

**Land reform in the Limpopo Province:
A case study of the Elias Motsoaledi Local Municipality**

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SUMMARY

My interest in this research was to interview leaders and members of the three communities within the Elias Motsoaledi Local Municipality as well as officials of the Regional Land Claims Commission (RLCC).

The purpose of the discussions was to find out how the communities involved Government when lodging land claims. The three communities are, Bakwena Ba-Kopa, Bakgaga Ba-Kopa and Masakaneng. The research yielded the following findings:

1. All the three communities followed the correct procedures regarding the relevant legislation and policies when they lodged their land claims.
2. Government played its role through the RLCC by assisting the communities in their endeavor to have their land restored.
3. In the interaction between Government and the communities challenges were encountered that at times led to the delay of the settlements.
4. When the communities keep patient during the land claim processes and Government officials are dedicated to assist the communities, the chance of positive outcomes is maximised.

There is evidence that Government made progress to ensure that the affected communities have the dispossessed land restored. However, there is still a lot to be done in addressing the outstanding issues. To handle these matters, as indicated below, co-ordination and interaction between Government and the communities is crucial.

One can point out these obstacles by focusing on the three affected communities respectively.

Masakaneng

There is a need to tackle the challenge of the concerned group that led to the emergence of another committee in the process. This delays the formal negotiations with the municipality to help facilitate the delivery of the necessary services.

Bakwena Ba-Kopa

The role-players missed the time-frames that were targeted for settlement. Government will have to speed up the matter and finalise the settlement, seeing that the beneficiaries have been waiting for many years.

Bakgaga Ba-Kopa

Only portion one of RietKloof was restored to the community. The community is eagerly awaiting Government to help facilitate the restoration of the remaining portion. This community also needs to play its part in ensuring that the other sections of the land are restored. It is important that they go back to the drawing board as beneficiaries and tackle the prevailing differences so that they end up with a unanimous stand on this matter.

To conclude: It is quite evident that the democratic government post-1994 is committed and prepared to restore the dignity of the black people who were forcibly removed from land they and their ancestors occupied. Government is assisting in this matter by providing all the necessary resources to ensure that land restoration is a success. For Government to succeed, the affected communities must also play their role within the parameters of the relevant legislation. This is what the land Acts expect of all the beneficiaries.

KEY WORDS

The following key terms are used in this study:

- Elias Motsoaledi Local Municipality
- Dispossessed
- Land claim
- Land use
- Land restitution
- Land reform
- Groblersdal
- Beneficiaries
- Masakaneng
- Bakwena Ba-Kopa
- Bakgaga Ba-Kopa
- Land Claims Commissioner
- Kgoshi
- Legislative framework
- Land tenure reform
- Spheres of Government

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LIST OF ABBREVIATIONS

The following abbreviations are prevalent in this discussion:

Anon – Anonymous source (used in references)

CPA – Communal Property Association

RLCC – Regional Land Claims Commission/Commissioner

BOT – Board of Trustees

LCC – Land Claims Commission

SAHRC – South African Human Rights Commission

NGO's – Non-Governmental Organisations

NCOP – National Council of Provinces

DLGH – Department of Local Government and Housing

SAPS – South African Police Services

IDP – Intergrated Development Programme

TLC – Transitional Local Council

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CHAPTER 1: INTRODUCTION

1.1 ORIENTATION

This chapter will serve to indicate the specific areas in the Elias Motsoaledi Local Municipality which will be under discussion. The areas are Klipbank, Rietkloof SJ and Magagamatala (Brakfontein). The study will deal with the background to land reform in South Africa and the historical background of the affected communities. The discussion will focus on the following aspects: the problem statement, research questions, research objectives, a general theory on land reform, challenges encountered during land reform, methodology and ethical considerations flowing from it. In this manner, the discussion document will outline how the three communities interacted with different spheres of Government to ensure that dispossessed land is restored in terms of the relevant legislation and policies. The communities in question are the Masakaneng, Bakwena Ba-Kopa and the Bakgaga Ba-Kopa.

The communities of the Elias Motsoaledi Local Municipality were affected by forced removals during the apartheid government. The Elias Motsoaledi Local Municipality is a municipality in Limpopo that resorts under the Sekhukhune District Municipality. The affected communities were forcibly removed from their settlements, which were within walking distance from the only town, Groblersdal, and from within farms around Groblersdal. Due to these forced removals by the apartheid government and the dispossession of their land, these communities suffered much hardship, seeing that the said government's policies implied that they were prohibited to reside in specific land areas.

The affected communities lodged land claims. The outcome and the impact of these claims differ from one community to another. The nature of the impact depends on the way individuals or groups affected see the future of the land in question and on how Government responds to the communities' requests. For example, beneficiaries within a particular community may not agree on the methods to utilise the claimed

land. Some may want to use the land for residential purposes while others may have a different view and aim. This could entail using the reclaimed land for business ventures or for both residential and commercial purposes. The impact of a land claim will also depend on the manner the community responds to Government's intervention in this area. It stands to reason that the impact will either be positive or negative.

