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A Precarious Success:

Land reform and governance of the commons at the Amangcolosi Community Trust

MA, Development Studies
Research report
University of the Witwatersrand

Final submission

2 November 2016

Amy Tekié
403399

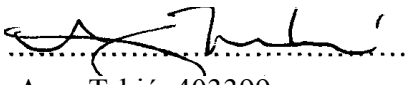
Acknowledgements

Foremost, I would like to thank the many people of the Kranskop area who gave of their time to extensively share their experiences for this study. I would like to give special thanks to Mfanevele Msimang, Alfred Xulu, Sipho Mdunge, and Robyn West for their extended input and assistance.

I also thank Dr. Samuel Kariuki, who supervised this study; Mfanafuthi Mbongwe, for his help with Zulu introductions and translations; Maggie Ndlovu, for providing a safe haven for my children while I worked overtime; and of course Kessete, for inspiring my interest in land rights and sharing the journey.

Declaration

This serves to declare that this work is entirely my own. It was not completed under the auspices of any organisation other than the University, and has not been submitted for any other degree purposes. All copyright protocol and ethical requirements have been met.



Amy Tekié, 403399

2 November 2016

Date

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ACRONYMS & INSTITUTIONS

Acronyms

- AGM: Annual General Meeting
- CBNRM: Community based natural resource management
- CPA: Community Property Association
- CPI: Community Property Institution
- CRLR (or 'Commission'): Commission for Restitution of Land Rights
- DLA: Department of Land Affairs
- DRDLR (or 'Department'): Department of Rural Development and Land Reform (previously Department of Land Affairs)
- LCC: Land Claims Court
- KZN: KwaZulu-Natal province
- RLCC: Regional Land Claims Commission (provincial offices of the CRLR)

Legal entities in the case studies:

The Ngcolosi claim ('Amangcolosi' = the Ngcolosi people)

- Amangcolosi Community Trust: Trust established to hold and manage the land
- Ithuba Agriculture: Operating company jointly owned by AmaNgcolosi Community Trust and Crystal Holdings

The Mkhabela claim ('Amakhabela' = the Mkhabela people)

- Gayede Trust: Trust established to hold and manage the land
- Mkuzangwe Pty Ltd: Operating company jointly owned by Gayede Trust and Crystal Holdings

1. INTRODUCTION

1.1. Background to the study

Shouldering the responsibility of shifting South Africa's racially skewed landscape, the land reform programme aims to begin redress of the millions of people who were dispossessed of land, resources, and economic rights under colonialism and apartheid. Starting from the 17th century, white settlers in South Africa over time appropriated more than 90% of South African land, through a complex process of colonialism and dispossession. (Ntsebeza, 2011) When a democratic government finally took power in 1994, restoring equity in land ownership to previously disadvantaged South Africans was a critical to building an equitable economy, and to restoring dignity to individuals and communities who had been stripped of their livelihoods, their rights and their cultural heritage.

The land reform programme is comprised of four pillars (Hall & Cliffe, 2009):

- Land restitution: To restore rights to land, or a portion of land, that was dispossessed due to racial discrimination.
- Land redistribution: To redress racial imbalances in land ownership by providing previously disadvantaged households with financial grants to buy freehold land.
- Land tenure reform: To provide people with security of tenure where they live, and prevent arbitrary evictions. (This is particularly relevant for labour tenants and those living on communal lands in the former homelands.)
- Land development (added in 2014): To capture the importance of productive land use and benefits beyond pure transfer of ownership. (DRDLR, 2011)

Land reform has been an ambitious and crucial venture, but it is fraught with complexities and obstacles. More than just transferring land, it is "a combination of land claims,

acquisition of land, securing tenure, involving communities in the conservation estate, reforming communal land tenure, and building capacity to manage land." (De Villiers, 2008, p.1) These are each immense, complicated and often highly political tasks.

Twenty years into the process, outcomes are mixed. It is estimated that about 8 million hectares have been transferred to black owners since apartheid, roughly 30% of the targeted 25.5 million hectares, even after the target date was extended to 2014. (Walker & Cousins, 2015; Chitonge & Ntsebeza, 2012) It is an issue of quality as well as quantity: even the land that is transferred does not seem to bring about the intended benefits. In 2012, the Minister of Land Reform and Rural Development asserted that 90% of land reform projects have been a failure. Some argue that this figure is inflated, and that more considered and contextually relevant definitions of success would drop the failure rate to 50% (with a further 30% which are 'struggling'). (Sherry, 2012; Chitonge, 2013). Reflecting on an analysis of sample of restitution cases, Edward Lahiff writes:

> "The most striking finding from the case studies is that the majority of beneficiaries across all the restitution projects have received no material benefit whatsoever from restitution, whether in the form of cash income or access to land." (Lahiff, 2009, p. 4)

Some of the factors causing widespread underutilisation of transferred land include the enforced structure of group production, the imposition of capital-intensive commercial business models, and the lack of post-transfer support, extension services, and market access. (Hall & Cliffe, 2009) As a result, "agricultural production on transferred land is generally disappointing, and many land-reform projects are mired in leadership and community disputes." (Walker & Cousins, 2015)

Indeed, conflict around decision-making, governance and resource management is often at the heart of 'failed' land reform projects. These issues are not easily resolved through the standard interventions of skills training and technical support provided by government and civil society organisations. "People are more likely to unite, and their united voices are more likely to be listened to, when there is something to struggle for than when the struggle has been won." (James, 2000, p. 634) Once the land is granted and decisions must be made about land allocation, membership, and finances, things fall apart. Myriad cases in South Africa tell this story.

1.2. Research objectives

> "In every community there are certain individuals whose uncommon behaviours and strategies enable them to find better solutions to problems than their peers, while having access to the same resources and facing similar or worse challenges." (PDI, 2014)

This is the basis for the concept of 'positive deviance', an asset-based approach to social change that enables people to identify successful outlying behaviours and strategies, and adapt them into solutions for the wider community.[1]

On that premise, this research explores the experience of a successful land reform project, the Amangcolosi Community Trust, in an effort to understand what factors have allowed them to succeed where so many others failed. The neighbouring Mkhabela community is used as a secondary case study for comparison. The research places particular emphasis on how divergent

[1]This differs from much mainstream analysis of poverty and social exclusion, which often starts with the problems and barriers to change, or lessons from earlier planned development interventions. (Biggs, 2006) First developed with striking successes in the field of public health, the positive deviance approach has been adapted for the study of groups in a variety of sectors, including social development and organisational behavior. (Devane, 2009)

interests and community power struggles are managed after land restitution claims have been settled, in cases where the restored land continues to be farmed commercially.

This study explored the following questions:

1. *What is unique about the Ngcolosi experience, context, or actions that have led to success where many others community property institutions (CPIs) have failed?*
2. *What factors have allowed elite capture to jeopardise that success?*
3. *Are there transferrable lessons for land reform implementation and commons management?*

To answer these questions, the research explored:

- Is the Ngcolosi project successful? If so, what are the core factors that allowed it to succeed?
- What led to a different outcome for the Mkhabela community?
- What are the sources of conflict and how is it managed? How has unity within leadership and the community been maintained?
- What were the roles of the joint-venture partner, the Regional Land Claims Commission, and the traditional authority in contributing to or hindering their success?
- How has the legal structure of the CPI as a Trust impacted the outcomes of the case?

1.3. Justification for the study

Recent, hotly contested policies have set the government on track to transfer more land, more quickly. The Restitution of Land Rights Amendment Act (RSA, 2014), which originally accepted claims until December 1994, re-opened the claims window until 2019. It is projected that this will result in up to 400,000 new claims. (Heard, 2016). The Expropriation Bill, passed through Parliament in February 2016 and now awaiting approval from the National Council of

Provinces, restricts the former willing-buyer, willing-seller basis for land reform, and potentially allows the state to expropriate land (with payment) for public interest. (Debate still rages over SA's land reform, 2016).

With the potential intensification of land transfer, the cost of getting it wrong looms large, and has enormous implications for rural livelihoods and economies, national food security, and consolidation of power under elites and political authorities. The academic literature and practical studies around land reform provide a clear view of where the problems lie in communal land management, with an array of suggestions for policy and practice on to make projects viable. By and large, insights are drawn from cases where things have gone wrong, as these clearly highlights the gaps in policy, implementation and support. Yet, although failure is widespread, the land reform terrain is also dotted with success stories which provide a glimpse of what land reform could be, and insights into whether widespread "success" is really feasible. There is space in the literature for more detailed examination of successful case studies in land reform, particularly those that are representative of the context and challenges faced by other communities. Furthermore, the issues of governing communal property is becoming increasingly relevant on a global level, as societies explore how to preserve common environmental resources and provide benefit to the majority while preventing exploitation by a few.

The Amangcolosi Community Trust has, by land reform standards, had remarkable outcomes, and although there has been some media coverage of the case there has been little or no academic reflection on their experience.[2]

[2] An informant told me of another university researcher, but I was not able to locate his/her report.

1.4. Outline of the research report

Chapter 2 of this report will describe the research methods which were used, the sampling and profiles of informants, limitations of the study, and ethical implications.

Chapter 3 provides a survey of the literature on communal land management as relevant to this research. It explores the drivers behind and challenges to group land management, the role and needs of communal property institutions, and the impact of internal community dynamics. It then explores the influence of external actors, including the government, traditional authorities, and joint-venture partners.

Chapter 4 presents the findings of the research: how the Trust built up a successful company, and what challenges jeopardise that success, as well as the experience of the Gayede Trust.

Chapter 5 explores the findings in greater detail in light of the relevant literature. It looks first at the factors leading to success, and then at how that success was jeopardised, considering the sources and management of conflict and corruption. Finally, it reflects on the implications of these learnings for governance of the commons.

Chapter 6 summarises the report, providing an overview of the research aims and methodology, an overview of the literature surveyed, and key points of the discussion and analysis.

2. METHODOLOGY

2.1. Research methods

This research focuses on the challenges faced by community property institutions after land has been restored to them through the land reform process. The issues are very complex, and outcomes are very context dependent. Therefore, qualitative research, which generally provides a more intensive study of fewer cases, was appropriate. (Dahlberg & McCraig, 1990) The research did not seek to collect objective data or provide a description of land reform experiences across the country, in which case quantitative methods would have been selected. Rather it aimed to understand how two specific communities managed challenges within their particular shared context, and whether their experiences could provide insight into the broader land reform experience.

2.1.1. The case study method

Founded on the concept of positive deviance, this study explores what lessons for community property management in land reform can be extrapolated from the positive experience of one particular community. The qualitative case study method was chosen as a fitting approach. R. K. Yin defines a case study as "an empirical inquiry that investigates a contemporary phenomenon in depth, within its real life context, especially when the boundaries between phenomenon and context are not clearly evident." (Yin, 2009, p.18) In other words, case studies are particularly appropriate for inquiries that are highly context specific. They are also appropriate for a qualitative and intensive approach to research, which examines in depth one specific example of a phenomenon. (Swanborn, 2010) Furthermore, a case study is appropriate for time and resource limitations of this study.

The single case study method is limited, however, in the extent to which findings can be extrapolated for other communities. (Collier, 1993) To further aid the analysis, a secondary, comparative case was added, that of the Amakhabela. The primary units of analysis in the two cases were the communal property institutions (CPIs): the Amangcolosi Community Trust and the Gayede Community Trust [although there is much overlap with the affairs of their respective agricultural companies (Ithuba Agriculture and Mkuzangwe Pty. Ltd.)].

2.1.2. Case study selection

The Amangcolosi case was selected through 'deviant sampling' because it is a unique and extreme case. (Patton, 1990) There are a limited number of cases of land reform in South Africa that can claim effective land management, successful communal production with ongoing profits, financial transparency and strong governance, and direct visible benefits to the claimants and broader community. (de Villiers & van den Berg, 2006)

The secondary case of the AmaKhabela, was selected as a comparative case to allow for a deeper understanding of what aspects of the Amangcolosi experience may be unique to their context, and what aspects may be relevant or replicable in other post-settlement land reform communities. It was selected because it is strikingly similar to the AmaNgcolosi experience in context and history and yet has had very different outcomes, therefore providing a good basis for comparison.

These two communities, both located near Kranskop in the Umvoti Municipality of KwaZulu Natal (KZN), form the basic units of study for this research.

2.1.3. Data collection methods

The case study method is qualitative by nature, using descriptive rather than statistical analysis. Although quantitative methods can be used, such as providing a questionnaire to community members, issues of language, literacy, and logistics made this impractical for this study. Methods for data collection were purely qualitative, and included:

2.1.3.1. Semi-structured in-depth & focused interviews

Because the study was not quantitative, and because the research is exploratory, interviews were not fully structured. However, they were semi-structured in order to ensure that data collection met the research objectives, and a full understanding of the situation was gathered (to the extent possible given limitations). (DiCiccio & Crabtree, 2006). As Dahlberg & McCraig (2010) emphasise,

> "There is flexibility in [semi-structured interviews], and the researcher can change the order and wording of the questions in order to achieve a more natural style of conversation. … [T]he interviewer must recognize moments in the interview that have potential for further questioning and be able to formulate the questions 'of the cuff'…. Although much of the data the researcher collects will essentially be comparable, due to the flexible nature, each interview will be unique and adapted to the circumstances of each participants." (p. 119)

The flexibility of the semi-structured format was critical for this research, in that it allowed for unexpected issues and new information to surface, and also allowed the researcher to accommodate the shifting dynamics among interviewees.

In-depth, long interviews, usually of one to two hours, were used for a large group of select key informants. Shorter, focused interviews were conducted to corroborate and/or probe findings from the in-depth interviews. (Yin, 2009) The majority of these were face-to-face

interviews, but many telephone interviews were also conducted after the second research trip, to verify or further explore information provided by informants.

2.1.3.2. Semi-structured group discussions

Many interviews were conducted in small groups, as informants would sometimes stay in the room after their interview, sitting in on subsequent interviews. On some occasions this was not desirable (for example, when the tribal leaders were present for one of the only female interviews.) However, in most cases, after the one-on-one interview a useful group discussion would develop. Informants were often talking to each other about the questions, creating a more relaxed atmosphere and allowing for greater candour. It also gave rise to various perspectives and issues that may not have otherwise surfaced.

As with the individual interviews, these group discussions were semi-structured in content. There were five group discussions in total, ranging from two to six participants each. However, they were not formal focus groups, in that the participants were grouped purely by chance and logistical factors, rather than by intention.

2.1.3.3. Document analysis

The following documents were reviewed:

- *AmaNgcolosi Community Trust Deed*: This is the founding document for the Amangcolosi Community Trust and is highly relevant to issues of governance, leadership and operations.
- *AmaNgcolosi Participatory Rural Appraisal Report*: This study, commissioned by the Trust and implemented by a third party, is an assessment of what are the greatest needs and challenges faced by the community, especially important for informing the Trust on how profits should be spent and benefits shared.

- *Memorandum to the AmaNgcolosi Community Trustees*: This details the allegations and complaints of some beneficiaries who feel the Trustees are misusing their power.
- *Minutes from government parliamentary briefings on the cases*: These detail several parliamentary committee meetings involving the two claims, and provide a formal record of related events.
- *Government gazette detailing the land claim:* This outlines the details of the initial land claim.

Additional primary document analysis included numerous government publications (including minutes from Parliamentary proceedings, and presentations to Parliament), as well as newspaper articles detailing relevant events.[3]

2.1.4. Interviews and informants

2.1.4.1. Interviewee sampling

Interviewees were selected through both purposive and snowball sampling techniques. As the Ngcolosi case was studied as a deviant case, purposive sampling identified key informants from both communities who are particularly well placed to describe and explain the CPI experiences. Snowball sampling was used to identify and supplement key informants, and gain a richer pool of data. (Patton, 1990) The latter was particularly important given the limitations noted in Section 2.3 below.

[3] Both Trusts are in a sensitive period, and were not ready to share all of their documentation, such as meeting minutes and financial statements.

2.1.4.2. Profiles of informants

Informant identities remain confidential, but they can be categorised as follows:

Ngcolosi Case		
Profile	*No.*	*Notes*
Amangcolosi Trustees and former trustees	7	
Tribal authority members	4	*Includes 2 people from the AmaNgcolosi chieftaincy at Hillcrest
Beneficiaries w/out leadership role	6	*4 of these were the children or spouses of current or former trustees
Commercial farmers, with land under claim	2	*Spoke about both case studies
Crystal Holdings representative	1	*Spoke about both case studies
Ithuba management	2	*Includes one who also served as an Mkuzangwe manager
Mkhabela Case		
Gayede trustees	2	
Mkuzangwe management	2	
Kranskop community member	1	

FIGURE 1: PROFILES OF INFORMANTS

2.1.4.3. Interview formats

35 interviews were conducted, with 27 informants. (Eight interviews were conducted as a second or third interview with the same informant.) Face to face interviews were conducted during two visits to the Kranskop area, in March and November 2015. Telephone interviews were conducted after these field visits. The formats of the interviews were as follows:

All in-person interviews and group discussions were recorded, and some telephone interviews were recorded, all with permission of the informant. Recorded interviews were transcribed, and the transcriptions coded in hard copy according to the area of content. These were then compiled according to content area for the findings and discussion.

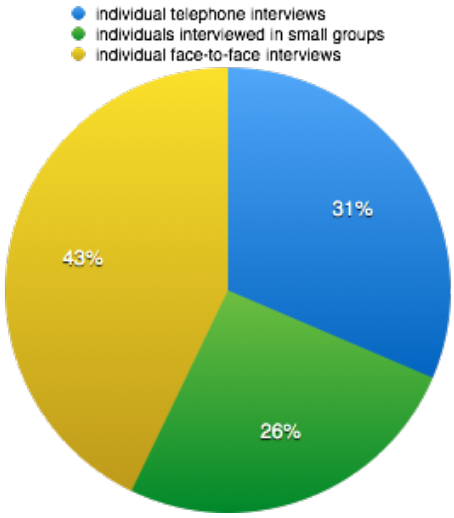


FIGURE 2: BREAKDOWN OF INTERVIEWS BY FORMAT

2.2. Disclosure

As part of a documentary film team, I was one of two people conducting interviews with the AmaNgcolosi leaders and community, around the story of their claim. We interviewed 14 people over two days in February 2014. These interviews formed the foundation from which the proposal for this research was developed. This research report is based on extensive interviews done subsequently, independent of the film company and purely for the purposes of this report. The 2014 interviews are not included in the above numbers. However, in some areas of analysis material from the 2014 interviews is relevant, and is therefore used in this report and cited accordingly. These 2014 interviews allowed me to begin the research with a basic understanding of the case, and also to note changes over time.

2.3. Limitations

There are several unexpected limitations to this study. Power struggles, allegations of corruption, and tensions around benefits at the AmaNgcolosi Community Trust surfaced during the course of the research. As a result, the Trust is in a particularly volatile period. This made the case study much richer and more multidimensional, but also impacted my research as follows:

Informants*:* For the first research trip (March 2015), the Trust was my primary access point into the community, assisting with in identification of informants as well as logistical arrangements. This was very effective from a practical perspective, but also gave them some control over who I spoke with.. I now recognise that individuals with certain opinions may have been excluded from the group of informants. For example, I interviewed six people who were 'ordinary' community members, not in positions of employment or leadership. However, I later discovered that four of these were direct relations of current or former Trustees, and therefore I cannot say whether they accurately represented the broader claimant community.

Location and presence*:* The March 2015 interviews were all held at the Ithuba office, and the founding Chairman of the Trust sat in on many of the interviews. Furthermore, the interpreter provided was a former Trustee (despite my efforts to obtain an independent interpreter). Although some of the discussion was very candid, the location of the interviews and presence of these individuals inevitably impacted what informants were willing to share.

Other limitations included:

Gender bias: The vast majority of interviewees were men, despite my intentions and efforts otherwise. In the March 2015 research trip, two of the female informants scheduled failed to arrive, and the one who did came with her husband, who did most of the talking. This reflects the gender bias and exclusion of women in AmaNgcolosi leadership as a whole.

Language*:* The majority of interviews were native speakers of isiZulu. An interpreter was present, and the interviewee was given the option of conducting the interview in isiZulu or in English. Most informants chose to speak in English, and the interviews went smoothly, even where an interpreter was used. However, I recognise that a different rapport may have been developed had I been able to interview these people in their first language.

Mkhabela access: Finally, I had fewer interviews than expected with the Mkhabela community. Two of the informants cancelled at the last minute, and several other promised interviews failed to materialise. Some of this is due to politics within the community, as the Trust is on one side of a struggle over the chieftaincy.

These limitations were managed by focusing the research and analysis on areas where sufficient data and diverse perspectives could be gathered, which was manageable given the richness of the case study. The report effectively answers the core questions, but perhaps with more breadth and less depth than initially intended. For example, an in-depth analysis of community conflict management, as initially intended, would have required several more field trips which were not possible within scope of the research. Therefore, analysis of community unity and conflict management is only included where data was sufficient. However, the

interviews also provided much more extensive data than expected in other areas, such as the roles of government and the joint-venture partner.

The above limitations were further mitigated by:

- Accessing informants through other contacts during the second field trip.
- Conducting subsequent telephone interviews.
- Conducting multiple interviews with Mkhabela informants who were available.
- Recognising potential bias during the reporting and analysis of the findings. [Responses that I could not substantiate were either excluded or noted in the report as potentially unreliable.]

2.4. Ethics

The research followed closely the methods outlined in the proposal, which met with university and departmental guidelines on research ethics, and was approved by the ethics committee. All of my interviewees were adults, over the age of 18yrs, and I did not interview any vulnerable individuals. I did not conduct an interview, nor record an interview, without written or oral informed consent.

The key ethical issue in this report is confidentiality. All of my interviewees were willing to be named in the report. However, there are criminal allegations included in the findings, and there has been violence over the allegations and power struggles. To avoid putting anyone at risk, pseudonyms have been used for all informants cited throughout the report.

3. LITERATURE REVIEW

To understand the context of the Ngcolosi and Mkhabela cases, and to place the issues raised within the broader debates and discussion on communal property management, this chapter will review the academic literature around internal and external factors impacting communal land management in South Africa (CPIs).

The first three sections (3.1) look at internal factors: the concept, practice and debate around communal tenure; the legal entities that hold communal land, and the challenges they face, and the role of community dynamics in effective common property management. The next three sections (3.2) explore the place and impact of external actors: government, traditional authorities, and commercial partners.

The academic literature is drawn primarily from peer-reviewed journals, other academic articles, books, and conference proceedings. This has been augmented by reports and studies from civil society organisations working in land reform, as well as relevant legislation and Annual Reports from the Department of Rural Development and Land Reform.

3.1. Communal property management: Internal factors

3.1.1. Managing the commons

"Successful land reform requires not only committed public institutions, at the national and the local levels, but also strong and committed organisations of the intended beneficiaries." (IFAD 1995, para.5) The way in which intended beneficiaries have organised themselves is at the heart of this study. Collective action is core to successful poverty alleviation, and communal property is ownership is historically and culturally appropriate in

much of South Africa. However, the fragmentation of rural communities under apartheid, and the shortage of skilled and financial resources in rural areas, result in a number of practical challenges for common property management. The following section looks at the drivers and debate around communal property.

3.1.1.1. Why common property?

Although land restitution and redistribution programmes are open to both groups and individuals, in practice most land has been transferred to groups, ranging from a few hundred people to thousands of households. There are a few factors driving this tendency toward group ownership. The foremost is the Constitutional recognition of indigenous law, and by extension, traditional forms of land management, which are based on communal tenure. About one-third of South Africans live within traditional communities, and many of these communities still practice customary land tenure, whereby traditional leaders manage the land on behalf of their subjects. Land claims are often based, then, on the historical rights of a particular community, and so transfer is made to the group as a whole. (Lahiff, 2000; Cousins, 2008)

In the case of land redistribution, many individuals or families find the Land Redistribution and Agricultural Development (LRAD) grant too small to purchase a viable farm, and so come together to purchase as a group. This ‘rent-a-crowd’ syndrome was recognised as one of the key failings of the first phase of land reform, as many beneficiaries had little intent of using the land, and the extended, often incoherent ‘communities’ resulted in challenging group dynamics. (Hall, 2009, p.26) As noted above, the Commission may also bundle claims, or extend the boundaries of claims, enforcing group ownership across multiple communities, or amongst people who do not have interests in common.

