “*a feature of many jurisdictions internationally*” (Cheney et al., 2002, p.2). This is the case in South Africa, where a public participation process is required to obtain an environmental authorisation in terms of the National Environmental Management Act of 1998. During this process, directly affected people, but also any interested parties

such as Non Governmental Organisations (NGOs), businesses and relevant governmental authorities, have an opportunity to ask questions, provide input, raise concerns and object the proposed development. There is indeed a broad consensus that all affected stakeholders must be involved in planning and decision-making to enhance the sustainability of mining and other projects, as well as the community within which it occurs (MMSDSA, 2002, p.53).

Motivations to participate

People can be involved in relationships with mining companies for a number of reasons, directly and indirectly. Mineworkers, but also their families and friends may be bound to the mining industry by ties of dependency or loyalty. Thus, their views on the industry are likely to be affected accordingly, if for instance they are cautious not to put income generating opportunities at risk (Cheney et al., 2002, p.12). On the other hand, people may be drawn into relationships with mining companies, at times unwillingly, because they are affected by mining activities. The displacement and relocation of a community to make way for mining is an extreme case of such impacts, but there are many other ways mining projects can impact directly or indirectly on local communities. People then become actively involved in relationships with mining companies (mostly through public participation processes) in order to influence decision making and promote better outcomes for themselves.

The nature of people's relationships with the mining industry thus depends on how they are linked to the industry, but also on the values they seek to uphold. In the Victorian studies for instance, informants spoke about the precautionary principle; a sense of responsibility towards future generations; sustainable mining practices, and the consideration of social, economic and environmental factors in decision making (Cheney et al., 2002, p.13). In the same way, there is a diversity of values held, the objectives people seek to attain through participation are varied, and are based on individual, but also broader social concerns: people felt they had to participate in order to address a power imbalance, defend their interests, or redress what they perceived as wrongs. For people opposed to the mining projects in Victoria for instance, involvement in public participation processes was motivated by the fact that they felt that "*they had some capacity, and hence responsibility, to restrict or prevent proposals going ahead*" (Cheney et al., 2002, p.17):

“[...] I do think it has to be done. I think there is a role, for a voice of the residents even if it appears you are just being negative all the time, and anti progress. It's our right to do that. You cannot rely on government [...] to look after your interests.” (Community participant, quoted in Cheney et al., 2002, p.17)

Power relations in public participation processes

However, even though people participating in relationships with mining companies have their own agendas; they experience difficulties having their voice heard. Indeed, relationships between communities and institutions in general, whether public or private, almost always involve unequal power relations; with substantial differences in the resources, authority, status, and legitimacy of each party (Labonte, 1997). Mining – community relationships are no exception to the rule and are marked by a significant power imbalance in favour of mining companies, which can result in a lack of confidence, discomfort, intimidation, and concern about consequences from the side of community members.

This is reflected in the way people in Victoria, Australia experienced communication with mining companies. Informants in Cheney et al.'s research described mining companies as secretive or lying, as well as furthering its own commercial interests at the expense of the broader community; this was seen by members of the community as deceitful or a betrayal:

“They came under the pretence that it was their right to drill and that they seldom find anything. After the first round, we were told there was nothing there. Geologically interesting... but nothing of interest. Two years later they were back for more drilling. At the conclusion of that, the geologist said lots more drilling needs to be done, and his boss confirmed this statement that afternoon. Two days later the midday news carried a story of the gold strike and it was on the front pages of the paper the next morning. We never got over not being told. It was an absolute disgrace. They are liars. The relationship went down hill from there.” (Community participant, quoted in Cheney et al., 2002, p.16)

The use of jargonistic or technical language is another manifestation of unequal power relations. People often feel disempowered without the necessary technical knowledge and/or support to understand the language used, and express dissatisfaction with how communication is conducted:

“The language they use - if they were to spend time talking in layman's terms so people could participate, this would assist the community come to some resolution. ... Locals don't understand the terminology used in the reports, like heapleaching, noxometer. [...] Previous reports omitted a lot of important content and yet were given the green light, without consideration for the surrounding areas.”
(Community participant, quoted in Cheney et al., 2002, p.16)

The antagonistic and unequal nature of relationships did not always manifest itself so obviously; the manner in which public consultation was taking place also contributed to the feeling of power and intimidation:

“A lot of people were completely flustered by [...] their manner, and the way the room was set up: a table with a row of men on one side and a little spot with the person with the microphone and you're under the spotlight. It wasn't conducive to reaching a co-operative conclusion. It was set it up as an antagonistic, someone has to win, fighting situation. I don't see that as a useful process.” (Community participant, quoted in Cheney et al., 2002, p.20)

Being confronted to this type of power imbalance can be frustrating for communities, who have their own ideas of their role and ability to influence decisions, and their expectations of outcomes. The reality however, is that people facing mining companies have to substantially revise their expectations. Without the support of clear legislation regarding participation processes, and considering the unequal power relations characterising them, people can find themselves feeling powerless. As a matter of fact, the law in South Africa does not give any clear guidelines regarding the extent to which mining companies are compelled to consider the concerns of stakeholders, in particular of affected communities, in the planning, design and implementation of a mining project. Furthermore, the concept of ‘participation’ can be interpreted in a number of ways: from mere information, to

consultation and decision making (see **section 3.2.2** for a more detailed breakdown and a normative view of participation). The mining industry has thus taken advantage of this gap to impose its own conception of ‘participation’, which is generally a minimal one, just sufficient to comply with legal requirements, with little or no opportunity for affected parties to have a meaningful input.

Barriers to participation

In these conditions, it is not surprising that some community members are overcome by a sense of inevitability and powerlessness, and believe such projects are too big to fight against, that it is not worth the effort.

Besides issues of unequal power relations and regulatory weaknesses, more practical barriers to participation include a lack of resources (e.g. childcare), and financial disincentives such as costs associated with absence from work, as well as administrative costs associated with transport and communication (Cheney et al., 2002, p.18).

Although most community participants in Victoria experienced unsatisfactory consultative processes, they did appreciate the fact that these processes existed and allowed affected communities to be informed of the proposed projects. They also valued being able to ask questions, express their views, voice their concerns and attempt to influence decision making on the project, as for many it was the only forum they had to do so.

Most people in the Victorian studies described participation processes as exhausting, time consuming, tokenistic, and with little reward in the end. But even though people realised that they might be fighting something that was too big and beyond their control, and had corresponding reservations as to the utility of public participation forums, they took advantage of the procedures in place and attempted to obtain the best project possible:

“It is inevitable that the mining will go ahead if the minerals are there, economics will make that happen. It is up to communities to ensure that it is done as responsibly as possible. There must be compromises in any situation - we or they won't get all they want, but

we want to get the best outcomes.” (Community participant, quoted in Cheney et al., 2002, p.18)

3.1.2 Power and trust in mining – community relationships

For people in the Victorian studies, the power imbalance and lack of trust were major factors impacting on relationships in general and participation in decision making in particular. In instances where power had been misused and trust had been lost as a result, *“people described themselves as feeling powerless and vulnerable”* (Cheney et al., 2002, p.21).

The definition of ‘power’ adopted by Cheney et al., and relevant to the study of community – mine relationships, is the ability at an organisational or individual level, to bring about decisions that shape and determine outcomes (Cheney et al., 2002, p.22). At the level of the system, power can manifest itself in the way the structure of the political and economic systems favours certain interests over others. Both conceptions are pertinent and valid in the relocation case examined and will be further developed in **chapter 6**.

On the other hand, powerlessness is envisaged as a “lack of control over destiny” (Syme, 1997, quoted in Cheney et al., 2002, p.22). In the context of a mining project affecting a community, and *a fortiori* in the context of mining induced relocation, this can be interpreted as control over the immediate environment; people’s ability to express themselves and negotiate with those who have conflicting interests, and ultimately, control over where and how people choose to live their life.

In Victoria, powerlessness was exacerbated by the fact that government agencies were perceived as being not responsive to the local community’s interests.

Feeling powerless acted as a catalyst for some people and stimulated them to take action, sometimes in spite of their own self image as politically conservative:

“Yes, but I haven't been involved in anything political, really. I've fought for things, but never did anything like writing to people about this open pit. This to me, is the destruction of [this town], that is the triumph of greed over the happiness of ordinary everyday citizens. It's like sacrificing that on the altar. It really, I'm really upset about it. [...]

It's all my memories, but basically it comes down to greed of the mining company, over people's happy lives.” (Community participant, quoted in Cheney et al., 2002, p.24)

Labonte notes that powerless individuals in conflict with or opposition to organisations and people that are more powerful than they are tend to create an identity as an organised group, in order to address the power imbalance. This process of community organisation occurred in all of the Victorian studies, where people had organised themselves into issue-based or resident action groups. (Cheney et al., 2002) and in the relocation process as well (**chapter 6**).

Individuals involved in these groups described them as a strong source of advocacy and identity for their members. In all three of the Victorian studies, the groups formed by individuals in reaction to a perceived power imbalance had a substantial impact on the proposed mining projects. As a matter of fact, in two out of the three cases, the projects did not proceed.

People in Victoria responded to unequal power relations in other ways as well, including legal representation and petitioning the government to provide legislative reforms and resources.

While feelings of powerlessness can prompt people to organise themselves and act, they can also affect people's motivation and capacity to take action in the opposite way, as an informant in Victoria puts it:

“People feel powerless. We feel that we do not have the capacity to deal with it. I can't get up and speak. I feel inadequate. We rely on people who can articulate things. Most of us feel we can't communicate. I feel powerless. I can't do it but I have to. It is a big strain.” (Community participant, quoted in Cheney et al., 2002, p.23)

When people who participate feel their input is disregarded and promises are broken, there is a break down of trust in the relationship. There were examples in Victoria where people felt they were being listened to at the time, but subsequently felt ignored:

“[...] I was surprised when I read the report though; it seemed a lot of things which appeared to have been taken on board at the time had somehow disappeared. [...] A lot of things seemed glossed over or not put in which had been raised by the community. At the time I felt like we were being listened to and it was a fair process, but when we saw the report it was as though there had been a hidden agenda.”
(Community participant, quoted in Cheney et al., 2002, p.25)

Claus Offe defines trust as *“the belief [...] that others will do certain things or refrain from doing certain things, which in either case affects the well-being of the holder of the belief [...]. Trust is the belief that others, through their action or inaction, will contribute to my / our well-being and refrain from inflicting damage upon me / us.”* (Claus Offe, quoted in Warren, 1999, p.47). Consequently, the building of trust over time is based on the perceived consistency, predictability and robustness of the behaviour of others. Cheney et al. identified four factors that influenced trust in the Victorian studies: *firstly* specific actions perceived as breaking rules or unfair; *secondly* the morals or ethics of companies and individuals; *thirdly* the lack of access to, manipulation, or dissimulation of information; and *finally* the impact of financial interests (Cheney et al., 2002, p.25). Community participants in Victoria notably found that directors and employees were bound by their wages, while consultants depended on income from the mines, and government structures relied on taxes and royalties generated by the mines.

“I don't know how you get around it, where the proponent employs the consultants. So in other words, you don't pay somebody for something you don't want to hear. That's a fair perception through the community. So no matter what the blasting experts came up with, or no matter what the dust experts came up with, or the historical experts, or the heritage or the environmental experts, it would have to be that it can go ahead with these conditions or with these sort of things. It would be a very brave consultant to come out and tell the gold mine that they couldn't do it. Because of this reason, you can't tell them. Because their place in consultancy within the mining industry would be very limited from that day on! [...] Probably, okay,

the proponent stands to win financially, so they can pay the consultancy costs. But I think the consultants really should be, look I don't know, [...] even if the consultants were employed independently, they would still generally be working within the industry.” (Community participant, quoted in Cheney et al., 2002, p.25)

Issues associated with power and perceptions of trustworthiness were recurring themes in all the Victorian case studies. Not only did informants question the independence of research and studies, but they also blamed companies for hiding information and obscuring facts, and saying one thing and doing another. Lying to and/or deliberately misleading local communities does not seem to be anything extraordinary for mining companies, as relocated people in Mafenya experienced (cf. **chapter 6**) and some informants in the Victorian studies deplored:

“They have done that much work I don't believe anything, they can offer me the world and I wouldn't believe it. I'm afraid they are just a pack of liars. They have lied to us too many times. [...] It seems to be standard practice. [...] You hear things, and it seems to be the standard lines. It doesn't matter where they are or who they are talking to.” (Community participant, quoted in Cheney et al., 2002, p.12)

This type of attitude is emblematic of the general disregard communities are treated with. Informants in Victoria complained about making efforts to contribute in forums and decision making processes, but not being listened to. Some experienced disrespect, and perceived mining officials as rude or uncooperative. In a few cases, some informants even felt threatened and intimidated (Cheney et al., 2002, p.16).

“I know we've got to live with mining, but how far do you go? Do I want to go flying down their big pits? No I don't. I think in an established community, you've got to have some respect for people.” (Community participant, quoted in Cheney et al., 2002, p.26)

In those conditions, negotiating a fair and mutually beneficial relocation can be tricky to say the least, not to say impossible. In addition to inadequate communication and dysfunctional relationships, there are a number of factors that can put people's lives and well-being at risk, and those have to be carefully considered and managed in the relocation process. There are a number of laws and guidelines to help prevent deterioration in affected communities' quality of life.

3.2 SOCIAL IMPACTS ASSOCIATED WITH RESETTLEMENT PROCESSES

Mining Induced Displacement and Relocation (MIDR) processes are subject to the laws of the South African state, notably the Constitution, and as such entail extensive consultation of affected communities (including the possibility of these communities to veto/refuse the relocation), as well as the principle of fair compensation. Nonetheless, they are all too often the cause of much distress, impoverishment, violation of human rights and other adverse effects of the traumatic uprooting of communities. Indeed, mining-induced displacement and resettlement poses major risks to societal sustainability. The World Bank Group's policy on involuntary resettlement encapsulates the severity of these risks in its opening lines:

“Bank experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social and environmental risks: productive systems are dismantled; people face impoverishment when their productive assets or income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost.” (World Bank, 2001)

The International Finance Corporation's Performance Standard 5 on Land Acquisition and Involuntary Settlement (2006) expresses similar concerns and warns against *“long-term hardship and impoverishment for affected communities, as well as environmental damage and social stress in areas to which they have been displaced.”* (IFC, 2006)

It is not possible to provide an accurate estimate of the number of people who have been resettled as a result of mining in southern Africa. The figure of 35,000 (Sonnenberg & Münster, 2001) given for the last decade only reflects those resettlements for which formal resettlement plans have been compiled. It is reasonable to assume that many unrecorded resettlements, which have not followed best practice guidelines, and which involve many thousands more people, have occurred (Sonnenberg & Münster, 2001).

A significant feature of resettlement is that it often affects people who have little access to resources and who benefit least from the new mining development. (MMSDSA, 2002, p.24) As a matter of fact, resettlement programmes inevitably have the greatest impacts on rural communities, which are already poor; therefore, they risk adding new forms of impoverishment in these vulnerable communities.

3.2.1 The resettlement effect

Mining Induced Displacement and Resettlement is accompanied by what displacement specialists call the 'resettlement effect', defined as the loss of physical and non-physical assets, including homes, communities, productive land, income-earning assets and sources, subsistence, resources, cultural sites, social structures, networks and ties, cultural identity, and mutual help mechanisms (MMSD, 2002, p.159).

Displacement and resettlement processes involve a number of risks for the displaced, over and above the loss of land, which may address only 10 – 20 % of the impoverishment risks known to be associated with involuntary displacement. (Cernea, 2000, pp.11-55) Displacement may have the following implications (Downing, 2002):

- *Landlessness*: Land that is lost has to be reconstructed or replaced with income-generating employment to avoid impoverishment and loss of capital. Failure to do so can result in landlessness and impoverishment (MMSDSA, 2002, p.53).

- *Joblessness*: Relocation may result in loss of economic power, redundancy of skills, loss of markets, and breakdown of economic networks. As a result, the risk of losing employment is high. Unemployment or under-employment will result

from resettlement if not addressed immediately after relocation, and new and sustainable job opportunities are created

- *Homelessness:* Loss or decline in the quality of shelter is exacerbated if compensation is paid at market value rather than replacement value. For some, a worsening in housing standards or loss thereof is a reality.
- *Marginalisation:* Relocation may result in loss of social and political status if the host community regards new arrivals as strangers or inferior. The resettled person, viewed as a stranger, is denied opportunities in the host community and experiences a drop in social status, lack of confidence, feelings of injustice and heightened vulnerability, and psychological depression.
- *Loss of agricultural land and food insecurity:* The loss of productive land may lead to a decline in available nourishment, nutrition problems, and increased mortality. Malnourishment results from deficient calorie-protein intake, and the incidence of morbidity and mortality depend on the effectiveness with which landlessness and joblessness are dealt. This issue should be recognised within the context of subsistence farming and food security ,as well as being part of the culture of the affected communities (SAHRC, 2008, p.ix).
- *Increased morbidity and mortality:* Malnourishment, stress and anxiety cause health levels to decline. Unsanitary conditions favour parasitic and vector-borne diseases such as malaria and bilharzia. The young, old and frail are particularly susceptible.
- *Loss of access to common property resources:* People may lose access to grazing land, fisheries, forests, and burial grounds, which may contribute to loss of income, a decline in living standards, employment, and recreation opportunities. Resettled communities tend to encroach on protected areas and on the host community's resources, which is a source of potential conflict.
- *Loss of access to public services:* Access to health care, education, public transport, and other public services may be lost.

-
- *Social breakdown:* Displacement breaks patterns of social organisation, interpersonal ties, informal ties, and other forms of social capital. The net loss of social capital and information compounds the loss of natural, human and physical capital. Social capital is furthermore usually unperceived and uncompensated.
 - *Risks to host populations:* If the resettlement site is already populated, these people may also suffer through increased pressure on social and environmental resources.

In order to minimise these risks, involvement of affected communities is essential from the planning phase throughout the duration of the project.

3.2.2 Involving affected communities in decision-making

There is a hierarchy of ways in which affected communities can be involved in decision-making about land and its use (MMSD, 2002, p.142):

- At a minimum, they should be *informed* of the proposed mining development;
- Anyone whose use and enjoyment of benefits from land could be affected by development has a right to be *consulted*; this includes those who have a vested interest in land and sites of spiritual, cultural, and natural significance. It involves access to the information necessary to develop an informed opinion, time to evaluate that information, and the ability to ask questions and get them answered;
- A more formal *public participation* process is appropriate when some legally recognised interest is likely to be affected by the decision;
- Individuals or groups who are required to surrender recognised legal or traditional rights for what is determined by government (through legislation, judicial decisions, or the issuance of permits, for instance) to be for the common good, are entitled to *compensation*; and
- Affected communities can have a *right of veto* over some land use decisions.

The ideal is to create conditions of resettlement that will be voluntarily accepted by the affected peoples. But it is hard to maintain, for example, that a handful of people should have a veto over the future of a major project that has been accepted by the majority, any more than that one recalcitrant landowner should be allowed to prevent

the building of a rail line or highway (MMSD, 2002, p.168). Furthermore, practical experience has shown that the landowner in question might be holding onto his land rights as a strategy to obtain more in compensation; and not necessarily because he/she opposes the project itself.

Besides, even when MIDR is ostensibly voluntary, there have been problems, as the Rio Tinto/ PT KEM's Kelian Mine (Indonesia) relocation illustrates:

The construction of the Kelian Mine involved the loss of land to make way for a river port. Land and assets of local people were appropriated; some were compensated, but at rates deemed unfair locally. Displaced people experienced a dramatic drop in living standards and resettled families were in many cases provided with a house plot, but no house – though one had been promised. Further, traditional economic activities such as small scale mining were discouraged. (Source: Oxfam Community Aid Abroad, Mining Ombudsman Report 2000–2001, in MMSD, 2002, p.159)

In any event, mining companies and governments should recognize the rights of the directly affected community to say no when there is a clear indication from a well established collective or traditional decision-making process that the proposal has been rejected (MMSD, 2002, p.167). However, mineral rights are owned by the state and “*most often, consent of the people who live on and make their livelihoods from the land is viewed as unnecessary, as they have no right of decision. The government therefore has generally not sought permission for the use of community land, and the rights of occupants, both formal and informal, have been abrogated.*” (MMSD, 2002, p.143)

This situation is further aggravated by the fact that in many places, land is occupied by people who do not have the capacity to defend their rights to land. Poorer communities tend to have subsistence relationships with land and to lack legally protected property rights, and therefore, they are the ones who traditionally get moved, but not compensated. Given the thin margins on which many of these people exist, this is a serious threat to their well-being or even their survival.

Nonetheless, local resistance to MIDR is building in many places, as people and governments try to shield themselves from its transferred social and economic costs. In north western Peru, for instance, local farmers in the San Lorenzo valley wish to maintain the Tambo Grande area as a fertile agricultural zone rather than support plans for a large open pit copper, silver, and gold mine that would move 1600 families to new housing provided by the project. This dispute is portrayed as a battle between the rights of some local communities that object to government policy and the state's need to court foreign investment for development. A report commissioned by environmental groups and Oxfam America concluded that "*some of the short term impacts could be viewed as positive, however it is the long-term impacts to the community and the environment that will be most significant.*" (MMSD, 2002, p.158)

3.2.3 Compensation

Most legal systems recognise the principle of compensation: when a surface landowner's rights are taken for purposes of mineral development, the owner must be compensated for the loss. This is designed to redress in financial terms the economic impacts of a lost opportunity caused by mining (MMSD, 2002, p.148).

One should bear in mind that compensation is designed simply to prevent a loss, not to create a benefit. Compensation by itself cannot adequately restore and improve the income levels and livelihood standards of people subjected to expropriation and forced displacement (MMSD, 2002, p.160). But there is a growing view that there should be a plan for an organized resettlement into new settings in which people can earn livelihoods and maintain community ties. This plan should also spell out clearly the responsibility of the state and other actors to provide the compensation and benefits promised in negotiations with communities. (MMSD, 2002, p.161).

Eligibility criteria

Who should be compensated, and by how much, for which kinds of uses of land? A clear and comprehensive compensation policy is essential to redress the losses of those affected by mine development. The success of such compensation policy depends on a clear definition of land tenure and rights (MMSD, 2002, p.149). Where land is owned collectively or under traditional systems of landownership, legal and administrative mechanisms need to be in place to establish legitimate ownership under traditional systems, and to discourage opportunistic land claims.

Adverse effects

Compensation, even when paid to the satisfaction of the local community and others, may have unintended consequences. For example, Bonnell found that the impact of large cash compensation payments at Porgera (Papua New Guinea) had a negative impact on women and marriage. Adultery, abandoned wives and children, and domestic violence became a major concern. The loss of land for food and gardening purposes also led to economic hardship for women, in particular those whose partners had left home to work in the mine (MMSD, 2002, p.149).

In subsistence economies in particular, compensation must cover the time lag between resettlement and the re-establishment of assets such as crops. Views of what constitutes fair compensation may differ widely between traditional landowners and others. For example, an economic assessment of bequest value (the importance placed on transferring something to a future generation), option value (the value of keeping something for future use rather than using it today), or existence value (the value of knowing something is available for use, whether it is actually used or not) may not fully capture the value of land assets to indigenous groups, where loss of such assets could mean cultural demise (MMSD, 2002, p.149). Moreover, as Hernando de Soto pointed out, the market requires clear indices of title and ownership (De Soto, 2000, p.244). *“Since the poor often have unclear or disputable title, or even no title at all, markets are unlikely to assign much value to their holdings.”* (MMSD, 2002, p.151) For these reasons, the valuation of assets should be done in close consultation with the community and with the use of experts such as resource economists (Sonnenberg & Münster, 2001).

Equally, it does not make sense to relocate people to land that is less productive or that requires input of resources that are beyond the means of the resettled. In its article 25, the Declaration of Human Rights states that ‘no standards shall be diminished as a result of the relocation and compensation process’ (MMSD, 2002, p.160). Similarly, where houses built with permanent materials replace traditional homes, for instance, communities may not have the skills required to maintain them.

3.3 MINING INDUCED DISPLACEMENT AND RESETTLEMENT: REGULATORY FRAMEWORK AND BEST PRACTICE

Resettlement policies are inadequate and not harmonised across Southern Africa. In South Africa, there is a range of laws and initiatives dealing with some of the components of resettlement and a multiplicity of government departments are drawn into the resettlement process (Sonnenberg & Münster, 2001). No clear policy or single comprehensive law exists (MMSDSA, 2002, p.24).