According to the common understanding amongst the affected inhabitants, the following are some of the reasons why the previous government thought it necessary to remove certain communities, even if it meant force had to be used:

- The black communities resided nearer to the towns. This created discomfort for the government and the majority in the white community. The Native Land Act, passed in 1913, restricted the available land areas that black people could occupy lawfully.
- Black people settled within the areas that contained fertile soil. The perception seemed to be that these communities could not utilise the land profitably for agricultural purposes.
- The apartheid government initiated various projects that functioned on the land where black people originally had settled. Some of these projects involved the training of the Police and/or the National Defence Force.
- In some instances the land contained valuable minerals and the government of that time did not acknowledge the black communities' right to benefit from the profits.

In addition to this common understanding amongst the people who were forcibly removed, there is reliable information on the activities and legislation from the previous governments in South Africa. This information can be used to give a historical overview of the circumstances that preceded the land claims process.

According to Thwala (2003:2) the following activities and legislation contributed to, or led to the forced removal of black people from land which their ancestors occupied:

- Relocation of blacks and segregation of blacks from whites started as early as 1658, when the Khois movements were restricted to the west of the Salt and Liesbeeck Rivers. In the 1800s the first reserves were proclaimed by the British and the Boer governments.
- The Native Land Act that was passed in 1913 restricted the area that could be lawfully occupied by blacks. The consequence of this Act was that only 10% of the land was reserved for blacks.
- The Group Areas Act of 1950 forced more people to live in racially segregated areas.
- The Black Resettlement Act of 1954 afforded the state the authority to remove blacks from any area within the magisterial district of Johannesburg.

According to Van Zyl *et al.* (1996:390), the 1913 Native Land Act was part of a process of dispossession of land, with an extended history before 1913. The Nationalist government continued to use this Act, resulting in a policy where people were removed from their homes by force.

“Black spot removals” refers to the removal of blacks from pockets of black-owned land in “white” areas (see Van Zyl *et al.* 1996:371). This clearly indicates that there was a concerted effort from the previous government to remove blacks from certain areas that were identified for different forms of development.

In 1959 the Bantu Self-Governing Act was promulgated to establish the Bantustans and establish the reserves as the political homeland for black South Africans. According to Thwala (2003:3) the dispossession of the black population’s land in South Africa was driven by two factors:

- the need to reduce competition with white farmers;
- to create a pool of cheap labour to work on the farms and mines and eventually also in the industrial sector.

1.2 GENERAL BACKGROUND

In line with the policies of the previous government, the majority of South Africans (non-Europeans, including blacks) were removed from certain identified land areas. These areas were proclaimed restricted and thereby prohibited for lawful occupation by non-whites (cf. Thwala, 2003:2).

The above-mentioned Act resulted in activities which saw many black communities being forcibly removed from land that they occupied and from areas they settled in, because the previous government envisaged other uses for this land.

After 1994 the newly elected government decided to draw up plans addressing these ills of the previous regime with a view to return the land to the original occupants. According to Thwala (2003:9) the new government planned, legislated and began implementing a complex package of land reform measures consisting of three components:

- Land restitution
- Land redistribution
- Land tenure reform

Communities in South Africa as a whole seized the opportunity of the new government's plan. They took part in the processes of land reform and submitted claims on the dispossessed land.

1.2.1 Land restitution

The purpose of land restitution is to restore land to the original occupants or to provide financial compensation for those dispossessed of their land after 1913. The newly elected democratic government invited persons or communities who forfeited their property as a result of the apartheid laws to submit claims for restitution.

1.2.2 Land redistribution

The process of land redistribution entails legislation making land available for:

- Agricultural production
- Settlement
- Non-agriculture enterprise

According to Wynberg and Sowman (2007:784) redistribution aims to re-allocate land to the landless for residential and productive purposes, and tenure reform. Their statement is relevant to this study because at the end of the process of settlement the three communities under discussion will benefit from land redistribution. This study will demonstrate how that took place regarding the following areas:

- Klipbank: A portion of 26JS was re-allocated to the Masakaneng community.
- Rietkloof SJ: Part of this area was re-allocated to the Bakgaga Ba-kopa community.
- Magagamatala (Brakfontein): Certain portions of this area were in the process of being re-allocated to the Bakwena Ba-kopa community.

Depending on the pace of the final settlement in each community, the land will be finally owned by the community. Then the onus rests on that particular community whether to use the land for commercial production, or for residential purposes. The three communities examined in this study will in the long run benefit from land redistribution, after the farms or portions thereof that they claimed, are eventually re-allocated to them.