Reinforcing the need for group claims is state resistance to sub-divide commercial farms. Despite expressed political support for rural development, policies strongly favour large-scale commercial farming as the preferred system of agriculture in South Africa, out of professed reluctance to disrupt production and jeopardise the nation's food security. (Lahiff, 2000) The Subdivision of Agricultural Land Act was passed in 1970 to protect agricultural land by preventing its subdivision into portions that would not be 'economically viable'. Frantz (2010) argues that the Act actually aimed to preserve prime agricultural land for white ownership under Apartheid, and that it continues to promulgate racial segregation by limiting black access to agricultural land. In 1993, the Provision of Land and Assistance Act waived the applicability of Subdivision of Land Act in cases of land reform projects, but there is still "no practical, accessible legal mechanism whereby groups can formally subdivide their land among their members after transfer to the group, and no example of such subdivision has been reported."[4] (SDC, 2007b, p.4)

So, as most of the land available for restitution in South Africa is relatively large, white-owned commercial farmland, communal ownership is often the only option. The issues of communal tenure security and effective common property management are thus paramount to successful land reform.

3.1.1.2. The Commons debate

Vesting property rights in a group of people can be both highly practical and highly problematic. Communal tenure (if properly managed) is very efficient, economically and

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[4] In 1998, the post-Apartheid legislature repealed the Subdivision of Agricultural LandAct, but the Repeal Act has not been made operational; in 2008 the Constitutional Court therefore ruled that Act 70 of 1970 continues to apply until the legislature takes further action

ecologically, for the livestock production to which Africa's arid landscape is so well suited. It allows for mobility, and this is crucial for finding water in times of drought, and for allowing portions of the land to rest and replenish. It also accommodates shared infrastructure, and is usually deeply embedded in societal and cultural norms which view land as an long-term resource to be protected. Formal or informal institutions govern usage rights, whether in cases of small scale agriculture, grazing, fishing, hunting or other types of land use. Customary forms of land management have evolved over time, with the flexibility and fluidity to accommodate the environmental variations, social relations, and political changes of their particular context. (Cousins & Hornby, 2002)

However in 1968, Garret Hardin's "tragedy of the commons" thesis called into question the long-term feasibility of communal property arrangements. He argued that individuals are fundamentally self-interested, and will exploit a group resource for his/her own short-term benefit. For example, by grazing too many cattle on shared pasture, or using more than one's fair share of water an individual will benefit, but the consequences of his/her actions will be borne by the group as a whole. Ultimately, individual exploitation of common resources will deplete or destroy them. (Hardin, 1968). Hardin's theory was a powerful challenge to the environmental sustainability of communal land management systems, and over the next two decades there was increasing focus from environmentalists, aid organisations and policymakers on the severe degradation caused to shared grazing lands and forest areas, particularly in 'developing' countries. (Peters, 2002)

Decades of debate ensued on the relationship between individual interest and group interest, and the conditions necessary for collective action. Aligning with Hardin, the "rational egoist" perspective argues that because individuals will always act out of their own self- interest, natural resources would only be properly cared for if private ownership and potential profit incentivised good stewardship. (Ibid.) The primary alternative to privatisation of the commons is 'command by control', meaning the state is responsible for enforcing compliance. This is effective in situations that can be easily monitored, if there is budget available for monitoring, and if the government is strong and not corrupt. (Dietz, Ostrom & Stern, 2003)

Many researchers (most famously, Elinor Ostrom, who received a Nobel Prize for her work) argued that there was a third route beyond privatisation or state control. Citing a variety of empirical literature on how people act collectively and prioritise long-term group interests over short-term personal gain, they note the potential for self-governance in the commons. (Ostrom, 1990) "Individuals in all walks of life… voluntarily organise themselves so as to gain the benefits of trade, to provide mutual protection against risk, and to create and enforce rules that protect natural resources." (Ostrom, 1999:1). Hardin's theory did not distinguish between open access property, and common property. In the latter, usage rights can be limited and regulated so that exploitation does not occur. Ostrom and others argue that the cause of resource degradation is not communal tenure per se. Rather the formal and informal systems of governance that manage the commons must be adapted and enforced to accommodate shifting political boundaries, integration into larger economies, and the increasing heterogeneity of communities. (Dietz, Ostrom & Stern, 2003)

A final option which is not widely covered in the literature, is ’unitization’, or ‘unified management’, in which a single operator is designated to manage and use the resource, and profits are divided among the community users/owners. (Thompson, 2000, p.3) This is most often applied in management of oil and other underground resources (see Feeny, Berkes, McCay and Acheson, 1990), but is particularly relevant for South African land reform. It is common for communities to either lease out restored land, or have it managed by a farming company, either externally contracted or formed internally by the CPI. Profits from that company are then paid out as dividends or spent on community projects. (See Chapter 3.2.3)

The global trend towards market-based development has of course followed the privatisation approach, with international institutions championing private property rights as a foundation for economic development, and aiming to minimise state involvement in management of resources. Results have been mixed. Communal tenure continues to prove resilient, often re-emerging in practice over government attempts to institute formal legal privatisation (Cousins & Hornby, 2002). In addition, titling and registration schemes have in some cases become a way for investors, prospectors, and elites to strip land users of their rights. Land privatisation has left a legacy in many places of disabling livelihoods, increasing poverty, and causing general confusion over rights and process. (Klug, 2000; Ruhiiga, 2011) South African recognition of communal ownership under customary tenure is therefore seen as a progressive step towards tenure security for rural communities.

Yet the communal nature of land ownership has remained a serious stumbling block for land reform in South Africa. Institutional failures have led to poor governance and cooption of

resources, especially in the many cases where traditional authorities and communal property institutions (CPIs) are competing for rights to manage the land. Furthermore, in traditional land management practices women's rights to land are very limited, despite their central role in subsistence agricultural production. Even within the more equitable and democratic framework of most CPIs, diverse interests and power struggles within a community can result in a deadlock, wasting resources and halting land use. These issues are further exacerbated by the failure of state to enact policy guiding communal land tenure, which has been repeatedly drafted and contested by civil society in court. (Ntsebeza, 2000)

3.1.2. CPIs: Institutional options and challenges

3.1.2.1. The 'Commons Trust'

In recent years, the increasing prominence of environmental policy debates and the felt impacts of climate change have triggered a renewed popular interest in the commons. The focus of this revived discussion extends beyond the traditional, physical commons, such as land and water rights, to also include social, intellectual and technological resources like cultural traditions, the internet and security. The discussion is around how to protect and enhance the commons within a more equitable and sustainable form of capitalism, especially as physical resources are increasingly exploited by individual, corporate, or even state interests. (Quilligan, 2009; Tomales Bay Institute, 2006) .

In a lecture exploring the relationship between capitalism and the environmental commons, Peter Barnes (2003) argued that "the great challenge of the 21st century is to make the commons visible, to give it proper reverence, and to translate that reverence into property rights

and legal institutions that are on par with those we currently give to private property." (para. 2) This essentially means developing, formalising and enforcing the types of context-specific usage rights and governance principles that Ostrom and others studied. Formalisation is done through legal institutions created to guard and manage the commons, thereby allowing public property to become both a counterpart and a counterweight to private interests. (Ibid.)

The most appropriate and widely used legal institution for safeguarding the interest of the commons and its users is the trust, as "trusts are the only fiduciary institutions accountable for the long-term preservation and sustenance of a resource." (Quilligan, 2009, p. 39) In principle, Barnes explains, a trust is a fiduciary relationship based upon the confidence of beneficiaries in selected trustees to hold and manage property on their behalf. (Barnes, 2003, p. 6)

The concept of the 'commons trust' has taken root. A few examples include the following, which all use varied forms of unified management:

- *State Land Trusts*: In 1787 the US government set aside over 150 million acres of land to benefit public schools. That land is held and managed by state land trusts and revenues from timber, grazing or oil production on the land are distributed to schools. (Ibid., p.8)
- *The Alaska Permanence Fund*: 25% of revenues from oil leases on state land is put into trust for the benefit of all Alaskan citizens. A diversified portfolio of about $30 billion pays out a yearly dividend to every Alaskan person, including children. (Tomale Bay, p.19)
- *The PCC Farmland Trust in Seattle, Washington*: The Puget Consumer Cooperative raised funds to purchase farmland and prevent it from being used for property or other non-agricultural development. Raising funds from over 1400 donors, the Trust has purchased additional farms, and leases the land back to the farmers, who grow food and train other emerging farmers. (Ibid., p6)

When applying the principles of common property to newly restored or redistributed land, the South Africa land reform programme also looked first to legal trusts to institutionalise and govern communal lands.

3.1.2.2. Legal entities in South African land reform

Although the Restitution Act allowed for group claims, it made no reference to the legal identity of that group or to the specific institution to which land should be transferred. (Pienaar, 2005) Trusts were initially the predominant legal entity for land restitution. In South Africa, trusts are legally designated by the Trust Property Control Act of 1988, and defined as:

> "An arrangement by which the ownership in property of one person is by virtue of a trust instrument made over or bequeathed to another person, the trustee… to be administered or disposed of according to the provisions of the trust instrument for the benefit of the person or class of persons designated in the trust instrument…" (RSA, 1988)

Thus the property of an individual (in this case, a class of individuals) is vested in appointed trustees, who control and administer the assets. (Ibid.) The 'founder' is the individual who forms the trust. The 'beneficiaries' are the individuals or entities entitled to benefit from the trust assets or income, in this case the previously dispossessed persons and their descendants. As custodians of the assets, the trustees may or may not be beneficiaries.

In time, however, the use of trusts came to be considered problematic in the land reform context, for several reasons. In the legal arrangement of a trust, beneficiaries do not have direct property rights over the land. Although trustees are by law accountable to act in the interest of the beneficiaries, and information and decisions are shared (in best cases) at regular meetings, it is ultimately the trustees who have final control over how the land is used or allocated. (Ibid.)

This structure is convenient for traditional authorities or other elites within the community who want to control over of the land. (Claasens, 2014) Appointed as trustees, they can manage the resources as they choose, provided it is within the mandate set by the Trust Deed. Although the trusts created for land restitution entail particularly strong rights for beneficiaries, countering trustees requires legal recourse which is often expensive, lengthy, and bureaucratic. In addition, trusts are accountable to the High Court, and so the government department managing land reform [initially Department of Land Affairs (DLA); from 2009 the Department of Land Reform and Rural Development (DRDLR)] has had limited ability to regulate or intervene in the affairs of community trusts, even when there are problems or breaches of the trust deed. (SDC, 2007b; Cousins & Hornby, 2002). Finally, gender imbalances in traditional communities result in male domination of trusteeships, and women, who are often the primarily users of farmland, have had limited voice and rights in the restored land. (Rangan, H. & Gilmartin, M. 2002)

In the dawn of the new South Africa, there was a clear need for a more democratic solution, an entity that could recognise customary communal law, but still allow for greater equality and transparency. The Communal Property Association (CPA) was the proposed solution, creating a more equitable, democratic, and non-discriminatory framework for community land ownership.

The CPA Act of 1996 was passed "to enable communities to form juristic persons… in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution" (RSA, 1996, p.1). This constitution is the central feature of the Act, guiding how beneficiaries define themselves and the manner in which they intend to govern

their ‘new’ resource. The constitution must be based on principles of fair and inclusive decision-making, equality of membership (including gender equality), democratic processes, fair access to property, and accountability and transparency. (Ibid.; SDC, 2007b) The Act also includes a provision for DLA (now DRDLR) monitoring and regulation of CPAs, to enable enforcement of the constitutional principles and transparent governance. Community members thus have more substantive and accessible recourse should their rights be infringed. ‘Similar entities’ holding land, such as voluntary associations, companies, and trusts, only fall under DRDLR jurisdiction if they choose to file an application with the Department to be registered as a CPA. (RSA, 1996)

3.1.2.3. Trusts vs. CPAs

CPAs are the government’s preferred form of community property institutions. As of 2015, there were 1428 CPAs registered with the DRDLR. (DRDLR, 2015, p.2) However, many communities and/or their leaders still prefer trusts. Up to date numbers on land reform trusts are harder to come by, as they are not registered with the DRDLR, but as of 2010 there were almost twice as many trusts as CPAs nationally. (Numbers across provinces vary, but CPAs were predominant only in the Northern Cape and Eastern Cape.) (DRDLR, 2010)

The predominance of trusts was explained by a few factors. Some communities prefer the independence of a trust, and do not want interference from the Department once they have received the land. There is also a perception that banks prefer to work with trusts over CPAs, an important influence on communities in great need of capital to manage their land. (PMG, 2010) Finally as noted above, traditional authorities prefer the structure of trusts, as it facilitates a greater role for the tribal authority in land management. (Claasens, 2014) This is exemplified in the recent Constitutional Court case of the Bakgatla ba Kgafela community. The community

voted to establish a CPA to manage their restored land and submitted the paperwork, but the chief and traditional council wanted a trust to be created, and pulled political strings to prevent registration of the CPA. The case highlights how traditional authorities feel threatened by CPAs, as well as the how political dynamics influence administrative processes in the DRDLR. (Clark, 2015)

Despite the CPA Act's attempt to legislate equitable and well-governed institutions, and despite some highly successful, well functioning land reform projects, generally outcomes have fallen far short of expectations. A 2005 commissioned report by the Council for Scientific and Industrial Research on the status of CPIs (including both trusts and CPAs) found that

> The majority of CPIs are partly functional from an institutional perspective but are largely or totally dysfunctional in terms of allocation of individual resources and the defining of clear usage rights, responsibilities, powers and procedures for members and the decision making body. Transparency and accountability is also often below what is required. (As cited in SDC, 2007a, p. 161)

Research by the Sustainable Development Consortium in 2007 corroborated this, finding that 'overwhelming majority' of CPI leaders did not understand their constitutions or were not using them as the basis for operations (SDC, 2007a).

3.1.2.4. The barriers to successful CPIs

Nearly two decades of experience, documented through case studies, academic research and civil society reports, have led to general consensus on where the problems. (See Cousins & Hornby, 2002; SDC, 2007b; de Satge & Baiphethi, 2013, CLS, 2015;.) The following sections explore some of the challenges faced by CPIs in more detail.

a. Institutional design, administration and governance

The CPA Act prescribes what must be included in a CPA constitution, and what policies and procedures must be in place for registration to be successful. However, in order to be truly effective these policies and procedures need to be highly customised for the community in question, with potentially contentious issues debated and resolved. Instead, the formal creation and registration of CPAs has become a pro-forma administrative task, outsourced to service providers or government officials, and completed as cheaply and quickly as possible. Constitutions and procedural documents are often entirely inaccessible to membership, written in English, dense with legal terminology, and sometimes not even physically available. (Cousins & Hornby, 2002)

As a result, the constitutions are often "not aligned to the evolving needs, values and circumstances of the community" (DRDLR, 2012a, p. 75) The same holds for Trust deeds. They include contradictory policies, and fail to provide clarity on central issues of land rights management, such as criteria for membership, rights and obligations of members, land use and allocation, benefit and cost sharing, and transfer and inheritance procedures. If these most critical aspects of communal tenure management are unclear, or contextually inappropriate, the doors are opened wide for internal conflict, mismanagement, and/or cooption of resources — particularly when there is no accountability or state monitoring.

Cooption of resources often takes the form of 'elite capture', defined as "a phenomenon where resources transferred for the benefit of the masses are usurped by a few, usually politically and/or economically powerful groups, at the expense of the less economically and/or politically

influential groups." (Dutta, 2009, p. 3) Unfortunately, this is a widespread challenge in land reform communities, where traditional authorities or CPI leaders often abuse and exploit their power. This is discussed in more detail in Sections 5.2 and 5.3 of the analysis.

b. Technical capacity and training

Beyond the institutional issues, many CPI's simply lack the skills to effectively manage the land. In 2001, the DLA Quality of Life surveys found 61% of land reform beneficiaries to be illiterate, reflecting the low levels of education across rural areas (SDC, 2007b, p. 263). While communities may (or may not) have experience with small scale farming, they are under pressure from the DRDLR to keep farms as commercial entities. Should they override this and choose to do small scale farming on the land, South Africa's agricultural industry is heavily biased towards commercial farming, and it is almost impossible for small scale farmers to successfully compete. (Lahiff, 2000) Managing large tracts of land on behalf of diverse and sometimes divided communities, presents an array of technical, business, political and administrative challenges that will often require advanced management skills, agricultural expertise, and business acumen. To expect individuals with little access to advanced education and limited work experience to succeed in this environment is entirely unrealistic.

Training, therefore, is particularly important to the success of land reform projects. The Community Agency for Social Enquiry (CASE) assessed 178 settled land restitution claims, and found that 127 projects had received no training at all. Overall, technical assistance provided to the reviewed projects was deemed to be completely inadequate, and relevant government

officials were under-qualified to provide the necessary support. (as cited in SDC, 2007b, p. 266-267).

c. Accountability & state support

As noted, DLA ability to regulate and intervene in CPA affairs was a core principle behind the creation of the CPA Act. However, in actuality there has been very little monitoring of CPAs by the DLA/DRDLR. As of 2009 - 13 years after the CPA Act was passed - the government CPA register consisted of a single, handwritten registry, with the first 400 entries gone missing. (SDC, 2007b, p. 261) For many CPAs the government has no record of the boundaries of land held, or a membership list. CPAs are required to submit annual reports to facilitate accountability, but there was very little compliance with reporting obligations. (Mogaswa, 2013) Pitiful records and lack of human and financial resources in the department have severely limited government intervention & support. Unless they choose to be treated as a CPA, other forms of CPIs are even further distanced from departmental monitoring, as they are not within the land reform jurisdiction.

Recently, however, this has started to change. In 2010, the Department began issuing an annual CPA Report, a baseline study to assess the status quo of CPAs. In the same year, a 'turn around strategy' was developed, based on the pilot 'regularisation' complex CPAs through the Land Reform Management Facility (LRMF). Regularisation is an in-depth process of research, facilitation and customised support to bring CPAs to a state of compliance with CPA law and financial solvency, or referring them to judicial administration if necessary. (DRDLR CPA Report, 2011) In the last year, there were 65 pending cases, only 12 successfully regularised and

15 were sent back to the department because they could not be resolved. (DRDLR, 2015) These low success numbers give a sense of how deeply rooted and difficult to resolve are the issues facing CPAs.

In a context where policies and procedures are inappropriate and overly sophisticated, where few individuals have the requisite skills, and where there is no monitoring to hold people accountable, nor training to enable them, it should not be surprising that CPIs are not submitting financial statements or properly convening their general assemblies.

3.1.3. Community dynamics

At the 2014 National Land Tenure Summit, the Chief Land Claims Commissioner presented on CPAs:

> There is an emerging consensus that CPAs have tended to fail in performing their basic functions, largely because they are riddled with internal governance deficits and conflict among members. Such conflict undermines the land rights of members and constrains the effective utilisation of land by beneficiaries, who also face hostile markets. (Gobodo, 2014)

Indeed, land reform is not a set of technical problems to be solved; it is a dynamic social challenge. (Hart, 2013) Some CPI managers have noted they spend more than 60% of their time addressing community disputes rather than managing the land. (de Villiers, 2008) Across the various CPI assessments and recommendations for support runs a common call for solutions that are highly contextual, and based on extensive “community” building. The following sections will explore the blurred definition of “community” in the context of land reform, as well as drivers of conflict and dissonance within communities.

3.1.3.1. The boundaries of 'community'

The 1994 Restitution of Land Rights Act defined community as "any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group…" (RSA, 1994) However, after centuries of land dispossession, evictions, and labour migration, geographic and ethnic communities in South Africa are often not the coherent 'rural communities' comfortably referred to by government, media and even civil society organisations. (Kepe, 1999)

> "Not only do the notions of 'community' held by local and external social actors often conflict with one another, but local geographical and social boundaries are also often fuzzy, and serve as sources of internal conflict. […] Who is included or excluded in 'group' forms of tenure? […] How are the benefits from claims by large and poorly defined groups… to be distributed? How do power imbalances within 'communities' affect land rights? The answers to these questions largely depend on which notion of community is held by the implementers of land reform (in most cases, government officials)." (Ibid, p. 418)

Even when the boundaries and membership of community are agreed upon, strong internal differences can present a fundamental challenge. Charles Taylor (2002) has argued that effective democratic participation requires "not only commitment to the common project, but also a special sense of bonding among the people" (p. 99). Without mutual trust, members of a community will not be willing to compromise their individual interests for the sake of agreement, or consent to redistribution of resources. Chipkin & Ngqulunga (2008) suggest that social cohesion, defined as feelings of solidarity among compatriots, is a proxy measure for the state of governance: where there is high social cohesion, it is much more likely that government will be effective, transparent, and democratic.

In their analysis of social cohesion in South Africa, Chipkin & Ngqulunga found that the 'fault lines' of division in South African society are not along racial, linguistic or cultural lines. They are within the family and between friends — thus not between communities, but within communities. (Ibid.) However, to strengthen their claims to land and other project support, beneficiaries are often represented as cohesive units. Decisions are presented as consensual, omitting the negotiations, compromises, and ongoing differences of opinion behind those negotiations. (Grant, 2011) Once the land is granted and decisions must be made about land allocation, membership, and finances, however, the diversity of interests re-emerges.

3.1.3.2. Sources of internal conflict

A helpful framework for exploring community conflict can be derived from studies on community based natural resource management (CBNRM). The Overseas Development Institute notes two important arena for conflict studies in CBNRM: peace-building, including the resolution and prevention of armed conflict, and conflict over natural resources in the pursuit of sustainable livelihoods, which is usually non-violent. (Warner & Jones, 1998) The proposed research falls into the latter arena. Such conflict is usually either directly caused by new developmental pressures, which can skew access to natural resources, or is linked to deep-seated latent conflicts (such as structural inequality or long-standing ethnic difference) that flare up as a result of developmental pressures. (Ibid.)

Eddie Koch classifies the primary sources of conflict in community based natural resource management (as cited in Fabricus & Collins, 2007). These include:

1. Competition for benefits at the time of success;

2. The "fluidity" of communities;
3. Tension between traditional authorities and elected leaders;
4. Conflict between entrepreneurs and collective action; and
5. Competing livelihood strategies.

Each of these is applicable to land reform cases in South Africa, but the first three are particularly relevant for the proposed case studies, namely:

Competition and cooption of benefits: Once a claim has been won, those who drove the effort may also expect larger rewards, and internal power dynamics may leave women and other vulnerable populations with less than their fair share of the benefits. (SDC, 2007b) CPIs often lack clear methods for dispute resolution, enforcing internal power disparities.

Fluidity of communities: Unclear boundaries and membership rules can result in a variety of disputes. For example, a successful claim may draw an influx of urban or other migrants returning to claim their share. In cases where claimants form a subset of a broader ethnic grouping, the latter may claim that benefits should accrue to the community as a whole, not just to specific claimant families. (Kepe, 1999)

Tension between traditional and elected leaders: Tension between tribal authorities and state mandated CPIs is a core challenge. Land reform policy has swung a wide spectrum on this topic, but the formal relationship between CPIs and traditional leaders remains unarticulated, left to communities to work out on an individual basis. In some cases, CPIs have managed this well, linking them to wider institutions in the district. In many others, the overlapping legal systems

and competition for power have led to a dysfunctional institution. (Cousins & Hornby, 2002; SDC, 2007a)

Notably, in an analysis of five of the most well-researched land reform communities, Pienaar (2002) found little to no link between the amount of internal conflict, and the size of community, type of legal entity, or amount of post settlement support received. This is important; it may seem that trusts, which are less democratic than CPAs, would have less room for difference of opinion, that small communities would be more cohesive, or that external support would help in preventing or resolving conflict. Yet the conclusion drawn here is that these three factors are not primary factors in determining community cohesion.

3.1.3.3. Potential for collective action

Peters (2002) notes that these challenges of intra-community dynamics are not unique to South Africa, nor are they inimical to successful communal property management. Most rural communities are not free of conflict, nor are they heterogeneous. Studies show that even in cases of the most effective communal resource management, user groups are highly heterogeneous, boundaries are flexible, and there are competing principles governing claims and use. Tjosvold argues that insufficient attention is given to the potential for conflict to actually create solutions and strengthen relationships, when it is successfully managed. (Tjosvold, 2006)

Based on case studies, Ostrom (2004) suggests five attributes of groups that are able to facilitate successful solutions to the challenges of common resource management:

- Individuals involved agree that issue or problem is important.
- The group has autonomy to take action, without fear of political oppression.
- Members take long-term view of the future and the shared resource.