There is a huge potential for conflict to arise during relocation processes, especially if they are not managed well. However, conflict over resettlement proposals can be avoided or at least minimised in most cases by adherence to a basic set of practices, such as free and willing negotiation on the part of the community (and the host community, where there is one); full and fair compensation of the community for loss of assets and economic opportunity; and provision of alternative land of equal value and equal income-generating opportunity to the land lost. (MMSD, 2002, p.168) Following this line of thinking, the International Finance Corporation (IFC) and the World Bank have devised a series of guidelines to encourage best practice in mining induced resettlements.

3.3.1 World Bank Operational Policy on Involuntary Resettlement OP 4.12

The World Bank was one of the first international development aid agencies to formulate a policy on involuntary resettlement in 1980. The policy was first issued as an internal Operational Manual Statement (OMS 2.33). It was revised in 1990, as Operational Directive (OD) 4.30, as was converted to Operational Policy (OP) 4.12 in 2002. It remains one of the most comprehensive resettlement policy statements, although it does not cover all of the social issues and impacts, which should be identified using tools such as the Environmental and Social Impact Assessment (EIA/SIA).

The World Bank's policy objectives are to:

- Avoid involuntary resettlement where feasible, or at least minimise it, exploring all viable alternative project designs.
- Conceive and execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be

meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.

- Assist displaced persons in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

The policy provides guidelines for resettlement planning, implementation and monitoring, and covers different aspects from consultation to compensation and support after displacement.

3.3.2 IFC Performance Standard 5: ‘Land Acquisition and Involuntary Resettlement’

According to the IFC (International Finance Corporation) Performance Standard 5: ‘Land Acquisition and Involuntary Resettlement’ (IFC PS5), relocation is considered involuntary when affected individuals or communities do not have the rights to refuse land acquisition that results in displacement. This can occur in cases of:

- Lawful expropriation or restrictions on land use based on eminent domain; and
- Negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail. (International Finance Corporation, Performance Standard 5, “Land Acquisition and Involuntary Resettlement”, 2006)

Involuntary displacement refers both to physical displacement (i.e. relocation of people resulting in a loss of shelter, productive assets or access to productive assets such as land, water and forests); and economic displacement (i.e. if land acquisition causes loss of income or livelihood, regardless of whether or not the affected people are physically displaced).

The objectives of the IFC’s PS5 are aligned with those of the World Bank OP 4.12., and its requirements are similar, although more detailed than the World Bank OP 4.12.

3.3.3 South African legislation

A few pieces of South African legislation can be mentioned with regards to mining induced resettlement.

Section 25 (1) of the Constitution specifies that *“No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.”*

Section 25 (2): *Property may be expropriated only in terms of law of general application –*

(a) for a public purpose or in the public interest; and

(b) subject to compensation, the amount of which and the time and manner of payment

Sections 5, 10 and 22.11, 12, 54, and 55 of the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA) contain the requirements to notify and consult affected peoples.

The Interim Protection of Informal Land Rights Act, 31 of 1996 specifies that no person may be deprived of any informal right to land without his or her consent (section 2(1)). This is particularly critical as landlessness is arguably the greatest threat to displaced rural communities; even more so if land rights are difficult to establish. Without this security of tenure *“displaced communities may be at risk of losing land and livelihoods without receiving appropriate compensation for such losses.”* (MMSDSA, 2002, p.23)

This thesis deals not only with the relocation process *per se* and the way it unfolded in Lekgoropane (Rasimone); it also examines the role that the Bafokeng traditional authority played in it, and unveils the power dynamics at place between traditional leadership structures and people on the ground, rooted in 150 years of Bafokeng social and political history. A history shaped by the discovery of minerals, by repeated challenges of constituencies to the leadership and their respective constant repositioning in the balance of powers, and by the advent of representative democracy. The methods used to achieve those goals are presented in the next section.

4. METHODS

Many aspects of a relocation process are regulated and the process itself, to a large extent follows a prescribed *modus operandi*. As a result, the overall framework in which the resettlement process takes place was known prior to the fieldwork, and the corresponding sections in the research were accordingly structured around it, following a chronological chain of events. Consequently, the research is of the pre-structured type as far as the narrative of the relocation process is concerned. On the other hand, examining the socio-political issues uncovered by the resettlement process, notably with regards to the management and administration of land and associated power relations involved elements of unfolding, emerging research, and relied to a greater extent on open and semi-structured interviews.

4.1 DESIGN: STRATEGY AND FRAMEWORK

The method used was essentially qualitative field research, revolving around the use of interviews. The study of documents on the social and political history of the Bafokeng supported the interpretation and analysis of the findings from the empirical research.

4.1.1 Choice of case study

Convenience was a factor in choosing the case study. Indeed, at the time investigations commenced, none of the identified informants had in depth knowledge about any of the relocation cases which had occurred in the Royal Bafokeng Nation. The initial intention was to study a case which occurred in the mid-2000s, in order for the current leadership (in place since 2000) to be held directly accountable for it. One of my key informants, a researcher and activist, suggested an older case (late 1990s - early 2000) which involved the relocation of a settlement (Lekgoropane) in the village of Rasimone. Retrospectively, the timeframe is ideal as the effects of the relocation are still visible (evidence of the old settlement remain), but as more time has passed, the whole process can be viewed into perspective. Interviews have moreover shown that informants' memories of the events are still vivid. The case of Rasimone was furthermore chosen for its intensity, in that it constitutes an information rich case, which manifests situations (such as social conflict and decision making processes) intensely, but not extremely.

4.1.2 Data collection

It had been envisaged that documents, as well as primary materials would be used in this research. Some hurdles were however encountered and official documents and reports produced during the resettlement process proved to be inaccessible. Documents such as the Environmental Impact Assessment and Social Impact Assessment (EIA and SIA), the Environmental Management Plan (EMP), including the social baseline study and Resettlement Action Plan, as well as the social monitoring and audit reports, all record various aspects of the mining project (including relocation), from planning to post-construction monitoring.

The Environmental and Social Impact Assessments by definition provide an evaluation of the nature and significance of impacts (both positive and negative) of the proposed mining project on the natural and social environment (*i.e.* ecological and human components). The information in the EIA and SIA are then used as a basis for the compilation of the Resettlement Action Plan (RAP).

Before commencement of construction, physical audits were undertaken by professionals (architects in the case of Rasimone) in consultation with the *kgosanas* (headmen) and affected communities to identify all potentially affected persons and record the status and condition of all properties, assets and infrastructure affected by the project, as well as all activities, land uses and structures (*e.g.* fencing, boreholes, houses, etc.) within the affected site.

This information formed the social baseline study, which typically includes photographs, including aerial photos and satellite imagery, site plans and maps. The purpose of the baseline study or 'Status Quo Report' (as it was called) was to develop an adequate compensation framework, detailed in the Resettlement Action Plan.

The RAP contains *inter alia* details of every directly affected person and property, the methodology for assessing losses and valuation of assets; organisational responsibility for implementation; implementation plan; grievance redress mechanisms; consultation mechanisms; monitoring plans, as well as input from affected stakeholders. This then forms the basis on which are developed the resettlement strategy and objectives; resettlement and compensation options and

packages; the institutional framework for responsibilities and decision-making; a monitoring and evaluation framework; and the relocation programme and budget.

The RAP must be compliant with South African legislation, although to ensure best practice, it should also incorporate guiding principles for resettlement contained in the World Bank Operational Policy on Involuntary Resettlement OP 4.12, and the International Finance Corporation (IFC) Performance Standard on Land Acquisition and Involuntary Resettlement PS 5.

The regional office of the Department of Mining in Klerksdorp, the Royal Bafokeng Administration and the mine (Bafokeng Rasimone Platinum Mine) have copies of these documents, as they are required by authorities considering the application by the Bafokeng Rasimone Platinum Mine to undertake blasting and proceed with the relocation of the residents of Lekgoropane. However, in spite of numerous attempts, I was unable to secure access to these records. This has a number of implications for this research that are discussed in **section 4.3**. As a result, the empirical research relied on informant interviews for a large part.

4.1.3 Informant interviews

The primary material analysed in this research are interviews conducted as part of research into the community. The material was collected during eighteen months of mostly informal interviews with key informants. Those took place through telephone calls, emails and direct contact with them; a relationship of trust was established with these individuals.

A round of formal interviews with people on the ground in the relocated community (in Mafenya) took place in November 2009. Seven informants (selected according to the technique described in the following section) were interviewed. Due to language issues and for courtesy purposes, I was introduced by two of my local key informants, who explained who I was, why I was doing this research and what I was doing it for. Apart from the obvious practical purpose, I believe having two members of the Bafokeng with me also broke down certain barriers that I might have experienced if I was on the field alone. I also felt more comfortable being assisted by two informants whom I could trust, and who knew what the research was about in order to convey it

to the interviewees. Not to mention that in an environment I was not really familiar with, I felt safer.

There was a very low non-response rate. Only one person refused outright to undertake the interview. But, the interview was cut short in other instances where the monosyllabic answers of one informant and the visible discomfort of another were enough to make us understand that we were intruding. Some informants wanted to confirm that I was neither from the mine, nor from the Bafokeng administration before proceeding with the interview. The majority of informants however were very welcoming and open, and willing to provide me with the material I needed, I am very grateful for their participation, without which this research would not have been possible.

Semi structured, in-depth interviews were conducted to encourage informants to relate their point of view and experiences, and brought out a rich understanding of the relocation process from the perspective of affected people on the ground. Interviewees were encouraged to expand on each topic to the limit of their knowledge and enthusiasm. The material from these interviews was also used to extract qualitative data needed to develop an analysis of the nature of power relations at play during the relocation process. The interviews with the seven informants in Mafenya took place in their homes, and lasted between twenty five minutes and one hour and a half.

4.1.4 Sampling technique

The target population for this research was constituted by a small, purposive sample constituted by individuals selected because of the specific information they have as members or representatives of affected and broader communities. The choice of key informants was to a certain extent, influenced by convenience. However, some of the key informants were referred to me several times by different stakeholders, thereby providing an indication of how representative of a particular position or situation they were to a variety of stakeholders.

Informant interviews involved people who were directly affected by the relocation as well as people who were involved as decision-makers in the process. With respect to the relocated community the sample was selected using the snowball sampling

technique, with some elements of random sampling. I was initially referred to two individuals by one of my key informants, who then suggested other people I could interview. After running out of contacts, I went door to door to request interviews. It is thus a non-probability sample and therefore is not necessarily representative of the entire community who was relocated. This has not proved a hindrance in this research as the emphasis was on a the analysis of experiences of people on the ground rather than a statistical exercise to achieve representativeness.

Key informants

Four people provided particularly useful insights into both the research and the methods to be used. Two informants from the Bafokeng Nation, involved in community activism (notably relating to mining issues) on the ground, provided valuable insights into the workings of the traditional authority and the dynamics at play between the traditional authority and its constituencies, and the evolution thereof. The two other key informants were researchers, who provided extremely useful background on the Bafokeng from an outsider point of view, as well as a critical analysis of power relations in the Royal Bafokeng Nation which allowed me to grasp the issues at play in the field with more accurateness. Three out of the four key informants did not want their identity to be disclosed.

Informants involved in the relocation process

Crucial to the research were the informants residing in 'new' Mafenya, who lived the relocation process from 1998 to 2002, and who gave me their perspective on how the events unfolded. Informants in Mafenya were not screened before the interviews. Out of seven people interviewed in Mafenya, three were women and four were men; their age ranged from 39 to 75 years, and among those who disclosed their occupations, I recorded two unemployed people, a pensioner, a farmer and an entrepreneur, so the sample was rather diverse. Informants from the relocated community included:

- Mr. Edward Boikanyo (former secretary of the relocation committee, entrepreneur);
- Mr. Eric Kgaditswe (former relocation committee member);
- Mr. Isaac Monei (pensioner);

-
- Ms. Teresa Tsiane*;
 - Mrs. Pitso* (unemployed);
 - Mr. Modise* (farmer);
 - Mrs. Modise* (unemployed).

For the other side of the story, that of the mine and the Bafokeng traditional authority, Mr. George Khunou was my only informant. Indeed, I found that ten years down the line, many people involved in decision making processes at the time were no longer working for any of the two entities in charge of the project. Mr. Khunou, although he was no longer working in the Royal Bafokeng Administration (RBA), was still involved with the Bafokeng traditional authority as CEO of Royal Bafokeng Sports and was relatively easy to trace. He gave me his account of the relocation, based on his role in it, as a representative of the RBA, and member of the Bafokeng Rasimone Platinum Mine Joint Venture 'development committee', responsible for facilitating the relocation process (see **chapter 6**). He notably provided information on procedural matters that informants in Mafenya were not aware of or able to grasp. He also shed some light on the roles and responsibilities of the various parties involved in the relocation process, something that the members of the relocated community did not convey.

Other informants

Contact was made with RBA officials, regarding the requirements to fulfil to obtain an authorisation to undertake fieldwork in the Royal Bafokeng Nation, and to enquire about access to records. I was notably in contact with Ms. Sue Cook, anthropologist, in charge of all matters relating to research in the Royal Bafokeng Nation. The Bafokeng traditional authority, through its fieldwork authorisation procedure, required a maximum of information on the thesis, including the proposal, an affidavit from the University of the Witwatersrand confirming that I was indeed enrolled for the degree, and a consent letter to be distributed to all participants in the research (see **Appendix C**).

Several mine officials were also contacted regarding access to information and records.

* Not their real names.

The research did not aim to establish ownership of land in the areas where it is contested; there are land claims pending and the courts will determine that. Therefore, no representative of the state, in the land commission was interviewed to provide an analysis of the contested nature of land ownership in the Royal Bafokeng Nation.

In total, fourteen people were formally interviewed for this research.

About the informants

As much information as possible about the informants and their place in the community was gathered in order to assess the accuracy of the information, the following factors were considered noteworthy:

- Language: not all the informants spoke fluent English, as for most of them it was their second language. This has implications in terms of concepts and vocabulary, as most people think in their first language, and this affects the way they understand other languages, as well as their ability to use language to describe an event;
- Age and gender: all the key informants are adult males; the age and gender of the other informants are indicated above;
- Education and employment: all the key informants are educated to at least matric level, and all of them are in relatively powerful positions (in terms of social status and resources) in the community. Education levels and employment were variable among members of the relocated community (see above).

4.1.5 Reliability of data

There is considerable controversy about the real meaning of verbal communication, and although most people try to be truthful in what they report, it is worth keeping a few things in mind:

- The material supplied by informants may be unreliable because they may not be as knowledgeable as they seem, because they do not want the information to fall into the wrong hands; because it reflects unflatteringly on them; because it could be used against them; or because they are deliberately attempting to mislead the interviewer;

-
- Communications can also be affected by the respondent's feelings about the interviewer: small clues to status and attitudes can make the difference between cooperation and reliability or refusal to cooperate;
 - What is reported is filtered through the informants' position in society, including age, gender, education etc. (see above), as well as their values and opinions;
 - Individuals' recollections of events are subject to all the biases of unsystematic observation, rationalisation and memory decay. However, as Peil notes: "*[Respondents] most important contribution is their well-considered interpretation of complex events.*" (Peil, 1995)

In order to better assess the accuracy of the information, as much information as possible about the informants and the community was collected. Although there will be some element of bias in any interview, inherent to the way informants remember and relate events, reliability was increased by checking all interview transcripts for internal consistency. Accounts of the relocation process by members of the relocated community in Mafenya for instance were internally consistent as well as consistent between each other. Finally, during and after fieldwork, perceptions and recollections of the relocation process were questioned and critically evaluated based on the literature, as well as the Bafokeng historical context.

4.1.6 Generalisation of findings

This piece of research focuses on the description of the relocation process in generic terms and on a set of context specific issues. With regards to the generalisation of findings, the part of the research detailing the relocation process will be a fairly accurate reflection of the way resettlement processes occur throughout the country (*i.e.* generalisable), as well as of the nature of relationships that are formed during that process. This is keeping in mind that mining companies face growing pressure from governments and society to avoid social conflict as much as possible; the approach may therefore have changed since, however, in terms of the process to be followed, the number and order of the various tasks are likely to remain the same. Other sections of the thesis, dealing with land administration and power relations are relevant for other cases in South Africa, notably in rural areas with traditional leadership structures and under communal land tenure regimes, and can provide useful insights on the conditions of the survival of traditional authorities in a democratic South Africa, but cannot be generalised as such.

4.1.7 Procedure for data collection

The fieldwork for this thesis took place in 2008-2009, roughly ten years after the start of the relocation process. Key informants were interviewed on an ongoing basis, while other interviews took place at specific times.

A first field trip in October 2008 allowed me to obtain an overview of the concrete field of research, orientate myself to the project I had in mind, as well as plan the *modus operandi* and range of investigation.

I had made provision for a week in the field for interviews of identified informants in Mafenya. However, two days were sufficient to collect the necessary information. Indeed, a clear pattern emerged whereby informants provided very similar accounts of the relocation process, albeit in different terms (see **chapter 6.**). However, one issue requiring further investigation kept me a little longer in the Royal Bafokeng Nation. Two more days were spent between the RBA offices and the mine, as I attempted to find out how and where to access records of the relocation, while officials and employees kept on passing the buck. After being promised a few times the above-mentioned documents by several people, but never actually managing to get copies, I accepted that I would not be granted access to them (see **section 4.3.** below).

Interviews took place in Johannesburg, Phokeng, and Mafenya during office hours and on weekdays. Informants in Mafenya were interviewed in their homes. Mr. George Khunou was interviewed in Royal Bafokeng Holdings office premises in Melrose Arch, Johannesburg. Finally, some interviews with key informants took place in public places in Phokeng.

Despite carrying a tape recording device with me at all interviews, only two interviews were recorded, for which an agreement with the interviewee had been reached in that regard beforehand. On the other hand, none of the interviews with the relocated community were recorded as it created visible discomfort or was outright rejected. Handwritten notes were taken alternatively.

Non-participant observation formed part of the methods utilised in this research to describe the environment and surroundings of the locations, and was be coupled with a photographic record.

4.2 CONSENT, ACCESS AND PARTICIPANTS PROTECTION

Most of the informants identified agreed to cooperate and allocate some time for the interviews. Part of the requirements of the RBA in order to issue a research authorisation was to draft a consent letter to be given to participants before each interview. This letter, together with the fieldwork authorisation, is included in **Appendix D**.

Regarding participants' protection, before each interview, informants had an opportunity to choose to remain anonymous or to be quoted with their real names. The majority of informants requested to remain anonymous. Some on the contrary specifically asked to have their real names mentioned; two of them are former members of the community's relocation committee (see **chapter 6**.) and one is a retired farmer. It is worth noting that all three have been in open opposition to some aspects of the relocation process and have tried until recently to obtain reparation for the (perceived) violations of the terms of the compensation agreements through various interventions at the *lekgotla*, with the mine and the *Kgosi* himself.

Given the background work that had already taken place, access to informants among the affected communities and main decision-makers was relatively trouble-free. Access to documents however, to the extent that it relied on people's willingness to grant access and organisation's ability to keep records, was more problematic (see **section 4.3**); even though Sue Cook, from RBA, had assured that the Bafokeng administration would fully cooperate in this regard, once due procedures were followed and the required authorisation to conduct research was obtained (**Appendix C**).

4.3 LIMITATIONS

The conditions in which this research was conducted have had an impact on the completeness and accuracy of some of the information presented in this thesis. Consequently, there are certain limitations to the research that are discussed in the following sections.

4.3.1 Problems related to access to information

Despite requesting the documentation relating to all aspects of the relocation for months, and even though several people (at the Bafokeng Rasimone Platinum Mine and the Royal Bafokeng Administration) promised to grant me access, I have not managed to obtain copies or even been able to page through those reports. This is after numerous emails sent to various people, telephone calls made and visits to the mine and Bafokeng Administration officials in charge of the records.

I started at the BRPM in February 2009 with the environmental control person, who requested a full disclosure on what the information was for, how it would be used, whether it would be published etc. This information was then sent to the SED (Socio Economic Development) manager (in charge of all relations with neighbouring and affected communities), who replied that since he was not working at the BRPM at the time, he could not help me. Further requests to search through archives were met with radio silence.

I then contacted the Department of Mineral Resources (former Department of Minerals and Energy) North West regional office in Klerksdorp. I had been warned by some in the know that their archiving was very bad and that it might be difficult to find the reports in question. After numerous fruitless attempts to talk to the person responsible for the filing and archiving in order to enquire about the conditions to access the Department's records, I eventually spoke to the general manager himself (directly in charge of processing this type of applications) who told me he did not know what I was referring to. I have not been able to get hold of him, or any relevant staff member since.

My third option then was the Royal Bafokeng Administration (RBA). I had been told earlier in the year that the reports I needed existed, but that a research authorisation was required to access them. After been granted authorisation to conduct fieldwork by the RBA, I requested their copy of the reports. Regrettably I also encountered archiving problems. I was told that the report was certainly somewhere, but that nobody was able to locate it. Mr. Khunou also mentioned that it used to be in his office at the Royal Bafokeng Administration, but since he no longer worked there, he did not know what happened to the report.

I tried contacting the mine again a few months later (August) and this time I was told that those documents were legal and confidential. I can only presume that there was a genuine misunderstanding regarding the nature of those reports, or that the person was attempting to elude my request. I finally went to the mine and physically knocked at the door of the environmental control person to request the documentation. This time I came with a letter written on an RBA letterhead and adorned with the Royal Bafokeng Administration's stamp, authorising my research. I was received more cordially than the previous times and was told to speak directly to the General Manager, Mr. Glen Harris, as well as to mention the person who recommended I come at the Royal Bafokeng Administration (in this case, Ms. Sue Cook). I then spoke to the General Manager's PA, who told me that Mr. Harris was not available but that she knew what I was looking for and would revert back. As she did not, I asked again, but with the same result. The same scenario repeated itself a few times after one particular follow-up call I was even promised that I would receive all the documents the following morning by email. Unsurprisingly, I did not receive anything, and she finally referred me back to the SED manager. The SED manager referred me to Mr. Chris Kern, who worked for the BRPM on the actual relocation at the time.

After multiple attempts to reach Mr. Kern (no longer working at the BRPM) and time running out, I decided to ask for Mr. Khunou's help in getting hold of him. I knew they had worked together on that project and that he mentioned he would be happy to assist and call him himself. This was also unsuccessful. I have not managed to obtain access to these documents. All records of communication in that regard were kept in a database for reference purposes.

Although not a tragedy for this research, this has two major implications that need to be reckoned with. *Firstly*, it is a severe limitation in terms of the exact description of processes and associated timeframes, as well as institutional arrangements and roles and responsibilities. Ten years after the process commenced, memories are blurred and recollections less than accurate. However, interviews of Mr. Khunou and of members of the community show that standards procedures were followed (*i.e.* planning, ongoing consultation throughout, and post-construction monitoring). As a result, broad timeframes have been defined in the research, outlining the relocation process. I had been assured of the Royal Bafokeng Administration's staff's

cooperation in my research and I am grateful for the time they have spared for me. Nevertheless, despite numerous requests to use their resources to support in securing access to those reports, no one was willing to assist.

I cannot speculate whether there is anything to read in this other than, a lack of time, lack of interest or simply apathy. Mr. Khunou did assure me that the process went smoothly and “*everybody was happy*” in the end (Interview with Mr. George Khunou, 2009). Indeed, due procedures were followed and authorisation was obtained from the competent authority for the relocation and blasting. No fatal flaws are likely to have gone through the net of authority consultation and authorisation. However, the essential point of discrepancy between Mr. Khunou’s account of the relocation, and the residents’ account, relating to the alleged lying and deliberate misleading of the relocated community cannot be verified, as access to public consultation records, notably minutes of meetings, was denied to me, which constitutes the *second* major limitation to this research. It is interesting to note that the two members of the committee representing the affected community who were interviewed have also requested those minutes (to the mine and to Royal Bafokeng Administration), to no avail. Those records were once in the public domain and formed part of the report submitted to the Department of Mineral and Energy (DME), who granted authorisation for the project to proceed on the basis of that report. Hence, these records are not confidential and should be available to the public, especially to directly affected parties such as the members of the relocation committee.

4.3.2 Issues related to accuracy of information

I have resorted to some approximations in the research that are largely attributable to the fact that no official records were available. The institutional framework has been outlined in **chapter 6.**, to a certain level of exactitude. However, the distribution of responsibilities and parties involved in decision making, were blurred in the minds of informants from the relocated community, who referred to “the Bafokeng administration”, “the mine”, or to a very elusive “they” with little appreciation of who was in charge of what. My interview with George Khunou and general knowledge of relocation processes has addressed this to some extent.