1.2.3 Land tenure reform

The inhabitants of the three communities mentioned in this discussion are the victims of land disputes arising from policies during the apartheid era. The advent of the new dispensation resulted in the need for land tenure reform. All the communities will in

the long run enjoy security of tenure (fixed property) after the settlements take its course.

This provides the inhabitants security of tenure over their residences and the land areas where they work or stay. Three types of tenure exist:

- **Private ownership:** A person or business owns the land or house.
- **Communal ownership:** People own land or property as a group, forming a communal property association (CPA).
- **Renting:** Entails renting a home or land from its owner (Anon).

According to Wynberg and Sowman (2007), land tenure reform aims to address issues such as insecure tenure and overlapping land disputed rights arising from apartheid-era policies. The land tenure reform will benefit the communities, seeing that it will afford them the opportunity to opt for any of the existing types of tenure.

According to Hall (quoted by Frazer, 2007:837), a key pillar of land reform implies restitution. This is a legal mechanism helping individuals or groups of people, who were dispossessed of their rights to land by racially discriminatory laws since 1913, to claim back particular sections of land.

The scientific study of the challenges related to land claims will in the end benefit both the government departments involved, as well as beneficiaries of restitution. The assessment will enable government to reach a workable solution for the challenges encountered. The results of the scientific study will enable government departments to engage relevant community structures or stakeholders within the communities.

This is important, seeing that some government departments will lend a helping hand assisting communities to develop their land after the settlement. Where challenges within communities are not yet resolved, the assisting departments will have a clear picture of the precautionary measures required to avoid further challenges. The

lessons experienced in this process may be of help when the state departments address challenges of the same nature somewhere else.

This experience is of the utmost importance, seeing that it may help the beneficiaries and the community at large to keep on identifying positively with the activities of Government when addressing the needs of the inhabitants. The focus will be on the following three communities that were subjected to the racially discriminatory laws and eventually lost the land they occupied:

1. The Masakaneng community
2. The Bakwena Ba-Kopa tribe under Kgoshi Boleu Matsepe-Kopa
3. The Bakgaga Ba-Kopa tribe under Kgoshi B.H. Rammupudu II

1.3 HISTORICAL BACKGROUND: MASAKANENG

This community originated from people out of the surrounding villages who came to the local town, Groblersdal, in search for employment in and round 1940. These people ended up erecting informal structures that contained doors and windows made of empty maize meal bags. Hence, the name Masakaneng (“the place of empty maize meal bags”).

The apartheid regime had to deal with the increasing number of black people settling at Masakaneng. In 1968 this regime started the process by which they removed the community forcibly from the farm Klipbank. People had to settle against their will in an area called Motetema, approximately 12 km from Groblersdal.

Seeing that these people suffered under the previous regime’s policy of forced removal, land redistribution will ensure that their original land is re-allocated to them. Presently these people are scattered all over the country; however, the majority find themselves in the Limpopo Province within the Greater Sekhukhune District Municipality in the Elias Motsoaledi Local Municipality. The majority of the people are without their own land, because they reside in areas under traditional leaders. In

these areas they only have permission to occupy land where they build their structures. Some have settled in the townships, where they are still struggling to get hold of title deeds. They only have deeds of grants for the plots allocated to them.

Land redistribution will restore dignity to the beneficiaries, seeing that they are able to arrange title deeds for the portions of the land identified for human settlement. On the other hand, they can opt to utilise the land or part of it for commercial purposes. This is possible, because a portion of the land re-allocated to them is already used successfully for agricultural production. This will of course depend on an agreement by the beneficiaries. The beneficiaries have many options in the forms of crop, grape or cattle farming.

Beneficiaries may decide to use the land for other forms of production, in addition to agriculture and human settlement. They may seek professional advice and use the land for a variety of business ventures, seeing that they are near to Groblersdal, their market.

1.4 HISTORICAL BACKGROUND: BA-KOPA

The information presented here was obtained from Kgoshi Boleu Matsepe-Kopa, the traditional leader of the Bakwena Ba-Kopa tribe. This information from Kgoshi is endorsed by historical literature on the Ba-Kopa tribe. According to Boshoff (2004:460), towards the end of November 1863 a Boer commando gathered to attack Kgoshi Boleu with the intention to discipline him and to reinstate the ZAR's hold over the Ba-Kopa.

Around 1863 the Ba-Kopa Tribe was engaged in a fierce battle with the Boers who had shown great interest in Thabantsho (Maleoskop). The Boers focussed on the fertile ground of Thabantsho. The Ba-Kopa tribe was involved in crop farming in Thabantsho and attempted by all means to defend and protect that which they rightfully possessed. The Ba-Kopa tribe defeated the Boers during the first sortie.

The Boers did not abandon their plans. During 1864 their manpower was reinforced by the Swazis. Many of the Ba-kopa people died during the encounter, including their leader, Kgoshi Boleu II. His death left the tribe with no option but to surrender. As a result the tribe ultimately ended up breaking into two groups and dispersed into different areas away from their ancestral land, and thereby became powerless. Subsequently, two smaller tribes were formed, each with their traditional leader, Kgoshi Matsepe I and Kgoshi Rammupudu I respectively.