- There is a level of mutual trust and strategies of reciprocity.
- Community has prior organisational experience and supportive local leaders.

This is a useful structure for considering, on a case-by-case basis, if and how community discord can be resolved in post-settlement land claim communities.

3.2. Communal property management: External actors

3.2.1. Government capacity in land restitution

Conflict within land claim communities both exacerbates and is exacerbated by poor government capacity in land reform administration and implementation. Government has a mammoth task. Restitution in itself is a difficult process, and it is further complicated by complex histories, messy social dynamics, and very high political and financial stakes. Five years into the restitution process, Cherryl Walker, Regional Commissioner for KZN at the time, observed.

> "It has not been an easy five years and I do not think the Commission has done very well when measured against both the expectations and the need — though I think the Commission has done fairly well when measured against the constraints and the obstacles." (Walker, 2000, p.1)

3.2.1.1. The Restitution of Land Rights Act

The Restitution of Land Rights Act, 1994 (Act No 22 of 1994) restores the rights of land to individuals and communities who were forcibly evicted or otherwise removed from their land over the last century of racial oppression in South Africa. Forced removals included evictions and displacement from white-owned farms, group removals from mission lands, evictions for infrastructure, military and conversation programmes, and urban relocations. Within the former

reserves and homeland areas, scattering communities and resettling across tribal boundaries created overlapping and conflicting land rights. (Ntsebeza, 2011) These removals and resettlements were facilitated and formalised by government legislation - most notably the 1913 Native Trust and Land Act, which marginalised blacks to 'traditional' areas, but also a suite of subsequent legislations that undermined land rights and facilitated removals. The 1936 Natives Land and Trust Act allocated only 13% of South African land to black South Africans, who comprised 80% of the population. (de Villiers, 2003)

The right to restitution required claimants to prove they were dispossessed due to a racially motivated law or practice. The initial Act required that dispossession had taken place in or after 1913, and that the claim was lodged by 31 December 1998. (RSA, 1994) In addition to detailing the criteria by which one qualifies for restitution, and regulating the process for assessing and processing each claim, the Act created two important institutions. The Land Claims Court (LCC) is mandated to adjudicate disputes around claims. The Commission on Restitution of Land Rights ("Commission"), is charged with receiving, investigating, and resolving land claims through mediation or negotiation, and includes a Regional Land Claims Commission ("RLCC") in each province. (DRDLR, 2014)

The recent passage of the Restitutions of Land Rights Amendment Act (RSA 2014) enforced several important amendments to the Restitution Act. Most notably, the lodgement of claims was re-opened for a five year period, and the process is now open to those who were dispossessed before 1913. In theory, this allows those who were not able to claim by 1998 to have access to land restitution, as well as those who were dispossessed long before the Natives

Land Act, such as the Khoi-San. It has, however, created a number of complications, including claims upon land already restored to another community, and vast tracts of land put under claim by traditional leaders. (CLS, 2013) As of August 2013, before the amendment passed, over 20,000 claims had yet to be finalised and fully implemented, twenty years after Restitution was begun. Since the 2014 Amendment Act, over 120,000 new claims have been lodged, and nearly 400,000 are expected by the cut-off date of 2019. (Cousins, Hall & Dubb, 2014) This places an enormous burden on the Commission, and the Department as a whole, both of which were already struggling with insufficient budget, administrative capacity, and human resources.

3.2.1.2. Challenges in implementation

The Regional Commissions are responsible for processing the claims as follows: An individual or community lodges a claim at the RLCC. The Regional Commissioner decides whether there is a basis for the claim, in which case it is published in the Government Gazette to inform all interested parties and invite comment. The Project Officer at the RLCC is then responsible for working with all parties to thoroughly investigate the claim; if the claim is is validated, it then seeks to settle the claim by negotiating and, if necessary, mediating between the claimants and land owners. (de Villiers, 2003, p. 55-57) RLCCs are thus main point of contact for land claimants and land owners involved in a claim. From inception of the programme until March 2014, just over 3 million hectares of land was transferred to formerly disadvantaged South Africans through the Restitution programme. (Zulu, 2014)

In 2014, the South African Department of Monitoring and Evaluation commissioned a review of the Restitution programme, from 1999 to 2014. The objective was to evaluate the effectiveness and efficiency of the business process of restitution, and to develop

recommendations for strengthening the programme. That report provides the basis for the findings in this section. The evaluation was thorough, and the results were disheartening. Genesis Analytics (2014), the consultancy conducting the in-depth review, found a daunting list of shortcomings at the Commission:

- Inexperienced programme personnel, often lacking the necessary legal and research skills.
- Poor communication with claimants
- Inadequate archival systems and reference material
- Weak arrangements for managing the quality of outsourced research
- Poor documentation of claims and incomplete files
- Claimant verification and research process compromised by inconsistent and incomplete application of research, generally of poor quality. (No standardised process exists for claim research and validation.)
- Proliferation of review and authorisation steps which dilute accountability and undermine efficiency
- Inconsistencies during claimant negotiations, in which the Commission project officer promotes one type of compensation over another, resulting in long and arduous negotiations

Archives, documentation, and files are crucial to the legitimacy of legal process and integrity of the restitution process, and so their poor state undermines the ability of the Commission to credibly process and validate claims. Poor research and record keeping lead to the referral of significant numbers of cases to the Land Claims Court, where challenges to the Commission are usually upheld. As exemplified in the case studies of this report, they also contribute to exacerbated conflict during and after claim settlement. All of these factors result in

a restitution process that is often unnecessarily long; it is not unusual for communities to wait more than a decade for their claim to bet settled. They undermine public legitimacy of the Restitution programme and ultimately cost the Commission extensively in time and resources. (Genesis Analytics, 2014)

3.2.1.3. Restitution in KwaZulu-Natal

From 1996 to early 2013, 15,837 land claims had been settled in the province of KwaZulu-Natal (KZN), costing the programme a total of R8,4 billion. 75% of this funding was for land, covering an area of 764,000 hectares. The remaining 25% was paid out as financial compensation. Eighty-four percent of claims were on urban land. Of the sample cases studied in the Genesis Analytics review, 41% of beneficiaries opted to claim the land, 31% opted for financial compensation, while 20% chose a combination of land and financial compensation. (Forsyth, 2013, p. vii)

The shortcomings of the Restitution process as a whole are exemplified in the KZN Regional Land Claims Commission, as detailed in the KZN Provincial Review of the same evaluation (Forsyth 2013). Administration and research are remarkably poor. Files are often incomplete, duplicated, or missing entirely. Research on the context and rights of individual claims is weak; stock phrases on dispossession are repeated across multiple project files, and often lacking the detail necessary to validate a claim. Over 20% of the files examined showed no evidence of a specific investigation of land rights, reflecting a concern that research into land histories and claim validity is limited and insufficient. The testimonies of elders and community members which inform the claims are too rarely validated by secondary research or

documentation. This weak research results in a very high rate of claims being sent to the LCC, which are then sent back to the commission for another round of research. (Ibid.)

There are also irregularities in the 'gazetting', or formal publication, of claims. The gazette may include properties which were well beyond the original claim, in which case individuals are sought out to be listed as additional claimants, or family claims are made to look like community claims. The Regional commissioner is assessed upon how much land is purchased and transferred, and the RLCC is thus under pressure to transfer large tracts of land. At times, claims are purposefully extended under instruction from senior management. The process is illegal, but changes are only made if the extended claim is challenged in court. (Ibid., p. 17)

A related issue arises in the bundling of land claims. In KZN, claims are bundled when a group of people on a parcel of land claim the same property. The piece of land claimed must be coherent and contiguous, in which case, the research and administration of the claims is far more efficient if they are handled as a single claim. This is legal, as long as approval is given by the Commission and the claimants. However, too often claims on overlapping land are bundled without the necessary research and consideration, and even without approval from the claimants. This quickly becomes problematic when further into the claim process, or even after settlement, people come forward with disputes that undermine the legitimacy and viability of the claim. (Ibid., p. 13)

The Commission, which initially was independent of the former Department for Land Affairs, has now become a branch of the DRDLR. Over the life of the institution, there have

been ongoing shifts in responsibility and blurred lines of accountability, especially as to who is responsible for the critical support to communities after claims are settled. Project staff at the Regional Commission struggle with the challenges of mediating within and between communities, and between claimants and landowners. There are differing opinions as to who the Commission is representing, and how far the influence of the Commission should extend in community decision making. This is exacerbated by the lack of sufficient training for staff, who are often put on the job with little or no preparation or training. (Ibid.)

Capacity on the part of the state can amplify, and in same cases even drive, conflict within and between communities around claims. Bundled claims, weak research, clumsy administration, and lack of clarity around post-settlement support on the part of the state are all are at the heart of the challenges and ensuing conflict in the Ngcolosi and Mkhabela claims.

3.2.2. Traditional authorities

A second external actor in community property institutions is the iNkosi (chief) and the Tribal Council in areas operating under traditional authority.

When the Communal Property Association Act was introduced in 1996, it was heralded as the "most progressive piece of legislation yet tabled by the government… send[ing] a clear message… about what the government understands by the concept of democratic control". (Streek, 1996, quoted in Klug, 2000, p.5) The Act seemed to both recognise and respect customary forms of tenure, while using a constitutional framework to require the gender equality and democratic participation that were lacking in traditional systems. "On the one hand, there has been increasing recognition of the political significance of traditional authorities and

indigenous law. On the other hand, there has been the formal triumph of universalism." (Klug, 2000, p. 8)

According to customary law, traditional leaders ('chiefs') are responsible for allocating land or granting usage rights, resolving disputes, and controlling evictions, inheritance, sale, and privatisation of land. Specific to the community or tribe are the governing regulations and procedures, as well as the hierarchy of authorities. (Alcock & Hornby, 2004). However, the CPA Act created independent, community-based legal entities (CPAs) which would be responsible for owning and managing the land, and which would be operate based on principles of democracy and equality. Despite recognising traditional governance and authorities, the Act did not give them any formal role in land reform, nor any guidance on how the overlapping institutions might be integrated. Indeed, one of three principles guiding the DLA in 1998 was that land would not be owned by tribal authorities or local government unless they were specifically asked to do so by landowners. (Ntsebeza, 2000)

3.2.2.1. The policy debate

In the early 2000's, however, policy began to shift in favour of a greater role for traditional authorities. The Traditional Leadership and Governance Framework Act (TLGFA) was passed in 2003, to harmonise the institution of traditional leadership within the new constitutional democracy. It recognised traditional communities, and legally entrenched the hierarchies of traditional leadership and traditional councils. Furthermore, it provided a statutory framework within which traditional leadership would operate which infused with democratic principles, including quotas of elected representatives, and female representation on traditional councils. (Kamieth, 2007)

Two subsequent legislations, the Communal Land Rights Act (CLARA) of 2004, and the Traditional Courts Bill (TCB) of 2008, sanctioned greater authority for traditional leaders. CLARA was enacted to secure communal tenure by transferring communal land from the state to communities, providing for increased cooperation between traditional institutions and local government. It also included a role for traditional leaders on the governing structures of land boards, which administered communal land. (RSA, 2004) The TCB aimed to integrate customary courts into the recognised South African Justice System. Both Acts were highly contentious. Opponents argued that CLARA consolidated power at the level of unelected traditional councils (including chiefs), essentially dismissing the role of localised decision making at the lower levels of traditional institutions, such as family, user groups, village, and clan. In addition, it did not sufficiently vouchsafe for the rights of women in land ownership. (Cousins, 2008) The TCB was accused of "undermining the intrinsic character and accountability of existing customary dispute resolution mechanisms". (UCT, 2012, p. 2) After extensive efforts by civil society activists, CLARA was finally overturned in 2010 by the Constitutional Court on the grounds of a procedural violation, and the TCB was never enacted by Parliament. (Grootes, 2014)

The political pressure to give traditional authorities control over communal land persists. The 2014 Restitution of Land Rights Amendment Act (RSA, 2014) opened up "the floodgates for traditional leaders to claim vast plots of land which they could rule over as their personal territory". (PMG, 2014) Indeed, less than a year after the reopening of restitution claims, a number of large tribal claims have already been lodged.

3.2.2.2. Land rights and democracy

Why is it problematic for land to be restored to Tribal Authorities rather than community members? Those continuing to resist the growing authority of traditional leaders argue that it is simply incompatible with democracy. Land management is perhaps the most important terrain on which this issue plays out. CPAs were created to provide a democratically elected form of communal governance. By legally entrenching unelected traditional authorities as governors of communal land instead of CPAs, the people in those areas are deprived of the democratic option, and of the fundamental right to legal ownership of the land restored to them. (Ntsebeza, 2002)

It is a direct contradiction of the Constitution, argue Rangan & Gilmartin (2002), that although bantustans were officially abolished under the new democratic dispensation, the traditional authorities who were used to exploit and oppress rural communities in these areas continue to enjoy protected status under the Constitution.

A final critical challenge to integrating traditional institutions into democratic governance is the patriarchal nature of customary law and land tenure. In the South African economy, over 50% more women than men earn a living through agriculture. (Jacobs, 2011) Yet under most customary laws, women do not have the right to own land outside of marriage, and access to land is defined entirely through their relationship to their husbands or other male relatives. Tenure security, as a core pillar of land reform, “threatens to subvert the customary rules and practices that uphold existing social hierarchies and gendered privilege” in traditional communities. (Rangan & Gilmartin, 2002)

An alternate view, however, argues that the historical exploitation and unelected nature of customary law should not be reason to simply eradicate it altogether. Rather, these institutions should be adapted in line with the democratic values of the Constitution. Under the post-1994 state, a wide variety of institutions required a process of transformation in order to effectively serve the constitutional values of democracy and equality. Traditional institutions, argue Alcock & Hornby (2004), were excluded from this transformation process for political reasons. Although this has begun to change with the recognition of traditional leaders through the TLGFA and other policies, these attempts to legislate transformation have been insufficient. The focus has been on representation and elected leadership, rather than the systems and practices that define these institutions in day-to-day practice.

Simply eliminating the role of such systems and practices in the area of land reform would be a mistake. Traditional institutions have persisted into the new South Africa, and remain deeply rooted in the structure of many rural communities, especially customary land practices. Eradicating them would be difficult, and replacing them would be both risky and costly. Furthermore, there is increasing question of actual state capacity to successfully manage the land reform programme. (Alcock & Hornby, 2004) Cousins (1995) notes that customary institutions may indeed be particularly useful in the areas of defining “community” membership, conflict resolutions at the local level, and rules for resource management based on local knowledge of ecological dynamics. Traditional institutions can and should be better adapted for the current political and social paradigm, including a shift toward democratic representation and equal rights for woman.

3.2.2.3. Implications in land reform cases

These multilayered tensions and contradictions between CPIs and traditional leaders, both of whom are vested with community property rights under two different legal systems, has been a serious cause of dysfunction in CPIs and failed land reform projects. For example, in the Thembalihle community in KZN, a trust was set up through a facilitated, participatory process with the community. Once the trust took transfer of land, two amakhosi (chiefs) laid claim to the land, leading to a war over jurisdiction and ultimate failure of the land reform project. (Cousins & Hornby, 2002, p.21)

In the case of the Makuleke Communal Property Association in Mpumalanga, the CPA fell under the jurisdiction of the Mhinga Tribal Authority. Without CPA consent, the tribal leaders allocated portions the restored communal land to members of the traditional authority, and allowed outsiders to graze their cattle on CPA land. (Jacobs, 2011)

Similar cases throughout the country test the potential for customary and statutory law to functionally coexist, with mutual respect, in a constitutional democracy.

3.2.3. Commercial partnerships

Government's reticence to subdivide farms or support a change in production has resulted increasing use of joint-venture partnerships, especially on high value farmland. In these partnerships, beneficiary communities are paired with individuals or companies who can provide the necessary capital and expertise to keep the newly acquired farms functioning as a 'going concern', with minimal changes to the mode of production. (Hall, 2009) The partnership can take a variety of forms, and exact terms will vary. In general, however, claimant communities

are expected to benefit through income from the land lease and profit shares, preferential employment opportunities, training and expertise development, and in some cases possibilities for new supporting business ventures and preferential procurement. In turn, commercial partners also get profit shares and in some cases a management fee or or salary, control of upstream or downstream activities, and similar preferential procurement. (Lahiff, Davis & Manenzhe, 2012)

After years of experience, results on these partnerships have been mixed. Most joint venture partnerships have failed to provide the expected benefits to one or both partners, or have collapsed entirely (Lahiff, 2013; Business Trust, 2011). There are numerous reasons for this, including:

Weak partnership arrangements:

- Lack of agreement around precise responsibilities, especially regarding provision of capital
- Benefit flows not agreed to upfront, or benefit arrangements are otherwise inadequate, illiquid, or perceived to be unfair.
- Vast differences in knowledge and experience between communities and commercial partners
- Lack of emphasis on skills development
- Failure of the Department of Agriculture (or other relevant entity) to monitor and regulate the contractual arrangement between parties.

Challenging community dynamics:

- Contestation for authority between structures, such as the CPI and the traditional authority, or between overlapping traditional authorities
- Personal privileges given by developers or partners to community leaders, isolating them from the community

- Insufficient investment made in keeping the community involved and informed

Financial difficulties

- Long delays by the state in transferring the land and releasing grant funding
- Loss of faith in the partnership by claimants, as profits and visible benefits are delayed due to loan repayments or business setbacks.

(Compiled from Business Trust, 2011; Vumelana Advisory Fund, 2014; Lahiff, Davis & Manenzhe, 2012)

Presenting at conference on commercial partnerships for land reform, Paul Zille argues that CPIs by nature are inappropriate for commercial partnerships:

> The central problem with CPAs and trusts is that they are ill-equipped to manage land-based businesses. The land cannot be bonded or sold. The capital improvements from the partnerships cannot be realised. Revenues and capital gains are not predictably or transparently distributed. The perception of unfair arrangements for the distribution of benefits by the CPI to members often leads to conflict. This is compounded by a dilution of ownership, accountability and benefits as demographic changes result in some members exiting the CPA and others joining in an often haphazard way. (VAF 2014, p.10)

Mayson (2003) notes that corporate and commercial actors may have other direct and sometimes circumspect interests, including access to land and capital, marketing, and BEE and social responsibility goals:

> "Proponents of JVs argue that they contribute to transformation of the countryside by providing poor, black people with a pragmatic option for engaging in agriculture, particularly commercial agriculture. Critics argue that JVs are a new form of exploitation, a mechanism through which white commercial farmers and corporations are able to spread the risk of engaging in an increasingly complex and capital-intensive sector, while gaining market and political credibility in the process." (p.1)

The result of all of this, states Zille, is that despite the valuable asset of land they have received, claimants often "live poor and die empty handed". (Ibid.)

However, there are models of partnerships that are working. Lahiff (2013) argues for commodity based rather than community based approach to partnerships. These would bypass CPIs and work directly with individuals, or small groups, particularly those who have potential to advance to commercial farming. The partnership would centre around the supply of a specific commodity, much like the well-known outgrower model used in the sugar industry. This will be looked at further in Section 5.1.2, in light of the case studies.

Understanding these core causes, both internal and external, of the repeated collapse of many land reform projects provides an essential context for exploring the cases of the Ngcolosi and Mkhabela communities. The cases can shed light on ongoing efforts by government and civil society to improve the capacity of CPIs, as well as policy discussions about the appropriate legal vehicles for communal owernship, the role of traditional leaders, and preventing the corruption which so often prevents individual community members from reaping the benefits of restored land.

4. FINDINGS

In sketching the context in which CPIs operate, the previous chapter explored why common land ownership is important, and the debate around whether it can be viable in the long term for both resource sustainability and community interests. South African land reform has provided a platform for formalised, legal communal tenure to be tested, through the community property institutions created to hold and managed the land. However, these institutions face extensive challenges, operating in a dynamic social context and lacking the technical, institutional and financial capacity need to effectively manage communal land. This is further complicated by the role of government, traditional authorities, and commercial partners, all of whom can be both a tremendous asset or a resource drain on CPIs.

This chapter will set down the experience of the Ngcolosi and Mkhabela communities in facing these challenges, particularly as relevant to commercially farmed communal lands. It begins with the history of land and relations in the Kranskop area, then tells how the two communities reclaimed their land and worked to operate them as commercial farms, one building a successful, profitable agricultural company while the other fell into disrepair. Finally, it looks at what challenges have faced both communities, including government corruption and the onset of elite capture.

As noted, the names of all informants have been changed in this report to preserve confidentiality.

4.1. The Amangcolosi arrive in Zululand

In the 16th century, the Amangcolosi arrived in Zululand when Bhengu Dlamini, a member of the Dlamini royalty and potential heir to the throne of Swaziland, was expelled from the royal family and exiled from the area after having an affair with his sister. Accompanied by a number of families, Dlamini led the group into Zululand around 1575. After moving around the region, they settled in Ntunjambili, in the mountains near the Thukela River. As oral tradition goes, after a series of wars with giant cannibals the Bhengu followers were victorious and took the whole area. On this land, the town of Kranskop was founded a few centuries later, east of Greytown in what is currently the Umvoti Municipality, KwaZulu Natal. (Bhengu, 2012)

As close allies to King Shaka, his assassination in 1828 embroiled the Amangcolosi in conflict with the new King Dingane. The people fled Ntunjambili at the king's onslaught. This migration away from Ntunjambili led to concentrations of AmaNgcolosi all over the region. The core group settled south near the eMgeni River, at what is now Hillcrest. When their chief was later killed by the king, his sons quarrelled over who was the rightful successor. It was eventually agreed that one son, Ndlokolo, would remain in eMgeni as iNkosi, and the other, Hlangabeza, would return with his people to the Ntunjambili area and be installed as iNkosi there. To this day there are thus two AmaNgcolosi chieftaincies and the other at Ntunjambili. (Bhengu, 2012)

4.2. Contestation for land at Ntunjambili

4.2.1. Contestation for land

When Hlangabenza and his people left eMgeni and returned to Ntunjambili, they found much of the land they had formerly inhabited had been settled by others. Some had been taken

over by white farmers from the Greytown area. In addition, several surrounding Zulu tribes, including the Dlomo (also known as the Mkhabela), had expanded their borders, encroaching on Ngcolosi land. Fighting between these tribes and the returned Ngcolosi ensued, and continued for over a century.[5] An Mkhabela community leader described the ongoing conflict between the Amakhabela and the Amangcolosi, which came to a head at the assassination of a chief in the 1980s:

> "After that all the community went to fight. Fighting with machine guns, big guns. All of the chieftancies are armed. Most of the arms came from Joburg, and they shot most of the family. […] Fighting was stopped when they met in the river we call Amazalati. It was 1987. Until then they'd been hiding through the forest, fighting through the trees, and in the hostels and the trains of Joburg. At Amazalati they came face to face, they fought from 3:30 am to sunset. Then they were finished. Most people died. Even now if you pass there with your dog, you'll find him carrying an arm. The bones are still there. After that it was peace - no one wants to fight again. They were done."[6]

Although the fighting has indeed stopped, disputes over land boundaries continue. Relations between the chieftaincies, however, were for many years peaceful and by some accounts even amiable.