Another factor that potentially affected the accuracy of information is related to the use of interpreters for the interviews of informants from the relocated community.

Although indispensable for the fieldwork required in this research, it may have been a hindrance in two respects: firstly, some meaning and content conveyed by interviewees is likely to have been lost in the translation exercise; and secondly, the interpreter's own interpretation and understanding of the questions and answers might have also influenced the manner in which they were translated. This impact was partly mitigated by the fact firstly there were two interpreters, who were able to rectify and expand on each other's translation, and secondly, they knew what the research was about and what information I wanted to get to convey it to the interviewees.

The following chapters are the result of the application of the methods described above. They present firstly a background to the Royal Bafokeng Nation, notably the history of land acquisition and land tenure and administration arrangements and their implications in terms of the distribution of mineral wealth. Then, power relations are explored through the unfolding of the relocation process in **chapter 6**.

5. TRADITIONAL AUTHORITY, DEMOCRACY AND THE LAND QUESTION IN THE ROYAL BAFOKENG NATION

Land acquisition by the Bafokeng over the years has been a critical factor in preserving them from dispossession and exploitation during the colonial era, and is the foundation of their extraordinary wealth and unique degree of autonomy today. Outlining the history of land acquisition in the Royal Bafokeng Nation (**section 5.2**) is central to the topic at hand, as it explains to a great extent the role that the traditional authority played during the relocation of the community of Lekgoropane (cf. **chapter 6**).

The process of land acquisition did not always benefit from the support of the entire community and some conflicts emerged over ownership of the land. These conflicts impacted on the relationship between the chief and his constituency; this relationship as well as some conflict resolution mechanisms that were resorted to will be examined in **section 5.3**.

Finally, land administration and management arrangements, resulting from both custom and recent legal developments in present day Royal Bafokeng Nation, which were directly applicable in the relocation of the community of Lekgoropane, will be discussed in **section 5.4**. But first, **section 5.1** will provide a brief introduction and contextualisation of the Bafokeng 'tribe'.

5.1 INTRODUCTION TO THE ROYAL BAFOKENG NATION

The Royal Bafokeng Nation (RBN) is situated within the Rustenburg Local Municipality, which in turn is part of the Bojanala Platinum District Municipality, in the North West province (see map below). It is constituted by 29 villages, with a population estimated at 300 000* and encompasses a territory of about 1 200 km². The town of Phokeng is the administrative centre of the RBN.

* Estimate of the Royal Bafokeng Administration (source: www.bafokeng.com)

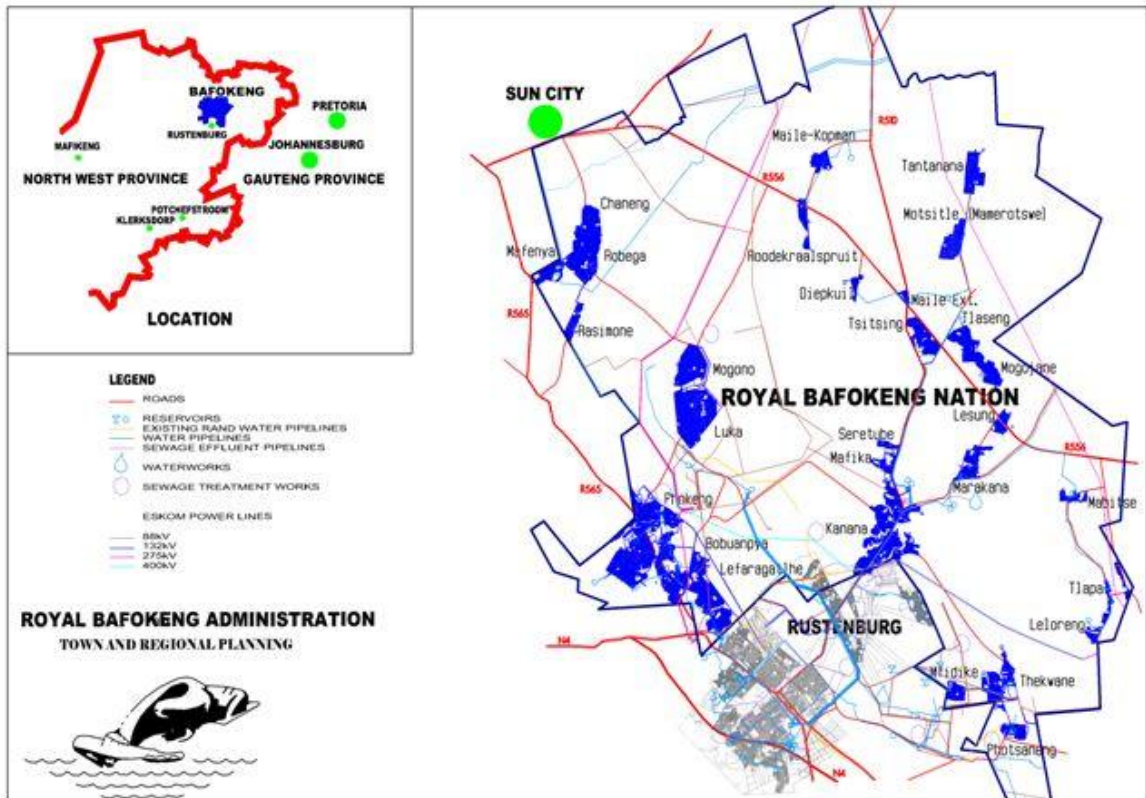


Figure 5-1: Location of the Royal Bafokeng Nation (source: www.bafokeng.com)

The Bafokeng (People of the Dew in Setswana) started buying the land they occupied in the 1860s, over the years, they purchased a number of farms with community resources (cf. following section). The Bafokeng now own 120 000 ha of land in the Bushveld Complex. The Bushveld Igneous Complex (BIC) extends for 400 kilometres and contains the world's largest known deposits of platinum group metals (PGMs), with estimated reserves of 62 816 tons (about 55.7 per cent of the world's total) (Bench Marks Foundation, 2008, p. 29).

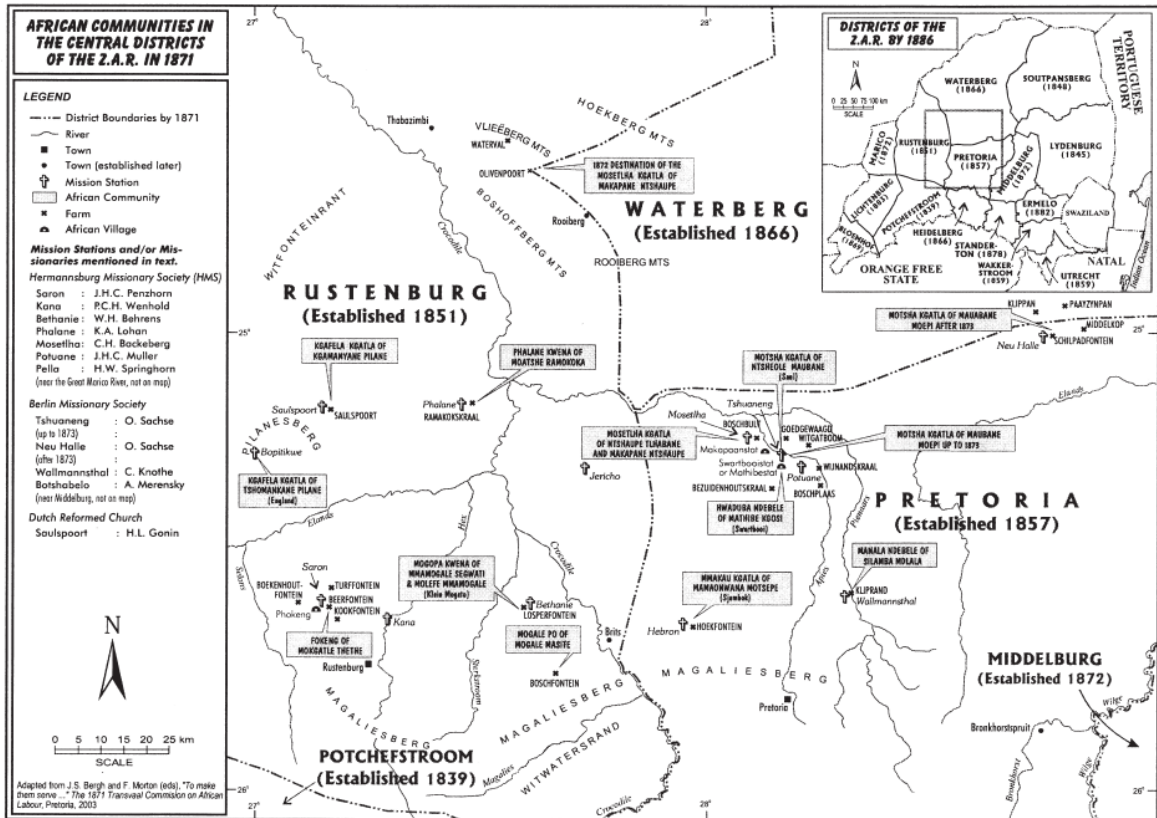


Figure 5-2: African communities in the central district of the Z.A.R in 1871 (source: Bergh, p.96)

Farming was the primary occupation in the area until German geologist Hans Merensky discovered in the early 1920s substantial reserves of Platinum Group Metals (PGMs), such as platinum, palladium, ferrochrome, rhodium, ruthenium, iridium and osmium in the region. He gave his name to the Merensky Reef, which spans the North-West, Northern and Mpumalanga Provinces in an arc extending 300 kilometres. It is characterised by its high PGM grades and the high ratio of platinum to the other PGMs. A second reef known as UG2 was subsequently found to underlie the Merensky Reef by between 60 metres and 400 metres. The reefs vary in thickness from 30 centimetres to 12 metres*. Mined at today's rates of extraction, mineral reserves on Bafokeng land are estimated to last for another 35 to 40 years.

In 2007, the Bafokeng made about R 2 billion from platinum, including R 1.2 billion in royalties from Impala Platinum (News 24.com, "What to do with R 34 bn?"),

* www.bafokeng.com

12/05/2008). This money is paid into a trust managed by Royal Bafokeng Holdings, the nation's investment vehicle.

The Bafokeng have been dubbed 'the richest tribe in Africa' (Mbenga and Manson, 2003) due to the revenues they receive from mining companies exploiting the platinum rich land. These revenues have allowed the Bafokeng traditional authority, who administers the funds through a trust, to ensure that its people were better off than most communities in rural areas (cf. Bozzoli, 1991) over the years. Indeed, between the mid-1960s and the early 1970s, the upsurge in platinum mining and corresponding royalties paid to the Bafokeng provided a great source of revenue to the chief (Chief Lebone at the time) to develop the community. Lebone offered a stand on which to live, free or subsidised health care, schools and bursaries for the youth. This made returning to the "homeland" desirable for many Bafokeng who had gone to live and work in cities, and made it a good place to live for those who had remained in the area. Furthermore, as the apartheid government made life increasingly difficult for Africans in urban areas, Phokeng, as well as other parts of Bafokeng territory became a shelter for those who were no longer prepared to suffer the hardships of apartheid, or who were forcibly removed (Bozzoli, 1991, p.206).

Services were improved through the development of infrastructure: boreholes were drilled, roads were tarred and new buildings, including the Civic Centre in Phokeng, were built. Chief Lebone was also committed to the improvement of education and the eradication of illiteracy in particular: "*we are going to use every cent we get to fight illiteracy*" (quoted in Bozzoli, 1991, p.28).



Picture 5-1: The Civic Centre in Phokeng

This practice of service delivery continued over the years, and presently in the Royal Bafokeng Nation, the Royal Bafokeng Administration funds and implements selected infrastructure developments including roads, water reticulation, sanitation and street lighting. The rates charged for the services they provide to households, are generally lower than those of the municipality.



Picture 5-2: Road maintenance in Phokeng*

The Bafokeng Administration has grown over the years and approximately 300 people now work in the different departments, including legal and corporate affairs, finance, human resources, community development and town planning.

* Source: www.bafokengholdings.com

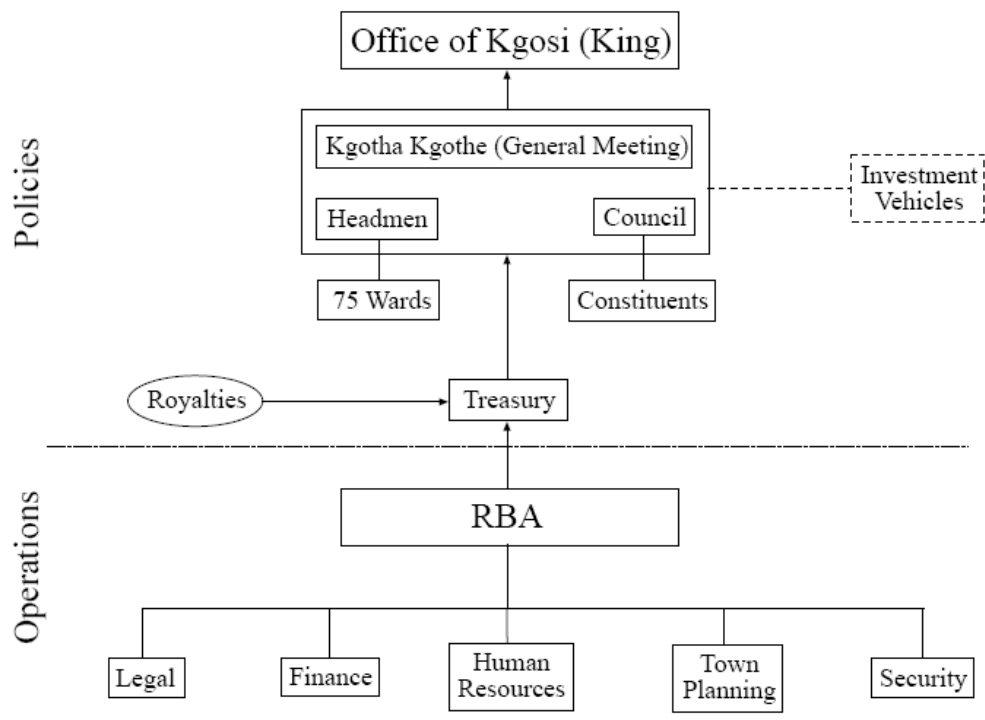


Figure 5-3: Organisation of traditional leadership and administration of the Royal Bafokeng Nation

Several schools have also been built, as well as municipal buildings and the prestigious Royal Bafokeng Sports Palace, which hosts international football games. However, all projects undertaken by the Bafokeng administration must be approved by the local municipality in order to ensure that they are in line with the Rustenburg Municipality’s Integrated Development Plan (IDP). From the side of the municipality, the Royal Bafokeng Administration has outperformed the Rustenburg Local Municipality the services provided by the Royal Bafokeng Administration have alleviated the Municipality of part of its service delivery duty in the Royal Bafokeng Nation, and allowed it to concentrate on more urgent needs in other parts of the municipality. As a result, people in the Bafokeng nation tend to think of the Bafokeng administration as the primary provider of infrastructure and service delivery.



Picture 5-3: Royal Bafokeng Sports Palace*



Picture 5-4: Children learning PC skills*

As a result, the Royal Bafokeng Nation is often held up as an example of the benefits of the mining industry to local communities, as well as of true ‘community based empowerment’. Indeed, the Bafokeng are the only example of community representation at decision-making level in mining companies (on the board and / or senior management). This distinctive configuration of power relations has led to a unique synergy between the Bafokeng and the platinum mining sector; the implications and ramifications of which are continuously being unearthed and adjusted to.

To be sure, one of the major consequences of the availability of such financial resources, and indeed one that is very much publicised, is that a significant proportion of mining revenue is reinvested directly into the surrounding communities, resulting in an expansion in communications, health, education and social amenities infrastructure (see above), and it is likely that *“the sustained growth of the PGM mining sector will produce extraordinary leverage in enhancing economic growth in the regional communities [...]”* (Mugodi and Fleming, 2003, p.505.)

Nevertheless, such huge financial resources (the Royal Bafokeng Nation owns assets valued at over R30 billion[†]) have also created tensions and discontent among some members of the community, who believe they are mismanaged and misused. Furthermore, despite the representation of the Bafokeng on the board of Implats, and the stakes owned in other mining companies, communities still suffer from the

* Source: www.bafokengholdings.com

[†] Figure for 2007, source: www.bafokengholdings.com

negative impacts of mining activities, and not a word is mentioned on how the Bafokeng have used their influence and resources to mitigate this.

In order to understand how this massive wealth came about, one has to start with the history of acquisition of the mineral rich land by the Bafokeng.

5.2 LAND ACQUISITION AND THE FIGHT AGAINST DISPOSSESSION

Most communal land is nominally owned by the state (cf. **chapter 1**), but the Bafokeng are part of the minority (as far as communal land tenure is concerned) who enjoy private ownership of their land^{*}.

Mokgatle[†] initiated the purchase of the first tracts of land that would allow the Bafokeng to fight off the worst ravages of colonialism. August Molotlegi continued the tradition of buying land and also managed the early relations with the prospectors that poured into the area after the discovery of Platinum. By the end of the 19th century, the Bafokeng ‘tribe’ had acquired over twenty farms or portions of farms (see **Figure 2-4**).

Land purchasing amongst the Bafokeng, was usually done on a communal basis; the complex process was led by the different chiefs with the help of lawyers. As the various purchases relied on collective resources, it required the support and co-operation of the community who had to understand the benefits that would accrue to them from each particular purchase.

This section will examine why, how, and under what conditions the Bafokeng acquired land from the mid-nineteenth century onward, as well as the way land was and is administered; and how this impacted on the relationship between certain sections of the Bafokeng and the traditional authority, especially from the time it was discovered that the Bafokeng were standing on one of the largest platinum reserves in the world.

^{*} Not all land in the Royal Bafokeng Nation is privately owned however, the village of Robega for instance is on state owned land and administered by the Bafokeng traditional authority.

[†] A number of Bafokeng leaders since the 19th century are mentioned in this chapter, a timeline of Bafokeng chiefs is included in **Appendix A** for reference purposes.

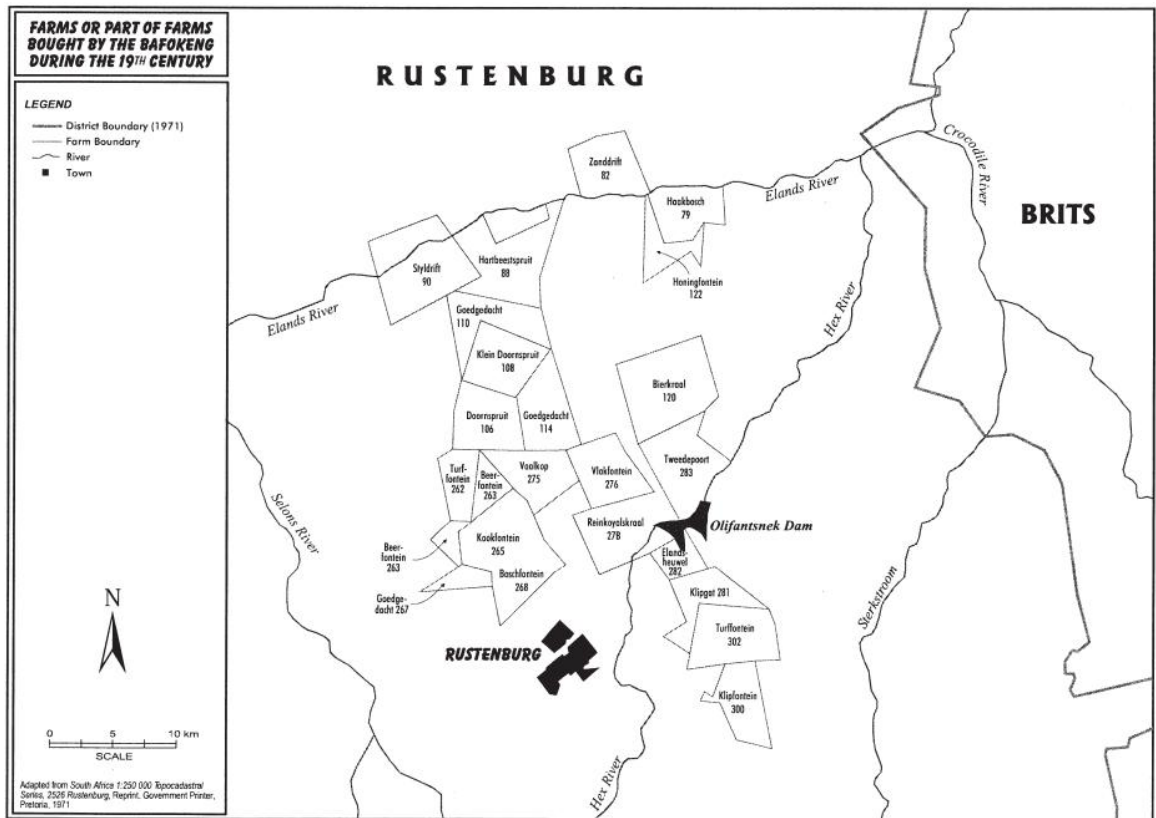


Figure 5-4: Farms and farm portions purchased by the Bafokeng during the 19th century (source: Bergh, p.104)

5.2.1 Land acquisition in the 19th and 20th centuries

The Bafokeng first began to purchase land under the leadership of Chief Mokgatle in the 1860s. At that time, there was a growing scarcity of land for the Bafokeng as Voortrekkers arriving in the area were given very generous amounts of land; and the Bafokeng found themselves increasingly living as tenants on Boer farms. Mokgatle was disturbed by this and persistently petitioned the SAR government for permission to buy the land that the Bafokeng had been occupying since their arrival in the Transvaal. His attempts having proved unsuccessful, he then turned to the missionaries for assistance.

Indeed, it was around this time, in the mid 1860s, that Mokgatle decided to allow the Dutch Reformed Church to build a mission station amongst the Bafokeng. Mokgatle decided that farms would be bought in the name of the name of the Hermansburg Missionary Society, under the name of Reverend Penzhorn, thereby finding a way around the fact that black people were not allowed to own land. The principle was that land would be purchased communally, by collecting contributions from the whole

community. The first farm, Elansheuwel, was bought in 1869, and the second, Bierfontein, was purchased in 1883 (Nthau, 2002, p.56). Part of the resources used to purchase land in subsequent years came from levies paid by several hundreds of young Bafokeng men, whom Chief Mokgatle had 'sent' to work on the diamond mines in Kimberley. Indeed, diamonds had been discovered in Kimberley in 1867, and people were migrating from all over South Africa to work on the diamond fields. (Bozzoli, 1991, p.37)

Kgosi Mokgatle (1836-1891), the longest serving Kgosi to date, has a significant place in Bafokeng history. He was a popular and respected chief, which made it possible for him to mobilise young males in order to purchase land, and as a result, he is remembered for buying the land that secured the future of the community.

Mokgatle died in 1889; he was succeeded by Chief Tumagole who ruled until 1896, after which Mokgatle's son, August Molotlegi came to power (1896-1938). Chief Molotlegi presided over the *"the less comfortable era during which full-blooded capitalism and segregationism placed almost unbearable pressures upon his community and his office."* (Bozzoli, 1991, p.62) Nevertheless, the land surrounding Bafokeng territories was part of a 'scheduled area' in terms of the 1913 Land Act (which prohibited Africans from owning land in prescribed areas), and Africans were allowed to purchase land communally in those areas. Hence, the Bafokeng were not dispossessed by the 1913 Land Act, and by retaining control on the land they had acquired during the more flexible years of Boer domination they remained relatively protected from the increasingly harsh colonial rules.

In fact, the Bafokeng continued to buy land after the First World War. The expansion of Bafokeng territory was funded by a system of tribal levies upon migrants (Bozzoli, 1991, p.62). According to Coertze: *"during [Molotlegi's] reign no fewer than 26 farms, or sections of farms, were registered in the name of the Bafokeng. Some of these were bought in his own name, and paid for with money levied from his subjects. Others were paid for from income received from White prospectors: the search for platinum began during Molotlegi's reign."* (Coertze, 1987, p.53)

The purchase of some of these farms, notably under the leadership of Molotlegi was contested by some elements within the community and conflicts emerged over the

ownership of land. These conflicts affected the governance characteristics of the Bafokeng traditional leadership and impacted on the relationship between the chief and his constituencies. This relationship, as well as some conflict resolution mechanisms that were resorted to, will be examined in the next section.