One section of the tribe under Rammupudu I ended up settling in Botshabelo near Middelburg in the former Transvaal Province. This tribe later re-settled at Thabantsho (Maleoskop). The other tribe under Kgoshi Matsepe II settled in Mafato, approximately 50 km from Thabantsho (Maleoskop).

Between 1874 and 1876, while they resided in Mafato, the Ba-kopa tribe under Kgoshi Matsepe II were again tormented and persecuted by the Boers. They were forced to start another journey towards Thabantsho, which took place between 1879 and 1880. They took the following route:

- They first landed in Mmitse (Rooival);
- thereafter moved to Khonu (Bloedrivier);
- eventually they reached Magagamatala (Braakfontein).

As time went by, the two tribes ended up distinguishing themselves by the following two names: *Bakwena Ba-Kopa* and *Bakgaga Ba-Kopa*.

The two groups fell under two different traditional leaders, namely Kgoshi Boleu Matsepe-Kopa and Kgoshi Boleu Rammupudu II respectively. Their stay in Magagamatala (Braakfontein) and Thabantsho (Maleoskop) was cut short. The Bakgaga Ba-Kopa tribe was removed from Thabantsho in 1962, and the Bakwena Ba-Kopa tribe was removed from Magagamatala in and around 1963. These tribes were forced to settle next to each other in Tafelkop. The entire Tafelkop-area formed part and parcel of the Lebowa Bantustan that was established in terms of the promotion of Bantu Self-governing Act of 1959.

The three communities, Bakwena Ba-kopa, Bakgaga Ba-kgaga and Masakaneng were forcibly removed from the land of their ancestors. At a later stage, during the post-apartheid era, all three communities lodged land claims in terms of the Restitution of Land Rights Act 22 of 1994 as amended.

The policy of land restitution is the product of the new dispensation, implemented after 1994. This policy focuses on making land available for the following activities:

- Agriculture production
- Human settlement
- Non-agricultural enterprise

1.4.1 The Bakwena Ba-Kopa community

Just as the Masakaneng community, the Bakwena Ba-Kopa tribe stands to benefit in the long run from land restitution, should their claims be successful and the farms in question re-allocated to them.

According to Kgoshi Boleu Matsepe-kopa (although he could not provide supporting documents), the majority of the claimed farms are potentially rich in valuable minerals. The community may benefit from the proceeds of any company that starts mining activities on any of the claimed farms.

1.4.2 The Bakgaga Ba-Kopa community

This Bakgaga Ba-Kopa tribe is already benefitting from land redistribution. It became clear from a discussion with Mr. C. Maipushe, a member of the Royal Council, that some community members are already busy with cattle farming, as well as with other livestock.

The same member of the Royal Council also indicated to the researcher that the community is benefitting from the rental agreement with a mining company that is busy with mining activities in Maleoskop. This entails a non-agricultural enterprise.

1.5 PROBLEM STATEMENT

The examination of the land reform will be incomplete without reflecting on the experience of various communities on land claim matters. Many authors have documented the experience of these communities in books and journals. Inhabitants of other communities can learn a lot from the experience and challenges of some of these communities, when embarking on programmes of land claims.

In all programmes of land claims by affected communities and land reform by Government, legislation will play a central role. The new dispensation brought in new legislation to deal with injustices of the past. The following legal documents are indispensable as information documents in dealing with issues on land reform and land claims:

1. The Constitution of the Republic of South Africa 1996
2. The Land Tenure Act of 1997
3. The Restitution of Land Rights Act of 1994
4. The Land Reform Labour Tenants Act of 1996

The above-mentioned legislation will be implemented to guide all role-players and stakeholders to understand what is expected of government officials and to ensure that challenges related to land reform are dealt with. Legislation will also address the relevant processes to ensure sufficient interaction between beneficiaries and government officials.

This study focuses on the difficulty of co-ordination and the role played by government officials to ensure that land reform is carried out to the satisfaction of the communities.

It does happen that during the processes of land claims the inhabitants of the communities concerned become excited. This is understandable, seeing that these people stand the chance of regaining what was taken away from them or from their parents. The excitement may lead potential beneficiaries to make certain decisions

before establishing the benefits of such decisions. This may be the result of ignorance on the part of some beneficiaries, or because they completely trusted their leaders who were on the forefront in pursuing the issue of land claims.

Members of the community, who institute land claims, should have the option of property holding. They should be in a position to decide whether they opt for Communal Property Association or Trusteeship. For them to decide on a suitable property holding to meet their needs, they should be made aware of the advantages and disadvantages of both options. This will enable the beneficiaries to make an informed decision on the option that will be in line with the way they intend to use the claimed land.