Also competing for the land in the 1800s were white and Indian farmers. The Ngcolosi continued to herd and farm, but the fertile lands of the area - some of the most productive land in KZN - were increasingly taken over by large-scale farmers, some of whom have been there since the mid 1800s. One interviewee recounts, from oral history:

> "When the black people came back [to Ntunjambili], the land was occupied by whites, so they settled on the other land that was not as good as this one, the edges of the land by the rivers, where it's not as productive and fertile as this flat land in the high lying area."[7]

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[5] S. Ngcolosi. personal communication, 27 November 2015

[6] S. Hlophe, personal communication, 12 March 2015

[7] S. Njomane, personal communication, 14 November 2015

Other tell the stories passed down off whites appropriating communal lands of the Ngcolosi and other tribes:

> When the first whites came to Zululand, they were looking for a place to settle. When they asked for land, they didn't tell the landowners that they were going to use it for farms, they asked just if they could live with the people and help them. […] They would first come and just ask for an allocation just to live as a neighbour. So they were given land free of charge. They then started calling people 'trespassers' if they went on the land. "You must have an appointment to see us." Thats how they started moving people off, by claiming they had trespassed and sending them to jail.[8]

4.2.2. From farmers to labourers

As they grew increasingly organised, white farmers in the area were frustrated by the refusal of Zulus to work as labourers. The local communities were herding cattle and goats, and successfully farming food both for subsistence and trade. The Amangcolosi were known to live comfortable, for some even prosperous lives. (Bhengu, 2012; Rule, 1993). The following was published in the Natal Witness in 1869:

> The progress made by the Kaffirs in agriculture is fast giving them the lead in supplying local demand. They now grow forage extensively — a thing totally unknown in 1858. They have, during the last ten years, bought many hundred of ploughs - indeed you might say, with truth, thousands. They all have a few oxen; they are adept at breaking the oxen in; they can make their own yokes, yokeskeys, trektouws, reins, neck straps, and, indeed, all that is necessary to set them up as ploughman. Under present arrangements, and indeed under any equitable arrangement, the Kaffirs must for many years to come make it impossible without capital to get a living in ordinary agricultural pursuits in Natal. (Rule, 1993, p. 19)

Concerted efforts were made to curtail the growth of independent African farming, and to force blacks to work on white land. Traders refused to buy produce grown on black land, and

[8] X. Dube, personal communication, 13 March 2015

blacks were only allowed in business districts if they wore European clothing. Duties were levied on basic farming implements such as picks and hoes. A range of taxes were introduced on each hut, each wife. (Steinberg, 2002)

In 1905, the British colonial administration introduced a poll tax of one pound was introduced for every unmarried adult male. "The tax was exorbitant, more than anything that had preceded it, and paying it would require transferring countless men from independent production to labouring on white farms." (Steinberg, 2002, p.125) Several chiefs in the area resisted the poll tax; the most well known of these uprisings was Bambatha's Rebellion. The British massacred more than 200 Ngcolosi troops during this time, buried in mass graves between Greytown and Kranskop. The revolts failed, the taxes were enforced, and the Amangcolosi and their neighbours became farm labourers and domestic workers. (Steinberg, 2002; Bhengu, 2012)

The 1913 Natives Land Act resulted in further dispossession. The Amangcolosi and Amakhabela tell stories of whites coming into the area on horses, accompanied by the police, and declaring that all the land was now a farm belonging to so-and-so. They recount the experiences of their parents' and grandparents' generations. "This was something common, to remove people from one place to another one. If you knew someone in government it was very easy to get people off the land that you wanted."[9] Those living on the newly claimed farms were either evacuated or became labour tenants. "The farmers were sending trucks and just dropping people off in the middle of nowhere. Those people must figure out how to survive without water,

[9] M. Ludonga, personal communication, 13 March 2015

without anything."[10] This thirst for land continued to push people out, until the last family was evicted from the fertile farmlands in the 1970s. (Dardagen, 2012) "The area where we find ourselves now is dry land. It is becoming drier and drier. That impacts on our stocks - if there is drought, they just die."[11]

Many of the current generation of Ngcolosi were born to labour tenants on the white farms. They told of their parents, and even themselves, working "isithupa", where for six months during the off season they were only paid R1 per month:

> First it was our grandmothers then our mothers who worked for six months without pay for land rental here in this farm. We grew up knowing that as a way of life and it was very difficult, you could not even walk anywhere in the farm you must only use the way allocated to you as a black person.[12]

The 1980s were a time of upheaval in South Africa, and very much so in rural KZN. The Kranskop area was no exception. The intense fighting amongst local chieftaincies described above was compounded by rising tension between the blacks of the area and the white farmers. When the new government took over in 1994 and began planning for land reform, the area was ripe for land contestation.

4.3. Claiming the land

4.3.1. Lodging the claim

In the late 1990s, a group of Ngcolosi community leaders went to the Regional Land Claims Commission (RLCC) to enquire about claiming the land from which they had been

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[10] X. Dube, personal communication, 13 March 2015

[11] V. Dube, personal communication, 13 March 2015

[12] B. Ndima, personal communication. 13 March 2014

removed. On 8 December 1998, a few weeks before the closing deadline for claims, a claim was lodged at the Commission on behalf of the Ngocolosi/Ntunjambili community for over 20 farms in the Kranskop area. (DLA, 2003)

A few years prior, in January 1996, their neighbours, the Mkhabela of the Dlomo chieftancy, had also lodged a claim for land from which they had been dispossessed. As the communities were both in the same area, the Commissioners coming from Pietermaritzburg suggested they process the claims jointly, for the sake of efficiency. Other accounts take it further, asserting that the two groups were actually putting in a joint claim, which they would later sort out 'under a tree', and that the Commission eventually advised them to submit separate claims.[13]

The Ngcolosi claim had adversaries on two sides. Many members of the Ngcolosi community, including the beneficiaries themselves, opposed the claim. They felt that the whites would never return the land, and even if they did, the people would not be able to successfully farm it. They feared that once transferred to the community, the farms would fail, and the workers would be left unemployed, hungry, unable to send their children to school. "I was very afraid! Thinking it would be like Ethiopia, where whites were chased away and people became very hungry and they suffered starvation a lot. I was afraid!"[14] The committee managing the claim held meetings with the community to keep them updated on what was happening, and to

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[13] D. Khumalo, personal communication, 3 December 2015
M. Sibiya, personal communication, 12 March 2015
S. Hlophe, personal communication, 13 November 2015

[14] B. Ndima, personal communication, 14 November 2014

convince them of the claim's potential.[15] However, the more important factor was the endorsement of the chief. "When it comes to the mouth of iNkosi, all of us we are bowing our heads. So if he says we must claim the land, everyone listens."[16]

Relations with the white farmers in the area, whose land was under claim, were not so straightforward.

4.3.2. Rising violence with farmers

From the early 1990's there was a steady rise in violence against large commercial (primarily white) farmers. The politics and literature around farm violence in South Africa debate the motivating force behind these attacks; projected motives include robbery, labour disputes, land-related intimidation, and revenge. (SAPS, 2003) Amongst the white farming community, there was a strong conviction that the harassment and attacks on farmers was politically motivated, aimed at driving them off of the land. Some even believed these were supported and driven by the ANC. (Ibid.; Steinberg, 2002).

In the Kranskop / Ntunjambili area, tensions were high. "There was ongoing conflict between blacks and whites. The farmers were generally of German descent and wanted things done they way they wanted them done; there were abuses on both sides."[17] Stock theft was a widespread problem for commercial farmers, as was robbery. The South African Police Service commissioned a thorough report into farm attacks in 2003, and the report covered the Kranskop area specifically, noting that:

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[15] M. Sibiya, personal communication, 12 March 2015

[16] X. Dube, personal communication, 13 March 2015

[17] R. Williams, personal communication, 14 November 2015

> [There are] thirteen farms near to the border with the reserve area which have experienced problems, including incidents of poaching, arson, and stray animals on property, and illegal land occupation. Fencing was stolen, and boundaries were difficult to distinguish. Cattle and goats caused considerable damage to crops, the impoundment of livestock was a contentious issue, especially as poor people found the costs of reclaiming their cattle beyond their meagre means. Theft of timber and sugarcane was also rife. (SAPS, 2003, p.156)

Farmers were consistently trying to limit trespassing on their farms, especially for trucks with building materials, as squatting on farms was becoming a problem. (SAPS, 2003, p. 127-8). When trespassers were apprehended or reprimanded, farmers would find their sugarcane set alight.

This, of course, is one side of the story. Cutting across farms, or 'trespassing', considerably shortened the distances for people travelling by foot. Theft may have been a natural outcome of the poverty to which people in the tribal authority had been formally and systematically degraded. (SAPS, 2003) Housing conditions for blacks were poor, and black students were not provided transport as whites and Indians were. Fees for high school were R70/ student; workers were only making R67.00 per month plus mealie meal. "Towards the end of the 1980s, I was in Standard 3. Life during those years on the farm was too difficult. As we were young, we knew something must be done."[18]

One informant recounted how he and friends wrote an anonymous letter in 1989 to their parents' employer and landlord, demanding a dramatic increase in wages and specific improvements in living conditions. The letter caused a stir in the farming community.

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[18] A. Mabuya, personal communication, 13 November 2015

"Whatever was done by one farmer in Kranskop was done by the others."[19] In the ensuing tension, groups of youth burnt sugarcane and timber land to put more pressure on the farmers. Ultimately their demands were met, although the young people paid for it with short term imprisonment and evacuation of their families.[20]

A decade later, two years after the Ngcolosi lodged their land claim, a white farmer was murdered on his farm, Dulumbe. Opinions differed as to whether it was simply a violent robbery, or whether the local people were making a statement. Then in August 2002, an alleged poacher was killed by a farmer's private security guard, and his two companions injured. "It was our land," the people protested. "Hunting is in our culture." (Dardagen, 2012) Two weeks later, white farmers in the area were presented a memorandum from the AmaNgcolosi Tribal Authority. It was entitled 'Reasons that lead to a decision to chase the Whites out of the area.' It listed the following complaints from community members (SAPS, 2004, p.125):

- the impounding of goats and cattle,
- the killing of donkeys,
- the shooting of innocent civilians by white security guards,
- the pointing of firearms at people using the road passing near 'the farm', and
- the discovery of bones in the bush and sugar cane fields on the farms of persons who had allegedly been killed by whites and their security guards.

[19] R. Williams, personal communication, 14 November 2015

[20] Ibid.

The memorandum continued, “We beg not to be misunderstood, we don’t mean we don’t want the Whites; we are just asking for them to be removed from our society’. It stated the following resolutions taken by the community at a meeting held just prior:

1. ‘We don’t need the Whites in the in the area and we ask them not to come beyond Kranskop. They must stay 10 kilometres away from us.
2. Whoever came with sugar cane [interpreted as a reference to Indian sugar cane farmers in the area] he/she must take it away, whoever came with the soil/land he/she must take it away and leave the Tribal land.
3. We don’t need security guards [referring to the private security company hired jointly by the farmers]
4. We don’t want the whites to go to Shushu even if they are going for fishing we don’t want them
5. We don’t want whites to go to Die Kop
6. We are asking the Station Commander to go and fetch any Whites at Shushu right now if there are any
7. The cattle, goats and the donkeys that were pounded (sic) and those that were killed we want them back
8. From now on we demand that no cattle, no goat and no donkeys are pounded (sic)
9. We want all our demands to be met and complied with within a month that include the return of cattle, goats and donkeys and their removal (sic)
10. Failing which we will be up in arms as we are not scared of anyone
11. We are appealing to the National Minister of Land Affairs to intervene in this matter’ (Ibid.)

A land reform official from the RLCC in Pietermaritzburg office was tasked with negotiating between the parties. (SAPS, 2004, p.153)

The Ngcolosi land claims were formally gazetted on 7 March 2003, as were those of the Mkhabela. The two claims totalled 30,000 ha. (DLA, 2003; SAPS, 2004). After the claims were submitted, farmers in the area held a meeting. They put on the wall a map of the farms, and told people to put a pin on their farm: green if they were willing to sell, and red if they were staying. When those with red pins saw they would be surrounded by reclaimed land, many of them changed their pins. The farmers were giving up, and were ready to return the land. According to one interview, they were paid well for it, up to twice the farms' market value.[21]

In September 2005, 12 of the farms claimed, totalling 8000ha, were handed over to the Ngcolosi people. The Amangcolosi Community Trust was formed as the entity which would manage it. Around the same time, their neighbours, the Mkhabela tribe, received 15 farms totalling 18,000 ha, and formed the Gayede Trust to hold the land.

4.4. Making the land work

4.4.1. Deciding how to use the land

A founding Trustee commented on the initial vision of the committee spearheading the claim.

> "There was no plan, there was no vision. Ours was just to get land. We were discussing the process and waiting, then something came to our mind: what is going to happen if government said tomorrow, here is the land? And then there were some meetings with the government that the land we claimed is commercial, so we have to keep it commercial. So then we started thinking, okay we have to use the land to develop our area…"[22]

[21] R. Williams, personal communication, 14 November 2015

[22] V. Dube, personal communication, 13 March 2015

The RLCC officials strongly advised the Ngcolosi community to keep the land as commercial farmland, as a 'going concern'. They said that the community would repay the government for the land through taxes on the timber and sugar cane that was harvested and sold.[23] However, many of the beneficiaries wanted to move their homesteads and their herds back onto the land that had been restored to them. The valleys to which they had been evicted were dry and overgrazed, and the claimed farms were lush and fertile. "In our thinking," recounted the Ngcolosi chief, "most of us believed that with the land back it means we must move back on it and build homes there and do whatever we wanted with the land."[24] The leadership of the claim spent a lot of time convincing people otherwise. A sugar cane manager recalled, "We had to go through a process of explaining the effects of such a move [to the community] and that it would impact negatively on the very assets which are supposed to improve their lives." (Gwatyu, 2008, p.26) The son of one of the founding claimants explained the process of persuading community members to keep the land commercial:

> "By having the AGMs we managed to help people understand what is happening, what the constitution says, to give them the chance to ask questions and get answers. They are being told that this farm is theirs. They requested for farms, and they understand that it is wrong to kill the sugarcane and build a house, to kill a forest and build a house. They started to understand that the land is used to create money."[25]

4.4.2. A Strategic partnership

The RLCC had agreed to suggest a few potential joint venture partners who could provide the Amangcolosi and Amakhabela with business management guidance and commercial

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[23] M. Sibiya, personal communication, 13 March 2015

[24] N. Ngcolosi, personal communication, 2 February 2014

[25] X. Dube, personal communication, 12 March 2015

farming expertise. (During the claim negotiations, there was some discussion of having the former farmers serve in this role, but ultimately this did not pan out. (SCA, 2015) The regional RLCC recommended only one partner to the communities: Crystal Holdings, based out of Richards Bay and started by two relatives of the farmers whose land had been claimed. When the communities asked for additional partner options, they were told that the Department had done the vetting for them, and Crystal Holdings was the cream of the crop. They even provided government vehicles for the communities to go see the Crystal Holdings farm at Empangeni.[26] The Ngcolosi trustees liked Crystal Holdings well enough, and the company had promised to get them the equipment they would need to start working. Despite some disagreement amongst the trustees, they made a quick decision so that the farms could continue operating.[27] Both Trusts signed contracts giving Crystal Holdings a share in their agricultural ventures. The Amangcolosi formed Ithuba Agriculture, and the Gayede Trust formed Mkuzangwe Pty Ltd.[28] Crystal Holdings was a 40% shareholder in each of these new companies.

Surprisingly, a few weeks after the signing of the contract, the RLCC came back to both communities and forcefully advised that that they withdraw from the shareholders' agreement with Crystal Holdings, claiming the company was corrupt.[29] Both Trusts refused, as the

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[26] D. Khumalo, personal communication, 3 December 2015

[27] R. Cele, personal communication, 13 November 2015

[28] Parliamentary proceedings in 2013 (DRDLR 2013) explicitly refer to Mkuzangwe as a CPA. However, interviewees from Gayede and Mkuzangwe stated it was a Pty Ltd company. The land is held by Gayede Trust, and Mkuzangwe's mandate was to run the agriculture business, as a company with Crystal Holdings as 40% shareholder.

[29] The Regional Commissioner at the time reported that Crystal Holdings had signed an agreement with the communities behind the RLCC's back, without going through the tender process. An Mkhabela leader asserted the opposite, that after introducing them to the company, the RLCC officials arrived in Kranskop with an MoU that had already been negotiated and signed by the Commission and by Crystal Holdings. The communities were then asked to simply add their signature, with no opportunity to negotiate terms.

contracts were signed, work plans had begun, and they did not have alternate partners. One of the founding Amangcolosi trustees recalls:

> We said… 'No, we are not going to let this land die. We are going to work with this mentor until we see for ourselves how bad they are.' Then we were at loggerheads with the government. We signed an agreement with Crystal Holdings. If we didn't do that, this farm would've stopped at the time. But that's why [the Department] didn't give us a grant.[30]

As a result of their refusal to break with the company, the communities' relationship with the RLCC turned sour. At Gayede Trust, the RLCC went so far as to state that they would bring Mkuzangwe operations to a halt if the Gayede Trust did not break their agreement with Crystal Holdings. Mkuzangwe took the RLCC to court for interfering in community affairs. The judge ruled that once the land had been returned to the community, it was not up to the RLCC to tell them what to do. The court put in place a six-month interdict forbidding the Department from interfering obstructively in Mkuzangwe affairs. After this, neither community received any financial support from the government to start operations; the Department refused to assist them as long as they were working with Crystal Holdings.[31] This was confirmed in the Department's 2008 Annual Report. (DRDLR, 2008, p.52)

Crystal Holdings brought on a sugar cane expert and a timber expert, who were employed to manage the farming for both claims. For the first year or so, the two Trusts worked closely

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[30] R. Cele, personal communication, 13 November 2015

[31] S. Hlophe, personal communication, 14 November 2015

[32] Interviewees either did not know why they separated, or gave inconsistent reasons for the separation.

together, even sharing managers and office space. In 2007, for reasons that were unclear[32], they separated.[33]

Immediately upon transfer of the land, Ithuba suspended all the employees of the transferred farms for a month, with a promise that when they returned to work they would be paid for that month away. This gave the new managers time to find financing to pay wages. They then went door to door to their contacts in the farming business, and asked for second-hand equipment on credit, personally guaranteeing payment once the year's harvest was sold. They also negotiated an advance on payment from the a mill.[34] The operations manager recalls those first months:

> We had no bakkies[35], we had nothing. [We] went all over the place trying to get finance. […] We sat on the floor in those offices, and we designed the farm. How our structures were going to be, how many tractors were needed what the financing would be, what our limits were in terms of purchasing of every item, how much we were going to pay the employees for every specific job. […] We sat there and we designed those farms. And that was very, very rewarding, because driving around I'd seen the potential of those farms. Thinking, you've got this massive potential, how are you now going to make this thing into a giant that generates money for the local people, not only through employment but also through community-based type operations. We wanted to build stadiums, clinics, schools. I built that school at Dulumbe.[36]

They started out at Ithuba with a debt of R20 million. Most of the workforce of the previous farms had been retained, as had some of the managers. New staff was brought on as

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[33] D. Khumalo, personal communication, 3 December 2015

[34] V. Dube, personal communication, 13 March 2015.
R. Williams, personal communication, 14 November 2015.

[35] "Bakkie" is a South African colloquial term for a pick-up truck.

[36] R. Williams, personal communication, 14 November 2015.

well, and with experts managing the agriculture, and strong systems in place, the farm went from strength to strength. The operations manager continued, "That farm was like a well-oiled machine. … Every year everything was improving, until we surpassed what the previous farmers had done."[37] After four years, they had repaid their debt, and by the fifth, they had a profit of R20 million.[38]

While Ithuba was flourishing, things had gone sour with Crystal Holdings. A few years into operations, some of Amangcolosi trustees secured copies of the banks statements, and found that up to 9 million had been transferred out of Ithuba into the Crystal Holdings account. Money was being bounced from Ithuba to the Mkuzangwe farms (of which Crystal Holdings was also 40% shareholder), and to the company's third farm at Empangeni. (Hlongwe, 2008a).

Crystal Holdings denied any intentional wrongdoing. In those days, with no start up capital and no financial support from government, they were doing everything they could to keep the farms going. Their own farm at Empangeni was put up as surety for equipment and loans, and they were even putting their own funds into the projects. It may have been inappropriate financial management, they argue, but it was simply a desperate attempt to manage cash flow, not a criminal undertaking.[39] The matter was settled out of court. Crystal Holdings reportedly returned the funds, and turned their 40% shares in Ithuba over to the AmaNgcolosi Community Trust.[40]

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[37] Ibid.

[38] Ibid.

[39] D. Khumalo, personal communication, 3 December 2015.
R. Williams, personal communication, 14 November 2015.

[40] V. Dube, personal communication, 13 March 2015.

After the break with Crystal Holdings, the managers they had appointed stayed on at Ithuba, with a newly appointed CEO. The team worked well together, and the company prospered. Ithuba has 3800 ha of timber, 2000 ha of sugar cane, as well as "short crops" such as kiwis, maize, and chilis. In 2011, they issued the first shareholder dividends to beneficiaries, of R3000 per person. By 2014 this was up to R6000 per person.[41] One of the beneficiaries, reflects, "At first I used to think that it will never happen that a business of this magnitude can be run by black people successfully. I was seriously confused and doubtful but as time went on I realised that it was possible, as it happened."[42]

4.5. Ithuba: From Strength to Strength?

4.5.1. Capacity and governance

Crystal Holdings, and the management team they brought on, played an important role in the success of Ithuba. However, the Trust itself must be credited for having the capable leadership, good governance and effective management which were able to bring to fruition the potential of the land and contributions of their commercial partner. CPI capacity and governance is where many land reform projects, and joint venture partnerships, fall apart.

4.5.1.1. Institutional design, administration and governance

Strong administration and governance were critical to the community's success. The Amangcolosi Community Trust is the owner of the restored land, and also the sole shareholder in Ithuba Agriculture. The Trust is governed by the Deed of Trust (often referred to as their Constitution). The trustees are elected by the beneficiaries, and are accountable to them through

[41] D. Cele, personal communication, 2 February 2014.

[42] M. Ndlovu, personal communication, 2 February 2014

the annual general meetings (AGMs), which have been held consistently every year since restitution.[43] Although there has been turnover on the Board of Trustees, it seems that trustees have been replaced gradually, through nominations at the AGMs, rather than through a board re-election at five-year intervals, as required by the Deed.

The literature notes that often CPI constitutions or deeds are simply based on templates provided by government or NGOs, with insufficient customisation for the specific context of the project. Furthermore, the legal terminology makes these inaccessible to beneficiaries, if they are even able to access a copy in the first place. This is indeed the case at Ithuba; trustees report that they were given a template deed by the RLCC which they simply filled out, with some amendments made much later.[44] They did, however, provide a copy of the Trust Deed to every beneficiary at the first (and possibly subsequent) AGM. (One trustee recalled their disappointment when after the meeting they found numerous copies of the Deed left behind on the seats.[45])

The Trust submits reports and financial statements to the Master of the High Court, in Pietermaritzburg (under the Department of Justice). Once elected, trustees go through governance training, both internally and by outside experts, to understand their role and

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[43] M. Sibiya, personal communication, 13 March 2015

[44] In 2012, they submitted an amendment to the High Court for the following changes to the Trust Deed:
1) Reduce the number of trustees from 15 to 11,
2) Register a new board (only 3 trustees remained from the initial board),
3) Change the term of a trustee from one year to five years, and
4) Add clause that dividends must be paid to shareholders if profits are made.

As I only have access to the 2012 amended Deed, I am not able to verify that these were the (only) changes made.

V. Dube, personal communication, 13 March 2015

[45] M. Sibiya, personal communication, 13 November 2015

obligations. They are also required to sign a code of conduct. The Trustees are responsible for appointing the Board of Directors for Ithuba Agriculture, which is a Pty Ltd company. This Board has four directors. There are currently two Ithuba Directors who are also trustees, which may present a conflict of interest. Ithuba's only shareholder is the Trust, and therefore 100% of Ithuba's profits must be either reinvested in the company paid out to the Trust.[46] It is not clear whether there is a written contract between Ithuba and the Trust.[47] Ithuba is audited annually, and according to the CEO, has passed those audits without qualification.

4.5.1.2. Technical capacity and training

From the outset, Ithuba avoided the pitfall of nepotism, and selected leaders and managers based on their merit and capabilities rather than their social position or connections. Ithuba hired a series of individuals with solid experience in farming sugar cane and timber, and in managing large scale agriculture. They also brought onto the board of the Trust some individuals with business and financial experience. This was the basis for building agricultural operations that were highly productive and efficient, and for building financial and governance structures which were professional and transparent.[48] Much of this capacity was built by Crystal Holdings at the start of the partnership, as the company's directors were experienced in commercial farming and fully invested in making the venture successful. Furthermore, they had a good relationships with timber and sugar mills as well as agricultural supply companies, which paved the way for trade contracts and a viable business plan. Outside of Crystal Holdings, the

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[46] V. Dube, personal communication, 13 March 2015

[47] C. Bhembe, personal communication, 13 November 2015

[48] K. Pretorius, personal communication, 13 November 2015
R. Williams, personal communication, 14 November 2015

business acumen and extensive networks of the CEO were also a core factor in Ithuba's rising success. The board is strong and the company is run by capable managers with experience in the industry.