5.2.2 Sources of conflict over land acquisition and ownership

Throughout the twentieth century, there were three recurrent sources of conflict over land issues:

- Migrants (typically young Bafokeng men from Phokeng and other villages who moved to town for work) felt they accumulated few real benefits from owning the land and were angered by the levies imposed by the chief and the *lekgotla* to alleviate debts on land purchases;
- Community members contested the claims of different chief over the decades that the land was in their own names rather than in the name of the Bafokeng; and
- Families, small groups and even individuals claimed individual land tenure as opposed to communal tenure over specific farms.

A brief account of the first two sources of conflict over land acquisition and land ownership will be given; this will be followed by a more thorough examination of the third one, as it has become particularly significant with highly sought after minerals generating substantially higher stakes. More to the point though, should these claims be confirmed, this would have a major impact on land administration in the Royal Bafokeng Nation, and hence, affect the rationale on which the Bafokeng traditional authority based its role in the relocation of the community of Lekgoropane.

Discrimination against migrants and unequal distribution of land

In the 1920s, the Bafokeng faced a growing scarcity of land. As a result, it became more difficult to buy farms and the chief could no longer extend his patronage through the distribution of land, as he had done in the past.

Chief August Molotlegi, as a strategy to maintain his power base, provided some sections of society with land and benefits, while others were marginalized. Young Bafokeng migrants who left their villages to go to town in order to find work were the first to suffer from this increasingly unequal distribution of land. They felt that despite

working hard, they were benefiting little from their labour. This feeling was exacerbated by the fact that the farms that the Bafokeng were still able to buy during this period were purchased with the remittances and annual levies raised from migrants, and such migrants became more inclined to resist chiefly control. Migrancy became a form of resisting chiefly control and establishing an alternative economic base; as a result, young Bafokeng men began to move to the cities to circumvent the control of the chief and his headmen.

Although Chief Lebone revoked the levies and taxes received from migrants in the 1980s, access to land and resources for Bafokeng migrants remained insecure throughout the 20th century, as was also the case in other African communities in South Africa.

Ownership of land by the *Kgosi*

Throughout Bafokeng history, *Kgosi's* claims to private ownership of land (Coertze, p.53) have never been well received within the population. Chief Molotlegi for instance had become something of an "individual accumulator" over the years and was accused of squandering tribal funds for private purposes, much to the chagrin of some of his subjects (Bozzoli, 1991, p.62). In 1903, a portion of Farm Kookfontein was registered in the name of the Commissioner for Native Affairs in trust for Chief Molotlegi. Then for the second time in 1906, Chief Molotlegi tried to buy a farm with public resources for his own private use. However in 1926, perhaps in an attempt to buy back some favour with his community after the painful dispute with the 'rebels' (described in some detail below), Chief Molotlegi relinquished personal rights in properties and declared that they belonged to the Bafokeng Tribe.

Chief Lebone Molotlegi (1956-1995) was also involved in similar incidents. In 1962, four years after he was officially invested as chief, a series of *lekgotla* meetings established that the chief was in serious financial trouble. He had spent extravagantly and had taken out a number of loans from African leaders in the region. In an attempt to repay his debts, he carried out a number of actions that angered his followers, but it was his claim to personal tenure over two farms that most seriously infuriated the community. As the local Bantu Affairs Commissioner reviewed the status and claims to all Bafokeng farms to try and understand the financial position of the Bafokeng, it came to light that two farms had been bought in the names of chief Mokgatle and

Tumagole and not in the name of the Bafokeng 'tribe'. Chief Lebone immediately claimed right of ownership. Chief Lebone, who was probably driven by his precarious financial state at the time, offered to re-register the farms jointly in the name of the Bafokeng if he was paid an unspecified sum of money. Although, the Bantu Affairs Commissioner defended Lebone's offer saying he was driven to make the proposal by necessity rather than greed, this offer inflamed matters and ultimately, Chief Lebone was forced to retract and sign an agreement to register the farms in trust for the Bafokeng in November 1962.

Chief Molotlegi's misuse of tribal funds for private purposes led him to be perceived as more self-serving and caused him to be challenged by his people and his *lekgotla*. And Chief Lebone was subjected to the same feat.

These incidents suggest that the Bafokeng people had the necessary influence to defend the interests of the community as a whole when they were threatened by the leadership's private and divergent interests.

Rights to Individual land tenure

There is contestation around the ownership of land, with some people claiming that they had bought land in their private name and that the Bafokeng traditional authority had effectively dispossessed them by either taking advantage of circumstances (in the times where people had to buy land through recognised chiefs), or by allegedly taking away title deeds, or generally by using intimidation, the traditional authority's control over resources, and their ability to afford a lengthy judicial process to discourage any land claims.

Nowadays, elements within the Bafokeng leadership and administration label land claims as 'opportunistic'. The mineral rich land is surely very coveted, and some land claims may well be opportunistic. When viewed in a historical perspective however, others are clearly legitimate. Indeed, the same farms which were claimed by individuals at the beginning of the twentieth century, before platinum was even discovered in the region, are claimed by the grandchildren of these same individuals today.

An early example of conflict around individual land tenure was in 1906, when a land claim was lodged with the then Transvaal High Court by the alleged buyers of farm

Turfontein 302JQ (land bought in the 1870s) to have the land registered in their names. The Court heard the case together with a similar claim on farm Klipfontein 300JQ by community members in neighbouring Photsaneng (see **Figure 5-5**). In 1908, a sub-chief, Modisakeng Petlele and his 24 followers, claimed exclusive rights to a property and refuted that it belonged to the rest of the Bafokeng. Petlele took the issue to the Supreme Court. He lost the case, the Native Affairs Department (NAD) arguing that a section of a tribe could not hold land apart from the tribe, and the communal status of the land was legally reaffirmed. Despite defeat, this case set a precedent and very soon thereafter, another individual brought a similar case to court. They too lost. Simpson argues that these conflicts over individual as opposed to communal land tenure shaped political and ideological disputes in Bafokeng society in the 1920s and 1930s. These disputes continued without being taken to court, particularly after the discovery of platinum deposits. After the third defeat of a similar case in 1936, it took several decades before members of the Bafokeng community started claiming individual ownership of land again through court action.

Today, the grandchildren of the original buyers of farm Turfontein are claiming their land back, while at the same time the Bafokeng leadership has applied to have the farm registered in the name of the Bafokeng tribe'. However, the Bafokeng land owners association has emerged as a determined and federative organisation to reclaim ownership of land which was not bought in the name of the Bafokeng 'tribe' (cf. **Appendix E**).

Contestation of land ownership in the Royal Bafokeng Nation is caused by a number of factors, many of which are rooted in the convoluted land purchasing procedures for blacks that prevailed during colonial rule and apartheid. Indeed, due to restrictions regarding land acquisition by Africans, private land had to be registered in the name of a recognised chief, the nearest one for convenience, and therefore the name of the actual buyer(s) never appeared on the title deeds. Farms bought collectively by the Bafokeng had to be held in trust by the missionaries, and then the homeland government. In any event, title deeds rarely reflected the actual purchasers and rectifying this involves court procedures, which can result in conflicting land claims (see above).

One informant provided another angle on the issue of land claims, by explaining that community members did not feel that they were benefiting from mining activities, and that since promises of great benefits from mining had not materialised and expectations had not been met; in other words, since the land in the current tenure system was not benefiting them, they would rather have the land their forefathers bought in their individual capacity back, and have the opportunity to profit from that asset.

Fighting for the acquisition and protection of their land forged the Royal Bafokeng Nation and made it this autonomous, cohesive, prosperous and resilient community, in an era marked by the dispossession and exploitation of blacks in South Africa. Ironically, fighting for land might ultimately be the cause of its disintegration: with too little wealth trickling down, mining adversely affecting populations, and the Bafokeng traditional authority's alleged intention to dispossess people of the land they have bought.

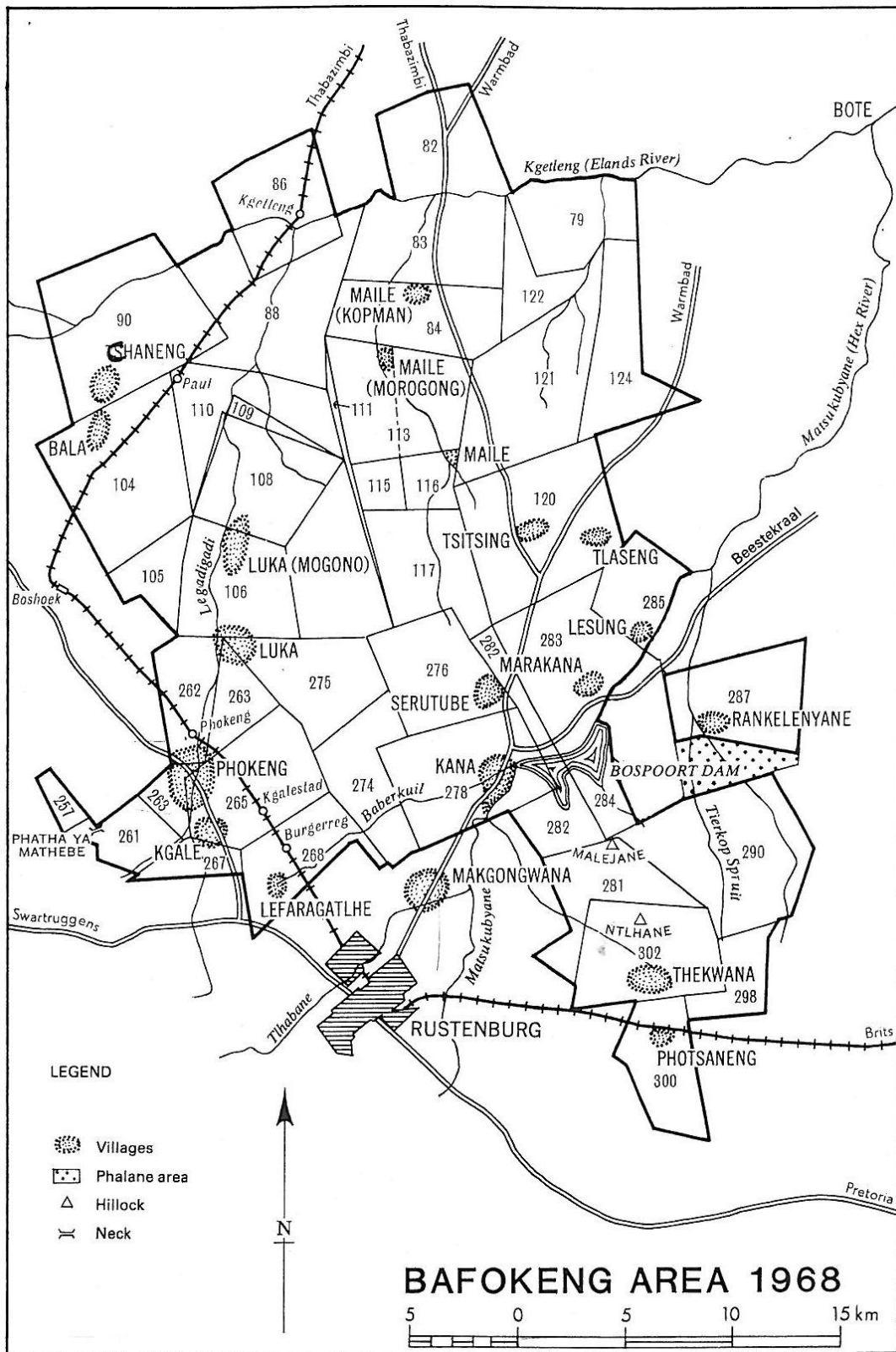


Figure 5-5: Bafokeng Territory in 1968

5.2.3 The advent and impact of mining: 1960s-present

The discovery of one of the largest deposits of platinum in the world on Bafokeng owned land, the ensuing royalties, and numerous litigation cases have shaped modern Bafokeng society.

From the 1940s until the 1960s, the mines were not very profitable, but in the 1960s the demand for platinum and its price began to rise after a lengthy slump and soon the mines became fully operational. Mines took over valuable farm land and they started to have a serious impact on Bafokeng life: notably, the declining peasant-based economy and way of life was brought to a sharp end.

Interestingly however, the Bafokeng at no point converted to being mineworkers. Bafokeng men worked in the Kimberley mines for about two or three generations, and after that, they progressively abandoned work in the mines. During apartheid, Bafokeng territory constituted “*one of the few economically viable regions in the homelands*” (Bozzoli, 1991, p.206). Their relatively privileged economic conditions allowed them to access better jobs, mostly in Johannesburg and nearer towns. To this day, the vast majority of mineworkers in the Royal Bafokeng Nation are migrants (*i.e.* non-Bafokeng) (see **Box 1**).

BOX 1: Mining and migrancy

When Impala Platinum began prospecting operations in the mid-60s a first wave of migrant workers arrived in the area. Indeed, the relatively privileged economic position of the Bafokeng in relation to other rural communities allowed them to access better jobs in the cities and as a result, Bafokeng men only constituted a small portion of mineworkers. The vast majority of mineworkers from the mid-60s up until present day have been migrant workers from outside the area.

In the early to late 60s, most migrant workers came from Lesotho and the Transkei; but after 1968 and the approval of Impala’s application to mine, migrants were arriving from all over Southern Africa. In the early 1990s however, as Impala wanted a more settled and skilled workforce, more SeTswana speaking workers from the region were recruited.

5.2.4 Challenging the apartheid state and white capitalism: the Bafokeng’s legal battles

In 1972, Bophuthatswana became a “self-governing homeland” and then in 1977, it was proclaimed an “independent state”. The Bafokeng found themselves under the

rule of President Lucas Mangope's government, and tensions with the latter soon emerged. As Manson and Mbenga (2003) note: the hostility "*became more pronounced as the fight for mineral control heated up*" (p.27).

As a matter of fact, black South Africans under colonial rule and especially during apartheid have been constantly threatened with dispossession. The Bafokeng in general, and Chief Molotlegi in particular, have fought for their share of mineral rights and ownership of their land and ensured their economic and financial well-being by successfully resorting to legal assistance, no matter the cost, and thereby coming to the realisation that the government policies and decisions could be challenged through these means.*

As President of Bophuthatswana, Mangope became trustee of the mineral rights. Chief Lebone fought against this: he took the matter to a court of law in 1983 and he announced the Bafokeng's intention to secede from Bophuthatswana. Mangope responded by declaring a State of Emergency over Phokeng and appointing a Commission of Inquiry into the (mal)administration of the Bafokeng under Chief Lebone. The Commission condemned the attempted secession as an 'act of insubordination'. Things deteriorated further after the Progressive People's Party (PPP), the official opposition party in Bophuthatswana, attempted to overthrow Mangope's government by force in 1988. Lebone was accused of supporting the failed coup, and detained. In March 1988, Kgosi Lebone fled to Botswana after finding a large contingent of police at his house as he arrived from work. He remained in exile there until 1994. He was replaced by his younger brother by decision of Mangope, despite the community having chosen someone else. Through him, Mangope managed to get access to mining royalties. "*The bulk of royalties were siphoned off to erect grandiose buildings in Mmabatho, the capital city of former Bophuthatswana.*" (Nthau, 2002, p.57)

Although platinum had been mined on Bafokeng land since the 1950s, it was only five years after the advent of democracy and dissolution of the 'homelands' that the Bafokeng managed to obtain their share of the wealth beneath their feet. This was

* A detailed account of the legal battles between the Bafokeng, mining companies and the homeland of Bophuthatswana during the second half of the 20th century is provided in Manson and Mbenga's article: "The richest tribe in Africa".

after winning a court case now famous in the history of the Bafokeng, which came to a head in 1988. The dispute involved a conflict over mining royalties between Impala Platinum Mining Company (of which the General Mining Company of South Africa - GENCOR- was a major shareholder at the time, a company in turn owned by Sanlam, one of the citadels of Afrikaner capital) and the Bafokeng. *Kgosi* Lebone instigated the court case against Impala Platinum which took long years to resolve but resulted in a lucrative settlement for the Bafokeng.

The Bafokeng entered this battle with the odds stacked against them. Historically the relationship between a mining company and the owner of mineral rights is unequal, with the mining company having a strong ability, even in the law, to exploit the owner of mineral rights. This is so partly because mining companies have far more legal experience and knowledge of mining than the farmers or black communities who own the mineral rights to the land (Manson and Mbenga, 2003, p.28). As the owners of the mineral rights, the Bafokeng were entitled to royalties, which were calculated according to taxable income generated by the mines. However, this was a very arbitrary amount and could be manipulated to suit the mining company. Indeed, because of the enormous amount of capital needed to prospect and open a mine, it is possible for the mining company to get some form of tax relief for many years despite the profit the mine may be generating. Moreover, as mines eventually do become unprofitable it is also possible for future costs to be deducted from taxable income. Hence, owners of mineral rights entitled to royalties are often left dry even though the mining companies are making a profit. This was the case with “1977 agreements”, which gave Impala the rights to mine certain reserves, and entitled the Bafokeng to royalties of 13 per cent on taxable income. The Bafokeng received derisory royalties and it was never acknowledged that the method for calculating royalties was unfair (Manson and Mbenga, 2003, p.29).

An opportunity to renegotiate royalty payments arose when Impala needed access to a reef which was on land held by the then Bophuthatswana government in trust for the Bafokeng. In the mid 1980s, the UG2 reef (which Impala had gained access to in the 1977 agreement) was becoming less profitable and another reef: “the Deeps” was identified for further mining. In 1986, *Kgosi* Lebone made a deal with Bafokeng Minerals which gave Impala the mining rights and gave him 25 per cent ownership of the company. However, the area could not be mined without certain information

relating to 'the Deeps' prospecting and mineral deposits, which Impala had access to but refused to provide. Impala was supported in this by Mangope, President of the Bophuthatswana government, who had singled out the Bafokeng as the community from which most of his political opposition came from (Manson and Mbenga, 2003, p.31). The Bafokeng then took Impala to the Bophutatswana Supreme Court to cancel their notarial cession. Judge Smith ruled against the Bafokeng, stating that the Bafokeng did not in fact own the land, but Mangope, as Trustee, owned it.

A "David and Goliath" battle followed in the 1990s between the Bafokeng and Impala Platinum. The Bafokeng and their lawyers continued to challenge Impala's right to mine the land, while Impala tried to avoid or delay the hearing of the Bafokeng's case. Finally in 1999, after ten years of acrimonious legal battles, an agreement was reached between the Bafokeng and Impala Platinum whereby royalties were increased to 22 per cent of taxable income, the royalties were subsequently converted into equity in 2007 and the Bafokeng received one million shares in Impala Platinum Holdings (valued at R 100 million at the time), and nominated a person to sit on the Board. It has been argued that with this Black Economic Empowerment deal (BEE), *"the RBN, [...] heralded as a shining example of true community-based economic empowerment, is cementing its position as an icon for social development, and an investment powerhouse."* (Soraya Spadavecchia O., "300 000 said to benefit from community-based empowerment", *Mining Weekly*, 6th July 2007)

However, although there is a recognition that mining revenues have enabled the chief to improve the life of the Bafokeng and provide support for his subjects, many feel that the revenue from the mines is in the hands of a few and does not benefit the community as a whole, that decisions regarding the spending of these revenues are not taken in consultation with Bafokeng communities, and the misuse of these revenues causes much grumbling.

A few decades ago already, some people on the ground were critical of Chief Lebone. In *Women of Phokeng* (1991), some of the informants deplored the 'spoiling' of the chiefship resulting from the revenue from the mines; and expressed resentment that the mines, despite being owned communally by the Bafokeng, were actually in the personal control of the chief:

“[...] that mine belongs to the tribe, it is Bafokeng mine. Now, can I as an individual, spend money that they got from that mine? No, I cannot. We as Bafokeng tribe spend that money through building schools for our children. But we do not have direct control over that money.” (Mrs. Phalatse, quoted in Bozzoli, 1991, p.217)

5.3 LAND RELATED CONFLICTS AND POWER RELATIONS IN THE ROYAL BAFOKENG NATION

Bozzoli explains that *“the progressive agricultural, educational, and land-buying strategies pursued by the community began to give rise to a stratum with distinctly modern ideas about ‘traditional’ society.”* (Bozzoli, 1991, p.62) This stratum preferred individual ownership of land to traditions of communalism, which threatened the survival of the chieftaincy. Indeed, the survival of the chieftaincy as a legitimate institution depended upon the ability of the Chief *“to retain access to some of the more traditional means of power, redistribution, and social reproduction.”* (Bozzoli, 1991, p.62)

5.3.1 Authority Contestation and the balance of power in the Royal Bafokeng Nation

Since the 1920s, when Chief August Molotlegi was challenged in court (Simpson, 1986, and Bozzoli, 1991), no Bafokeng chief has been without some form of opposition from the community. The grievances and internal tensions that have most often emerged, historically and in recent times, relate to the role of the *Kgosi* and the extent of his chiefly authority; the rights to land and land distribution; and the costs and benefits of mining. These issues have all come to light in the case of mining induced resettlement at hand. Some background will be provided for each one of these issues in this section and they will be viewed in the specific context of the relocation case in the next chapter.

A few cases drawn from Bafokeng history illustrate the recurring contestation of the Traditional Authority’s leadership.

The mill boycott – 1920-1922

Chief Molotlegi’s hold over the Bafokeng was challenged by a significant “progressive” segment of society, *“including the leading members of his lekgotla, and*

during which the values of Westernism, individualism, and democracy were posed as alternatives to the paternalistic and conservative communalism which the chief [...] represented.” (Bozzoli, 1991, p.76) A series of conflicts around a mill that villagers in Phokeng decided to boycott sparked off this conflict.

“[The grain mill] was situated on the Indian’s plot of land. The Indian was charging exorbitant prices for the use of his mill, and thus it was concluded after a discussion between the village elders that the grain mill should be boycotted.” (Bozzoli, 1991, p.76) Despite this decision taken by the community, the *Kgosi* continued to use the mill. This caused uproar and divided the people of Phokeng. *“There became a group called the rebels who wanted the chief to be brought before the kgotla to answer for himself”*; while the moderates believed the chief made a mistake and should be forgiven. (Bozzoli, 1991, p.76) The conflict escalated to the point where the chief and his wife were sent into ‘exile’ in the mountains for a month and those close to the chief were ordered to stop visiting him.

On this matter, members of the Bafokeng were split into the “rebels” and the “loyalists”. The rebels were members of the *lekgotla* and made up an educated, slightly more political and affluent group in the Bafokeng. There were nine men in particular who directly challenged the chief, and remarkably, a few of them had royal blood. They questioned the authority of the chief while the loyalists defended the chief’s right to authoritarian rule.

The ‘rebels’ at this time raised many more grievances against the chief, not strictly relating to mill prices. They alleged that between 1911 and 1916, their chief had misappropriated tribal levies, acted corruptly, behaved abusively and often got drunk. A lengthy dispute also erupted over the *Kgosi*’s attempts to privately buy a farm, as has been explored in more detail above. Similar grievances were expressed by the *lekgotla* when they testified about the dissension to the Native Commissioner in 1923:

“We would like to know from the chief what has become of all the tribal monies? Has he kept an account of the tribal receipts and payments? And if so is he prepared to show them to his lekgotla?”

“We do not know what has become of the site rents. We never see them. There are three blacksmith shops and we do not know on whose authority they are there.”

“He is not a fit and proper person to be our chief and yet we are told that we must be satisfied with him and act loyally under him and obey all his commands.”

“The lekgotla of Phokeng [...] feel that our administrative functions in all tribal affairs have been over-ridden, disregarded and totally ignored by our Chief, who has taken upon himself the autocratic control of the tribe, and who refuses to listen to us or seek our advice. This is a state of affairs which we, in all honesty of purpose, feel that we cannot submit to and this grievance is the first of the many that must be removed.” (quoted in Simpson, 1986, pp.205 - 207)

Reacting to these serious accusations levelled against the chief, some community members chose to resist paying extra levies and taxes, a form of protest that repeated itself whenever residents felt that they were not benefiting from the way in which their money had been spent (Simpson, 1986, p.206). The chief retaliated to this insubordination by denying the rebels access to essential resources. An example of this is when the chief decided to build a dam on the farm Boschfontein. Chief Molotlegi expected community members to pay a levy towards a dam at a cost that to them seemed too high. When some people refused to contribute towards the levy, Molotlegi stationed a guard at the farm's water supply. Those who would not pay were denied access to the basic resource of water.

Bafokeng 'loyalists', on the other hand, thought that the "rebels" should be forced to contribute to communal funds; they argued that it was unacceptable for anyone to challenge the chief's authority and believed that the rebels were destabilising Bafokeng society.