The Department of Land Affairs should facilitate the process by holding talks with beneficiaries through the Land Claims Commissioners. The purpose of the meeting should be to brief them on the two options of property holding and advise them accordingly. This will go a long way in addressing potential conflicts between beneficiaries and their leaders who manage the claimed land. It will also make it the highest priority to ensure that the land is restored to its rightful owners. This issue of the rightful owners, or rather the *rightful beneficiaries* is another matter that needs to be handled with care, seeing that there may be more than one claim for a section of land.

The Land Claims Commissioner's office responsible should play a vital role in this process. Part of its role is to ensure that only those who qualify will end up being indicated as the rightful beneficiaries. In this regard the Land Restitution and Reform Laws Amendment Act 1999, Section 2 (1) (a) provides helpful guidance:

A person shall be entitled to restitution of a right in land if he or she is a person or community or a direct descendant of such a person who was dispossessed.

Using this Act as a guide will help considerably to minimise conflicts that may arise when the status of some of the beneficiaries are questioned. Where a beneficiary's case is not handled well, conflicts occur and the utilisation of the land is delayed. Such a situation defeats the moral intention of land reform and land restitution.

The aim of the study in this regard will be to establish how the relevant departments co-ordinated their resources to help advise beneficiaries on alternatives and provide better options on how to use the land claimed.

According to the Nkuzi Development Association, there is a great need to focus more on economic development in any approach to land reform. This is the case, seeing that the return of the claimed land will have a profound effect on the entire economy of the areas area concerned. Whereas this view cannot be disputed, cognisance must be taken of the fact that some beneficiaries may not have economic (i.e. commercial) options for development in mind. They may be looking forward to utilise the claimed land merely for residential purposes. Government has to intervene and, in a simple and well understood discourse, brief the beneficiaries on the advantages and disadvantages of each approach.

The study will also be verifying whether, when the process of restoration was implemented, the following two applicable stipulations of the Constitution of the Republic of South Africa (1996) were taken into account:

1. **Section 25 (3)** indicates that where compensation has to be paid to the previous owner, payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected.
2. **Section 25 (5)** outlines the role of the state in ensuring that citizens gain access to land on an equitable basis.

This study deals with the challenges specific communities in the Elias Motsoaledi Local Municipality face in co-ordinating land restitution and what measures could be taken to tackle these challenges. For this purpose a research was conducted to describe, by means of three case studies, the land restitution challenges communities face.

The case studies will also examine whether communities are of the opinion that they received sufficient assistance from Government and whether, according to them, Government could have done more.

1.6 RESEARCH QUESTIONS

The general research question of this study can be put as follows:

What measures should/may be instituted to improve the co-ordination between relevant governmental departments and the stakeholders and beneficiaries within the jurisdiction of the Elias Motsoaledi Local Municipality?

The research questions on which this study focuses are:

1. What is the *nature* of the co-ordination processes and interaction regarding land reform between the relevant stakeholders and beneficiaries? The research will be investigating whether the interaction between government departments and beneficiaries play a sufficient role in ensuring that the claimants receive sound advice, helping them decide how to utilise the land claimed after they settle themselves.
2. What are the main *responsibilities* of involved departments who liaise with stakeholders and beneficiaries? The question will arise whether the departments concerned are guided by the relevant legislation when they carry out their responsibilities.
3. What are the *expectations* of the stakeholders and beneficiaries on the co-ordination? Are the stakeholders' expectations guided by relevant legislation, such as the Land Tenure Act and the Constitution of the Republic of South Africa?
4. Why do the beneficiaries *respond* in certain ways and how did government departments intervene in addressing these challenges? Is Government responding in a manner that enables the beneficiaries to indicate clearly how they want Government to assist them by rendering the necessary services?
5. What measures can be taken to ensure that Government improves *co-ordination* in dealing with the challenges encountered by stakeholders and, more importantly, by the beneficiaries?
6. What are the measures that ensure that beneficiaries are *benefitting* and have started using the claimed land profitably?

1.7 RESEARCH OBJECTIVES

The main objective of this study is to explain the nature of the co-ordinating role played by government officials, and the specified communities' view on this. In view of this analysis, recommendations will be made on how this role can be improved to ensure satisfactory land reform.

The sub-objectives of this research are to clarify the following issues:

1. The *historical background* of the land reform and the communities affected by dispossession and land reforms.
2. A *literature review* of the process of co-ordination and interaction regarding land reform matters.
3. Determining the main *responsibilities* of the relevant departments that liaise with stakeholders and beneficiaries. This will be achieved through interviews with stakeholders, beneficiaries and officials from the Regional Land Claims Commission (RLCC).
4. Describing the *expectations* of the stakeholders and beneficiaries in terms of the above-mentioned co-ordination.
5. The *interaction* between all three spheres of Government and the communities affected by the co-ordination.