4.5.1.3. Accountability and support

Lack of effective and sufficient post-settlement support from government is a common complaint of CPIs and the civil society organisations supporting them. Initially, the AmaNgcolosi Community Trust was not at all unique in this. Once the land was transferred, the RLCC did a messy job of assisting with the joint-venture partnership, and then withdrew all financial and technical support out of anger that the Trust did not follow their shifting guidance. Only years later, after Ithuba had proven itself as a viable and successful company, did the government start providing financial support.

Despite this, in a 2014 interview, the Ithuba CEO could not stop singing the praises of the RLCC in Pietermaritzburg. "Whenever we have any problems or questions, we just go to the office in Pietermaritzburg and they provide us with whatever advice and assistance we need."[49] He repeatedly thanked government for its excellent support and assistance. This is strikingly different than the experience of most land claim communities in KZN, and it does not it line up with the accounts of other trustees and managers regarding RLCC involvement. This relationship is queried in more depth in Section 5.2.3.

[49] D. Cele, personal communication, 2 February 2016

4.5.2. Reaping benefits

The profits from the Ithuba are used to benefit claimants, and the Ngcolosi community as a whole. With these funds, the Trust pays out annual dividends to the 376 beneficiaries. The dividend amount has increased annually. The Trust has also financed and supported the following community development initiatives, many of which benefit the Amangcolosi as a whole:

- the building of five classrooms at Dulumbi,
- installation of 11 dip tanks for cattle immunisations
- installation of a water scheme for some communities
- electrification of some communities
- a youth soccer league
- university bursaries for students in the community
- 10 cooperative gardens in which mostly women plant crops for subsistence and sale
- a computer lab for community use
- transportation for students to school

Interviews overflowed with appreciation for Ithuba's work in the community::

> "Ithuba is very much involved; they helped us when there was water shortage. When there is an outbreak of livestock disease Ithuba arranges for agricultural advisors to come and vaccinate cattle."[50]

> "In other situations, for families who have nothing, Ithuba will donate coffins for their loved one's funerals."[51]

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[50] S. Mkhize, personal communication, 2 February 2014.

[51] V. Dube, personal communication, 2 February 2014.

> "We are grateful for the development that [Ithuba] did for us .We are making money [through the cooperative gardens], there are customers buying and money is banked. We are thankful."[52]

4.5.3. Employment

Perhaps the most powerful impact of the project is through employment. As of February 2014, Ithuba employed 538 people.[53] Responses vary widely on how many of these are also beneficiaries of the claim - some say most are, others say most are not beneficiaries. From day one, the company instituted very well-considered human resource practices.[54] The following factors are core to maintaining the morale and allegiance of Ithuba employees:

1. Secure employment with fair wages and treatment, UIF, leave, etc. (On previous farms they were not registered as employees.)
2. Workers council, which allows them to air their grievances and be part of decision-making process
3. Company culture of mutual respect and community ownership

As explained by a timber worker:

> "Ithuba has made a big difference in our lives. … We are paid far better than what we earned under white people… Also, a lot more people are employed who never used to work before. Even the work environment changed; now we are treated with respect whereas before they would tell you anything, you were a slave. Now that the land has changed hands, management respects us and they ask for our opinions. That is why Ithuba is so successful and growing because we as workers also have input and air our opinions about the work we do. … We are prepared to work hard. We end up not feeling the hardship in our hearts because we are paid fairly. If maybe there was a mistake in your pay it is attended to and you get your money as you

[52] M. Mabuya, personal communication, 2 February 2014.

[53] D. Cele, personal communication, 2 February 2014.

[54] R. Williams, personal communication, 14 November 2015.

> should have and that is the greatest motivation - that you will receive what you have worked for."[55]

The founding management team instituted a workers' council, in which elected shop stewards from each area of the business meet monthly with senior management to relay the concerns of staff and have the opportunity to weigh in on company decisions.[56] As one worker explained,

> "We sit down with management and discuss how much will the wages be increased by. They discuss that with us, they do not do it unilaterally … The same applies with disciplinary hearings - we get called in if there is an employee who has a disciplinary case. We sit down and solve that problem. […] And also, as workers there are suggestions you make and you see them being implemented and contributing to the growth of the company. … Previous management did not treat us as well as Ithuba does. Before Ithuba we used to work and in the end we will only receive R50.00 bonus per annum. We have seen change with Ithuba, now we get a healthy bonus at the end of the year.[57]

Ithuba culture was open and respectful, and there was not a strong enforcement of hierarchy. This built a strong morale amongst workers, as some of the following quotes from field interviews attest to:

> "I was encouraged by all this knowledge that I gained and I realised that you do not have to look down on somebody who works with a hoe or look down on someone who fell trees because they gain knowledge in their work," - Sugar cane worker.[58]

> "For most of us it was out first time to work somewhere like that. When you get to the office, everybody is happy. You are laughing until the sun sets." - Former trustee and maintenance manager[59]

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[55] T. Mchunu, personal communication, 2 February 2014

[56] K. Pretorius, personal communication, 12 March 2015

[57] E. Myeza, personal communication, 2 February 2014

[58] J. Mbatha, personal communication, 2 February 2014

[59] S. Bhembe, personal communication, 13 November 2015

> "People are very proud to work for Ithuba; one was saying that sometimes he wears his Ithuba jacket in Greytown or Pietermaritzburg just to hear people ask, 'Who you working for?' 'I work for Ithuba.' They are very proud." - CEO.[60]

Such results from a land reform project in South Africa are, needless to say, extraordinary. It leads one to believe that either the institutional leadership and structures must be exceptional, or that there is another story which is not being told. In actuality, both are true.

4.6. Difficulties faced

4.6.1. Challenges at Mkuzangwe

When the government approved the Mkhabela land claim, the approved settlement also included a settlement planning grant of R384,480, and restitution discretionary grants of R801,000. (DRDLR, 2013) After the fallout with the regional Commission and Crystal Holdings, these grants were withheld. The regional officers argued that since an interdict had been put in place to prevent them from interfering obstructively in the claim, they would not be involved at all.[61] (DRDLR, 2013)

Furthermore, the land restored to the Amakhabela was less productive than the Ngcolosi land. Much of the timber was still young, and most of the farmers had cleared the land of every last tree before turning it over the Gayede Trust. Raising the necessary capital was a struggle, as young timber would not be ready to harvest for years to come, and so could not be used for credit. Unlike Ithuba, the farm had only a very small section sugar cane, which has a shorter time to harvest and is thus better placed for credit.[62] Crystal Holdings, and the Mkuzangwe

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[60] D. Cele, personal communication, 2 February 2014

[61] S. Hlophe, personal communication, 14 Nov 2015

[62] P. Armstrong, personal communication, 22 January 2016

director hired to manage the farms, struggled to get things off the ground without a cent of capital.

As with Ithuba, Crystal Holdings put up their own houses as guarantees to obtain second hand equipment, and provided the money for the first month of salaries.[63] Mkuzangwe harvested and sold what timber they could, and the farms were operational, if struggling. When Crystal Holdings was was charged with theft at Ithuba, there was division within the Gayede Trustees on whether to terminate their own partnership with the company. Ultimately, they retained the partnership.[64] However, with the loss of Ithuba, its prize farm, and with fallouts in relationships with commercial partners, Crystal Holdings was losing viability. In 2013, the company went bankrupt, and their shares in Mkuzangwe were turned over to AFGRI, one of their debtors. AFGRI was not interested in investing any funds into the project, and the farms went into disrepair, with people chopping down trees and selling the timber individually.[65]

Around this time, the son of the late iNkosi Dlomo decided to do something about the condition of the farms that his father had worked hard to win back for the community. He wrote a letter to government for assistance. In 2013 the Amakhabela had a meeting with the National Parliamentary Committee in regards to the failure of the Pietermaritzburg office to provide them with support, and the non-payment of the promised grants. The Committee ruled that the RLCC had wronged the community, and must provide them with assistance. (DRDLR, 2013) However,

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[63] S. Hlophe, personal communication, 14 Nov 2015

[64] D. Khumalo, personal communication, 3 December 2015

[65] P. Armstrong, personal communication, 22 January 2016
S. Hlophe, personal communication, 14 Nov 2015
S. Kunene, personal communication, 15 November 2015

this support has not yet materialised, even after three subsequent visits by the parliamentary committee to Kranskop to see the farms.[66]

The new management has a formidable task ahead, with 18,000ha of land to manage. There are still outstanding debts, both to agricultural supply companies and to SARS. Like the Amangcolosi Community Trust, Gayede is committed to managing their land as a commercial farm, although during the current drought they are allowing their community and a neighbouring community to use the land for grazing. Although the Gayede Trust itself doesn't own any cattle, stock theft amongst the cattle on their land has become a problem. There is a 7000ha game farm which has been hijacked by a former employee who is bringing tourists to hunt their for his own profit, with no permission from or payment to the trust. Water is a big challenge; the drought is compounded by dams which have fallen into disrepair, causing difficulties for both the cattle and the game.[67]

The new management is employing 150 people, but they are still in desperate need of capital funding, as well as skilled managers. They are verifying the initial 267 beneficiaries, and have a list of more potential claimants who are being verified. They have submitted business plans to the government, and were planning to host the first AGM at the end of 2015. They have started making plans to provide bursaries for youth in the community to study agriculture, and to support a cooperative farming project for beneficiaries on part of the land. They are hoping that

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[66] S. Hlophe, personal communication, 14 Nov 2015
D. Khumalo, personal communication, 3 December 2015

[67] S. Kunene, personal communication, 15 November 2015

the government will provide them with financing and support, now that they have a new board and are getting things in order.

Beneficiaries are supportive, but there is tension with some who want to be on the board or be otherwise involved. “They think we eat money here”, says the new farm manager from their office at the former homestead of a white farmer, in an empty outbuilding with few rooms and very little furniture. “They don’t understand that this is business - in business, you can’t just eat money. … They think there is a lot of money, they want that money. … The tension can is very bad. It is a lot of pressure for us to live under, the friction.”[68]

4.6.2. Challenges at Ithuba

Despite its annual profits, beneficiary dividends, and shining reputation as model of land restitution,[69] all is not well at Ithuba. In discussions with Ithuba leadership, the following challenges were raised:

High Turnover: Recent years have seen very high turnover in management, with senior managers often lasting only a year or two. When asked why, no one could provide a clear answer, but repeatedly suggested it was the responsibility of the executive team to explore and address this.[70]

Quality of farming declining: Several interviewees noted that there has been a visible decline in the standards of Ithuba’s crops in recent years. Weeds are rampant, and the cane is

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[68] Ibid.

[69] For media coverage, see SACGA, 2011; AgriTV, 2012; Dardagen, 2012; DRDLR 2012b; New school for KZN learners, 2012

[70] A. Mabuya, personal communication, 13 March 2015
R. Cele, personal communication, 13 March 2015

much shorter than in previous years. Ithuba is ordering a fraction of the amount of fertiliser and pesticides it used to order, suggesting a change in how the agriculture is managed.[71]

Maintaining board continuity & integrity. Current trustees expressed concern that as new generations of leadership come in, the initiative could be put in jeopardy. If Trustees start prioritising personal interests, it could be downfall of Ithuba. One elderly trustee and founder of the claim feels this has already begun to happen.[72]

Competing claims: Since the reopening of land claims, there is at least one claim that has been placed on Ithuba land. The Amakhabela also plan to fight for their land once they are functioning properly and can make a strong case.[73] (KZN Violence Monitor, 2013) Ithuba is, in the meantime, interested in acquiring more land, through both claims and purchase.[74]

In interviews with those outside of Ithuba and the Amangcolosi Trust, deeper allegations came to light. Some community members feel the Trust has been hijacked by certain members of the current leadership, perhaps even in collusion with government officials. Over the last few years there have been reports of large, irregular payments of Trust funds to individuals, and Trust leadership is consistently dodging member requests to see financial statements. In the same time period, some key individuals in management and governance were dismissed or pushed out.

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[71] R. Cele, personal communication, 13 November 2015
G. Morgan, personal communication, 13 November 2015
R. Williams, personal communication, 14 November 2015

[72] R. Cele, personal communication, 13 March 2015
V. Dube, personal communication, 13 March 2015
M. Ludonga, personal communication, 13 March 2015

[73] K. Pretorius, personal communication, 13 March 2015
S. Kunene, personal communication, 15 November, 2015

[74] V. Dube, personal communication, 13 November 2015

This has resulted in court cases from both sides, and intense conflict over who is controlling the Trust.

On 6 November 2015, the sons of a founding claimant submitted a memorandum to the Amangcolosi Trust Chairman, complaining of "nepotism and fraud" and demanding resignation of the CEO. (Khathi, J & Khathi, M, 2015) It lists the following charges:

- Building of school and a church without AGM resolution
- Spending of R1.1 million for school construction contract for only four small classrooms, and without putting the contract to tender.
- Building of computer lab without AGM resolution and without tendering construction
- Building a Lutheran church, which is of no direct benefit to the community, only to the chairman who is a member of that church
- Giving bursaries to the children of non-beneficiaries
- Installing electricity and water scheme without AGM resolution
- Spending money on community gardens without AGM resolution
- Purchasing Fortuner as a gift for the chief without an AGM resolution
- Demolition of farm buildings at Vitoli and Palm Grove without informing that community and providing rationale
- The LIMCO trucking company used by Ithuba is owned by CEO's brother in law, and no trucking tender was ever put out. [Ithuba purchased trucks which were always sufficient for transporting cane and timber; according to some these are now sitting unused.]
- Farm houses are being rented out; claimants don't have details on where the funds are going.
- Non-beneficiaries are being paid annual stipends and benefiting from trust funds.

- Audited financial statements are not provided to or accessible by claimants
- The CEO is employing relatives to run the business
- They and he are overpaid.
- Ithuba employees have been taken to other farms, such as Cele and Zubane, to work without approval by the Trust or report on how much was spent for this, and despite the fact that Ithuba farms are not in good shape. [Ithuba CEO is also on the Board of Trustees for these farms]
- An Ithuba truck was sold to a trustee for only R30,000, and was never advertised for sale.

To date the administration has avoided confrontation and refused to respond to charges .

5. Discussion & Analysis

At the time of writing, just over ten years after receiving their land, the two Trusts are in very different positions. The Amangcolosi Community Trust has a reputable agricultural company, which has been turning profit for years and providing shareholder payments and community upliftment projects. However, this is now jeopardised by power struggles and declining management standards, and the trustees may soon be taken to court for corruption

Gayede, on the other hand, is starting almost from scratch with little to show for the last ten years. They have a new board, committed team, a skeptical community, and promises from government for much needed capital that has yet to materialise.

This research set out to understand what factors determined the initial success of the Amangcolosi Community Trust. Many land claims have failed even under promising conditions (See Lahiff, Davis, & Manenzhe, 2012) Why did it work for the Amangcolosi? This chapter will explore the core reasons for their success where others have failed, particularly Gayede, which was working in very similar conditions. It will then explore where were the fissures in governance or operations that have allowed for elite capture at the Trust. Finally, it will explore the implications of the Ngcolosi experience for governance of the commons.

5.1. Evaluating Success

5.1.1. Is the Amangcolosi Community Trust a success?

5.1.1.1. Measuring Success

With a profitable agricultural company, annual dividends to the community, a strong leadership team, and support of the tribal authority and the DRDLR, the Amangcolosi

Community Trust seems to be an obvious success. However, it is useful to query what successful CPI actually means, and whether the Trust meets that definition.

The Legal Entity Assessment Project (LEAP) was started in 1998, to focus on why land reform CPIs appeared to be failing.

> "[LEAP] questioned the widely held view that the land reform communal property associations (CPAs) and trusts needed capacity building. Instead, LEAP argued that there were no clear indicators for assessing success or failure and that these micro institutions were overloaded with development objectives that often were the proper responsibility of government." (Mdukatshani, 2012)

Ultimately, LEAP suggested tenure security should be the primary mandate of CPIs, and the foundation for other development objectives. (Ibid.) The primary goals of a CPI should be to

1. enable transfer of land for the group, thereby securing the group's tenure
2. provide security of tenure for the members of the group
3. provide democratic, accountable, equitable governance
4. manage natural resources sustainably
5. manage development
6. ensure gender equity. (Cousins & Hornby, 2002)

The AmaNgcolosi Community Trust has enabled transfer of land and secured group tenure. Claimants also have security of tenure as beneficiaries of the trust, although they do not have usage rights for the land. Democratic, accountable, and equitable governance systems were in place, although the quality of governance ha seemingly declined. (See Sections 4.5.1 & 5.2.6) Development is managed through profit sharing and development projects. Gender equity is enshrined in the Trust Deed (ACT, 2012), and women have membership and land rights; however, there is currently no female representation on the Board of Trustees and management

positions are dominated by men. Is commercial farming a good way to manage natural resources sustainably? This is a longer discussion outside the scope of this report, but for these purposes, the land is being used in away that will allow for long-term use and benefit to the community.

So with caveats on gender equity and recent governance issues, the Trust is relatively successful by LEAP standards. Furthermore, it is paying taxes, providing employment, and contributing to community development and the local rural economy, which fulfils the state's ambitions for land reform.

5.1.1.2. Factors contributing to success

Research from the Centre for Applied Social Research identified the following factors contributing to success and failure of settled land reform projects (as cited in SDC, 2007a):

Factors contributing to success	• *Factors contributing to failure*
• Skilled and experienced leadership. • Active participation of claimant structures in project steering committees. • Availability and utilisation of settlement planning and discretionary grants. • Sustained support from government and NGOs. • Strategic partnerships, special purpose vehicles, mentoring and appointment of managers.	• Attempts to manage business enterprises under communal management. • Project steering committees that close out participation of members. • Inappropriately structured and supported legal entities. • Unclear determination of individual rights and benefits. • Lack of clarity about roles and responsibilities leading to conflict. • Lack of management and financial skills to run commercial enterprises. • Poor quality/inadequately monitored service provisions.

FIGURE 3: FACTORS CONTRIBUTING TO LAND REFORM SUCCESS & FAILURE (SDC 2007A)

Ithuba definitively has only two out of the five 'factors contributing to success': skilled and experienced leadership, and a strategic partnership. The settlement planning grants promised by government were withheld. There were no NGOs involved, and sustained government support only came well after they had proved themselves successful. Research findings cannot conclusively report on whether there was active participation of claimants, but given the tone of interviews with the Trust leadership, and the way the story of Ithuba's development and success is told, it does not seem that claimants played a forefront role in project design and decision making. (See Section 5.1.4 on leadership.)

The Trust, did however, manage to avoid most of the factors leading to failure. The farms were managed through Ithuba, a separate legal entity, rather than through the Trust itself, which too often results in entangled finances and reporting structures, insufficient technical capacity, and failed farming operations for CPIs. Even if decision making did not meet the ideal standards of democracy, members were sufficiently involved and informed to retain their support for the Trust. As the farms were run commercially, and the land not accessible to claimants for individual use, the issue of claimant rights and benefits was simpler. The right human resource systems were in place and there was enough unity of purpose amongst the leadership to avoid significant conflict. Crystal Holdings helped to bring management skills, and some of the Trustees had business experience as well; furthermore, they had the foresight to identify and engage the current CEO due to his financial expertise.

So although the Trust and Ithuba were by no means perfect, enough of the core systems, capabilities and good governance principles were in place to see the potential of the land and the

JV partnership to their fruition. Three core factors stand out as foundational to the Ngcolosi success:

1. Good fertile land in a land reform friendly industry,
2. Strong joint-venture partner, and
3. Strong and united leadership, including support of the traditional authority.

These inputs combined to create to financial viability, a high level of CPI capacity, and ongoing community support for Trust leadership.



FIGURE 4: AMANGCOLOSI KEYS TO SUCCESS

The following sections will look at each of these three factors and their outcomes. Subsequent changes in governance and management standards, and the drivers of those, will be explored in the subsequent section.

5.1.2. The Land and the industry

5.1.2.1. The quality of land

An Ngcolosi leader from the Tribal Authority at Hillcrest recalled, "When they opened the process for land claims, everyone was trying to get their hands on those farms at Ntunjambili."[75] The land restored to the Amangcolosi was highly fertile and productive, which is perhaps the most important criteria in the success of any agricultural venture. Furthermore, the timber was 'in cycle', meaning that every year, a portion of it was ready for harvest. Finally, the farms included large sections of sugar cane land which, as noted below, is useful for accessing credit.[76]

As noted in the findings, the Ngcolosi claim was not without contestation. They may have their forefathers to thank for selecting a good location, or they may owe their claim to savvy leadership and a cozy relationship with the RLCC. This will be explored in more detail in 5.2.2. Regardless, the base fertility of their land, a factor over which they have limited control, has been a core factor in their success.

5.1.2.2. Land reform friendly industries

In South Africa's highly competitive, globalised agricultural markets, the most well resourced of farms may struggle to compete. Land reform communities, which start on the back foot in terms of capacity, resources, and economic integration, are even more hard pressed to succeed in these markets. However, sugar and timber, the main commodities farmed by both of the case studies in this report, have been the two sectors most responsive to land reform. Sugar

[75] M. Ngcolosi, personal communication, 26 November 2015

[76] R. Williams, personal communication, 19 February 2016

and timber mills are dependant on a steady supply of cane and timber for sufficient turnover; if farms are unproductive, then the mills are unproductive. Milling companies have thus made extensive efforts to assist land reform farmers in keeping production levels high. As noted by David Mayson (2003), the sugar industry has a long history of working with the black farmers:

> In the 1970s the sugar industry recognised the potential for expanding the throughput of its mills by utilising the access that black farmers had to communal land in the homelands, so it began encouraging the development of small-scale cane growing. This was possible on land that is communally held, a tenure status which precludes the land being used as collateral for credit. The nature of sugar cane production means that the crop itself can be used as collateral. The other crop which has been grown on communal land in this way is timber.

By 2012, 21% of sugar cane land under freehold had been transferred to black ownership, far surpassing the 7% transferred at the time in the rest of the country. (Sherry, 2012)

As the RLCC withheld their capitalisation grants due to the Crystal Holdings relationship, Ithuba had to find large sums of start up capital to finance equipment, labour, and inputs. Good relationships with the mills, access to credit based on future harvest, and a accessible market for their produce were critical to getting farm operations off the ground, and turning a profit in the early years of the business, which kept the community happy.

5.1.3. The Joint-venture (JV) partnership

5.1.2.1. The Partnership structure

Since 2005, strategic partnerships have become the norm in high value restitution cases. Lahiff, Davis & Manenzhe (2012), attribute this to the “higher quality of transferred land, the technical and financial challenges faced by large claimant communities in operating the farms,

and perhaps most importantly, growing pressure on communities from state agencies…to avoid a repetition of the well publicised collapse of earlier restitution projects." (p. 10) From interviews, it does not seem that amongst the leadership of the Kranskop claims the option of using the land for communal or individual farming and grazing was ever seriously considered. There was a lot of pressure to maintain the employment of the hundreds of farmworkers on the claimed land. They had also seen the 'failed' land reform projects around them and they wanted a different outcome.[77] Crystal Holdings was key to that outcome.

Strategic partnerships can be structured in a number of ways, with detailed agreements on how capital is sourced, benefits are distributed, and risks are shared. Generally, ownership of land is vested in the claimants, through a CPA or trust. The claimant community and private partner(s) establish an operating company, with shares usually split 50/50 or 60/40. The company then leases the farmland from the community property institution. Rights and responsibilities are spelled out in the shareholder agreement, lease agreement, and/or other documents. The JV partner usually takes the lead in acquiring the capital, whether from their own resources or through loans and investors. They are also normally responsible for financial oversight and day to day operations of the farming company. Once the company makes a surplus (which may take a few or many years), profits are either reinvested in the company, or paid as dividends to the shareholders. (Lahiff, Davis & Manenzhe, 2012)

This was the model used for both Ithuba and Mkuzangwe. Crystal Holdings brought on skilled managers, used their relationships with mills to get capital advances on the upcoming

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[77] V. Dube, personal communication, 13 March 2015
M. Ludonga, personal communication, 13 March 2015

cane harvest, and worked intensively to get Ithuba and Mkuzangwe off the ground. With access to some of the most fertile land in KZN, the project was appealing both technically and financially for Crystal Holdings, and the directors were supportive of land reform, and wanted to be part of making it work. The joint venture companies paid leases (albeit small) to their respective trusts, and the profits from the companies were divided 60/40 between the Trusts and Crystal Holdings. Each trust was then responsible for using the profits to benefit the community, through development projects or shareholder dividends.[78]

5.1.2.2. Crystal Holdings Contribution

When restitution lands are farmed as a going concern, claimants have few to no land usage rights; their benefit from the restored land is thus entirely dependent on profitable commercial agriculture. In a 2010 Farmers Weekly article (Phillips, 2010), the General Manager of Ithuba (brought on by Crystal Holdings) made the following suggestions to other land reform communities farming commercially:

- Partner with proven farming companies;
- Employ experienced farm management team while developing the available staff through training and mentorship;
- Maximise outputs through effective agricultural practices;
- Make use of the experience of the successful land reform farms to set up a new farming ventures; and
- Good record keeping and accounting practices could be used when applying for bridging finance.