The conflict between the loyalists and the rebels came to a head between the years 1921 and 1926. The situation was so serious that the Secretary for Native Affairs commented at the time that *“the tribe is numerous and rich but full of dissension which is paralyzing their business affairs”* (quoted in Simpson, 1986, p.202). The 'rebels' insisted that the chief pay a fine and become accountable to the *lekgotla* and

the community. Eventually the chief decided to banish the 'rebels'. After a first appeal failed, the rebels took their case to the Supreme Court in Bloemfontein (Simpson, 1986, p.229).

There were two opposing points of view: the 'royalists' and the Native Affairs Department (NAD) on one hand asserted that the paramount chief had the power to do whatever he liked, that his word was final, and that this fact was fundamental to customary law. Thus, the *lekgotla* was simply seen as an advisory body and was considered out of line in expecting to have any kind of equal footing with the chief (Simpson, 1986, p.236). Customary law, the NAD argued, should be kept in place, as it was and was essential in keeping the 'unity' of the tribe (Simpson, 1986, p.230).

On the other hand, the 'rebels' did support the system of chieftaincy but wanted it to become less autocratic and more democratic. They denied that the chief had a right to autocratic rule, and stated that the *lekgotla* was above the *Kgosi*. David Mokgatle, a member of the *lekgotla* and one of the central figures in opposition to August at the time, asserted that "*under customary law, the lekgotla was effectively the most powerful body in the chieftom. In doing so he also cast some aspersions on the authority of the 'supreme chief' in the form of a representative government*": the *lekgotla* (Simpson, 1986, p.244). The 'rebels' insisted that a more democratic chieftaincy was a part of African custom and tradition, and it was only recently that this had changed. They stated that it had definitely never been a part of custom for a chief to expel people for opposing him.

The conflict between the 'rebels' and the chief was in fact about land as much as about mill prices. The former had ambitions to individual land tenure and a Westernised community, while the latter was resisting this because it would undermine his authority. The same conflicts take place in modern day Bafokeng nation, with chiefly authority resisting to maintain its authority, but also its control over mining revenues. Indeed, the 'rebels' were supported by a more educated stratum of Bafokeng society, those who were paying for, but not necessarily benefiting from, communal land ownership. The great majority of the witnesses for the plaintiffs were not living in Phokeng, which shows that the arguments advanced by the plaintiffs did have a broader base.

Judges Tindall and Curlewis ruled in favour of the defendant, Chief August. They said that the chief had the power, according to customary law, to banish those who opposed him. The Judges claimed that Sol Plaatje, one of the witnesses for the plaintiffs who may be taken to represent their point of view, “*was projecting unconsciously his desire for democratic tribal government into the sphere of customary law where it did not really apply.*” (Judgement from the case Daniel Mokgatle versus Herzog, quoted in Simpson, 1986, p.248) The plaintiffs’ plea for the ‘democratisation of chiefly authority’ went against the Judges’ keen sense that any obvious links with ‘western civilization’ would lead to ‘detrribalisation’ and the breakdown of control: “*The crisis of control in the Fokeng chiefdom reflected a wider crisis of control for the NAD.*” (Simpson, 1986, p.249).

The chief’s victory was double-edged. It destroyed the power of his *lekgotla* and undoubtedly undermined his own legitimacy to lead. After the judgment in June 1926, the nine leaders of the rebels were expelled from Phokeng and went to a place near Luka called Malebogo, joined by 351 of their followers, an experience recalled by many as painful:

“They left their houses vacant and decided to move into places unknown to them. [...] Most of those who settled at Malebogo had left beautiful houses in Phokeng. After a long period of time, there were some who desired to return to Phokeng and reoccupy their houses, but were advised that their intended action would lose them any credibility they had gained by opting out of the chief’s jurisdiction.”

“Those who could not stand the hardships of foreign lands returned to occupy their former houses, but the majority that left did not come back.” (Mrs. Setshedi, quoted in Bozzoli, 1991, p.79)

The bitter taste left amongst some groups of the Bafokeng only went away when the rebels were allowed to come home after a series of talks between the chief, elders and the rebels (Bozzoli, 1991, p.80). But more than eighty years later, Malebogo is still synonymous with great distress and hardship: according to one informant, communities living in Bafokeng territory to this day are reluctant to openly oppose the chief for fear of being exiled to Malebogo.

The role of the chief, his relationship to the *lekgotla* and other governing or representative bodies, and to the wider community are the cause of recurring problems in the Royal Bafokeng Nation; indeed, the issue of the chief's assertion of his authority at the expense of the desires of the community has recurred in other periods of rule. Remarkably similar grievances were expressed in relation to Chief Lebone: Chief Lebone imposed decisions on the community, who did not participate and was never consulted.

5.3.2 Modern dissidence and contestation of the Bafokeng Traditional Authority

The tendency of the chief to rule autocratically instead of through his *lekgotla* and elders has been considered by some the most important challenge to Bafokeng identity and unity through the decades. The initial challenges against *Kgosi* Molotlegi in the 1920s were led by members of the *lekgotla* made up of mission-educated, slightly more political and affluent groupings amongst the Bafokeng. Men in this group generally had experience in cities, and sometimes had links with national political parties. These men were interested in obtaining a more democratic form of leadership, with a chief as head but a *lekgotla* making up the "parliament", and private ownership of land. One of the groups currently challenging the "traditional" authority of the *Kgosi* is the Mariga Resident's Council (MRC), which is primarily concerned with how their environmental complaints are being addressed. Residents of Mariga, a village near Phokeng home to Impala Platinum mines have experienced a decline in health, as well as general degradation of the environment as a result of mining activities and have complained about air and water pollution, as well of the drying up of the Legadigadi, a stream that used to provide the village with water. Other groups inside the 'Bafokeng Nation' contest the *Kgosi's* authority and the way it is exercised.

Much conflict revolves around, or has its roots in land management and administration in the Royal Bafokeng Nation. The following section presents the terms thereof.

5.4 LAND MANAGEMENT AND ADMINISTRATION IN PRESENT DAY ROYAL BAFOKENG NATION

The Communal Land Rights Act (RSA, 2003) specifies the role of traditional authorities in land administration. Traditional councils (established in terms of the

Traditional Leadership and Governance framework Act) are given land allocation and administration powers and functions in communal areas. In terms of Section 21(2) of the Communal Land Rights Act: “*If a community has a recognised traditional council, the powers and duties of the land administration committee may be exercised and performed by such council.*” In the Royal Bafokeng Nation, this function is performed by the ‘executive council’.

5.4.1 The allocation of land

Tribal land is held in trust by the traditional leader (on behalf of his subjects) who has the title deed for the communal land. Land is allocated by him, assisted by his *kgosanas* (headmen).

The *Kgosana* had indeed allocated all informants their plot of land in Lekgoropane, as Isaac Monei explains: “*I arrived in 1952 in Lekgoropane, I gave the kgosana a cow, and he gave me two plots of land: one to farm, and one to build a house.*” (translated from interview with Mr. Isaac Monei, 2009). This system is accepted and functioned well as far as my informants were concerned; however, it creates a relationship of dependency that can be detrimental for people on the ground when things go wrong. Indeed, people need privileges through the chief, they do not have title deeds to their houses and conflictual relationships with the leadership have led to people’s houses being broken down and people being exiled. The fear of chiefs is directly linked to its land administration prerogatives and the relationship of dependency that exists between community members and the traditional authority regarding access to land and resources. This is consistent with Ntsebeza’s argument that the fear of the *Kgosi* is deeply bred and is bound up with the privileges dispensed by him and his capacity to allocate resources.

Family status, gender and age are all factors contributing to “*a widely agreed hierarchy of entitlement to land, with married, older men at the top and unmarried younger women at the bottom.*” (Lahiff, 2000, p.57) This is applicable to members of the Bafokeng community as well: as *Kgosi* Leruo indicated, unmarried young women are denied access to land “*to maintain respect and dignity of tradition. As long as one is not married, she remains a child to be cared for by parents*”, only when a woman reaches 35 and “*has demonstrated a sense of responsibility in terms of maintaining respect and having a job*” does she qualify to access land (Nthau, 2002, p.59).

Communal land ownership with land administration prerogatives attributed to appointees of the Bafokeng leadership means that land tenure is potentially insecure. If for example the Bafokeng leadership decides to give land to a mining company to extend its operations, land on which a community is living, thereby effectively implying their removal. This was the case in the late 1990s for the Bafokeng Rasimone Platinum Mine for instance: Bafokeng land is privately owned* and as such, cannot be subjected to any state interference. The Bafokeng traditional authority is the administrator of the land by virtue of customary law and more recently by virtue of the Communal Land Rights Act of 2003. Consequently, the traditional authority, can make unilateral decisions on land allocation and land use, without any prerequisite of consultation of affected communities (although on paper those mechanisms do exist, they are either useless if agents are co-opted or 'toothless' or corrupted with intimidation practices, cf. **chapter 7.**). In other words, Mahmood Mamdani's decentralised despotism, although toned down and very well disguised, is well and alive in the RBN.

5.4.2 Land use management

Decisions around the use of land for mining, at the expense of other land uses such as agriculture and residential, need to be taken carefully. Notwithstanding all the issues related to social and environmental impacts on neighbouring communities during mining operations, the issue of the sustainability of livelihoods in these communities after mining activities have ceased needs to be seriously considered. As large scale mining leaves behind land that is virtually unusable for any other purpose (notably agriculture). This has important implications in terms of the long term vision for the development of communities in the Royal Bafokeng Nation: once the minerals are depleted, what will people be doing to sustain their livelihoods?

Struggles to assert ownership of the land have influenced the evolution of the Royal Bafokeng Nation and continue to shape political relations in modern day Bafokeng society, albeit in a very different manner. Indeed, both historically and in recent times,

* Not all land in the Royal Bafokeng Nation is privately owned however, the village of Robega for instance is on state owned land and administered by the Bafokeng traditional authority.

the causes of contestation of the Bafokeng Traditional Authority, have related to the role of the chief and the extent of his chiefly authority; the rights to land and land administration; and the costs and benefits of mining. These issues have all manifested, albeit at a micro level, during the relocation case discussed in the following chapter, and confirm their significance in the context of the Royal Bafokeng Nation.

6. THE UNFOLDING OF THE RELOCATION PROCESS

6.1 INTRODUCTION

Early 2002, around eighty households living in Lekgoropane (a village constituting an extension of Rasimone) (see **Figure 5.1**), were relocated to a new location in Mafenya, a village approximately seven kilometres away. The move had to take place as the nearby 'Bafokeng Rasimone Platinum Mine' (a 50:50 Joint Venture between the Royal Bafokeng Nation and Anglo Platinum) was to undertake blasting in the area, which would have caused major disturbances to the residents staying in the area.

The need for relocation of the community living in Lekgoropane arose in 1997-98, and it was only after four years of planning, consultation, specialist studies and construction, that the community of Lekgoropane moved into their new houses. The following sections will detail the chain of events which led to the displacement and relocation of the inhabitants of Lekgoropane, and provide insight into the views of the main stakeholders in the process. Given the fact that responses collected during the interviews that were conducted in Mafenya were fairly similar in substance, they have in a number of instances been blended together to reconstruct the chain of events in a manner as complete as possible.

The Bafokeng Rasimone Platinum Mine's (BRPM) operations take place on farm Boschkopie 104 JQ and Styldrift 90 JQ (a subsequent and recent extension of mining operations) (see **Figure 6.1**). The Royal Bafokeng Nation owns both the land and mineral rights to farm Styldrift, but only the surface land rights to farm Boschkopie (the mineral rights belong to Anglo American) (see deeds registry documents in **Appendix D**). Adjacent to the BRPM, are the villages of Chaneng, Rasimone and Robega. The first two are on land owned by the Bafokeng, while the latter is on land nominally owned by the state and administered by the Bafokeng traditional authority (Interview with Mr. Khunou).

At the time, Anglo Platinum was mining PGM reserves on farm Boschkopie; mining activities have recently extended to farm Styldrift where the village of Chaneng is located (see **figure below**).

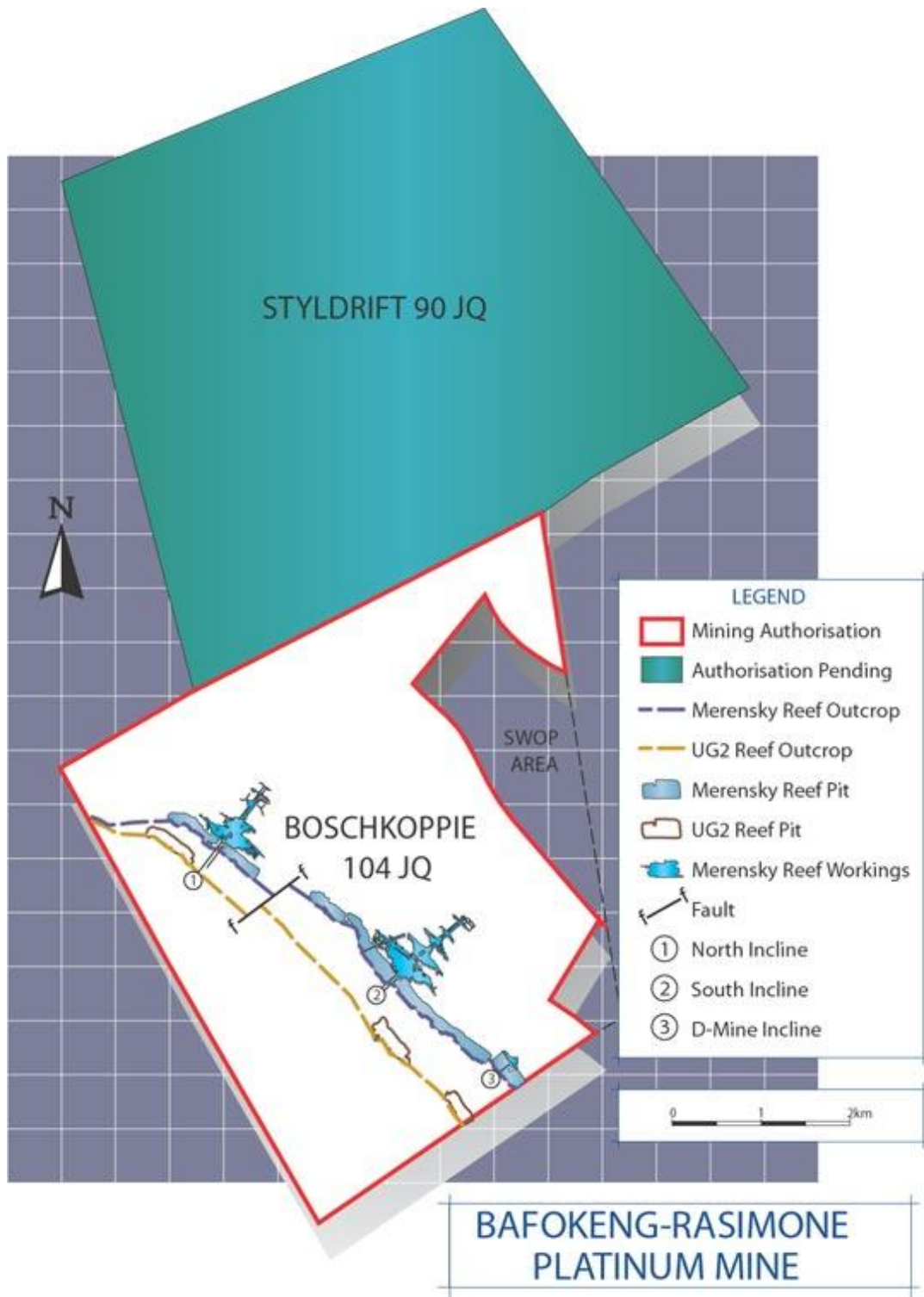


Figure 6-1: Mining activities on farm Boschkoppie 104JQ and indication of future mining operations on farm Styldrif 90JQ (source: Amplats Annual Report 2001)*

* Mining on farm Styldrif has been authorised since.

6.2 RELOCATION PLANNING AND CONSULTATION

The four years that preceded the relocation constituted the most crucial phase in the relocation process. It was during that phase that key decisions as to the conditions of the relocation, including housing arrangements and compensation details, were taken; it was during the pre-relocation phase that the affected community had the opportunity to voice concerns and attempt to influence the negotiations that were to determine their future living conditions.

6.2.1 Key stakeholders and decision-makers

The main parties involved in the relocation were:

- Anglo Platinum;
- The Bafokeng traditional authority (the RBA specifically);
- The Bafokeng community of Lekgoropane.

At that time (1998), the Bafokeng were involved in a 50:50 Joint Venture with Anglo Platinum for the Bafokeng Rasimone Platinum Mine. As a result, both parties were represented jointly in the relocation process in the form of a 'Development Committee'.

The 'Development Committee'

The 'Development Committee' assumed the leading role in the management and facilitation of the relocation process. It was constituted of 50 per cent of mine officials and 50 per cent of representatives of the Bafokeng administration. Mr. Khunou, one of the informants, was the head of the Project department in the Royal Bafokeng Administration at the time, and as such was involved as a member of the Joint Venture's Development Committee. The committee acted as an intermediary between the mine and the community; in other words, decisions made by the mine were relayed to affected parties by the Development Committee, who would then revert back to the mine with feedback. It also planned and organised the relocation together with a team of consultants.

The community of Lekgoropane

At the time, there were approximately 80 households residing in Lekgoropane, a settlement forming an extension to the village of Rasimone. All inhabitants of Lekgoropane were due to relocate. For about two years, the public consultation

process was carried out without the community having a dedicated body to represent and defend its interests. However, after conflicts regarding housing and compensation started growing, some community members decided to organise themselves and form a 'Relocation Committee', in order to provide a platform to voice people's concerns and attempt to obtain better relocation conditions.

The 'Relocation Committee'

The Relocation Committee was formed after it appeared that verbal agreements regarding the houses' structures and sizes, as well as compensation for community boreholes and other assets that were reached were not adhered to. As Edward Boikanyo and Eric Kgaditswe, two former committee members explain: the Relocation Committee constituted an interface between the facilitators of the relocation process (*i.e.* the Development Committee), including the Bafokeng administration (notably George Khunou) and the mine on one hand, and the community on the other hand.

Other important stakeholders included the **Bafokeng traditional authority** (in its own capacity this time), mainly in the person of the local *kgosana* (headman). The *kgosana* in Lekgoropane, represented higher instances of the traditional authority at the local level, and was directly involved in the process. The *kgosana* was not involved as a facilitator, but as a representative of the traditional authority, and his role was to assist in resolving problems and addressing the concerns of his constituencies as well as request the assistance of higher institutions of traditional authority, including *kgosi* if applicable to deal with matters arising during the process.

Although the **Bafokeng Rasimone Platinum Mine** was the project proponent and project implementer, the mine itself was practically not mentioned in any of the interviews and was virtually absent from the process. Its role as the project proponent was to fund and implement the project. All the negotiation and facilitation tasks were undertaken by the Development Committee.

6.2.2 Status quo determination and planning

The RBA, jointly with Anglo Platinum, appointed a team of architects to undertake a baseline study and compile a 'Status Quo Report' (1998). The architects worked with the local *kgosana* and went to each affected household to record the characteristics

of houses, including size and type (e.g. shack or brick house), as well as other assets such as trees and fences. This report contained the information that determined the conditions of the relocation and formed the basis on which negotiations between the Development Committee and the relocated community took place.

It appears that during that process, some inhabitants of Lekgoropane tried to take advantage of the system and subdivided their plots, building a shack on the other half of the stand and then arguing that they had double plots with two houses. Mr. Khunou explained that it was mostly the case with shack owners, and that the agreement was such that if they had two shacks, they would get two houses. In the end, about one hundred new houses were built in Mafenya for the relocated community, even though there were initially around 80 households in Lekgoropane (Interview with Mr. Khunou, 2009).

The architects' study concluded that the new houses to be built for the displaced would be categorised from A to F, according to the size of the original houses. Category A houses were to replace 'tin houses', and were about 40 m² (slightly bigger than the standard RDP houses at the time); whereas houses in category F would replace the biggest brick houses. All houses in one given category were to be built on the same plan. Several informants mentioned however that the architects asked homeowners who were able to, to provide the plans of their original houses to them and that their respective houses would be built according to these plans, as opposed to the standard houses proposed in the category (Interviews with Mrs. Modise, Mr. Monei, 2009). This was however a verbal agreement, and the agreement signed with each homeowner did not reflect this, which was a major cause of conflict after the agreements were signed.

After this process was conducted, the Development Committee then planned the new settlement. They chose to relocate the residents of Lekgoropane to Mafenya (approximately 7 km away), in order to maintain proximity with the former settlement and preserve ties with neighbouring communities, as Mr. Khunou explained. He added that in the former settlement, they (the Royal Bafokeng Administration) were struggling to build roads as there was no defined structure in the settlement. He argued that from a town planning perspective, the new settlement in Mafenya was sound and allowed them to build roads. Indeed, from Rasimone, as one turns left into

'new' Mafenya, there is a long road with turn-offs to the right. All the houses were built on the right hand side of the road, in an orderly fashion. The new part of Mafenya is distinctly different from surrounding villages, resembling the city centres of Pretoria or other towns, with streets at 90 degree angles at regular intervals and houses neatly aligned.

6.2.3 Consultation processes: major milestones

1998-2000: from inclusivity to alienation

The public consultation process was initiated under the rule of the late *Kgosi* Mollwane Molotlegi by an official from the Royal Bafokeng Nation, whom Mr. Modise described as "very good": Mr. Modise recalled he felt involved and that his input was meaningful. In contrast, after *Kgosi's* death in 2000, the *kgosanas* took over as representatives of the community and it seemed as though there were on the side of the mine and not of defending the interests of the affected community (interview with Mr. Modise). Mr. Monei also stated that he was happy with the way people were being consulted until he realised that promises were not being kept. He complained about this to the *lekgotla*, but nothing was done to follow up on it. All informants in Mafenya confirmed that participation processes became increasingly unsatisfactory and relations rapidly deteriorated as they felt their concerns were not being addressed adequately. As a result, at a stage where the affected community saw the impasse they had reached through formal consultation processes and established channels of communication (mainly through the *kgosanas*), they embarked on a march to Legato (a village approximately 10 km away) to express the discontent with the way the relocation process was managed, and the fact that their main concerns remained unresolved.

The march took place during the period after the death of *Kgosi* Mollwane Molotlegi and before his successor, the current *Kgosi* Leruo came into power. In the views of Mr. Modise, the mines took advantage of this gap in leadership to speed up the process and from that time, he remembers the frustration and discontent amongst members of the community progressively intensifying as people felt less and less in control and less and less listened to. The march to Legato was in protest of bad representation by the *kgosanas* in the matter, and the fact that grievance redress mechanisms, although existent, were perceived as completely futile. Ms. Tsiane

explained that the march to Legato was a last recourse as there was “no one to talk to” anymore.

2000-2001: building up of conflict and community organisation

Consultation resumed after the march with no actual change in the way the process was conducted, and as a result, conflicts regarding the conditions of the relocation soon re-emerged. When the residents of Lekgoropane realised that promises made were not being adhered to and that they had no grip on how their own houses were being built, and, by extension the way they were to live their lives, some residents decided to form their own committee to rally support in the community and voice their concerns. They nominated members such as Edward Boikanyo and Eric Kgaditswe to represent them and take those issues up with mine officials (notably Mr. Chris Kene) and the Bafokeng administration (represented by Mr. Khunou).