After an overview of the sub-objectives, the focus can shift to the core theoretical statement, the basis of the research.

1.8 CORE THEORETICAL STATEMENT

Van der Elst (2008:21), researched post-settlement land-reform objectives in South Africa. He makes reference to the public policy of the land reform programme that is implemented in line with the three spheres of government: national, provincial and local.

The above-mentioned spheres of government, according to Van der Elst (2008:21), implemented the land-reform programme in order to rectify the current ownership imbalances and to contribute to the reduction of poverty, particularly amongst formerly disadvantaged individuals and communities, as stipulated by Chapter 3 of the South African Constitution (1996). Van der Elst further identifies the White Paper on Land Policy (1997) and the Restitution of Land Rights Act (1994) as the main policy guidelines stipulating how land reform objectives should be achieved. He indicates that in the implementation of land reform each sphere of government played a specific role, which will be indicated below.

1.8.1 National Government

According to Van der Elst (2008:22), the role played by the National Government centres on the following functions and responsibilities:

- Setting of policy priorities
- Provision of implementation guidelines and advice in the final analysis
- Reviewing specific aspects of land reform programme where necessary

1.8.2 Provincial Government

Van der Elst (2008:23), argues that the sphere of the Provincial Government is the main mechanism for the implementation of the land reform programme. This is understandable, because of the proximity this sphere of Government enjoys to the community that lodges the land claim.

1.8.3 Local Government

The sphere of Local Government is responsible for attending to the concrete developmental needs of the communities. It does that by rendering the necessary services, such as infra-structure, water and sanitation.

Land reform implies a revolutionary step; it transfers power, property and status from one group in the community to the other (Letsoalo, 1987:13). It is true that land reform leads to changes of ownership in an affected community. The changes will have a different effect on the different role-players; the owner of the land involved in the process of land restitution will be affected differently, compared to the people aspiring to have their land returned. This may lead to instances where the owner of the land attempts to resist re-appropriation, leaving Government with no other option than to expropriate.

Restitution forms a unique part of Government policy and the implementation of this policy is one of the few practical measures taken to address injustices caused by the apartheid policies of the previous government. Section 25 (7) of the Constitution (1996) specifically provides avenues for redress. It forms part of the Government's larger land reform programme, of which the primary objectives can be seen as threefold:

1. Redressing the injustices of the apartheid dispensation.
2. Fostering national reconciliation and stability.
3. Underpinning economic growth (Du Toit, 2000:76).

Land reform is seen as a remedy for many obstacles in rural and agricultural development. In South Africa, however, land reforms over the last eight decades have not performed this remedial function. Instead, the apartheid regime was seen to present superficial land reforms as true land reforms in order to create a black labour reservoir to feed the nation's capitalist economy (Letsoalo, 1987:14).

After the newly elected government took office the situation changed. This government initiated the implementation of a nationwide land reform programme in February 1995. This was done with the launch of a land reform pilot programme in each of the nine provinces (see Van Zyl *et al.*, 1996:15).

1.9 CHALLENGES ENCOUNTERED DURING LAND REFORM

The above mentioned three-pronged land reform policy of Government is not without its challenges. The land redistribution, land restitution and the land tenure reforms are faced with the following challenges affecting their pace:

1.9.1 Land restitution

The challenges and obstacles encountered during the process of restitution include the following:

- Scarcity of viable commercial land.
- Land owners unwilling to sell their land.
- The Department of Land Affairs not using its powers to expropriate.
- Bureaucratic structures that prolong the sale of land.
- Many land claims that must be finalised (Anon, 2004:4).

1.9.2 Land tenure reform

The challenges and obstacles faced during the process of land tenure reform could be the following:

- Weak implementation of legislation.
- Lack of institutional and financial support.
- Lack of knowledge of legislation amongst all role-players.
- Scarcity of land.
- Lack of compliance with legislation (Anon, 2004:5).

To summarise: The challenges related to land restitution and land tenure reform have a negative impact on land reform in general. These challenges become stumbling blocks and as a result, the pace of land reform is slow.

Where land owners are not willing to sell and Government does not use its powers to expropriate, the process will be delayed. The delay may be the result of weak implementation of legislation by government officials.

1.10 METHODOLOGY

The aim was to ascertain how the potential beneficiaries thought issues should be addressed. This was done by getting in touch with various stakeholders within the affected communities and those managing the restitution process. Inputs were also sought from the officials from the Department of Land Affairs with the intention of hearing both sides of the story.

To address challenges that might arise, the study was done to establish which events preceded the land restitution, and to verify whether beneficiaries clearly understood the procedures and processes. The study also assessed the interaction of different government departments with the beneficiaries concerned.

For this dissertation, data was obtained by means of a *semi-structured* questionnaire. This means there is no set interview schedule; the interviewer may probe deeper with additional questions. This is in contrast to a *structured* interview, which follows a schedule of set questions.