These highlight the critical component of agricultural expertise. Crystal Holdings brought to Ithuba technical expertise on managing commercial farmland, good business sense,

[78] V. Dube, personal communication, 13 March 2015
D. Khumalo, personal communication, 3 December 2015

and strong relationships with local suppliers and purchasers. When these were put to use on very fertile land in accommodating markets, the potential for agricultural success was high. Coming from a corporate background, the general manager placed great importance not only on expert agricultural management, but also on creating the right organisational structures, effective human resource policies, and strong business management.[79] The Crystal Holdings directors also recall working intensively with the Trust to put in place strong governance structures that were transparent and financially sound.

Informant responses on whether Crystal Holdings contributed capital funds varied substantially. Regardless of whether or not they put in their own funds, the majority of Ithuba's critical start-up capital was raised on the basis of the fertile land and the reputations of the Crystal Holdings director and the general manager. As the Ithuba CEO reported:

> When we started in 2005, we didn't have working capital. We actually had to try and make it work ourselves, hence the JV partner came in. But he didn't come with any money, the only thing that he came with was the weight behind the business, as they are known in the industry The commercial banks will not even look at you as a black newly formed company; by having them as our JVs it actually helped us to manage to get equipment on hire purchase.[80]

The Crystal Holdings partnership ended with embezzlement charges and and out-of-court settlement at Ithuba, and at Mkuzangwe it ended with bankruptcy. However, most interviewees at Ithuba recognised that Crystal Holdings was essential to getting their business off the ground.

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[79] L. Williams, personal communication, 14 November 2013
R. Williams, personal communication, 14 November 2013
P. Armstrong, personal communication, 22 January 2016

[80] D. Cele, personal communication, 2 February 2014

One claimant, who is spearheading efforts to overthrow the current leadership, admitted in reference to Crystal Holdings, “Even white people are good sometimes.” [81]

5.1.4. Strong and united leadership

Chipkin & Ngquluba (2008) suggest that social cohesion, defined as feelings of solidarity among compatriots, is a proxy measure for the state of governance: where there is high social cohesion, it is much more likely that government will be effective, transparent, and democratic. Research by the Centre for Applied Social Research found that community conflict undermined development in 34% of the projects studied. (SDC, 2007b, p. 259). It categorised conflict as disagreement:

- within communities,
- within leadership structures, or
- between communities and their leadership structures.

Research limitations did not allow for in-depth research with the majority of claimants, and so this report cannot comment with any certainty on the general level of social cohesion or conflict within the AmaNgcolosi community. However, discussions around why the Ithuba model succeeded reveal purposeful efforts to build unity and cohesion in two of the three areas above: within the leadership, and between the leadership and the community. An additional area of cohesion is among the company and its employees, which is critical to operational success of the business.

[81] C. Bhembe, personal communication, 26 November 2015

5.1.3.1. How leadership maintained unity

When asked why the Amangcolosi have succeeded where so many others failed, the Ngcolosi chief responded:

> "The secret of the success as we can see it, it lies on the these people here in the committee, how they operate, how they select directors and staff for managing the farm. … The secret is within these people here. If these people were not working hands together, if they were not united, nothing would have been a success. It is because of this knowledge and unity.[82]

At the time of the claim and the subsequent land transfer, much of the community was hesitant and suspicious, as people were convinced the farms were going to fail and everyone would lose their jobs. It was the work of the Trustees to prove them wrong, and to garner their trust and support, which would be essential if the venture was to succeed. Their approach to this was two-fold. The first method of building trust was intensive communication efforts. Dietz, Ostrom & Stern (2003) note the importance of communication in effective commons governance, not only to provide information but also to develop trust. Those leading the claim, and later the trustees, held regular meetings to explain how they planned to use the land, and convince claimants that this was the right path. This was a long and ongoing process, which still continues.

Sustainable Rural Development, an NGO from the Eastern Cape, was one of many organisations to visit Ithuba as a learning site for land reform communities. Their newsletter reported the following about the trip:

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[82] N. Ngcolosi, personal communication, 14 March 2015.

> "What's their secret one might ask? According to the farming operations manager… and the Ngcolosi Community Trust chairperson… it's sheer hard work and the ability to make tough decisions and to stick to them. This meant community leadership had to remain strong and focused in persuading community members (the shareholders in Ithuba Agriculture) that they would not get rich overnight and to invest any initial profits along the way back into the company." (SURUDEC, 2011)

The second method of maintaining unity within the leadership and between leadership and community was a firm leadership style. The Ithuba operations manager noted the importance of avoiding or resolving conflict within the leadership:

> If you don't have peace, you don't have a business. … They [Ithuba/Trust leadership] got rid of people that tried to create a divide. They were taken off the directors' board and sorted out. If you don't take out those rotten apples you won't continue. 2% in any situation, or 3%, can actually bugger up the whole operation.[83]

A founding trustee also commented on the need to get rid of those who were "disuniting" them:

> If you are guilty of doing a mess you are out. … That one sends a message to the people. [They see that] if you mess around with those people, they will show you the door. And it makes the people have a bit of trust in us.[84]

One does not get the sense that the management style of the trustees was particularly open and democratic. Communication with the claimant community is usually discussed in terms of 'bringing them around', explaining and teaching them about how the project works and convincing the beneficiaries to support the direction chosen by leadership. When reflecting on the AGMs, a conversation with Trustees went as follows:

> You found the first meeting was a very bad meeting. The second was a little bit better. At the third one there was still some complaining about this and that. At the fourth one,

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[83] K. Pretorius, personal communication, 14 November 2015

[84] V. Dube, personal communication, 14 November 2015

> things had come alright, and the one which was had last year it was a SMOOTH one! Everything went well. We were happy, because we had been explaining to them.
>
> What he is trying to say is that initially there were tensions that we had to normalise… now they seem to understand what the process is for all these meetings.[85]

It is less about getting input from the beneficiaries, and more about maintaining their support.[86] Indeed, one of the beneficiaries who is disgruntled with current leadership stated repeatedly that the Trust and Ithuba are like government in the area. They spend the money and make the decisions; they are in control.[87] It may be that it was initially more democratic, and that the shift towards executive decision making has accompanied the shifts in power. On the other hand, it may be that the AmaNgcolosi benefited from 'benevolent dictator' style of leadership - with the best interests of the community at heart, but with a firm fist that did not allow a variety of interests and perspectives to paralyse decision making or interfere with strategy.

5.1.3.2. Business success and community cohesion

This is not too say that community support for Ithuba is not genuine. As Ithuba began to bring in revenue, and certainly as beneficiaries began to receive shareholder dividends and see community projects take shape, maintaining support between community and leadership became less and less of a challenge. Claimants could see the long term potential of the project, as well as its viability, and therefore had less reason to object. The importance of short term benefits to the

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[85] M. Sibiya, personal communication, 14 March 2015
V. Dube, personal communication, 14 March 2015

[86] It is important to note that this was the perception of the researcher, supported by the tone and content of interviews. However, the findings are by no means conclusive; the Trust processes may have been more democratic than it seems.

[87] C. Bhembe, personal communication, 26 November 2015.

community was noted in the literature on why commercial partnerships fail. When years pass and the claimant community sees no benefit from their land, they are frustrated, resulting in disputes, power struggles, and loss of faith in the partnership. (Vumelana Advisory Fund, 2014) Leadership then becomes paralysed by divisions, spending most of its energies managing community dynamics and politics, and is unable to effectively manage the CPI and related business. The business suffers, resulting in less profit, resulting in further frustration by the community. Business success and community support are thus mutually reinforcing in land reform projects:

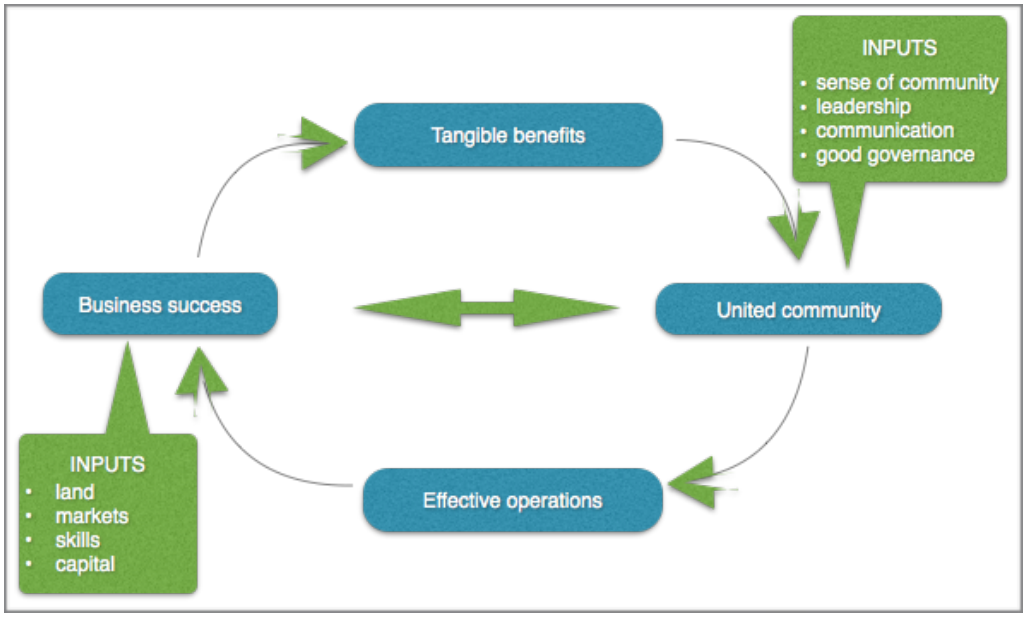


FIGURE 5: RELATIONSHIP BETWEEN BUSINESS SUCCESS AND COMMUNITY COHESION

The operations managers at Ithuba had a very different leadership style than the trustees. The level of morale described in Section 4.5.3, the sense of pride and ownership in the company, were carefully built and nurtured by the founding team. This was done through the workers' councils, an open and lateral management style, fair treatment of employees, and the building of

a common vision. Reflecting on how they initially brought everyone together, the original operations manager recalls:

> In the beginning, it was 12 or 13 individual farms [coming together from the claim], and everyone had their own way of doing things. We basically had to streamline that so that everyone had the same vision. For the first three, four, five months there was a lot of tugging and pulling. But it's basically having a vision and getting everyone to understand that vision and accept that vision as the way your going. And then you have buy-in and everyone is pulling in the same direction. That's what I do. How do you articulate the vision? It's having excitement about what you're doing and portraying excitement, saying "next week we are doing this, the month after we are doing that, the month after we are doing that." Everyone understands that there is a process, and that the process is actually taking us forward to something better.[88]

Employee buy-in to Ithuba's vision was one factor which set it apart from other commercial agricultural companies, and allowed operations and productivity to soar. As some employees were also beneficiaries who shared in Ithuba's profits, the success of the business further improved employee morale and productivity, again a virtuous cycle.

5.1.3.3. Support from the Tribal Authority

One cannot look at unity and leadership in the Amangcolosi community without discussing the role of the traditional authority, particularly the chief. Like most rural KZN communities, the Amangcolosi are firmly rooted in their tribal identity, and the traditional authority plays an important role in leadership and mediation. Although the chief at the time of the claim was supportive, the land claim was submitted on behalf of individual claimants, not in the name of the tribal authority. The current chief is a figurehead of the land claim. He is not officially a registered trustee (ACT, 2012), but is sometimes referred to as a trustee. (Ithuba

[88] R. Williams, personal communication, 14 November 2015

Agriculture, 2010) There are no other members of the tribal council on the Board of Trustees. The chief helps the Trust in communicating to the community, serving as a leader, and mediating disputes: "The Tribal Council helps to solve problems when we have conflicts, disputes among the committees or members. They decide who is right and wrong."[89]

The iNkosi recalls how when the land claim was underway, he felt it would be his responsibility to see it succeed, and was daunted by the task. However, seeing the skills available in the community and on the management team, he realised it would be possible to make it work, and now sees the community reaping the benefit:

> We [the Inkosi and induna] have many roles in the life of Ithuba and the Trust. We have seen some changes since it started to operate. They made great impact in the community - classrooms, cattle dips, these things make a big impact. So our aim and goal is that it must be sustained so we continue to get help from Ithuba, because if there is ever something we need, we can come to Ithuba for it.[90]

The relationship between the traditional authority and the Trust is mutually beneficial. The chieftaincy benefits from community development and positive morale resulting from Ithuba's success. In return, the iNkosi's support is important in keeping the community united behind the Trust. As noted by an Ithuba Director and Trustee:

> If you are not on good terms with iNkosi it is not easy. We sat down and said iNkosi must be part of this because he represents the community. If he has information about what happens here, he can easily answer and respond. We have made the right decision to make him part of what is happening.[91]

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[89] X. Dube, personal communication, 13 March 2015

[90] N. Ngcolosi, personal communication, 13 March 2015

[91] V. Dube, personal communication, 13 March 2015

The last sentence is significant, as it suggests that the involvement of the iNkosi is a choice. The Ngcolosi claim does exemplify an instance where the relationship with the tribal authority, if ambiguous, does not compromise the autonomy of the CPI. The Trust seems to be in an enviable position of having the support of the iNkosi, which is essential in maintaining the support of the community, without having to relinquish control over decisions and operations to the traditional authority. The previous chief passed away in the years between the lodging of the claim and the settlement of the claim. At the time the land was officially restored, the new chief had not yet been installed. This may have played a role in enhancing the autonomy of the Trust over the tribal authority.

Ithuba's profitability combined with effective leadership by trustees and support of the tribal authority were the keys to maintaining community support for the vision and decisions of the trustees. Although there were certainly those who wanted things done otherwise, the degree of community support behind the venture was sufficient to avoid embroiling the Trust in ongoing disputes.

5.1.5. Why Ithuba succeeded and Mkuzangwe failed

The Amangcolosi Community Trust succeeded because it had institutional capacity (technical/managerial and governance), and strong leadership (able to keep community united behind the CPI, and maintain the support of the tribal authority). Ithuba succeeded as a business because of its access to resources (fertile land in a friendly industry) and the commercial partnership (which provided access to expertise and financial capital).

Why did the neighbouring Mkhabela claim experience such different outcomes? Mkuzangwe also had access to fertile land, in the same industries; it shared the same commercial partner for access to expertise and capital. Information on Gayede Trust under its original board is limited, but there were clearly gaps in managerial capacity and governance.

The data available on Gayede reveals an unfortunately stereotypical CPI. Although the Board of Trustees held monthly meetings, not a single AGM was held. Some say this was simply because the Chairperson did not know he was supposed to hold an AGM. Others suggested that perhaps they were hesitant to meet with the community as things were not going well, or because they had something to hide.[92] The trustees had a five year term, but after eight years there had still been no new election. According to the new management, many of the Gayede claimants did not even know they were beneficiaries of the land reform project.[93]

Was this then, the weak link at Gayede? Not necessarily. Three informants intimately involved in the Mkhabela claim, including the manager and the JV partner, argue otherwise. The reasons they gave for Mkuzangwe's failure were relatively simple, and based on two of the most foundational inputs for a successful farm: land and money. If Gayede had been given the government settlement grants as promised, they would have had the finances necessary to cover initial capital costs and get the farms running, eventually building up a profitable enterprise. Without those grants, they had to scramble to raise the funds. This was much more difficult for Mkuzangwe than for Ithuba, as they had inherited primarily timber farms, which had either been

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[92] M. Hlophe, personal communication, 14 November 2015
D. Khumalo, personal communication, 3 December 2015

[93] S. Kunene, personal communication, 15 November 2015

fully razed or had only young timber not ready for harvest, and only a very small area of sugar cane. The amount of credit they could access from mills based on future harvest was therefore much smaller than for Ithuba. Furthermore, although their land is productive it is significantly less fertile than Ithuba's land, meaning that annual profits would be smaller, debts would take longer to repay, and the community would see less money coming back to the trust. Mkuzangwe fell apart simply because it could not services its debts, or, from another perspective, because it never received the support promised by government.[94]

Understanding what happened at Gayede sheds further light on the secret to success at Ithuba. When asked about the secret of their success, responses from the Amangcolosi usually included good leadership and hard work. These were important factors. However, if the previous farmers had left the farms in a different condition, so that the timber or cane was not harvestable or was insufficient for credit, it may be that Ithuba never would have gotten off the ground. If the farms had been less fertile, the community would have seen less return on their land, potentially bringing early division and conflict to the Trust.[95]

It is useful to note that timing and condition of farms at transfer is a critical issue in land reform. When farmers know their land is under claim, they often put fewer resources into maintaining the infrastructure and ensuring a good yield, as they may not be around to benefit from the harvest. The communities then receive land that is in poor condition, without viable harvests in the short term (as was the case with Gayede). In the case of the Ngcolosi claim, the

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[94] D. Khumalo, personal communication, 3 December 2015
P. Armstrong, personal communication, 22 January 2016
R. Williams, personal communication, 14 November 2015

[95] R. Williams, personal communication, 14 November 2015

RLCC discussed reimbursing the farmers for pesticides and fertiliser costs during the transfer period, so that the land would be in good shape when the communities received it. However, after settlement the RLCC never paid farmers (who say that the RLCC had committed to the idea), and their is an ongoing lawsuit against the RLCC by the farmers involved. (SCA, 2015). The sugar industry has recently negotiated with the DRDLR to implement land transfers along the cycle of cane so that harvests are not lost during the transfer period. (Dardagen, 2015)

5.2. Sources of conflict and capture

Recent years, and changes in management, have seen a slow shift in attitudes towards the Ithuba and Amangcolosi Community Trust leadership. Some former trustees and claimants feel that board trustees have begun to find ways of benefiting personally from Ithuba's prosperity, resulting in allegations of nepotism, embezzlement, and running the farms down.

An important aspect of the Ngcolosi success was their strong leadership and governance. The principle role of good governance is to prevent corruption, and yet there is widespread acknowledgement in the Ngcolosi and broader Kranskop community that some corruption has set in. Were the governance systems not as strong as initially supposed? Or is there another fissure in the structures, policies, and politics at the Trust that has allowed for personal interests to override the best interests of the claimants?

This section will look at the current conflict at the Amangcolosi Community Trust. The first two sections provide relevant context on the validity of their land claim and the role of the RLCC. The next three sections look at corruption within the Trust, what types of mechanisms for conflict resolution are being used, and the role of the traditional authority.

5.2.1. Narratives of dispossession

5.2.1.1. Competing claims

While the Amangcolosi have inarguably made a success of Ithuba, the underlying validity of their claim on the land is widely disputed, by the former famers and by other Zulu tribes. Commercial farmers whose land is/was under claim assert that their forefathers arrived on those farms in the 1800s, and no one was using the land at the time.[96]:

> Kranskop was different in that there wasn't a claim which was then validated and then farms were handed over. After years of attacks and murders and burning of the farms and everything, they did willing seller, willing buyer scenario. The farms were never validated.. they could've disputed it right back because the farms were actually inhabited in 1870-something. Graves on Biltmore, on Wonderfontein farm in Kranskop indicated that the farms were there way before black people lived there. Especially the Amangcolosi."[97]

Indeed, the Ngcolosi history actually accounts for why pioneering farmers might not find blacks in the Kranskop area in the 1800s - they had recently fled in the wars with King Dingane and others, and they returned to their land during the same period that white farmers had begun to settle and claim large farms in the area.

According to the Amakhabela, there is documented evidence that a good portion of the land claimed by the Amangcolosi is actually Mkhabela land. Many in the Kranskop area, even outside the two communities, support the Mkhabela claim.[98] A partner at Crystal Holdings recalls that initially the Ngcolosi trustees did not know the boundaries of their land, and when

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[96] G. Morgan, personal communication,13 November 2015

[97] R. Williams, personal communication, 14 November 2015

[98] L. Williams, personal communication, 14 November 2015

driven through it, were surprised at its extent. Deep in Ithuba land, in the corner furthest from the Mkhaba border, they found the homestead of an elderly widow. Her chief, she said, was Dlomo, the Mkhabela chief.[99]

The Amangcolosi, of course, disagree with the competing claims. Oral histories from the claimants tell of land evacuations by whites moving into the area, and labourers being evicted, both before and after 1913. They had consulted the indunas, and could show officials from the Department of Land Affairs the graves of their forefathers and their previous homesteads. Interviews told of a map was located by the RLCC which reinforced these claims, and photos found at a Cape Town museum of Ngcolosi elders on the land when they were young.[100] A list of people who had been evicted from the land was compiled, and the RLCC worked with them to verify the individual claimants. As the Ngcolosi claimants tell it,

> "We knew each other and where we were staying before eviction, so we could make a list of who was neighbouring us when we were still in the farms, before eviction. And we were helped by the office of the regional commissioner who compiled a list - it was their responsibility to ask question and ensure it was really the right people."[101]

> "Everyone came and put his name forward and the verification was done where they actually screened each and every individual, get the history of that household, how they were evicted and all that. The people who came forward were over 700 but only 376 were found to be the legitimate claimants.[102]

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[99] P. Armstrong, personal communication, 22 January 2016

[100] C. Njomane, personal communication, 14 March 2015
X. Dube, personal communication, 13 March 2015
V. Dube, personal communication, 13 March 2015

[101] V. Dube, personal communication, 13 March 2015

[102] D. Cele, personal communication, 2 February 2014

According to Mkhabela informants, in December 2004 they and the Amangcolosi were to meet with the RLCC project officer to verify the boundaries of the claim. The Amangcolosi met on the 19th, and the Amakhabela on the 20th. When the latter arrived at their meeting, much of their land had been already claimed by their neighbours, and the RLCC wasn't willing to change it or register competing claims. Some feel that RLCC officials benefitted by in supporting Amangcolosi claims to more fertile lands, and that this was the beginning of RLCC interference and personal interest in the two claims.[103]

The KZN Provincial Review of the Restitution Business Process (Forsyth, 2013) noted the problems caused by bundling land claims. The Amakhabela submitted their land claim nearly three years prior to the Amangcolosi. As the communities were both in the same area, the Commissioners coming from Pietermaritzburg suggested they process the claims jointly, for the sake of efficiency. Other accounts take it further, asserting that the two groups were actually putting in a joint claim, which they would later sort out 'under a tree'.[104] In any case, the processing, negotiation, and settlement of the claims was done jointly, despite the fact that the land portions they were each claiming were not 'coherent and contiguous' as required for the legal bundling of claims. The KZN Review notes a similar case of claim bundling:

> The solution of consolidating the land was apparently one that was imposed on communities who were not fully aware of the possible implications and consequences. In this case the conflict apparently came about because one area is more productive than the other. This is an in-built recipe for conflict and dispute between communities. A manager noted 'these kinds of cases are ticking time bombs' and generate volatile

[103] D. Khumalo, personal communication, 3 December 2015

[104] S. Hlophe, personal communication, 13 November 2015
D. Khumalo, personal communication, 3 December 2015
M. Sibiya, personal communication, 13 March 2015

> community dynamics. Mediators then have to be appointed, but this is not the solution. (p. 27)

When it was time to draw the boundaries of each claim, the RLCC essentially divvied up the land in question, giving preference to the Amangcolosi. So while some aspects of the bundling were likely efficient and posed no problem to the community, especially as ultimately the claims were separated, it allowed the Amangcolosi to claim without contestation land that may rightfully belong to the Amakhabela. As noted above, much of Ithuba's success can be traced to the specific portion of land it received, which was "by far" the more fertile portion.[105] Whatever the basis for determining the claim boundaries, the Regional Commissioner defined the future of the respective CPIs when she drew those particular lines on the map.