The committee concentrated on the main reasons for discontent among displaced residents: the size of the houses, and, to a lesser extent, the structure of the houses. Ultimately, the aim of the Relocation Committee was to obtain fair compensation and hold the Development Committee and the architects to their word, as well as avoid further ‘miscommunication’. By the time the Relocation Committee was formed and started raising these grievances, foundations had been laid, walls were up, and in some cases entire houses had been built; a late reaction Mr. Khunou struggled to comprehend (Interview with Mr. Khunou, 2009). From the perspective of the community though, people had repeatedly been promised bigger and better houses than their original ones, built according to their own plans (even though written agreements stipulated something else), and had no reason to complain about them until they saw what was actually taking place. Sonneberg and Münster (2001, p.46) commented that it was not unusual for disputes to “*arise after agreements have been made regarding the type of compensation, the timing of relocation and the type of infrastructure provided.*”

The issues of the size, and, to a lesser extent, the structure of the houses did indeed constitute major bones of contention. In one particular public meeting, residents told the Development Committee that the houses were too small and that they did not want them (Interview with Mr. Khunou, 2009). Mr. Khunou recalls telling disgruntled residents that they had signed the plans of their houses, specifying the size and

structure thereof, and that it was too late to change those specifications now that houses were almost complete. Residents argued that they had signed indeed, but that they “did not understand” the terms of the agreement. This argument was rejected as invalid by the Development Committee, but it clearly indicates that the Development Committee facilitating the relocation on behalf of the mine failed to achieve informed consent. In fact, accounts from relocated people in Mafenya suggest that proper informed consent was never sought. The Relocation Committee formed by members of the community then called a meeting at a school, which was attended by the Joint Venture’s Development Committee and *Kgosi Leruo*. Once again the issue of the size of the houses was raised. Mr. Khunou intervened and asked one woman whom he knew had a large house in Lekgoropane and had also a large house built for her in the new settlement in Mafenya: “*do you want to talk about your own house in front of everyone?*” The woman, driven into a corner, responded that she did not want to, and the question left many other participants puzzled. Mr. Khunou then suggested that everyone move into their house first, and that once they had moved in, each household’s problems would be addressed on a case by case basis, instead of anticipating problems in public meetings (Interview with Mr. Khunou, 2009). This ‘strategy’ was effective and resulted in the breakdown of community mobilisation and paved the way to a peaceful move to the new settlement.

6.2.4 Agreements reached during the consultation process

One of the principal objectives of the consultation process between the Development Committee and the inhabitants of Lekgoropane was to reach agreements regarding a number of practical implications of the displacement and relocation of approximately 80 households, notably related to housing matters. Findings from the interviews show that what the community perceived as agreements, reached through discussion and based on a common understanding, were in reality empty promises; the Development Committee’s version of agreements was (contractually) imposed.

Arrangements pertaining to the location of stands

During the meetings preceding the move to Mafenya, residents were told that they would be allowed an opportunity to decide on the location of their stand within the area designated for resettlement (Interview with Mr. Khunou, 2009). In fact, to avoid conflicts around the location of the stands, the Development Committee had organised a draw: they set up a box containing papers with all the stand numbers

written on them, residents picked a piece of paper and were allocated the corresponding plot. That is how stands were allocated and Mr. Khunou asserted that everyone was happy with what they had got.

Compensation for assets owned in Lekgoropane

The Development Committee requested the plans of the houses in Lekgoropane in order to replicate them in the new settlement. Those who had the plans of their houses in Lekgoropane, like Mr. and Mrs Modise and Mr. Monei, provided them, while those who did not have any plans were to get standard houses, as drawn by the architects. In all cases, residents were assured that they would not only get a house of the same size and structure (regardless of the condition of the houses they were leaving behind), but that their houses would be bigger and/or have additional rooms. The size of the houses is one point on which the version of the informants on the ground and that of Mr. Khunou differ greatly. Indeed, all the relocated residents complained that their houses in Mafenya were smaller than the ones they used to have in Lekgoropane. Whereas, Mr. Khunou asserted that houses were on average 30 per cent bigger than the houses they replaced, across all categories. During the meetings preceding the move to Mafenya, residents were also told that they would be able to see the foundations of their future houses and confirm the size and structure thereof.

Other improvements or changes to the houses had to be negotiated and were subjected to trade-offs. Edward Boikanyo and Eric Kgaditswe pointed out that every time the architects gave something extra to the future homeowner, they took something away. This was confirmed with other interviewees, such as Ms. Tsiane, who indicated that she had a *lapa* (a low, circular clay wall constructed at the back of the house where visitors and friends are seated on social occasions) in her former house in Lekgoropane, and she agreed to give it up in order to have tiles in her new house. In the same way, Mr. Monei stated that, since the architects gave him a better ceiling, they did not finish the verandas, which still needed to be cemented.

Residents were also told that they would be compensated for all the improvements brought to their homes as well, such as gardens and garages; and that whatever they had that the mine was not able to replace would be subject to an indemnity.

These were the agreements as understood by informants in Mafenya, and confirmed by Mr. Khunou. However, the actual houses looked very different to what people expected. And all informants complained that not all other assets were compensated for; fences, in particular were never replaced. Instead, Mr. Modise explained that a truck full of fences came to the village and people had to buy their own fences. Community boreholes and trees were to be replaced or compensated for, but all the informants said that they were never replaced, and that no money was paid in compensation. Mr. Monei never received compensation for the farm he owned in Lekgoropane. He brought the matter to the attention of the *lekgotla*, but to no avail.

Other claims

Subsequently, other claims were put to the Development Committee, such as an 'inconveniency fee' for having to move from one village to the other. Mr. Khunou recalls that they "*won that battle*", arguing that residents got better structures in Mafenya, structures that they could not have built themselves, and that this in itself rendered any type of indemnity or 'inconveniency fee' illegitimate and unjustifiable.

Discrepancies between verbal and written agreements

Once the stands in Mafenya had been attributed to the different households, and after the Development Committee and affected parties in Lekgoropane had discussed the compensation packages and (apparently) reached an understanding on the matter, the architects then went house to house in Lekgoropane to get the plans for the new houses approved and signed by their owners.

Mrs. Modise explained that the agreement they had signed stated the value of the house and displayed the plans of the house to be built. The plans in the agreement were not those agreed upon during the consultation phase. Mr. and Mrs. Modise were told that indeed, the written agreement they were to sign showed different plans (for a standard house), but that their house would be built according to their own plans. Recouping information from the different informants, it seems that the architects were those who had those agreements signed and deliberately or ingenuously mislead the residents by telling them that although they were signing to have a standard house built, they would get their house built according to their original plans. In any event, it is clear that informed consent was not achieved on those particular contractual agreements. Whatever the case may be, when they saw

the foundations of their new house (under construction), they realised that it was not what they were promised and from then on, started a fruitless struggle to have the Development Committee adhere to what they had understood to be the agreement. Mr. Monei, Mrs. Pitso, Ms. Tsiane, Mr. Kgaditswe and Mr. Boikanyo went through the same tribulations, as they attempted, some through collective action, to make the Development Committee keep its promises.

6.3 MOVING TO MAFENYA

After dismissing complaints of residents regarding their new houses, the Development Committee then drew up a schedule for removals, all residents were told when they were scheduled to move and in Mr. Khunou's words, "*everyone was happy*". People with trucks, bakkies and carts pulled by donkeys were hired by the Development Committee to transport the belongings of residents moving to Mafenya. They were paid according to the number of houses they moved, and as a result, there was a great efficiency in moving the maximum of households in the minimum time. "*That's how we got people to move; [...] it was a very smooth type of arrangement*" (Interview with Mr. Khunou, 2009).

Yet, several informants remember this experience as a source of anxiety, as they felt a lot of pressure to move speedily, Mr. Modise even compared it to Apartheid forced removals. The technique adopted by the Development Committee of hiring people who were being paid according to the number of households they could move in one day may well have contributed to increase the pressure, as truck drivers and donkey cart pullers themselves urged people to move fast.

For Mrs. Pitso, moving was also quite trying: in the space of 24 hours she went from excited to disenchanted. When Mrs. Pitso and her husband went to visit their allocated house in Mafenya for the first time, the house was already complete and they were told to move in the following day. As they moved in their new house, some of their belongings did not fit in the house, furthermore, as there was no garage in the new house (as opposed to the older one), they had to leave these items outside the house. Although in many cases residents felt distressed, they did not offer much resistance; Mr. Monei explained that he could not refuse to move when everyone else had accepted, adding that he was confident that he would 'get the same or

more' in Mafenya. And within two weeks, all households had moved to the newly built settlement in Mafenya.



Picture 6-1: A typical 'Category A' house in Mafenya with pit latrine *

6.4 POST-RELOCATION: OUTCOMES

6.4.1 Outstanding issues

Many issues that had been raised before the relocation remained unresolved after; and had just become more difficult to address.

Mr. Modise said he moved into a house so small it could have fitted in his former dining room. The issue of the size of the houses on one hand, and the structure and quality of the houses on the other, were the two major issues in order of importance that the informants felt duped on. A few informants stated that they only realised the house and services were not what they had expected when they moved to the new settlement. However, members of the Relocation Committee confirmed that these matters had been discussed before the relocation, as houses were still being built.

* As there was no sanitation in the new settlement, portable toilets (VIP toilet types) were installed inside every house. However, when people moved into their new houses the toilets started smelling. They were then closed, and pit latrines were built outside the houses in replacement.

Poor workmanship in the houses is an issue that is still adversely affecting many members of the relocated community. Two informants reported that the geyser started leaking a few days after moving in and many snags that were recorded were never fixed. Four informants complained about cracks in the walls, and two informants reported that they could hear and feel blasting under the ground for a while after they moved into the new house, a plausible explanation for the cracks that began to appear in the new houses. Although Mr. Khunou indicated that there was a five months 'maintenance period' during which residents were able to submit any issues related to snags, most, if not all complaints were left outstanding.

In 2002, the Relocation Committee organised door to door visits in the village and compiled a list of problems people were experiencing due to poor quality houses (such as cracks in the walls, leaking geysers etc.). This list was taken to the RBA, which in turn commissioned a group of youth to do another audit, as it appeared they did not trust the committee to be honest. Nothing has happened since then, and these issues are still outstanding.

The compensation of assets such as trees, fences and boreholes were another issue which remained unattended to.

Access to facilities and service delivery issues were also key. Lekgoropane was close to schools, and other facilities such as the graveyard; but residents now living in Mafenya are too far from these amenities to be able to walk there. As a result, they have to pay for transport to take the children to school; they also have to hire a bus to transport people to the cemetery, which is in Rasimone, when there are funerals, which is also a cause of important unforeseen expenses. All respondents complained about services, one issue in particular was street lights. Despite repeatedly requesting that street lights be installed, nothing happened, and people were feeling unsafe, a few years ago a child was raped on her way from school as she was walking back home, a regrettable incident which one informant attributed partly to the absence of street lighting (Interview with Mr. Modise, 2009).



Picture 6-2: The graveyard in Lekgoropane (2008)

Back in Lekgoropane, the graveyard was left unattended, in the middle of a field and unsecured, when it had been agreed that it would be fenced (see **Picture 6.2**).

6.4.2 Grievance redress mechanisms

Issues were raised by the affected community on an ongoing basis from the start of the planning and consultation phase until several months after the relocation had taken place. Some were outright dismissed by the Development Committee, some were dealt with using deceit and empty promises to achieve temporary peace, while others were simply ignored until it became too late to address them.

Although a formal public participation process was in place where the project was discussed and input could be provided, there were no dedicated mechanisms to receive and address grievances from the affected community. As a result, when agreement could not be reached in the formal consultation forum, or alternatively, when agreements reached during consultation were not honoured in the implementation phase, affected people had no one to turn to from the side of the mine. The only interlocutor available was the Development Committee, who kept on delaying any sort of intervention until people moved to the new houses and it eventually became too late.

Mechanisms internal to the Bafokeng were available to people however, and were used in addition to consultation with the Development Committee. Mr. Modise for example asked the *kgosana* to intervene to address all the grievances that he raised, notably pertaining to the size and structure of his house and of the rooms. The

kgosana then wrote to the Bafokeng administration requesting assistance in resolving these issues. The Royal Bafokeng Administration organised a meeting with the architects in Phokeng to discuss the issues and after that, the architects came to Mr. Modise's house. They offered to build an extension separate to the house with two rooms. Mr. Modise is still very unhappy about the extension that was built, it is barely the size of a garage and he considers that it is no compensation for the house being so small. Mrs. Pitso also criticised the *kgosana's* representation and said that they felt abandoned by the authority. She added that after the relocation debacle, she didn't feel that if she raised a concern to the authority, it would make any difference.

As to Mr. Monei, he took his complaints to the *lekgotla*, but they did not follow up on it. During this process, and especially after former *Kgosi* Mollwane Lebone Molotlegi died (2000), the Bafokeng traditional authority was seen as furthering the interests of the mine instead of defending the interests of the community.

Collective action failed as well: in spite of the Relocation Committee communicating the grievances of people they were representing to the Bafokeng administration, to mine officials and even the *Kgosi* (who all promised they would be resolved), nothing was done to address them. Mrs. Pitso reckoned that the Relocation Committee did what it could but it was facing more powerful forces.

The Joint Venture agreement between the Bafokeng traditional authority and Anglo Platinum *de facto* entailed the displacement and relocation of the community living in Lekgoropane. Although residents were largely unhappy with both the outcome of the relocation process and the manner in which their grievances were dealt with before and after they relocated, their recourses were virtually non-existent as they were denied access to official records which might have proven that the community was deliberately misled; attempts to negotiate the terms of the relocation directly with the facilitators (in this case the 'Development Committee constituted by representatives of Anglo Platinum and of the Bafokeng administration) only led to unfulfilled promises; and their normal grievance redress mechanisms (through traditional leadership representatives such as the *kgosanas*) failed repeatedly.

All informants in Mafenya indicated they were unhappy about the whole process and were better off before the relocation. The successive disappointments of broken

promises, the lack of meaningful participation of the affected community in decision making, coupled with poor representation and ineffective grievance redress mechanisms engendered a feeling of disempowerment that was perceptible during all the interviews with members of the relocated community, and brought them to a state of irreversible disgruntlement.

6.5 THE SOCIAL IMPACTS OF THE RELOCATION PROCESS

6.5.1 A relative success?

Displacement and relocation processes tend to be difficult for affected communities to say the least, no matter how well they are managed. In the case examined here, due procedures were followed, public participation was undertaken, and authorisation was obtained by the relevant government department. However, the uprooting of communities causes the destruction of immaterial and unquantifiable social ties that no social impact assessment expert can evaluate.

As Sonneberg and Münster (2001, p.38) note: *“involuntary resettlement will always be accompanied by trauma. This trauma can manifest in many ways, for example, social disintegration, economic decline, depression, illness, violence, and environmental degradation. It is the degree to which the above manifest that often characterises the success or failure of a resettlement.”* In comparison to other Mining Induced Displacement and Resettlement cases, the relocation to Mafenya can to a large extent be considered successful, as few of the commonly observed impacts were felt by the affected community, and where there were impacts, they were felt at relatively small intensity.

Indeed, the relocation from Lekgoropane to Mafenya did not result in homelessness; each household was given a replacement house and residents who were living in shacks resettled into brick houses. Access to common property resources was maintained (notably grazing land) (see **Picture 6.3** below) and food security was not threatened. There was no evidence that it had caused joblessness or marginalisation either; in fact, the host community was very welcoming according to one informant. Loss of access to public services was only relative in the sense that facilities and services were still accessible, but at a higher cost (in time and money). The displacement did not result in landlessness, although it did pose the question of land tenure security; and it did not cause absolute social breakdown, even though the

community experienced internal divisions as a result of the relocation process (cf. **section 6.5.3**).



Picture 6-3: Communal land used for grazing

It is reasonable to say then that the relocation process did avoid many of the pitfalls associated with MIDR; however, the affected community did experience a deterioration of its quality of life due to inadequate and partial compensation for housing and increased costs of access to services. The implementers of the resettlement failed to restore, let alone improve, livelihoods and standards of living to pre-displacement levels. Furthermore, ensuring the long-term well-being of the resettled community necessitated the definition of roles and responsibilities post-relocation, which they neglected, leaving people with no follow up support, and thus failing to comply with international standards and best practice (cf. **sections 3.2. and 3.3.**). This arguably held people back and prevented them from moving on for a long time, many informants at the time of the interviews were still hoping to obtain fair reparation.

6.5.2 The effective impoverishment of affected communities

The Development Committee did not envisage compensation in financial terms (*i.e.* cash compensation*), as Mr. Khunou explained, but rather in terms of better living conditions; the idea being to offer displaced people better living conditions in the new settlement. The criteria defining superior living conditions were however set unilaterally by the Development Committee and did not fully correspond to people's views of an improved quality of life. Indeed, while the Development Committee, and more specifically the Royal Bafokeng Administration component of the Development Committee, valued the ability to build roads in the settlement and the eradication of informal housing (*i.e.* tin houses), people on the ground valued proximity to facilities and services and the individual character of their homes. People effectively experienced a drop in living standards and consistently stated that they were better off before.

Informants were very factual in their grievances (size of houses, cost of transport, lack of street lighting etc.) and they did not mention any loss of social capital *per se*, suggesting that the relocation did not have any significant impact on community institutions, social networks, the proximity of kin groups or potential for mutual help. It is also very possible that practical economic considerations may have overshadowed these issues. Indeed, the direct economic consequences of the relocation and the immediate deterioration in living conditions were more tangible and were in all likelihood felt more intensely; in addition, the gap between expectations that had been created and the reality of the process probably contributed to intensify this feeling. On the other hand, the organisation of the community against the relocation, or rather against the terms of the relocation, can be considered as the creation of new social capital.

6.5.3 Divisions within the community

Beyond its impact on individuals, the relocation also created divisions within the community. While informants in Mafenya indicated that they were not willing to move under the conditions set by the Development Committee, they pointed out that people living in shacks were happy to go to Mafenya as they were going to move into solid

* Only boreholes were to be compensated by cash; the RBA did not agree to replace them as they had not been approved in Lekgoropane in the first place.

brick houses^{*}. This is important in the sense that although many residents complained about the conditions of the relocation, and the broken promises of compensation, some, notably shack owners, were satisfied with what they had got, and as a result, the community was not fully mobilised, which, Mr. Modise reckons, helped the project proceed.

Broken promises in relation to compensation also caused some havoc in the community. On behalf of community members, the Relocation Committee claimed money promised by the mine to replace community boreholes. It was agreed that the money would be paid to Eric Kgaditswe (committee member) and that it would then be used to replace the boreholes. Mr. Kgaditswe explained that they were unsuccessful in obtaining the said money, but subsequently, he became suspected of stealing the money and keeping it for himself by some community members. In Victoria (Australia) as well, conflict around mining projects spilled from formal consultation forums into interactions between families, friends, and caused divisions among the community:

“The proposal has split the community like you wouldn’t believe. I was accused of having shares in [the company] just because I’ve been laid back and haven’t screamed ‘not over my dead body’. I had to stand up in a public meeting. Just ends up in a screaming match at meetings. [People] accuse others in the community of not caring, why aren’t they objecting, but not everyone wants to verbally object in a big way. Not everyone approves, but not everyone shows disapproval in this way.” (Community participant, quoted in Cheney et al., 2002, p.19)

Having the traditional authority involved in the relocation process created certain expectations in terms of the nature of the consultation that would be undertaken: an empowering one, emphasising inclusivity and meaningful participation. Such expectations were based on the traditional forms of participatory democracy that had

^{*} I have not been able to verify this as I have not been in contact with former shack owners.

prevailed at one stage in the Royal Bafokeng Nation. This is demonstrated by the fact that people used traditional institutions such as their headman and the *lekgotla* in an attempt to have their grievances addressed. However, traditional forms of conflict resolution and established forms of counter power are no longer fully functional in the Royal Bafokeng Nation. In fact, traditional forms of participatory democracy are progressively being eroded in the Royal Bafokeng Nation and counter powers are being undermined. As a result, the reality was one experienced by many relocated communities before them: where unequal power relations dictated the conditions of the relocation and where powerless communities had no recourse to defend their interests. The evolution and current nature of power dynamics in the Royal Bafokeng Nation are explored in more detail in the following sections.

7. SOCIO-POLITICAL ISSUES UNCOVERED BY THE RELOCATION

7.1 POWER DYNAMICS IN THE RELOCATION PROCESS

7.1.1 Public consultation: an empowering tool?

In South Africa, a public participation process (PPP) is mandatory for almost any project of a certain scale or impact, and any mining project for that matter. Proof must be given to the government department issuing the authorisation that all affected parties have been offered an opportunity to submit any comments and/or objections that they might have, in order to secure approval for the project. Public participation processes are designed to be empowering tools for local communities; however, there is no mention of the extent to which these comments and objections should be taken into account in the final project design and management. From this ambiguity stems much of the frustration and disillusionment experienced by people on the ground, who envisage public participation as involvement in decision making, while the project proponent and facilitators tend to view it as a box to tick. Due to the power imbalance prevailing in this type of relationship between mines and communities, it is the mine's conception of public participation that is imposed. This is what happened in the relocation case studied here.

The need to relocate the people of Lekgoropane arose in 1997; the Bafokeng Rasimone Platinum Mine, a Joint Venture between the Bafokeng 'tribe' and Anglo Platinum decided unilaterally that the community would be displaced to allow mining activities (in this case: blasting) to take place. By the time the consultation process started in 1998, people in Lekgoropane were presented with a *fait accompli*, with no right to veto the proposed development.

This is congruent with findings from the MMSD project which show that since mineral rights are often owned by the state, "*most often, consent of the people who live on and make their livelihoods from the land is viewed as unnecessary, as they have no right of decision. [...]*" (MMSD, 2002, p.143) (See **section 3.2**) Similarly, rights to land and in some cases mineral rights belong *de facto* to the Bafokeng traditional authority, who did not seek permission for the use of communal land, did not present the affected community with an opportunity to reject the project, and the rights of occupants, both formal and informal, have been abrogated. Since the 'no-go' option was virtually non-existent, community members could only negotiate the terms of the

relocation, which turned out to be effectively predetermined anyway. This was only possible because although the mine was the project proponent, the Bafokeng traditional authority was involved in the Joint Venture and was therefore also an instigator of the relocation. This, combined with its position as land owner and land administrator, entitled the traditional authority to pursue the project it had for use of the land^{*}. This made possible the displacement of the community of Lekgoropane, as decided by the owners and administrators of the land, with little meaningful participation from the community, who bears the disproportionate costs of the expansion of mining activities.

Even though Mr. Khunou stated that consultation was key is eliminating disputes, and fostering buy-in, this was short-lived. As the process started, informants[†] did say they were “excited” about the relocation and happy to move to Mafenya, as promises of generous compensation had created great expectations. However, informants ultimately found the process strenuous and unsatisfactory.

The fact is that unequal power relations were very much prevalent in the public participation process and largely contributed to the frustration and general powerlessness experienced by people in Mafenya.

7.1.2 An analysis of power relations during the relocation process

People involved in this type of relationship with a mining company, in which livelihoods are at stake, experience powerlessness and frustration due to meaningless participation. In the Victoria case studies, as in the relocation case examined here, the discourse was centred on unmet expectations (of both the participation process and the outcome), and conflict. Indeed, people come to the discussion table with a variety of agendas and expectations; and views vary considerably among the different parties as to what participation processes are for and what roles each party should play.

^{*} In theory, all important matters relating to land are discussed with the community, however, in reality, the *Kgosi* and his advisors makes the final decision.

[†] Only Ms. Tsiane was against moving to Mafenya at the time as the mine and the Bafokeng traditional authority had given affected people the option of relocating to another village and she had chosen to relocate to Robega. The *kgosana* in Lekgoropane however wanted everyone to move to Mafenya to have enough of his constituencies in that village.

As a result, informants in Mafenya, like informants in Victoria, Australia (See **section 3.1**) experienced the public participation process for the relocation as stressful and conflictual, and in some instances felt uncomfortable or intimidated, and less free to provide their input as a result.

Mr. Khunou painted a picture of the consultation processes as confrontational, as a case of 'us' and 'them', and used warfare analogies such as 'winning the battle'. The relocated community on the other hand envisaged them as forums of discussion aiming at reaching the best possible agreement for all. However, after they realised they had reached an impasse in these discussions, and that they could not have their concerns addressed, they also adopted a more antagonistic approach with the march to Legato and the creation of the Relocation Committee.

Group organisation is a commonly observed response to a power imbalance: Labonte (1997) notes that powerless individuals in conflict with or opposition to organisations and people that are more powerful than they are tend to create an identity as a community group, in order to address the power imbalance (cf. **section 3.1**). This was in all likelihood the rationale behind the formation of the Relocation Committee in Mafenya, which constituted a strong source of advocacy and identity for its members. The Relocation Committee was perceived as doing what it could, but that it was not enough.

People voiced their concerns on multiple occasions, to a number of decision makers and powerful actors (in the mine and the traditional authority), to no avail. The concerns raised by community members were never addressed by the people in charge; 'participation' in the case of the relocation of people to Mafenya, was limited to mere information, and meaningless consultation. This exacerbated feelings of powerlessness, as traditional leadership structures, including *Kgosi*, were perceived as being not responsive to the local community's interests. Nothing changed after people raised their concerns, and they felt that whatever they said, it did not matter. In addition to their lack of power (*i.e.* the ability to bring about decisions that shape and determine outcomes) on an individual level, people in Mafenya suffered from the way the structure of the political and economic systems favours the interests of the mine over those of affected communities at the level of the system.