Appendix 1 provides as illustrations of this type of questionnaire. The qualitative data was obtained from the following sources:

- Interviews and discussions with members from the Masakaneng, Bakwena Ba-kopa and Bakgaga Ba-kopa communities.
- Interviews with the relevant officials from the Limpopo Regional Land Claims Commission.

1.10.1 Drawing up a questionnaire

The study involved constructing a questionnaire, followed by the collection of data. This was done by means of interviews with leaders from the three communities, as well as from ordinary community members. **Table 1** below gives an overview of the identity of the interviewees in the different affected communities.

Table 1: Identity of interviewees

	Name	Position in community	Date of interview
Masakaneng Community			
<i>Interviewee 1</i>	L. D. K. Legoabe	Chairperson BOT	2009
<i>Interviewee 2</i>	N. Mohlala	Secretary BOT	
<i>Interviewee 3</i>	Rev. D. B. Mdluli	Resident beneficiary	2010
<i>Interviewee 4</i>	Senior community Member	Resident beneficiary	2010
Bakwena Ba-kopa			
<i>Interviewee 5</i>	D. Matsepe	Resident beneficiary	2010
<i>Interviewee 6</i>	H. Matsepe	Resident beneficiary	2010
<i>Interviewee 7</i>	Rakgetsi	Resident beneficiary	2010
<i>Interviewee 8</i>	M. Matsepe Boleu Matsepe-kopa	Resident beneficiary Kgoshi	2009
Bakgaga Ba-kopa			
<i>Interviewee 9</i>		Kgoshi	2009
<i>Interviewee 10</i>	Maipushe	Secretary Bakgaga Ba-kopa tribal authority	2010
<i>Interviewee 11</i>	M.J. Matsepe	TBA member	2010

<i>Interviewee 12</i>	B. H. Rammupudu	Kgoshi	
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The researcher consulted relevant documents that outlined the process in each community. This will be dealt with in the literature study below:

1.10.2 Literature study

The study focused on two sets of documented evidence, as explicated below.

a) Legislative documents

The following documents were reviewed to help outline and evaluate the legislative process followed:

1. The Native Land Act of 1913
2. The Group Areas' Act of 1950
3. The Promotion of the Bantu Self-governing Act of 1959
4. The Restitution of Land Rights act 22 of 1994 (as amended)
5. Communal Land Rights Act 11 of 2004
6. The Constitution of the Republic of South Africa, 1996

b) Related literature

The other literature listed below, which focuses on co-ordination between the state and communities, was consulted:

1. *Land research action network* (Thwala, W. D., accessed from the Internet).
2. *Policy options for land reform in South Africa:* (Cliffe, L in New institution Mechanisms.)
3. *The land question in South Africa: The challenges of transformation and redistribution* (Walker C)
4. *The pace of land reform in South Africa* (Anon, accessed from the Internet).

1.11 COMMUNITY DOCUMENTS RELATED TO RESTITUTION

1.11.1 The Bakwena Ba-kopa's application

From the Bakwena Ba-kopa community there is little documented information on applications for restitution. However, reliable oral information and data emerged from the interviews with the Kgoshi and members of that community. The court order giving advice to the Bakwena Ba-kopa and the Mampuru communities how to tackle the joint land claim is the only document that deals with this specific restitution application.

1.11.2 The Bakgaga Ba-kopa's application

Data was collected through an interview with Kgoshi Boleu Rammupudu II, a member of the Royal Council and a member of the community. The respondent indicated that he was amongst those who were not convinced that the inhabitants of the community enjoyed the fruits the restored position of the claimed land afforded them.

In addition to the verbal communication, the researcher had at his disposal correspondence in the form of letters between the Regional Land Claims Council (RLCC) and the community through the Royal Council or Kgoshi (traditional leader). The correspondence is of value to this discussion.

1.11.3 Masakaneng's application

Data was collected from a combination of sources, ranging from verbal communication with leaders to discussions with members of the community. The documented information entails communication between the Board of Trustees (BOT) and the following: the RLCC: Limpopo; the local municipality; and other stakeholders who had expressed their interest in the claimed land.

1.12 ANALYSIS OF DATA

Data collected from the verbal communication with members and leaders within the three communities is viewed in relation to and compared with available documented data. Documented information from any sphere of government adds more value to analysed data, seeing that this data stems from the official sources in Government. Where documented data is unavailable, related data collected from two or more community members and from leaders is compared. The aim is to establish whether members of a particular community view a certain aspect in the same way or differently.