5.2.1.2. The 'Master narrative'

This case of disputed boundaries and competing rights at Kranskop is by no means unique. The original Land Restitution Act tried to address competing histories and overlapping land rights by approving claims only for dispossession from 1913 onwards, and only when racially motivated. However, as seen in these case studies, even those boundaries leave complexities that become impossible to untangle. There are many different historical narratives around the Kranskop land, and it may be that all of them - or parts of all of them - are true.

Cherryl Walker explores the idea of a 'master narrative': the overarching story of land dispossession and racial oppression in South Africa that fundamentally informs the restitution project. That story includes colonial wars of dispossession and white supremacist land policies; it includes forced removals and resettlements away from fertile land and economic centres; and it

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[105] R. Williams, personal communication, 19 February, 2016

includes the immense losses, in every sphere, suffered by black South Africans as the result of the land theft and removals.

While never questioning the validity of this master narrative, Walker (2000) explores the way in which it is understood and carried by dispossessed South Africans, particularly land claimants:

> "More often it is a very limited stock of phrases, drawn from a collectivised memory, that is presented [to the Commission]. The phrases, scripted elsewhere, have become part of the standard repertoire of those reporting their dispossession. ... 'We were forcibly removed', 'Before we were removed we lived in happiness and peace', 'We received peanuts for compensation'." (p. 3)

Claimants have access to a story, she continues, that is already written for them. The exact dates and timelines of dispossession are less relevant; events and personalities from the 1800s, or 1913, or since, are treated almost as if they are in the present day. (Ibid., p. 5). The historical figures and public themes of the master narrative serve very local, specific agendas and perspectives.

The master narrative informing land restitution, Walker argues, is too simple. It does not recognise competition among the dispossessed, it does not include notions of citizenship, of limited choices and what is in the interest of the broader public. It stops at the points of dispossession, and does not consider what has happened to communities and land in the subsequent years. This too-simple narrative results in a notion of restitution that is also too simple. (Ibid.) Furthermore, the South African population has grown ninefold (from 6 million in 1911 to 53 million in 2013), on the same amount of land, and rural economies have changed

dramatically. (Walker & Cousin, 2016). There can be no straightforward reversal of racially based land dispossession.

Mention of stock phrases used to describe dispossession echoes the concerns expressed in the 2014 Review of the Land Restitution programme (Genesis Analytics, 2014). The KZN evaluator noted that "specific case research was often replaced by a generic narrative of the history of apartheid legislation that was cut and pasted from one project file to another, without an evidence of project specific research." (Forsyth, 2013, p. 42) It seems the same 'master narrative' is repeated at every level, from the dispossessed, to the government officials, through to the Constitution. In a very politicised environment, with multiple competing claimants, "the responsibility of the Commission is to be both principled in its reading of the claim and the [Restitution] Act, and practical in its interventions. There is a terrible responsibility to get 'it' right, quickly." (Walker, 2000, p. 15) The result of this immense pressure is that the complex tangled narratives of land ownership, occupation, and dispossession are artificially simplified. This is compounded when claims are not well researched, and boundaries are influenced by multiple agendas.

At the time of the Ngcolosi and Mkhabela claims, the Commission was indeed under great pressure to speed up the settling of claims, and to show large amounts of land transferred. (CRLR, 2006) According to one interviewee, the RLCC was so eager to get the Kranskop land claims settled that once the farmers had agreed to sell, the actual claim validation was rushed to in order to quickly process and negotiate the land transfer.[106]

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[106] R. Williams, personal communication, 19 February 2015

Over 750,000 hectares of land in KZN has been transferred (Forsyth, 2013), and the Commission can publish this with pride in their annual report. The achievement, however, is short-lived. Poor and corrupt management of claims generate conflict within and between claimant communities. That tension simmers, and months or years down the road it erupts - even more so when the business is prosperous and large amounts of profit are at stake, as with Ithuba. "One day," noted an interviewee in regards to the competition over claimed land, "there will be chaos in Kranskop."[107]

5.2.2. Government maladministration

A 2013 article in the KZN Violence Monitor was entitled "Is the Department of Rural Development & Land Reform stoking the flames of violence in Kranskop?*"* This article supported the assertion that the Ngcolosi claims were never validated, that much of the Ithuba land truly belongs to the Amakhabela, and that the government set up both claims to fail by not providing post-settlement support and by refusing to engage with them [after Crystal Holdings partnership]. "Tensions are rising, and there are fears that violence will erupt. If it does, the responsibility must be laid at the feet of Department of Rural Development and Land Reform." (KZN Violence Monitor, 2013, p.1)

5.2.2.1. Corruption at the RLCC

In 2013, Corruption Watch, an online non-profit service which allows people to report government corruption, reported a 'sizeable' number of complaints implicating the DRDLR in abuses of power, corruption in procurement, and bribery. (Talane, 2013) The majority of complaints come from rural areas (as that is where the large claims are), and KZN has the

[107] D. Khumalo, personal communication, 3 December 2015.

greatest number of cases (35% of reported charges). "In analysing the reports we've received from the public, it's become clear that Communal Property Associations (CPAs) are vulnerable to abuse by government officials." (para. 5) At the time of the Kranskop claims, the KZN regional commissioner had already been charged in the media with nepotism and corruption. (Zulu King taken to court, 2002) At a 2013 civil society workshop on CPI challenges, a claimant from the Amajuba district in KZN reported that farmland that was supposed to be restored to communities was going to corrupt DRDLR officials. (Molose, 2013) In September 2015, the KZN premier's office found over R500 million of DRDLR funds had been stolen by KZN land reform officials through fraud, including false claims with made-up beneficiary lists. (Erasmus, 2015) Mike Cowling, executive director for the land rights movement AFRA, was cited in a News24 article, noting that "the high number of fraudulent claims saw 'genuine claimants marginalised'. We have documented this for years and while we have handed over documentation to the authorities, nothing has been done.'" (Ibid., para. 12)[108]

Regardless of exactly what happened at Kranskop, there is clearly a basis for questioning the agendas and interests driving decisions at the Pietermaritzburg RLCC. A number of questions arise around the behaviour of the Regional Land Claims Commission in these cases:

1. Why were the Amangcolosi given preference when the borders of the claims were defined, especially if there is evidence contradicting those borders?
2. Why did the RLCC push for the Crystal Holdings partnership, without offering alternatives? What caused the swift change of preference, and subsequent attempts to do everything in their power to destroy the same partnerships they had created?

[108] See Ngubane, 2013 for a further discussion on state corruption in land reform.

3. Why did the RLCC obstruct progress and withhold post-settlement support grants when trustees did not do as RLCC wanted, to the extent of intentionally causing division between Mkhabela trustees and the claimant community?

Further allegations against RLCC officials include:

- Reinforcing power of current Amangcolosi administration. [Commissioner still attends Amangcolosi AGMs, standing up front with the Trust management. One beneficiary said after an AGM, the Regional Commissioner approached him and admonished him for challenging the administration and asking too many questions.][109]
- Placing Ithuba CEO on boards of community property institutions throughout the region, for benefit of both the commissioner and the CEO.[110]
- Channelling government funds to Ithuba, and then into private pockets.[111]
- Channelling government funds to the ANC, in collusion with Ithuba leadership.[112]

This research had no definitive answer for these questions, only a variety of suggestions and conjectures offered by those interviewed. Most of those suggestions involve personal interest on the part of the RLCC commissioner and project officer. There is a widespread assumption that the Commissioner was hoping to benefit from the Crystal Holdings partnership, through rights to a transport supply contract or a farmhouse. Once she realised this would not be the case, she swiftly changed tact and tried to dissolve or destroy the partnership.[113] Another theory is that RLCC staff had a financial interest in supporting the Amangcolosi, which is why

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[109] K. Bhembe, personal communication, 24 November 2015

[110] S. Bhembe, personal communication, 13 November 2015
G. Morgan, personal communication, 13 November 2015

[111] Ibid.

[112] L. Williams, personal communication, 14 November 2015

[113] R. Williams, personal communication, 14 November 2015
P. Armstrong, personal communication, 22 January 2016

they were given superior land. The Amakhabela could go to court to fight the borders, but the DRDLR or the courts would not be inclined to take land from a flourishing land claim project and reassign it to a failed project. The RLCC and the Amangcolosi were thus invested in keeping Mkuzangwe from succeeding.[114]

A final theory involves national politics. Bongi Mlambo, brother of then Deputy President Phumzile Mlambo-Ngcuka, was a behind-the-scenes shareholder in Crystal Holdings. He was involved in facilitating the partnership with the claimant communities, but withdrew from the partnership after the embezzlement charges. (Hlongwe, 2008b) In the same months that the Kranskop land was transferred to the communities, the Deputy President was under investigation for involvement in the 'Oilgate' scandal, whereby billions of rands in government funds were channelled to the ANC via the parastatal PetroSA. Bongi Mlambo had shared investments with his sister, and so was also implicated in some of the charges.[115] The theory is that the ANC was trying to get Mlambo-Ngcukva out, and the regional commissioner may have been under pressure from the party to sever any government deals with her or family members involvement.[116]

The point of including the many allegations above in this report is two-fold: to show the variety of ways in which government involvement in land claims extends far beyond straightforward administration, and to illustrate how deeply complex and political individual claims are. To blame the inter- and intra-community conflict in land reform projects purely on

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[114] D. Khumalo, personal communication, 3 December 2015
P. Armstrong, personal communication, 22 January 2016

[115] Both were ultimately cleared of any involvement by the public protector. (Hlongwe, 2008b)

[116] P. Armstrong, personal communication, 22 January 2016

mismanagement and power dynamics within the communities themselves is to bypass perhaps the most influential external factor: the capacity and interests of government land reform institutions.

5.2.2.2. Blurred lines of post-settlement support

Did the RLCC officials recommend Crystal Holdings in good faith, and then, a few weeks later, genuinely believe they had made a mistake and try to reverse it? Perhaps, although it would not account for all of their actions, and their reputation suggests otherwise. However, the boundaries between corruption and incompetence at the Commission are unclear. The KZN Review notes the tension at the Commission in regards to its role in providing communities with support once claims have been settled:

> In practice, the focus of the CRLR has expanded to take responsibility for a variety of project needs which lie beyond its mandate and competence. These include taking responsibility for post-settlement outcomes, resolving ongoing community and local political economy disputes, and taking responsibility for broader local economic development issues. These all lie beyond the legal and administrative scope of the restitution function, and they detract from the core tasks of the restitution process. (Genesis Analytics, 2014, p. x)

While post settlement support was not part of the RLCC mandate, this support was so desperately lacking in the Land Restitution programme that the Commission often was obliged to get involved, whether or not it had capacity. In the case of the Crystal Holdings partnership, one may argue that the Commission went too far in trying to force paths of action that the CPIs did not want. Even years later, after the court interdict and the RLCCs refusal to provide support and withholding of promised grants, the commissioner and project officer are still interfering in

Gayede affairs, presenting lists of trustees for election, and meeting with the community to sway its support of the Board.[117] Even if the RLCC was acting in good faith, and believed that CPI leadership was not acting in the community's best interests, the questions arises at what point should the government step back and let the community make the decisions on use of land that is officially theirs? At what point might government interference be doing more harm than good?

5.2.3. Sources of internal conflict

It is within this context of corruption and maladministration at the regional office overseeing land reform that corruption and elite capture have set in at the Amangcolosi Community Trust. Disputes have arisen over two primary issues: the role of non-beneficiaries on the Board of Trustees (and the resulting expenditures), and alleged corruption by the Ithuba executive.

5.2.3.1. Non-beneficiary trustees

According to a founding Ngcolosi trustee, the RLCC advised them to have non-beneficiaries on the board of the founding Trust, who could provide objective viewpoint, independent governance, and specialised skills or expertise to the Trust as it developed. For subsequent boards, trustees should be beneficiaries.[118] This is in line with legal practice around trusts (not specific to land reform) which finds it is advisable to appoint at least one non-beneficiary trustee to promote the independence of the trust. (Lee Attorneys, 2015). In the case of the Amangcolosi, at least half of the founding trustees (including the chairperson) were non-

[117] D. Khumalo, personal communication, 3 December 2015

[118] Ibid.

beneficiaries, some of whom were involved in helping the claimants lodge the initial claim.[119] Clause 13.4 of the Amangcolosi Community Trust Deed states the following:

> Save for the initial Trustees, all future appointments of Trustees shall be made with due regard to the eligibility requirements that all Trustees serving from time to time shall be persons who are themselves members. (ACT, 2012, p. 11)

The subsequent clause states that should any legal regulation or statute require them to have non-beneficiaries on the Board, such persons would be nominated for election. When the Trust Deed was amended in 2012 and the Board changed, nine of the eleven resulting board members were non-beneficiaries, completely flouting these regulations.

According to the Trust Deed (ACT 2012), Trustees have "complete and absolute discretion" with how funds are spent, provided they fall within the mandate of the Trust. This mandate is laid out as follows:

1) To acquire and hold land in common for the benefit of its' members.

2) Further to this main objective, to

- carry on activities for the development of the community and improvement of quality of life of the members
- secure and hold additional assets and property
- raise funds, set trading companies, and purchase property
- invest with an accredited financial institution.

Beneficiaries have complained that trust funds are going to projects which benefit the broad Ngcolosi community or individuals, but not the beneficiary community specifically. This

[119] As the researcher was not able to access a copy of the beneficiary list, she was reliant on informants to note who is and is not a beneficiary of the land claim. If there are internal disputes over beneficiary status, this may have impacted informant responses which cannot be considered definitive. However, the interviews did corroborate each other (including some from outside the community).

is clearly the case in the building of the school and dip tanks which are open to all Amangcolosi. The memorandum, however, presents further allegations of non-beneficiaries being given bursaries, voting at AGMs, and even being paid shareholder dividends, in exchange for political support of the current leadership. This too is in direct contradiction to the Trust Deed. The 'Principle of Equity' is given as the overarching principle governing the decisions of the trustees, "which shall require that the trustees deal with the assets of the Trust and confer benefits hereunder only for the benefit of the members…" (ACT, 2012, p. 5)

The chief supports the notion that Trust projects must be for the benefit of the broader community:

> I would say it is not only the 400 trustees that benefit, the whole community does because if we build a school it will not only cater for the children of the 400 trust families, it will cater for everybody. If we build dip tanks, it's for every member of the community. Every single member of the community benefits.[120]

In a 2014 interview, the former chairperson responded as follows when questioned whether there was conflict from Amangcolosi who were outside the claimant community:

> No, the problems comes mainly from the 400 beneficiaries. Amongst them there are those who want only beneficiaries to benefit, whereas we believe we all should benefit, and if we develop we should develop as a community. Then there are those who say people who are not owners of the land should be left aside. So we have to put them in line and win them over because we believe what we do should affect everybody in the community.[121]

When the government has spent such large sums of money to restore land, it does seem fitting that the project should benefit as many people as possible. Yet when the majority of the

[120] N. Ngcolosi, personal communication, 2 February 2015

[121] V. Dube, personal communication, 2 February, 2015

trustees are not from the claimant community, it is hard to ignore a measure of self-interest in the above statement.

In an article on tenure arrangements in land reform, Lahiff touches on this issue precisely, noting that trusts are "considered unsuitable for land reform projects because they vest ownership in non-beneficiaries (the trustees) who are not democratically accountable to the beneficiaries." (Lahiff, 2009) Beyond this, there is little discussion in academic literature of the issue of non-beneficiaries acting as trustees in land reform projects, and the researcher was not able to find similar situations in other land reform cases.

When asked why a trust was chosen as the legal form of CPI, one of the founding trustees, not himself a beneficiary, responded that they had felt a trust would ensure that "the members of the community have power over their land." In reality, it has resulted in the exact opposite: through the structure of the trust and election of non-beneficiaries, the beneficiaries have placed control over their land almost entirely into the hands of those who are outside the claimant community.

5.2.3.2. Elite capture

There is also dissent at the agricultural company. Interviews with Ithuba employees in February 2014 were, as reported above, overwhelmingly positive. A year later, in March 2015, the attitude seemed to be changing. Management was complaining that employees were lazy and disgruntled. Employees complained that they had been given an annual increase of only R2, and that the CEO had increased the standard task of weeding 100 rows of cane to 140 and then to 180 without increasing their pay. (Their were also rumours that employees had been moved to

seasonal rather than full time status and that some were not being consistently paid. However these latter allegations could not be verified.) There was at least one instance of employees burning a sugar cane field in protest. The new operations manager had seemed optimistic and committed in his new position. Six months later, he had left the company, reportedly due to frustration with management.[122]

Reflecting back on Koch's classification (Section 3.1.3) of what drives conflict in community based natural resources management, three of the five sources are relevant to the Ngcolosi case. Initially, the conflict reported in interviews was primarily around residential and grazing rights over commercial land use, which falls into Koch's category of 'competing livelihood strategies'. Although the issue simmers, it seems to have been generally resolved through communication, firm leadership, and, perhaps most importantly, sharing of benefits from Ithuba profits. Another relevant source of conflict is the 'fluidity of communities' which touches on the issue described above of non-beneficiary trustees, and where the boundaries of community are drawn in spreading the benefits.

More recently the conflict between the community and leadership centres around 'competition for benefits at the time of success'. One aspect of this is known as 'elite capture'. As Grant (2011) notes,

> Within the South African Land Reform process, elites are able to access position of power due to their status, significantly influencing community dynamics and politics, to affect the land transfer processes and subsequent development strategies and land use

[122] G. Morgan, personal communication, 13 November 2015
S. Bhembe, personal communication, 13 November 2015

> management. Such elites often take the form of western educated individuals, and/or traditional authorities. (p. 57)

If there is any validity to the slew of allegations against the current CEO, this is exactly what has happened at Ithuba. He is accused of embezzlement and abuse of power on several fronts (see Section 4.6), including outright theft of Ithuba funds.

The CEO was brought on because of his business and financial skills, which are often lacking amongst land reform communities. Indeed, with these skills he was able to expose the mismanagement of funds by Crystal Holdings. He was respected by colleagues and partners for his business acumen, which has been a core factor in Ithuba's ongoing success. Those same skills, however, are what allow for capture of resources and power when personal interests become prioritised.

5.2.4. Modes of conflict resolution

Research limitations prevented an in-depth understanding of how conflict is managed and resolved in the Ngcolosi land reform project. As noted in Section 2.3, access to the broader community was limited, not all answers could be verified or supported, and the conflict was far deeper and more complex than initially anticipated. However, there was one striking find in this area. In discussions with leaders at Ithuba, the Trust and the Tribal Authority, the same theme was recurring across interviews: when disputes arise, they sit together to discuss the problem and sort it out, whether it be at the foot of the iNkosi, in the Boardroom, or at Workers' Council meeting.

Later, in interviews outside Ithuba, a very different picture of conflict management emerged, especially regarding the current power struggle and corruption allegations. The two groups are by no means sitting together under the proverbial tree to sort out their differences. Rather, they are taking each other to court, in a dozen ongoing cases over both petty and substantial charges. They are organising employee strikes and marches and burning sugar cane fields. They are hiring hit men to have opposition leaders killed.[123]

Multiple informants mentioned visiting their lawyer or going to court, which is notable in a rural area where people have limited disposable income and the tribal council is traditionally responsible for mediation. In some cases it seems the courts have become another platform for political tussles, a tool used alongside strikes and guns. The use of local courts to hash out power struggles is not limited to this case. In *Midlands*, a case study of farm violence and race relations in rural KZN, Jonny Steinburg (2002) noted this phenomenon precisely:

> And when democracy came and they were still tenants of white landlords, they began to fight a scrappy and opportunistic campaign. They learned the country's new laws quickly, and they used them as hardened and brutal men do. (p. 179)

That said, the courts, and the Constitution behind them, may be the last hope for people who are trying to fight for their rights and their land. It is the court which forced the former Gayede Trustees to hand the paperwork over the new board so they can rebuild Mkuzangwe. It is the court which supported the communities when they wanted to get down to business and start farming operations with Crystal Holdings against the wishes of the RLCC. It is the court to

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[123] S. Bhembe, personal communication, 14 November 2015
C. Bhembe, personal communication, 26 November 2015
K. Bhembe, personal communication, 26 November 2015

which the Ngcolosi beneficiaries are looking when their trustees refuse to engage with them over allegations of corruption.

5.2.5. Role of the traditional authority

With the explicit responsibility of mediation within the community, and as a figurehead of the land claim project, the Ngcolosi chief should hold some responsibility in addressing and resolving the breaches in governance and allegations of corruption. Where does the traditional authority sit in these particular disputes? In 2010, Ithuba Agriculture and the Trust presented the chief with new Toyota Fortuner vehicle. "Upon receiving the car, the Chief thanked the Directors and Trustees saying that the new car will enable him to attend important meetings and to visit the people in his community." (Ithuba Agriculture, 2010, p. 12) The current iNkosi does not have the reputation of a strong chief. Many feel that his relative youth, lack of wealth, and well known drinking problem compromise his stature as a chief, and possibly his allegiances. Those battling the current leadership do not feel it is worthwhile to bring the charges to the iNkosi, as he is aligned with the trustees.

5.2.6. Weak links: governance and accountability

The AmaNgcolosi Community Trust and Ithuba were an exemplary land claim project. They had strong leadership, with the support of both the community and the tribal authority. They had a successful, reputable agricultural business which consistently grew in profitability, and employed hundreds of workers on fair terms. Finally, those profits were distributed in shareholder payments, and a number of verifiable community projects were developed.

Recent claims of corruption and elite capture by non-beneficiary trustees and the CEO have not been substantiated in court, but they have been corroborated by a variety of informants with divergent interests (including a former financial manager at Ithuba, and locals from within and outside of the community), and substantiated by contextual factors, such as obvious decline in farm quality, irregular expenditures, disgruntled employees, and abnormally high turnover in management. In 2012, there was an investigation by the Hawkes, a directorate within the South African Police Force mandated with serious organised crime and corruption, into Ithuba finances. They did an extensive investigation in Kranskop, but in the end nothing came of it. It is reported that they went into a boardroom with the CEO, and then left Kranskop with no further questioning.[124]

There is debate around exactly who among formerly disadvantaged South Africans should benefit from land reform, and there are divergent opinions on whether it should be the poor majority, often rural subsistence farmers, or whether it should be the small middle layer of emerging professional black farmers, who have the education and capital to create a new sector of black large scale commercial farming.[125] Although the political language of land reform is directed at the rural poor, many would argue that the government policies are more interested in supporting the latter. As Ben Cousins (2013) quoted in an article on elite capture in the land redistribution program:

> "I guess elite capture is part of the process," DRDLR Director General Mdu Shabane conceded at last week's meeting with MPs. "We've seen people coming from nothing and becoming so powerful. They have a vision of saying they want to make a billion. I think

[124] G. Morgan, personal communication, 14 November 2015

[125] B. Cousins, personal communication, 5 November 2013

> that's exactly what we want them to do. We need to restore the class of black commercial farmers destroyed by the 1913 land act." (para. 14)

A white farmer from the Kranskop surrounds seemed to feel that elite capture is simply a necessary evil. The CEO's extensive political connections are instrumental in bringing funds to the project, and he has the strategic skills to hold it all together. He may be stealing money, but on the other hand, without him the whole thing would probably fall apart.[126]

Those closer to the project, however, assert the exact opposite. With the falling quality of the farms, disgruntled employee relations, and a group of angry beneficiaries, the prioritisation of personal interests over community interests is about to destroy everything that the Trust and beneficiaries have worked so hard to build over the last 10 years.

The burning question, then, is what went wrong? Where was the weak link which allowed strong, established institutions to be corrupted?

5.2.6.1. Red flags on governance

Any exploration of the roots of corruption must start with governance. The Trust seemed to have the right principles and structures in place for good governance. As described above in Section 4.5, trustees are elected by the claimant community, on a five year term; AGMs are held consistently every year; good financial systems are in place with annual audits; there is clear legal and financial separation between the Trust and the company; and the Trust Deed (ACT, 2012) lays out clear criteria and processes regarding membership criteria, rights, and obligations. There are clauses in place to ensure financial transparency, protect resources from being exploited by individual or non-beneficiary interests, and to promote fair and objective arbitration

[126] D. Walker, personal communication, 5 February 2016

in case of a dispute. The Deed also protects the right of women to be both members and trustees; however, as it does not require a minimum number of female trustees, it is not effective in preventing gender bias among the leadership.