One of the main problems experienced by relocated people and associated with their powerlessness was thus the lack of effective entities where grievances could be addressed. The prevailing feelings of powerlessness and resignation were largely due to the major political and economic forces driving the process and the lack of meaningful participation. Members of the relocated community in Mafenya progressively lost control over their surrounding environment to more powerful stakeholders, and ultimately, they lost control over where and how they were to live their lives. This experience of the relocation process corresponds to the definition of powerlessness, as envisaged by Syme (cf. **section 3.1**). Members of the relocated community were powerless, insofar as they were able to express themselves but they were not listened to. When people who participate feel their input is disregarded and promises are broken, there is a break down of trust in the relationship.

“I think the most damaging development was the alienation of the people of this community from the control of their own lives.”

(Community participant, quoted in Cheney et al., 2002, p.23)

7.1.3 Broken promises and break down of trust

Claus Offe defines trust as *“the belief [...] that others will do certain things or refrain from doing certain things, which in either case affects the well-being of the holder of the belief [...]. Trust is the belief that others, through their action or inaction, will contribute to my / our well-being and refrain from inflicting damage upon me / us.”* (quoted in Warren, 1999, p.47). Consequently, the building of trust over time is based on the perceived consistency, predictability and robustness of the behaviour of others.

Broken promises result in a break down of trust in the relationship. In the same way, trust can be lost when people who participate feel their input is disregarded. There were examples in Victoria where people felt they were being listened to at the time, but subsequently felt ignored:

“[...] I was surprised when I read the report though; it seemed a lot of things which appeared to have been taken on board at the time had somehow disappeared. [...] A lot of things seemed glossed over or not put in which had been raised by the community. At the time I felt

like we were being listened to and it was a fair process, but when we saw the report it was as though there had been a hidden agenda.

(Community participant, quoted in Cheney et al., 2002, p.25)

Community members in Lekgoropane and then Mafenya experienced the same loss of trust. As issues that were supposedly dealt with during public meetings re-emerged and ultimately became major bones of contention. Retrospectively, Eric and Edward believe they were deliberately misled into believing in the promises made in order to avoid a struggle.

After it appeared that the Development Committee could not be fully trusted, the lack of independent information (emanating from an entity different from the mining companies proposing the project) became a cause for concern for many in Mafenya. Some informants claimed that they were provided inaccurate and misleading information. Many people in the Victoria case studies conveyed frustration with the degree of secrecy surrounding information on mining projects (cf. **section 3.1**), and informants in Mafenya had the same grievances.

The impact of financial interests is according to Cheney et al. a major factor that can influence trust in mining – community relationships. Community participants in Victoria, Australia, found that financial interests skewed stakeholders' views on the proposed mining projects, whether they were mine officials, government agencies or 'independent' consultants'. The architects contracted by the Development Committee were in the same situation of financial dependency towards the latter; it appears they promised a number of things to people in Lekgoropane regarding the type of houses they would get, and these promises did not materialise, the architects were ultimately accountable before the mine, and members of the community could not hold them to their promises.

Communities in Victoria, Australia, deplored that government structures were so receptive to financial "incentives":

"[...] I found out that the mine had just given [...] their bit of funding to the school. So I thought, well that's just to keep them quiet, you know, throw a bit of a thousand dollar donation at them every now and

again and that will shut them up." (Community participant, quoted in Cheney et al., 2002, p.26)

In Lekgoropane, community members themselves were not so impervious to the financial factor: according to one informant, some members in the Relocation Committee were allegedly co-opted by the relocation facilitators. Indeed, it appears that some members of the committee were given houses that they were not supposed to get in terms of the relocation agreements and suddenly "became quiet", according to Ms. Tsiane, who used to be a member of the Relocation Committee. She did not elaborate but this clearly was an insinuation that some vocal elements in the committee were co-opted.

In the same way community members in Victoria, Australia experienced the deceitful behaviour of mining companies (cf. **section 3.1**), people in Lekgoropane were made to believe in empty promises in order to ensure a relatively peaceful public participation process, and ultimately a trouble free move.

I have had no reasons to doubt the truthfulness of the accounts that people in Mafenya provided. They were internally consistent, and the similar descriptions of the process, as well as the recurrence of certain grievances across the interviews also strengthened this belief. However, Mr. Khunou denied any problems regarding the size and structures of the houses provided, and came to the conclusion that everyone was happy with the way the process was conducted, with perhaps the exception of former shack dwellers. Mr. Khunou seemed very genuine, and I have no reasons to believe he was not truthful either. It is also possible that it all boiled down to problems of miscommunication and perceptions. Minutes of meetings could have possibly set the record straight on that matter. As a matter of fact, when they realised the promises were empty, Eric Kgaditswe and Edward Boikanyo from the Relocation Committee actually requested copies of the minutes, to support their appeals to have their issues addressed. According to mine officials however, no minutes were kept, even though informants saw someone taking minutes at those meetings. They requested the minutes from the Royal Bafokeng Administration as well, to no avail. I also asked for these public participation records, in order to document the consultation process. But neither myself, nor the members of the Relocation Committee could lay hands on them, suggesting that once more unequal power

relations were at play (see **section 3.1.**), and affected communities were denied the evidence they could have used to argue their case.

Persistent refusal to access official records despite assurance that all legal requirements were complied with, that the process was transparent and without any major problems, and that there were no outstanding issues (cf. interview with George Khunou) could plausibly point to the deliberate misleading of the affected community with regards to what they could expect in their future location, and hence, validate the version of the story told by people on the ground.

Mr. Modise started the interview, with this statement, which is a reflection of the overall feeling of the informants concerning the relocation: “*The process did not satisfy us, I am still feeling emotional about it.*” The facilitators of the relocation created great expectations, but empty promises, the deliberate misleading of the people of Lekgoropane in order to ensure a peaceful move, and the consequent break down of trust caused bitter disappointment.

7.1.4 Ideas for better relocation practice

With its enticing promises, the relocation process created great expectations amongst the relocated community, but the reality was one of frustration, disillusionment, hardship and failed dreams. Indeed, in addition to the deliberate misleading of members of the relocated community with empty promises, the lack of meaningful participation and effective grievance redress mechanisms, together with poor representation, resulted in a break down of trust towards both the mine and the traditional authority, as well as divisions within the community. This echoes many other cases of communities affected by proposed or existing mining projects (see **section 3.1**).

Informants in Mafenya felt that they paid a big price and that nothing was coming back to them, and that only the mine and the RBA would benefit from the project. They nevertheless had a few opinions to share about how the relocation process could have conducted to ensure more mutually beneficial outcomes. Informants notably stated that the RBA, the *Kgosi* and the mine would “need to improve”; that “they were together in this”. They feel that the community has done everything it could: it has organised itself, appealed (individually and through the committee) to

their leaders (administration and *kgosanas*) to assist in resolving the numerous outstanding issues, asked the *kgosi* himself to intervene; spoke to mine officials on numerous occasions, but to no avail. They deplored that they, as members of the community were not well represented by the structures of the traditional authority, and by the *Kgosi* in particular, as he would have been able to address the issues raised by community members, but when asked to do so he did nothing. They added that improving infrastructure and services such as better roads and street lights would have made settling down in Mafenya easier. Better access to facilities would have also meant the relocated community was not burdened by the cost of transport to the graveyard etc. The lack of recreational facilities such as sports grounds means that children are playing in dangerous places such as illegal dumping sites or pits used for mining purposes.

There is a major discrepancy between the accounts of all informants on the ground and Mr. Khunou's version of the story, notably regarding the promises that were made, the actual conditions of the relocation, and the level of satisfaction among the affected community. The negativity towards the resettlement was such that none of the informants could state what was good or better in Mafenya, the most positive comment was from Ms. Tsiane, who just said she 'got used to it'.

7.1.5 Reflexion on the ambivalent position of the Bafokeng traditional authority in the relocation process

Displacement and relocation of communities are inevitably difficult to say the least and in the great majority of cases, affected communities do not benefit from the development that caused them to move. In this sense, the relocation from Lekgoropane to Mafenya is no exception. In addition to this, such projects are characterised by unequal power relations that invariably favour the mining company, who then imposes the conditions of the relocation which can, and often do lead to the impoverishment of affected communities (cf. **section 3.2**).

One major factor however, could have tipped the balance of power in favour of the relocated community. Half of the members of the Development Committee in charge of facilitating the process were members of the Royal Bafokeng Administration (the administrative arm of the Bafokeng traditional authority). This was in line with the Bafokeng Rasimone Platinum Mine 50:50 Joint Venture agreement between the

Bafokeng traditional authority and Anglo Platinum. There was therefore reason to believe that the people of Lekgoropane would have a different experience; as they were facing not only the mine, but also representatives of their traditional leadership and administration. These representatives were in a position to influence the terms of the relocation, and as a result, the relocated community stood to benefit significantly from the unique position of their leadership in the decision-making process. The potential therefore existed to have the relocated community's concerns and interests taken into consideration, and defended by representatives of the traditional authority.

Such dynamics were nevertheless not evident at all during the relocation and one can wonder why the traditional authority did not use its position in the Bafokeng Rasimone Platinum Mine Joint Venture to obtain fair relocation conditions for the community of Lekgoropane? To a certain extent, it is understandable that given the ambivalent position of the traditional authority, it was stuck between a rock and a hard place. Failure to strike a balance between conflicting responsibilities, and the fact that the Bafokeng traditional authority was fully committed to its position in the Bafokeng Rasimone Platinum Mine resulted in the imbalance of power being even greater, as in the relocation case at hand, affected communities were not only facing Anglo Platinum as the project proponent, but they also had their own leadership defending its interests in the BRPM Joint Venture.

There is an interesting analogy vis-à-vis the relationship between the Bafokeng traditional authority and companies mining on Bafokeng land on one hand, and the relationship between traditional authority and the apartheid regime on the other; notably regarding how traditional authorities derive and use their power. Ntsebeza highlighted the autocratic abuse of power and corruption by traditional authorities during apartheid, and pointed out that "*a large number of traditional authorities became "stooges" of colonial and apartheid regimes.*" (Ntsebeza, 1999, p.83) (cf. **section 2.1.4**). In the same way tribal authorities created or coopted by Apartheid pursued a self-serving objective of empowerment and enrichment by acting as agents of the oppressive regime, the Bafokeng traditional authority has arguably found another, perhaps more acceptable way of achieving those objectives. In democratic South Africa, the well-educated and modern leadership of the Royal Bafokeng Nation is resorting to the same self-serving, self-enriching methods used by apartheid created tribal authorities to protect their own interests. Even though the

public discourse stresses the benefits of this 'synergy' to local communities, people in Mafenya tell another story, in which they have borne the social costs of mining induced relocation and hardly reap any benefits. The issue hence remains the same: does this alliance between the Bafokeng traditional authority and mining companies operating on Bafokeng land have to be at the expense of people on the ground?

This research aimed at providing an account of a case of mining induced displacement and relocation, and uncovering the underlying socio-political dynamics at play during the process, that also characterise the power relations in the Bafokeng Nation. For instance, the relocation has shown how the Bafokeng traditional authority exercises its prerogatives as land administrator and how the concerns of affected communities can be disregarded even though they collectively own the land. It has shown the lack of counter powers to the traditional authority or rather the co-option of potential counter powers within the traditional authority. How do those issues of unequal power relations translate at a broader level in the Royal Bafokeng Nation?

7.2 POWER DYNAMICS IN THE ROYAL BAFOKENG NATION

People were presented with a *fait accompli* when they were told they would have to relocate, but also when they discovered the conditions of the relocation. Consultation was meaningless, and the relocation was conducted as planned by the Development Committee, regardless of the concerns raised and mitigation measures 'agreed upon' during the public participation process. The fact that the Development Committee went through all the rigmarole of the public participation process but did not incorporate any of the essential concerns that the community had, reflects the tendency of mining companies to view public participation as a box to tick rather than a useful tool to empower local communities. More importantly though, it is representative of the leadership style prevalent in the Royal Bafokeng Nation, which maintains the appearances of participatory democracy (their website is a perfect illustration), but in fact imposes an increasingly authoritarian and centralised form of leadership. This is done not only by disregarding the input of members of the broader community, but effectively stripping traditional leadership institutions of their counter powers, thereby eliminating checks and balances and any potential for a functional balance of power, as shown in the next section.

7.2.1 Centralisation of power and disempowerment of local communities

The proposed and now terminated relocation of approximately eighty households from Lekgoropane to Mafenya was characterised by latent social conflict throughout the process, punctuated by episodic eruptions of public dissension, and is to this day the subject of divergent and conflicting views from the various stakeholders involved, as was recorded during the fieldwork. In the case examined here, this conflict took place in the context of established legislation, formal environmental authorisation procedures with provisions for public participation, free media and free speech. Despite this recognised framework, there is still a lack of clarity regarding the roles and powers of communities in these consultation and decision-making processes, which can lead to disenchantment and frustration in local communities if expectations are not met, as well as a disintegration of trust. In the relocation case at hand, major community concerns were time and again dismissed and are currently still outstanding. The consultation of affected residents was for appearance's sake and did not materialise in meaningful participation. This is symptomatic of other consultation processes in the RBN, such as the *Kgotha Kgothe*, which is basically a public relations exercise, with little opportunity to formulate one's views on the vision and development path that the Royal Bafokeng Nation has adopted.

Indeed, in the same way the community of Lekgoropane had no control over the conditions of the relocation and as a result, on how and where they would live their lives, people in the Royal Bafokeng Nation have progressively lost control over decisions affecting the community as a whole, including over the management of community resources.

People on the ground are however reluctant to contest the current status quo and directly oppose the traditional authority. Much of the reason for this apparent apathy, particularly in poorer, less educated communities, is related to the fear of the traditional authority, fear of exile, fear of being discriminated against and not having access to resources such as land, and the link of dependency that bounds people to it. Indeed, the fear of chiefs is directly linked to their land administration prerogatives and the relationship of dependency that exists between community members and the traditional authority regarding access to land and resources. This is consistent with

Ntsebeza's argument that the fear of the *Kgosi* is deeply bred and is bound up with the privileges dispensed by him and his capacity to allocate resources.

Despite having a number of forums to voice their concerns, dissident or simply non acquiescent voices are not only ignored, they can be severely repressed, as any form of undermining can ultimately be fatal to the survival of the traditional authority, as is explored in the next sections.

7.2.2 Degeneration of effective checks and balances

Bafokeng history over the past century has been marked by a few significant cases showing that leadership decisions that were not based on broad support from the community were dealt with decisively.

The incident where *Kgosi* Lebone, had to re-register the farms (purchased with community resources but registered in his name) in the name of the Bafokeng (**section 5.2.2**) shed light on the capacity of sections within the traditional authority and the community to check the abuse of power of traditional leaders in cases where they adversely impacted on the interests of the community as a whole. While the mill boycott (**section 5.3.1**), which opposed the 'rebels' to the Chief, was a high point in authority contestation in the Royal Bafokeng Nation, and illustrated the powers of structures within the traditional authority (namely members of the *lekgotla*) to stand up against the excessive powers of the chief.

However, one of the findings that came out of this research, is that the balance of powers in the Royal Bafokeng Nation has shifted over the last century and it appears that the community representation by the *kgosanas* (headmen), as well as tradition leadership structures such as the *lekgotla*, are not as influent, and as effective in defending community interests as they were in the early nineteenth century. In fact, it seems that from checks on the chief, they have become co-opted. To be sure, some people affected by the relocation resorted to the traditional channels of communication to voice their concerns (through the headmen and *lekgotla*) until they realised they were no longer working^{*}. Key informants have mentioned that the

^{*} Even though resorting to the *lekgotla* to solve the compensation problem and empty promises was fruitless. The fact that Mr. Monei continues to go there to voice his concerns

traditional leadership was now like a monolithic bloc, and that *kgosanas* and members of the *lekgotla* were allegedly co-opted, through ‘gifts’ and other incentives.

This had led to the erosion of the balance of power and progressive and insidious establishment of authoritarian rule in the Royal Bafokeng Nation. This research shows that people have progressively lost control over the management and use of community resources (notably land) and in parallel, the ability to enforce checks and balances on *kgosi*'s power (through the *lekgotla* for example), which has resulted in a shift in the balance of power in favour of the traditional authority. As communities have been stripped of their powers, and checks and balances within the Bafokeng Traditional Leadership structures have been co-opted, the balance of powers has progressively ceased to function, resulting in an increasingly centralised and autocratic power. The root cause of this change in power relations over the years is the necessity to assert control over resources, in order to maintain both political and financial power.

7.3 THE SOURCES OF POWER

The Bafokeng traditional authority derives its power from two main sources: *first*, and most critical source of power is the control over communal land resources, and *second* is the control over mining revenues and other community resources.

The control over land (notably land management and administration prerogatives) is a source of power and legitimacy for the traditional authority to the extent that people depend on the traditional authority for land, and that these prerogatives are bestowed upon the traditional authority by virtue of both tradition and recent legislation. This power and legitimacy allows the traditional authority to control mining revenues and other community resources, which in turn reinforces its power, insofar as people depend on the traditional authority to access these resources, services as well as patronage; not to mention that control of the sheer financial wealth in itself is a source of power.

seems to be a sign that the *lekgotla* continues to be considered, at least for Mr. Monei, as a forum where one's voice can be heard and can matter.

These causality/dependency links are represented in a very simplistic and schematic way in the figure below, and are analysed in more detail in the next sections:

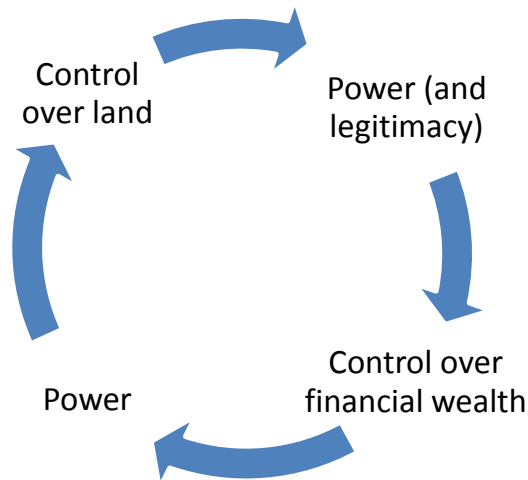


Figure 7-1: Sources of power in the Royal Bafokeng Nation

7.3.1 Control over community resources

Control of mining revenues is what really is at stake as they are the primary source of the financial wealth of the Bafokeng. The traditional authority is the administrator of mining revenues, which are by far the largest source of funds in the Royal Bafokeng Nation. Mining revenues are administered by the Bafokeng traditional authority, which uses them to extend patronage and deliver services people depend on for their day to day lives (cf. **section 5**).

Allocation and redistribution of these funds is contentious to say the least; the Masterplan, a medium term policy for development planning, is the vision driving infrastructural development in the RBN, from roads to schools. This plan was not developed in consultation with communities in the RBN, which is all the more cause for concern since it was mainly developed by consultants ill-acquainted with local contexts.

The Bafokeng traditional authority would not control such massive financial resources if it was not for the fact that they had control over land, its management and administration, as is shown in the following section.

7.3.2 Control over land

Control of land is critical in understanding how the Bafokeng traditional authority (and other traditional authorities in South Africa for that matter), derives its power. It also explains to a large extent the evolution towards an increasingly autocratic leadership style (notably by repressing opposition and challenging concurrent land claims). In this respect, Ntsebeza's work has been extensively used as it provides a framework to understand the powers that traditional authorities derive from their land allocation prerogatives. And how traditional authorities have at times resorted to autocratic modes of government, as opposed to the traditional forms of governance based on participative democracy. Indeed, control of land is the primary source of political, but also financial power for the Bafokeng traditional authority, and is therefore of critical importance.

The eagerness of the Bafokeng traditional authority to establish communal ownership of and control over land is not to be underestimated. *Firstly*, if legitimacy and popularity is declining, all there will be left to justify the rule of the *Kgosi* over the people in the Royal Bafokeng Nation will be the more traditional forms of authority, derived from the control over resources, and over the allocation of land in particular.

Secondly, as outlined above, communal ownership of the mineral rich land by the Bafokeng is the fundamental premise for not only the payment of royalties by the mines to the Royal Bafokeng Trust, but also the ownership of shares and the formation of Joint Ventures with mining companies. Hence, if communal ownership of land is contested, which it is (cf. **section 5.2.2**), and sections of 'Bafokeng' land ultimately become private, the whole economic structure on which the traditional authority rests on is bound to collapse, or at least undergo serious damage. This in turn ties back with the first argument since if the Bafokeng traditional leadership has less resources, its redistributive power will be considerably undermined, and so will its comparative advantage vis-à-vis local (democratic) government. This might be just enough to tip the balance of power and trigger a massive shift of (already shaky) allegiances towards the elected members of local government in the Rustenburg municipality (which does not mean this would not be equally disenchanting).

The ramifications of the land question in the Royal Bafokeng Nation are far-reaching and touch every segment of Bafokeng society, the implications of equivocal

ownership of land are considerable, and the way this issue is resolved will have substantial social, political and economical consequences. The traditional authority is able to sustain lengthy judicial process and thereby discourage land claims. Nonetheless, concurrent land claims present the risk of striking right at the foundations of this financial wealth, thus severely undermining the very basis on which the Bafokeng traditional authority derives its power.

7.4 RETAINING POWER IN A PRECARIOUS ENVIRONMENT

There are a number of threats menacing the power of the Bafokeng traditional authority. The system described above (**Figure 7.1**), in which the Bafokeng traditional authority has control over people and resources, is only tenable as long as members of the Bafokeng 'tribe' feel they have a say in decisions affecting the community and that resources are used appropriately and for the benefit of the community as a whole, (based on the fact that the land was bought by, and hence belongs to the community as a whole). However, signs of ailing support and discontent with the way the traditional authority is appropriating itself mining revenues and increasingly neglecting views from the people are visible and have been building up over time.

Glitches in the system mean that it does not run smoothly, and as a result, the Bafokeng traditional authority has had to apply force to maintain the status quo. To be sure, this did not translate in physical force, rather, it entails an increasingly centralised and autocratic form of power, which effectively implied the disempowerment of ordinary community members as well as rendering traditional checks and balances inoperative. This strategy however, can only lead to further instability in the system, as people become increasingly unhappy with the lack of inclusivity (*i.e.* consultation), start questioning how community resources are used, and reclaiming control over them (including control over land), thus, threatening the very basis on which the Bafokeng traditional authority's power rests, and increasing autocracy and centralisation accordingly.

The powers of traditional authorities in general are being questioned as democracy has been extended to all South Africans in theory. If the power exercised by traditional authorities is no longer justified by custom and constituencies themselves consider the traditional authority illegitimate, traditional authorities will lose their power, and with it, their land administration prerogatives, which will be given to a

democratically elected entity. As far as the Royal Bafokeng Nation is concerned, legitimacy and tradition alone cannot sustain the Bafokeng traditional authority in the long run, as there are already signs that legitimacy is dwindling. Therefore, a loss of power (due to declining control over the sources of power) in effect means the end of the traditional authority. Thus, the Bafokeng traditional authority has had to resort to more authoritarian rule in order to maintain power, as the bases on which its power rests have become increasingly shaky.

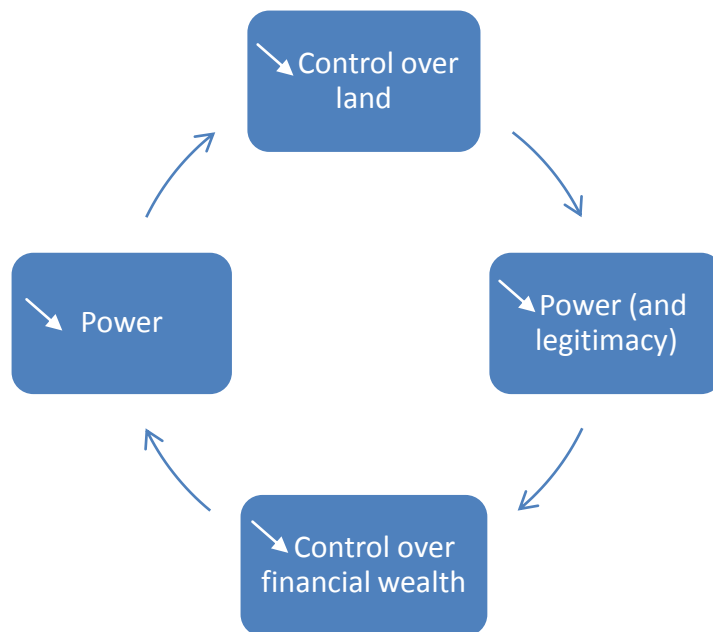


Figure 7-2: Chain reaction resulting in a decline of power

From this perspective, one can understand the amount of effort that the latter makes to retain its power. If the Bafokeng traditional authority can maintain its control over the two major sources of power, it can maintain its position as the leadership of the Royal Bafokeng Nation, even if it is not backed by popular support. With this in mind, one understands the strategies of intimidation, co-optation and corruption to artificially maintain support and effectively silence opposition. The cost of this strategy so far has been stripping the *lekgotla* and councils of their (counter) powers and disempowering people on the ground through dependency and intimidation, resulting in increased incidences of authoritarian and centralised power overriding traditional forms of participatory democracy.