At a closer look, however, the research has raised several red flags in regards to Trust governance:

Irregular trustee elections and termination: As the Trust was founded in 2004, and the Deed calls for five-year terms of trustees, there should have been two elections. However, there has only been only one change in trustees registered with the Master of the High Court, in 2012. (ACT, 2012) Trust leaders say that trustees have been replaced gradually, rather than through a full election, to protect the ethos and culture of the board.[127] Critics of the current board complain that elections are rigged: when a space on the board is open, the trustees bring their own nominations and let people choose from among them.[128]

Interestingly, the current Trust Deed (amended from the original in 2012) includes the following clause:

> Notwithstanding anything to the contrary hereinbefore contained, a two-thirds majority of the Trustees in office at any time…shall be entitled to remove any one or more of the Trustees as they may consider to be necessary and appropriate to the interests of the Trust", provided that the Trustee is given ten days notice and the opportunity to address fellow Trustees regarding the reasons for his/her removal. (ACT, 2012, p.12)

In other words, a majority group of board members can simply remove any trustee who is perceived as problematic. 'The interests of the Trust' can be loosely interpreted, opening wide

[127] V. Dube, personal communication, 14 March 2015

[128] C. Bhembe, personal communication, 26 November 2015

the opportunity for a few strong leaders to gain support, and then remove any trustee who opposes them. In the words of one trustee "if you mess around with [us], [we] will show you the door."[129] This is exactly what happened, with several trustees being kicked off the board before their term was finished. It was presented as getting rid of the "rotten apples" to preserve unity and integrity,[130] but it could also be straightforward capture of the Board by the interests of a few.[131]

Non beneficiary trustees: In the case of the Amangcolosi, those few are not actually beneficiaries of the land claim, and they have filled the board with others who are also not beneficiaries, with only two claimants on the Board.[132] For non-beneficiaries to control the board, they would have to have a majority control, for the nature of self-governance is that trustees who are beneficiaries would generally not be supportive of decisions which are not in interests of the beneficiary community.

Ithuba Board accountability: The Ithuba Board is comprised of four members. (Ithuba Agriculture, 2011) Two of these, the Ithuba CEO and the founding Chairperson of the Trust, are also trustees.[133] The Ithuba Board of Directors is directly accountable to the Amangcolosi Community Trust. If 50% of the Ithuba Board also sits on the Trust Board (and are among its most powerful members), governance is not independent, and accountability of the Ithuba Board

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[129] V. Dube, personal communication, 14 March 2015

[130] K. Pretorius, personal communication, 14 March 2015

[131] One trustee noted that when the current CEO was brought on, "we got rid of one of the [two] women on the Board and put him in instead." (V. Dube, personal communication, 14 November 2015.)

[132] As I was not able to access the Trust membership list, I am relying on members accounts of who is and isn't a beneficiary, which are secondary sources. However, multiple sources do corroborate the information. Furthermore, at least one trustee has admitted to not being a beneficiary himself.

[133] C. Bhembe, personal communication, 26 November 2015

is compromised. As long as those individuals can maintain the support of their fellow trustees, they can do what they like at Ithuba. This may be why the current CEO has gotten away with taking over the roles of human resource management and financial management.

Irregular expenditures and breaches of Trust Deed: Claimants have alleged that Trust funds are being spent on personal projects, inflated tenders and shareholder payments to non-beneficiaries. Many of these irregular expenditures are fully visible: for example, a church built with Trust funds to support the religious affiliation of a (non-beneficiary) trustee; large supply contracts given, without a tender process, to family members or affiliates of trustees; non-beneficiaries given bursaries (despite a clause precluding the Trust from making grants or loans, "save to or for the benefit of persons who are members". (ACT, 2012, p. 23)). These are listed in full in Section 4.6.

Lack of financial transparency: Multiple claimants have been denied access to the Trust's financial statements. Furthermore, there was a change in auditors from an internationally recognised firm to a small local firm, which beneficiaries suspect was done to cover up financial irregularities.[134]

Thus, although the right governance structures are in place, they have been breached repeatedly and without disciplinary repercussions. It seems the Amangcolosi Community Trust has good governance structures, but has poor governance.

[134] S. Bhembe, personal communication, 14 November 2015

5.2.6.2. Insufficient accountability

The AmaNgcolosi trustees are accountable to the Trust beneficiaries, as elected representatives, and to the Master of the High Court in the Department of Justice. As noted in the literature on trusts, the High Court is an inappropriate monitor of land reform CPIs. It is distanced from the policies and issues around land reform projects, as these issues comprise only a fraction of the Court's responsibilities. Furthermore, it has no legal mandate to monitor these trusts, and so will only be aware of problems if they are brought to the court by legal action. (SDC, 2007b) Situated in a tribal authority, the Trust is also under the oversight of the iNkosi, who would be expected to take action if community resources were co-opted. However, if the iNkosi chooses for any reason not to act, the Trust has virtually no oversight other than that of its members. If trustees can suppress internal disputes, they can continue to exploit the community's common resources for their own short term interest.

The final clause of the AmaNgcolosi Trust Deed is entitled "Trustees' Discretion" and reads:

> "Save as hereinbefore otherwise stipulated, where discretions are vested in the Trustees, **such discretions shall be complete and absolute, and any decision made by them pursuant to such discretionary powers shall not be challengeable by any member or any other person affected thereby**, provided the trustees conform to the Main Objects of the Trust, and to the other terms, conditions, and principles of this Trust Deed." (ACT, 2012, p.27, emphasis added)

5.2.6.3. The Role of the trust structure

The situation of the Amangcolosi Community Trust exhibits exactly the reasons for the creation of the CPA Act: decision-making at the Trust is controlled by a small group of

individuals, rather than through democratic process; the Trust has little accountability and oversight from the state; and leadership structures have little to no female representation.

The CPA was intended as a more democratic and accountable legal entity in land reform. However, as noted in the literature review, CPAs face many of the same challenges as Trusts. A parliamentary briefing on CPIs (DRDLR, 2010) noted the following challenges, categorised by type of legal entity:

Challenges to Trusts	Challenges to CPAs
Abuse of power: Trustees do not always act in the best interest of beneficiaries, or in a democratic way.	**Abuse of Power**: Allocation of rights to members not sufficiently clarified (few individuals amass power and rights for themselves)
Conflict with traditional authorities: Traditional authorities and trustees have disputes over management of communal land.	**Conflict with traditional authorities:** Legal entities do not operate properly when co-existing with traditional leadership
Poor Governance: Failure of Trusts to hold Annual General Meetings and failure to provide financial and operations reports.	**Forced communities:** Nature & size of land reform grants compelled individual households into communal ownership of land.
Poor Governance: Failure to hold elective meetings where the term of Trustees has expired.	**Gender bias:** Membership of CPAs based on families and not individuals. – giving powers to heads of households, mainly males
Lack of accountability: Lack of capacity in the Master's Office to hold trustees accountable in terms of Section 16 of the Trust Act.	**Lack of accountability:** Lack of monitoring of CPAs –impacts on the accountability of CPA Committees to their members

	Lack of accountability: Failure to use (to the fullest extent) remedies provided in the CPA Act for Department to intervene.

FIGURE 6: COMPARISON OF CHALLENGES OF TRUSTS & CPAS

Both types of CPIs struggle with abuse of power, tension with tribal authorities, and lack of accountability. Though not listed above, gender bias is just as much an issue for trusts as for CPAs (if not more) - in fact, gender bias of trusts was one of the motivators for establishing CPAs in the first place. CPAs, for their part, do have widespread issues with poor governance. (eg., SDC, 2007b)

Would outcomes be different, then, if the AmaNgcolosi land was held by a CPA rather than a trust? Potentially,

- Trust expenditures would decided by vote at the AGM, rather than by executive decision of Trustees.
- Leaders would be more directly accountable to their members, and would not hold "complete and absolute discretion" on Trust decisions.
- As a direct democracy, it would be more difficult for non-beneficiaries to take control over a CPA.
- The DRDLR would have oversight over CPA governance, and could intervene in cases of corruption or mismanagement of resources, as well as mediate disputes. (RSA, 1996). This may be more direct and effective than going through the court system.

However, the chart above particularly notes that CPAs are also marred by abuse of power, with few individuals amassing power for themselves, just as in the Trust. For example, the Ravele CPA in Limpopo received its land the same year as the Amangcolosi. 10 years later, and

despite successful commercial farming enterprise, claimants have not reaped any benefits from the land, and there are rumours of non-beneficiaries receiving payments. The claimants and the DRDLR have taken the tribal authority to court for hijacking the CPA for their own interests. (Timse, 2015)

In land reform experience, the legal structure of the CPA does not seem be substantially more effective at preventing elite capture and poor governance than that of the trust. The most important difference is the CPA's line of the accountability to the DRDLR, which can provide both support for post-settlement operations, as well as oversight and regulation when things go wrong, as they are doing in the case of the Ravele.

However, given the poor (albeit improving) DRDLR monitoring of CPAs, as well as the layers of corruption and poor administration at the DRDLR and the RLCC, in some cases Departmental accountability may not be any more effective or efficient than the court system.

5.3. Reflections on governing the commons

The AmaNgcolosi story was chosen for this research because of its exceptional success in building a land restitution initiative that is profitable and delivering benefit to the claimants and the local economy. Perhaps most importantly, it provides an example of how land reform can work despite the challenges. Critical in this case were

1. strong and united leadership, with the traditional authority playing a supportive, rather than leading role;

2. an effective JV partnership to provide technical capacity and access to networks and finance often unavailable to land reform communities; and

3. highly fertile land in a land-reform friendly industry, illustrating the importance of the quality of the resource communities have to work with, and the critical role of the market environment.

However, perhaps the most interesting implications for commons management are from the potential jeopardisation of the AmaNgcolosi success, through alleged co-option of power and resources. This final section looks at the role of leadership in successful commons management, and how corruption at state agencies impacts governance of the commons.

5.3.1. Leadership in the commons

When looking at the Ngcolosi success factors, it is difficult to rank one as more important than another. The strength of Ithuba is in these factors coexisting and successfully reinforcing each other, in a virtuous cycle. That said, strong leadership is an overarching factor. The trustees were effective in building a vision and making the right decisions to realise it successfully, as well as in maintaining the support of the community and the tribal authority. Leadership from the JV partner and their management team was foundational in building effective long term business structures and high-yield farming processes. Each case of land restitution will have its own context-specific assets, challenges and model of land use: the key is effective leadership which can work with and around these to envision and fulfil the potential of the land.

The logic of collective action follows that if members of a group have a common objective that is of benefit to all, they will rationally act to achieve that objective. (Olson, 1965,

as cited in Ostrom 1990, p.5) However, at the heart of this, and of the tragedy of the commons, is the problem of the 'free-rider'. As Ostrom explains, "Whenever one person cannot be excluded from the benefits that others provide, each person is motivated not to contribute to the joint effort, but to free-ride on the efforts of others." (Ibid, p.6)

The problem of the free-rider is central to commons management, and often leads to an inability of groups to effectively coordinate and fix a platform or programme of action. (Van Belle, 1996) The role of leaders is to overcome this paralysis and mobilise membership. In a global study of communal management of fisheries, Gutiérrez, Hilborn, & Defeo (2011) found that strong leadership was the most important attribute contributing to success.

> Presence of at least one singular individual with entrepreneurial skills, highly motivated, respected as a local leader and making a personal commitment to the co-management implementation process, was essential. Legitimate community leaders, when guided by collective interests and not self-benefits, give resilience to changes in governance, influence users' compliance to regulations, and enhance conflict resolutions…(pp. 387-388)

The legal structure of a Trust may have facilitated elite capture at Ithuba, but it may also have facilitated the firm and decisive leadership which is in part responsible for Ithuba's success. If decision-making was more democratic, disputes and divergent interests would also be more likely to paralyse decision making. For instance, the decision to initially retain the Crystal Holdings, despite heavy pressure from the RLCC and resulting in withdrawal of all government grants, ultimately was a key factor in the company's success, but could easily have exploded into internal disputes in a more democratic structure, or ended up in stagnation, waiting for a sufficient quorum to vote at the AGM.

Strong and effective leadership and elite capture can unfortunately become two sides of the same coin. In an article on leadership in collective action, Van Belle (1996) proposes that:

> individuals initiate the formation of groups for collective activity or join early in the collective activity, with the expectation of becoming the leadership of the group. As the leadership of the group, they expect to reap additional benefits, leadership benefits, that are highly significant in comparison to the other values involved in the collective action. (p. 111)

This aligns with Robert Michel's famous 'Iron Law of Oligarchy', which argues that no matter how democratic an organisation, a small group of leaders will ultimately take power. Initially this is necessary to facilitate decision making and action, but once ensconced as leaders, these elite few will work to maintain their positions. In solidarity with each other, they will work together in fending off criticisms, and even resort to co-opting rank-and-file members to suppress resistance. (Tolbert, 2010)

Herein lies the importance of external oversight in commons management.

5.3.2 Accountability and corruption: Covenants with broken swords

The Ngcolosi story emphasises the importance of CPI accountability in land reform. "If private interests cannot be expected to protect the public domain, then external regulation by public agencies, governments, or international authorities is needed." (Ehrenfield, 1972, as cited in Ostrom, 1990, p.9) In a study of fisheries management, de la Torre-Castro (2006) concluded that "a crucial factor for improving results is the institutionalisation of any kind of monitoring efforts. Without the involvement of the state and the consideration of national policies and goals, projects are less likely to succeed." (p.11) This may be particularly important when

1. restored land is being used commercially, and thus claimants are not involved in day to day decisions

2. when the CPI has substantial layers of hierarchy, such as in a trust, that create power differentials between leadership and the community.

Part of recent DRDLR proposed policy reforms for communal land tenure included:

> pro-active and reactive intervention powers of the Registrar of CPAs… [which] will have the necessary powers to investigate and report on irregularities, call on CPAs to account, ensure adequate document retention and access to required documentation (internally and externally). (Gobodo, 2014, p. 6)

However, the question that arises in this case study is where do the layers of that external regulation end? Ithuba is regulated by the Trust, and the Trust is regulated by the national government, via the High Court and the DRDLR. If even the external regulator is exploiting the resource for private benefit, as is the case in this story and in much of the global commons, what next?

Communal property management with and without state oversight have been termed ‘covenant with swords' and ‘covenant without swords’, respectively. In exploring how government corruption impacts governance of the commons, Sundström (2014) introduces the concept of a ‘covenant with broken swords’. “In situations with corruption, the likelihood of achieving sustainable outcomes for management of CPRs [common pool resources] is severely decreased.” (p. 25) This is a critical issue for the new institutions rising to manage the commons, such as the commons trusts described in Section 3.1.2; where does final accountability lie? Sundström continues:

> the destructive effects from corruption on governance of the commons… is a big challenge for scholars and policy-makers. How to tackle the fact that CPRs around the world – for instance, the tropical forest reserves that are key in global efforts to store carbon and protect biodiversity – are monitored by institutions that are infested with corruption? (p. 231)

De la Torre-Castro (2006) suggests that when state agencies are involved in corruption and rent-seeking, bottom-up initiatives may improve monitoring. (p.11) The importance of the legal structure of a CPI arises here: ultimately, if the external regulator (the DRDLR) is corrupt or otherwise unable to fulfill its role, it falls back to the claimants to hold their fellow members and/or leaders in check. The CPA, which prescribes direct accountability of leadership to the claimants and more democratic decision making than trusts, may therefore in principle be a better option for communal management of restored land. The policy reforms noted above included the institutionalisation of use rights in which governance structures are accountable to households. (Gobodo, 2014)

Dietz, Ostrom, and Stern (2003) advocate for coordinating governance structures, at different scales:

> Institutional arrangements must be complex, redundant, and nested in many layers. … [They] must use mixtures of types (e.g. hierarchies, markets, community self-governance) that employ a variety of decision rules to change incentives, increase information, monitor use, and enforce sanctions. (p. 14)

In the case of the Amangcolosi, such checks and balances may still rein in exploitation of power by leaders. The claimant community has stood up to the corruption, and they are using the court to try to end exploitation and enforce their shared rights and governance principles as enshrined in the Trust Deed. Furthermore, the Tribal Authority may under internal or external pressure, step up to end the corruption, as the decline of Ithuba would be a huge loss to the

chieftaincy and the community as a whole. Finally, there has been increasing attention on the corruption at the KZN RLCC, which may result in a change in officials, and more accountable oversight of restitution projects. One or all of these may happen, or none of them may, and Ithuba may continue to degrade as have so many land reform projects.

6. CONCLUSION

6.1. Review of research aims, literature & methodology

This research was borne out of an interest in how a remarkably successful land restitution project has managed to avoid the pitfalls and overcome the barriers of post-settlement land use that have plagued so many communities. Through an in-depth case study of the Amangcolosi Community Trust experience, in comparison with the case of the neighbouring Gayede trust, it aimed to understand

1. *What is unique about the Amangcolosi experience that led to success where many others CPIs, especially Gayede, have failed?*

Over the course of the research, allegations of corruption and misuse of resources surfaced, revealing a much more complex and multi-dimensional case than was initially anticipated. In addition to understanding why the Amangcolosi were able to succeed so remarkably, a subsequent question had to be explored:

2. *What factors have allowed elite capture to jeopardised that success?*

Having explored what factors allowed the Amangcolosi to succeed, as well as what facilitated co-option of common resources, the final aim of the research was to understand what light the Amangcolosi case could shed on the challenges of common property management:

3. *Are there transferrable lessons for governing the commons?*

This final question refers both to the practical aspects of CPI management in South African land reform, and the broader global challenge of how common pool resources can be effectively and sustainably managed for long term benefit.

The key areas of literature that informed this study were as follows:

Governing the commons: This is the debate around how common pool resources can effectively be managed to prevent exploitation and preserve the resource for long term use. Key issues include whether privatisation or state regulation are the only means of preventing individual exploitation of the group resource (known as the tragedy of the commons) or whether communities can self regulate successfully over the long term. This is particularly relevant as most land restitution claims in South Africa, as well as many redistribution projects, transfer land ownership to a group of people, rather than to individuals.

The challenges of effective land use in post-settlement land reform cases: This centres particularly around Community Property Institutions (CPIs), which face common challenges of governance and administrative capacity, lack of technical expertise, and insufficient post-settlement support and accountability from government. Furthermore, once land has been restored, internal community dynamics are in some cases the biggest barrier to successful land use. Power struggles, conflict over how to use resources, and elite capture of resources are the undoing of numerous land reform projects throughout South Africa.

The influence of external actors: The community dynamics underpinning land reform, as well as the potential for a CPI's success, do not play out in isolation; they are heavily impacted by other actors outside the claimant community. Especially relevant are the roles of the

Department of Rural Development and Land Reform, where operations are hindered by insufficient resources and corruption; Traditional Authorities, who often attempt to undermine the power and land rights of CPIs; and commercial partners, who have varying motivations and capacity for assisting land reform communities, and can make or break the project in cases where communities continue to farm the land commercially.

To answer the three research questions, the qualitative case study method was used, with a secondary case for comparative purposes. Research tools were entirely qualitative as well, including semi-structured in-depth interviews, informal focus groups, and document analysis. 35 interviews were conducted, with 27 informants, in two field trips supplemented by telephone interviews over the course of a year.

6.2. Key points of findings and analysis

Key findings were as follows:

6.2.1. What factors allowed the Amangcolosi to succeed where others failed?

1. The land restored to the Amangcolosi was highly fertile, and the sugar and timber industries are particularly open to working with land reform communities, which facilitated access to start-up capital, credit as needed, and accessible markets.
2. The leadership of the Trust had a strong vision and was effective in realising it. They made the right business decisions in their oversight of Ithuba, and of equal or greater importance, they managed to maintain overall support of both the community and the traditional authority.
3. The joint-venture partner and their management team had in-depth knowledge and experience in making commercial agriculture profitable. They were able to raise the necessary start-up capital, build a remarkably efficient and effective farming

> business, and put in place the right governance and HR structures to keep the business profitable over the long term.

These 'inputs' resulted in good capacity and governance at the CPI, financial viability of the venture, and ongoing support from the community. It was noted that the success of the business in the short-term was critical in retaining support from the claimants, as they could see early on the potential benefits of the project. On the other hand, community support also reinforced the success of the business, as farming operations are often foiled by power struggles, delayed decision making, and community conflict in land reform projects.

6.2.2. What factors allowed elite capture to jeopardise that success?

Although the Amangcolosi Community Trust has strong governance structures, standards of governance have slipped. In direct contradiction to the principles of the Trust Deed, the current Board of Trustees is dominated by non-beneficiaries, which impacts how funds are spent and who receives benefits. Furthermore, there are substantiated allegations that the CEO of Ithuba is stealing funds and mismanaging the company, and that individual trustees are abusing their power for personal benefit of themselves and their supporters.

What has allowed for governance standards to slip without repercussions? First of all, the legal structure of the trust gives trustees 'complete and absolute discretion' over much of the decision making on use of land and resources. While this may have made it easier for trustees to govern efficiently and build a successful company, it also creates greater hierarchy between trustees and the claimants, making it more difficult for the claimant community to reproach trustees. Certain clauses in the Deed of Trust (which was revised in 2012) reinforce this

hierarchy, stating that a trustee can be kicked off the board if other trustees if they deem it necessary, and that members shall not challenge the decisions of the trustees. Furthermore, trusts are accountable to the high court rather than the DRDLR, and so have little oversight or monitoring from the department, which could interfere if a CPA was in a similar situation.

Secondly, layers of corruption and mismanagement at the RLCC/DRDLR have actually fuelled problems at the Amangcolosi Trust. From the beginning, land claims were not properly verified and borders between Ngcolosi and Mkhabela land were poorly researched, aggravating conflict between the communities and limiting chances of success for the Mkhabela's Gayede Trust. There are also indicators that the Regional Commissioner and/or other RLCC staff members are in collusion with the corruption at Ithuba, and are also benefitting from the funds. This would not be unusual; reports of corruption and abuse of power by the KZN RLCC are echoing throughout the province. The department cannot, then, be expected to enforce good governance at the Trust. In the meantime, claimants are in the process of taking Trustees to court over the allegations.

In principle, methods of conflict resolution through dialogue and mediation exist at all levels of the Amangcolosi project; however, current disputes have degenerated into demands, strikes, violence, and legal action. Although the Amangcolosi traditional authority has been a help to the Trust (rather than a hindrance as in so many other land reform cases), until now the chief seems to have also turned a blind eye to the corruption allegations.

6.2.3. Are there transferrable lessons for governing the commons?

Strong leadership, from both the Trustees and the JV partner, is the overarching factor accounting for the Amangcolosi success. Leadership has been noted as a critical requirement of successful collective action, to overcome the paralysis that occurs when group ownership dilutes responsibility and individuals wait for someone else to act. However, as explained by Michel's 'iron law of oligarchy', once leaders are in power, they will inevitably collude and suppress resistance in order to retain their position and its benefits, resulting in control of the group resources by an elite few. This is helpful in understanding what may have happened at the Amangcolosi Community Trust. It also underlines the critical importance of accountability and oversight of communal management in land reform - particularly when there are substantial layers of hierarchy within the community or CPI, and claimants are not involved in day to day land use, as is often the case when restored land is farmed as a commercial venture.

A critical question in both the literature on governing the commons, and in this case study, is who regulates the regulator? Oversight must not only come from the top; bottom-up monitoring and accountability is critical in keeping leaders in check. Building layers of accountability across multiple institutions (such as the state, the traditional authority, and within the community) can create the necessary checks and balances limit unfettered exploitation of group resources. The need for both top-down and bottom-up accountability reinforce the CPA as a better structure for group management in land reform, as it allows for DRDLR monitoring, as well as more democratic internal processes by which, in theory, claimants can limit abuse of power by leaders. Dual and multilayered accountability must also be built into the structures of

the new commons trusts and other models being developed for sustainably managing our shared resources.

It is yet to be seen whether the Amangcolosi story will become a true tragedy of the commons, or whether it will weather current threats to good governance and remain a landmark case of land restitution, providing an example that can inspire and inform other CPIs.

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