The Bafokeng traditional authority has resorted to increasingly autocratic and centralised forms of governance through the disempowerment of Bafokeng constituencies and the decline of effective checks and balances within the institution of Traditional Leadership, in an attempt to retain control over land and mining revenues, which are the two major sources of power in the Royal Bafokeng Nation. Those power dynamics were perceptible at the level of the relocation process, and it is argued, are representative of the trend characterising the current leadership style in the Royal Bafokeng Nation

Beyond the relocation case examined, this thesis has argued that the wealth engendered by mining revenues, and the agreements that the Bafokeng traditional authority and mining companies entered in on the one hand; and the fragility of such wealth and contractual arrangements due to growing dissatisfaction within communities as well as competing land claims by individuals within the Royal Bafokeng Nation on the other (threatening the very basis on which this wealth is built), have contributed to shift the style of leadership in the Royal Bafokeng Nation from one emphasising participatory democracy and checks and balances, thereby tending to a relatively stable balance of powers; to a more authoritarian and centralised one, stripping institutions such as traditional councils and *lekgotla* of their (counter) powers, and co-opting representatives of communities on the ground such as the *kgosanas*.

7.5 EMPOWERING THE POWERLESS

As traditional checks and balances became inoperative, and the powers of traditional leadership institutions such as the *lekgotla* and the headmen started eroding progressively through cooptation and corruption, the broader Bafokeng society started to regain its responsibilities as the watchdog of the traditional authority, and some sections of the Bafokeng began to take up those issues.

Indeed, abuse of power, absence of meaningful consultation, intimidation, appropriation of land and mining revenues are fuelling much discontent among some sections of the Bafokeng. Although no hard evidence of this was collected during this research, these are trends that emerged during the fieldwork, mostly in informal conversations with people on the ground, through statements that were made verbally and explicitly, but also through non-verbal reactions and implicit remarks.

As this thesis has shown, there are a number of reasons for the growing contestation of the traditional authority in the Royal Bafokeng Nation. Grievances do not only relate to the fact want to receive tangible benefits from mining, which is really the tip of the iceberg. More fundamentally, discontent stems from the increasingly centralised and authoritarian style of leadership imposed by the Bafokeng traditional authority, supported by its administrative and financial arms, upon people on the ground. While people generally respect decisions made by the traditional authority, it is the lack of inclusivity that has exasperated many members of the community, who feel they no longer have the opportunity to provide input and have a say in the way community resources are allocated.

The status quo in terms of power in the Royal Bafokeng Nation is partly maintained because people feel intimidated to speak out and dissident voices are repressed. But sections of the Bafokeng are starting to organise themselves, just like group organisation was the response of the powerless to the powerful in the relocation process. The 'Bafokeng Land Buyers Association', representing a group of individuals reclaiming land, is one example of this. As discontent grows and more and more people feel left out, while at the same time, a small elite is splashing on flamboyant stadiums, releasing ten digits financial statements and foreign made masterplans, this will become untenable. The sheer numbers might just be enough to tip the balance of power, in true Marxist revolution style.

Perhaps a more plausible scenario would be one where the power of the traditional authority could be undermined by the loss of control over certain sections of land (should the land claims underway lead to such outcomes). Finally, control over land will progressively become less critical when platinum reserves become depleted, and the traditional authority might then concentrate on its asset management functions. These are just a few conjectures; the Bafokeng traditional authority probably has more elaborate plans for the future and, more importantly, there are undeniably ideas emerging from the ground promoting another vision for the Bafokeng, one that emphasises inclusivity and regaining control over community resources.

8. CONCLUSION - THE STORY BEHIND THE STORY

8.1 GLOSSY PAMPHLETS VS. DIRTY LITTLE SECRETS

“The Bafokeng royal family's disbursement of its riches is increasingly seen as an object lesson for South Africa in how to transfer wealth to the poor.” (Financial Times, 28 June 2008)

“The Royal Bafokeng Nation [...] a shining example of true community-based economic empowerment” (Mining Weekly, 6 July 2007)

“This is a people-driven, community-driven operation. We are using the traditional model where everyone has a right to the community's wealth to ensure we grow our people” (Business Report, 1 May 2005)

I was warned at the very beginning of my research by a staff member of the Royal Bafokeng Administration that what I would find would not reflect what one can read in the newspapers, which is in essence a very elaborate and carefully planned exercise of papering over the cracks, reminiscent of Pangloss' mantra: *“all is for the best in the best of all possible worlds”*. She left it there, reluctant to elaborate, and leaving me to imagine what kind of Pandora's box I was about to open.

It was not long until the fault lines started to reveal themselves, and this was before even speaking to any members of the relocated community. There is a lot more to the Bafokeng than what information can be found in the public domain. Certainly, the fact that the Bafokeng 'tribe' own assets valued at several billions of Rands is a distinctive feature of the community; as is the fact that hundreds of people are employed to manage this wealth like any other investors would, and to plan and implement development projects very much the way local government would. Those are all elements that make the Bafokeng stand out as a rural community governed by a traditional leader, and it is only fair that journalists focus on what makes the Bafokeng unique in South Africa.

Behind the story reported by journalists lies another, less polished reality, which exposes the gap between the version of the story that is marketed to the public, and

the untold reality on the ground. Indeed, anyone who has spent a little bit of time in the villages of the Royal Bafokeng Nation, and spoken to people on the ground knows there is another story to tell: one that heavily questions the so-called 'community-empowerment' and the true benefits of mining to communities. There is so little space for critical minds in the Royal Bafokeng Nation that any opinion vaguely out of line with the accepted thought is kept almost like a secret. Nevertheless, the skeletons in the closet are beginning to reveal themselves, for those who know where to find them. Organisations such as Jubilee South Africa in particular are following developments in the Royal Bafokeng Nation and have issued several press releases about conflicts involving communities protesting against mining operations (see **Appendix F** for recent examples).

8.2 THE POLITICS OF THE BELLY: REAPING THE BENEFITS WITHOUT BEARING THE COSTS

At present, there are a number of stakeholders who benefit from the status quo in the Royal Bafokeng Nation. The traditional authority, for the reasons stated above, but also the mining companies, which have much of their stakeholder engagement facilitated through the involvement of the Bafokeng traditional authority, not to mention easier access to one of the richest platinum deposits in the world, as the Bafokeng traditional authority is the only interlocutor for all land related matters, these factors allow mining companies to save significantly on time and money, and access considerably valuable resources.

Furthermore, there are various entities within the Bafokeng traditional leadership structures that gain from maintaining the status quo: the Bafokeng civil service depends on this system, as well as all the corporate entities, such as Royal Bafokeng Sports and Royal Bafokeng Holdings. This is much bigger than the chief's personal power and, it would be erroneous to consider the chief, as the sole promoter of the status quo.

In this context, any changes to the status quo in terms of power relations in the Royal Bafokeng Nation could lead to massive consequences for the stakeholders currently benefiting from it. With stakes being so high, and too many people standing to lose from a change in the current arrangements, preservation of the status quo is critical in maintaining power and wealth. However, reaping the benefits of the status quo

comes at a cost which is borne by local communities, which in turn is much of the reason why the system is increasingly unstable.

The Bafokeng traditional authority, more than the mining companies, is particularly vulnerable, as it stands to lose everything. The Bafokeng traditional authority was seen as furthering the interests of the mine during the relocation process, but given the context described above, the interests of the mine are the interests of the traditional leadership, insofar as they both rely on the status quo being maintained. Hence, more than furthering its corporate interests, the Bafokeng traditional authority is actually striving to ensure its own survival.

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APPENDIX A

TIMELINE OF BAFOKENG LEADERS FROM 19TH CENTURY TO DATE

APPENDIX B

IFC PS 5 AND WORLD BANK OP 4.12 ON INVOLUNTARY RESETTLEMENT

APPENDIX C

AUTHORISATION TO CONDUCT FIELDWORK AND CONSENT LETTER FOR PARTICIPANTS

APPENDIX D

DEEDS REGISTRY
DOCUMENTS FOR FARMS
BOSHKOPPIE 104JQ AND
STYLDRIFT 90JQ

APPENDIX E

**'BAFOKENG LAND BUYERS
ASSOCIATION' PRESS
RELEASE ON PENDING LAND
CLAIM**

Bafokeng Land Buyers Association

Tuesday, December 8, 2009

Tshasa

Thekwana and Photsaneng Land Claims

By Gash Nape

In 1906, our forefathers, the buyers of the farm in which we reside here in Thekwana(Turfontein 302JQ) today, lodged a land claim with the then Transvaal High Court. They were later joined by the claimants from our neighbouring Photsaneng on the farm Klipfontein 300JQ.

The Court decided to hear the two claims together, as their merits were similar.

In the end, the Court held that a section of a tribe could not hold title on land separate from the tribe.

It is almost 103years since our forefarthers fought for their right to have the land they bought back in the 1870s registered in their names. On Thursday the 10th December 2009, the Mafikeng High Court will hear again the same matter.

The Royal Bafokeng Nation has requested the Court to order the Minister to register our farms, which are still held by the Minister, in the name of the 'Royal Bafokeng Nation'. We and other sections of the tribe within the Bafokeng are opposing that the farms be registered in the names of the Royal Bafokeng Nation but instead, they should be registered in the name of the original buyers. The very same argument that our forefathers argued in 1906.

Last year, Klipfontein 300JQ was gazetted after the Land Claims Commission found the Photsaneng claim to be valid. We at Thekwana were promised by the Commission last year that our claim will also be gazetted as it is similar to that of Photsaneng. In fact the Minister opposed an Application by the Bafokeng last year in High Court when the Bafokeng wanted to transfer the farms. The Minister is a different person this year . We hope that since the decision of the Court in 1908 was based on racially discriminatory laws of that time, which made it impossible for our forefathers to have our lands registered in our names, it is possible today in our democratic, constitutional state that such transference and registration as we wish take place.

We will oppose and contest the Bafokeng application until we have the land of our forefathers, our land, back. We will not be apologetic for that.

Baphiring in Luka to hold a public demonstration

Baphiring in Luka village will embark on a public demonstration, picketing at the entrance of Luka Village, at seven in the morning or five in the evening, Wednesday 09th December 2009—writes Lucas Mekgwe.

Baphiring are one of the three villages within the Bafokeng 'tribe' who formerly lodged a land claim back in 1998. Baphiring have appointed a firm of lawyers, Gillfillan du Plessis to represent them in opposing transference and registration of their farms into the Royal Bafokeng Nation. Baphiring feels insulted by the manner in which Government has treated them on this matter, with different regimes in

the ANC-led Government always preferring to work with the rich and mighty Bafokeng than with the meek and poor rural community who wants to assert and entrench their constitutional right to land.

Chaneng Community Up in Arms

Bachana of the rural Chaneng Village, a stone throw away from the international resort, Sun City, are furious about what they describe as 'broad day land robbery' – writes Chaneng correspondent.

Written evidence is available that shows that the farm Styldrif 90JQ, on which the Chaneng Community resides, was privately bought by five 'natives' separate from the larger Bafokeng 'tribe'.

The Community is infuriated by the manner in which mining rights on their land have been expropriated. Anglo Platinum has entered in mining deals with the Bafokeng tribal authority without due regard to the land buyers. The latest insult is the attempt by the Bafokeng tribal authority to have the High Court Order to the effect that the farm Styldrif 90JQ be registered in the name of the Royal Bafokeng Nation instead of the original buyers. The Community asserts that they have always been ready and capable of administering their own title on land. The land claimants are working closely with Bafokeng Land Owners Association, which is a body of land claiming communities within the Bafokeng, The Association has recently exposed, through public submissions on the TLGF Bill, the historic coverup by the Bafokeng on private land purchases by indigenous communities forming the Bafokeng 'tribe'. The Community vows to expose injustices they suffer under Bafokeng and Anglo.

Mogono fights the Bafokeng for their land

Mogono Community has always been fighting battles in protection of their lands, Haartbeestspruit 88 JQ (Melloe) and Klein Doornspruit 108JQ (Mogono).

Between the years 1940 to 1950, the community destroyed invader settlements on their farm Melloe. The settlers are believed to have been the followers of a certain Geni. The invading settlers requested protection and assistance from the Bafokeng Tribal Authority, which they were afforded. In the end both the tribal authority and Geni lost, and the settlers relocated to settle on the nearby farm Rietspruit. In a recent fight, a certain Martin Diale wanted to plough on Melloe without permission by the Mogono Community. He was summoned to the Community Council (Lekgotla) and was ordered to vacate the farm with immediate effect. He opened a case against the Community and lost.

On Thursday the 10th December 2009, the Community will engage again, this time against the Bafokeng Tribal Authority aka Royal Bafokeng Nation at the Mafikeng High Court against transfer of their farms into Bafokeng's RBN.

Marakana Community says enough is enough!

Some members of the Marakana community who have been in contact with the Bafokeng Private Land Owners Association have joined forces to stop the Mafikeng High Court's transference of their farm Tweedepoort 283JQ to the Royal Bafokeng Nation.

The members rely on the affidavit written long ago in 1904 by Missionary PH Wenhold that the farm was bought for the community. At the time of purchase the community was under the leadership of Mahuma, Mogobodia and Modisakeng.

The community members claim that they have been neglected by the Bafokeng for many years, with social developments in Bafokeng mainly earmarked for Phokeng and Luka villages. Members wants the court to rule once and for good on their land title.

Why are Bafokeng land buyers angry?

On the 22 October 2009, the High Court of Mafikeng, ordered in Case no. 999/08 that:

1. A rule nisi is issued calling upon any interested person (other than the Minister and the Registrar of Deeds who do not oppose the Application) to appear in court on the 10th December 2009 at 10h00 to show cause why a final order should not be granted in the following terms:

1.1 It is declared that the properties set out in Annexure A to the Notice of Motion are registered in the name of the Royal Bafokeng Nation, who is accordingly a registered owner thereof.

What this means is that any person who is against the registration of the farms into the Royal Bafokeng Nation's name should appear before the judge on the 10th December 2009 at 10am and to request the Judge to set aside the Application by the Bafokeng Tribal Authority as represented by Lerou Molotlegi,

The implication is that should there be no one appearing to contest the transference, the Court will order that all the listed farms be transferred and registered under the Royal Bafokeng Nation.

One of the problems that have been raised with such transference is that the Royal Bafokeng Nation's administration itself may not be a democratic institution and it is not representative of all the bona fide members of the 'tribe', as a result, everything happening within the Bafokeng will be controlled by anyone of Semena or Magosi or Lerou.

A major problem is that the three could themselves be controlled by certain powerful people or companies who are not members of the 'tribe' and who will either steal, misuse Bafokeng property or use the Bafokeng for a certain political agenda, detrimental to the South African constitutional state.

The present outcry is that the Bafokeng is being used by the mining companies who are looting the platinum wealth beneath their lands, this with the support of unscrupulous government officials and politicians.

Travel Arrangements to Mafikeng

Four buses have been arranged to ferry people to the High Court on Thursday the 10th December 2009.

The buses will depart from Game at 6am. Any person wishing to go to Mafikeng to see and hear this important historic Court appearance for him/her-self, should sms or contact Mr. Nape on 0731988634.

A light meal will be served and people must bring water bottles for themselves. Picketing outside the Court will start at around 8:30am. By 9:45am people will be expected to be seated inside the Court. The Court proceedings will commence at exactly 10am.

A number of t-shirts will be given to the demonstrators for ease of identification. The media will be present and people will be expected to behave in a peaceful and responsible manner.

Those who will be traveling in their own cars, and wishing to join the others at Mafikeng, are requested to contact Michael Nape for support.

The Court proceedings themselves are not expected to take more than two hours. Departure from Mafikeng will be at 1pm.

In the Next Edition

Tshasa is a publication of Bafokeng Land Buyers Association ("the Association"). This newsletter is expected to carry news from all the communities forming the Bafokeng. It is the voice of the voiceless people of Bafokeng.

The newsletter has a sister publication which can be found online at **www.bafokeng-communities.blogspot.com**.

Anyone can send a story either directly on the blog or by email to **bafokengcommunities@gmail.com**.

Arrangements are currently being made to avail the newsletters at strategic points where supporters and members of the public will be expected to buy a copy for R1. The money will be used to cover printing and distribution costs.

People are encouraged to send in stories happening in their areas. It is believed that every village has a story to tell. Some say there is a cover-up to expose. Some of the cover-ups have been exposed through blogs such as the **Rustenburg Monitor**.

A death, a marriage, a birthday party, a general meeting, an announcement, mining impact, pollution, job advertisement, anything, you can have it published here.

The newsletter will accept donations to print at least 4000 copies to cover all the areas per month on an A3 paper. The total minimum cost is a mere R1 500.00.

You can pledge by directly settling the printers' invoice for the print, a copy of which will be sent to you before publication!

How chief August Mokgathe registered communities' title deeds in 1906

At the time the title deeds were registered in 1906, many chiefs (then called *kaffir kapteins*), were being used by the then colonial regimes for expediency. If whites wanted slave labour, they would simply consult with the *kaffir kaptein*. When government wanted to collect taxes, they would go to the *kaffir kaptein*. When the military wanted additional manpower for their frontline combats in a battle, they would use *kaffirs* supplied by the *kaffir kapteins*.

When Mokgathe Mokgathe ('Mokgathe') facilitated the purchase of land for natives around Rustenburg between the years 1871 and 1895, he did not display any malicious intentions to rip-off the land buyers. It was Mokgathe's grandson, August Mokgathe who started the furore. It was during his reign in the years between 1897 and 1906 that he plotted to register all the farms, bought privately by sections of the 'tribe', in his name.

The bulk registration of the community's farms in 1906, in trust for August Mokgathe, were on the one end out of expediency for the then colonial government to work with one obedient 'kaffir kaptein' August Mokgathe, instead of the many leaders ('petty chiefs') in the area. On the other end, the family of Missionary JHC Penzhorn ('Penzhorn') went through an ordeal after the Missionary passed on. Faced with huge challenges on estate duties and poll taxes, the executrix, Penzhorn's wife, Henrietta, made a simple choice to handover all the title deeds, most probably with the accompanying buyers' lists to August Mokgathe. It is alleged that Mokgathe promised to pay off all debts on the

farms on condition that Henrietta signed a declaration to the effect that the farms were bought by Penzhorn **FOR** Mokgatlhe instead of for the various sections of the 'tribe'. At the same time, the Missionary P.H. Wenhold refused to be coerced in making such a false, expedient declaration.

Who is this Bafokeng Land Buyers Association?

The Bafokeng Land Buyers Association ("the Association") is representative body of the descendants of the original buyers of private farms that forms over fifty percent of the current geographic area of the Bafokeng Tribal Lands, located around the town of Rustenburg, North West Province.

The Association asserts that the racist colonial laws of the late 19th and 20th centuries did not allow black people or groups of black people to buy and register farms in their individual capacities.

Title to their farms is currently held by the Minister of Rural Development and Land Reform in trust for Leruo Molotlegi and the Bafokeng Tribe.

The Association seeks to assist all persons in asserting their land and economic rights within the Bafokeng in particular and Rustenburg in general.

APPENDIX F

JUBILEE SOUTH AFRICA
PRESS RELEASES REGARDING
CONFLICT AROUND MINING
ACTIVITIES IN THE ROYAL
BAFOKENG NATION

From: George Dor georgedor@gmail.com
Date: Thu, 11 Feb 2010 15:37:24 +0200
To: george george@mail.ngo.za
Subject: North West protest Anglo and Royal Bafokeng

Please receive the release below from youth in communities around Rustenburg in the North West Province. Yet more dissatisfaction with Anglo Platinum and the Royal Bafokeng corporation.

George Dor, Jubilee South Africa

Today, 11 February 2010, the youth organisations and the communities of Mafenya, Chaneng, Robega and Rasimone leaders are without any business conditions pushing the R 10.5 billion Styldrift Project (Anglo Platinum and Bafokeng Joint Venture) Managers to shut down the operation within 24 hours.

The BRPM JV which began bulk earth works without an Environmental Impact Assessment (EIA) has been clouded by a lack of respect to the afore-mentioned communities, even to the land owners and farmers.

The unethical mine bosses and canny BRPM JV Executive are hopeful for prospecting license to be granted which will be reduced to non-issue when the Robega Community leaders meet this mid-week.

The forceful closure of the 380 000 Pt oz per annum project of greedy capitalist has proven a GAP in the ANC-led government policies of Community Consultation.

The consultation in question was in a form of informing the elderly traditional makgotla who are illiterate and lack understanding in many of constitutional and environmental rights. Amongst communities complaint leading to the unconditional Closure is:

- Violation of communities rights to a reasonable and just compensation as outlined in section 25 (3) of the bill of rights.
- No social and labour plan
- Unknown/ inaccessible Environmental Management Programme Report
- Farming and grazing land is destroyed without prior engagement and just compensation.
- Lack of benefits to local business and removal of an outspoken RBED official.
- Improper labor hiring

The radical stance comes as a result of the said communities attempts to receive an ear to listen from the mine bosses but failed to conduct a community engagement process, which is viewed by platinum scramble leaders as partially informing the directly impacted communities.

The question, is how long should the poor suffer?

Joseph Magobe
Chairperson and Protest Convener
Chaneng Youth Organisation

From: Anne Mayher akmayher@gmail.com

Date: Sat, 23 May 2009 15:41:25 +0200

To: akmayher@gmail.com

Subject: Alert: Landowners Demand Impala Platinum/Bafokeng Prospectors Leave Their Land

Jubilee South Africa, National Office

Press Alert

LANDOWNERS STRUGGLE AGAINST THE BAFOKENG AND IMPALA PLATINUM

Roodekraal, Near Sun City, North West Province, South Africa

23 May 2009, Saturday 15:00

Landowners are marching to a prospecting site of Impala Platinum today, to give them notice to leave their land with immediate effect. They have not been consulted and they do not want any mining to take place. Despite this, a joint venture of Impala Platinum and the Royal Bafokeng have started prospecting on their land. The communities are planning rolling mass actions from today.

As stated by the landowners, "Our grandfathers bought the two pieces of land in Brits with the following registration number 823-92-197JQ referring to land at Ward Hex River (some refer to it as Twee Rivier) and Ysterfontein 45 beginning in 1907, and finishing paying for these portions of lands in 1912." In 1923-1924 they were forcefully removed from these lands and resettled at Roodekraal Spruit.

History of Land Claims

With the new dispensation in 1994 people were encouraged to claim for the land where they were forcefully removed. On 11 June 1997 we lodged our first restitution land claim and this was followed by the second claim on 28 September 1998. We lodged as individual claims and communal claims with title deeds and shares including minerals lying underground. Our claim was Gazetted in 1999. After the Gazetting was done and we were assisted by two people who confused us, as the Roodekraal Spruit community. They started to mention the different entities that communities can claim land under, including a Trust, Communal Property Association and a Closed Corporation. They told us we should choose the CPA without even training us on the different entities mentioned above.

With regard to Roodekraal Spruit where our forefathers were resettled, the government only allocated them 7469 Morgen 360 square without including the Ysterfontein hectare even though they were also forced out of Ysterfontein.

The agreement was for every 1 Morgen taken they would get 2.5 morgen back at the new place where they were relocated, but they only received 1.5 Morgen for every 1 Morgen. They also promised three boreholes, but to no avail. In all the negotiations there were no Bafokeng tribe authorities or members, and that is why we are today

surprised to hear that they have portion of our land. Most importantly we are against the Royal Bafokeng for also dispossessing us of our land.

We now find ourself having to go to the land claims court and even embark on rolling mass action to protect and defend our land.

It is against this backdrop that we are planing to hold a meeting on Saturday to inform all community members and to plan the way forward. We are inviting all media houses and Social Movements like Jubilee South Africa to also help us like they are helping those who are like us in Mokopane and Xolobeni - and many others that they are assisting.

Issued by Mr. Jaconiah Mafoko (079 854 8917) and Mr. Sello Ditsela (072 222 0955) of Roodekraal Spruit

For more information please also feel free to contact Jubilee South Africa's Brand Nthako at 082 628 1362.