1.13 SEMI-STRUCTURED REPORT ON THE LAND CLAIMS BY THE THREE COMMUNITIES

A structured report was completed on the restitution of land claims by the three communities within the Elias Motsoaledi Local Municipality. This was done by interviewing leaders or stakeholders from the communities concerned, as well as officials from the Land Claims Commission. The report covered the following information:

1. The name of the community that has laid the claim.
2. Names of interviewed persons within the communities.
3. Obstacles that may have been encountered during the claiming process.
4. The role played by officials acting within the three different spheres of Government (national, provincial and local) to address possible obstacles.
5. The role played by the Land Claims Commission (LCC) in particular.
6. What the beneficiaries expect from Government in order to be convinced that enough assistance is rendered.
7. Progress to date.
8. Matters that are still outstanding, which, according to the communities, should be addressed by Government.

1.14 ETHICAL CONSIDERATIONS

According to Schwarz (as quoted by Struwig and Stead, 2007:66), ethics of research entails a system of morals and rules of behaviour, which provide researchers with a code of moral guidelines on how to conduct research in a moral acceptable way. These guidelines seek to prevent researchers from scientific misconduct such as:

- Distorting and inventing data.
- Plagiarising the work of others.
- Republishing someone else's data as if it is an original contribution – i.e. without proper acknowledgement of someone else's work.
- Failing to maintain the code of confidentiality and privacy with regard to research participants and clients.
- Forcing people against their will to be involved in research.
- Not executing the study properly.
- Deceiving the interviewees.
- Reporting results falsely.

According to Struwig and Stead (2007:67) the following five basic moral guidelines are based on the 1992 American Psychological Association Ethics Code:

1. Researchers must be qualified and competent to undertake a particular research project.
2. Integrity is an important characteristic of a researcher.
3. Researchers must uphold the standard of their profession.
4. Researchers must respect the rights and dignity of others.
5. The welfare of others should be of major concern to researchers.

While compiling their study, researchers must do their utmost to ensure that they follow a system of moral guidelines as well as comply with the ethical code. Kept on course by the guidelines as outlined above, researchers will be able to get maximum participation from their clients or respondents.

The persons who were interviewed were informed about the information required. The researcher also asked the permission of interviewees to quote them as the source of information. Except for one respondent, no-one else whom the researcher interviewed for this research had a problem to be acknowledged as the source of information.

Brief resume of the study thus far

This chapter (1) indicated comprehensively what the entire discussion will focus on. This includes details on how the discussion will be conducted. The next chapter will deal with the literature review. The following chapters will highlight specific aspects on land reform, indicating the role played by Government and beneficiaries and relevant stakeholders in the affected communities.

Chapter 2 reflects on the literature review. This review analyses the apartheid legislation that lead to forced removals of blacks from the land they occupied previously. It will also examine legislation enacted by post-apartheid governments to facilitate land reform and to ensure that land is restored to the previously repossessed. In addition to the legislative material, attention will be paid to literature that deals with land reform matters in general.

Chapter 3 presents the results of the interviews and discusses the implication thereof.

Chapter 4, the conclusion to this study, will review the interaction between the communities concerned and Government (which includes all three spheres of governance).

CHAPTER 2: LITERATURE REVIEW

This chapter reflects on the relevant literature about land reform that was consulted in this study. The discussion in this chapter will point out the legislation by which the apartheid government's oppressive policies lead to the legitimised forced removals of non-Europeans. The focus will then fall on the legislation of the democratic government after 1994 and its aim of reversing the injustices committed by the previous government.

Not only legislative material, but also other literature will form part of the discussion in this chapter. All literature will also focus on the problems regarding co-ordination in land restitution.

The selected literature is crucial for the discussion, not only in this chapter, but throughout the entire document. The legislative material will help clarify why actions were taken at a certain point in time. The additional literature will outline the land reform activities, which were researched and/or documented by scholars of repute.

2.1 LEGISLATIVE FRAMEWORK: POLITICAL ISSUES

The activities of the previous government that led to blacks' dispossession of their ancestral land were politically motivated. The previous government systematically passed Acts that resulted in the dispossession of blacks. The current government's legislative framework should be sufficient to help government officials deal with problems emerging from the relationship between the Land Claims Commission (LCC) and communities that lodged land claims.

2.1.1 Acts passed by previous governments

Government's Acts that the study examines below were passed by the previous government. Through these Acts legal mechanisms were created by which non-

Europeans could be removed by force from their land and in this way they could be dispossessed of the land area they occupied. The Acts in question are:

- The Native Land Act of 1913
- The Group Areas Act of 1950
- The Promotion of Bantu Self-governing Act of 1959

a) The Native Land Act of 1913

The creation of reserves for blacks was implemented in terms of the Native Land Act of 1913. This Act reserved certain areas of land for legal occupation by blacks. The Act was passed owing to constant pressure by white citizens to prevent the encroachment of blacks on white areas. Blacks were allowed to live outside the reserves as long as they could produce evidence that they were employed by whites. While they were outside the reserves, blacks had to carry a permit as proof. Those who failed to do so faced jail sentences and/or deportation to the reserves.

According to the Hansard records of debates in Parliament, the Act was passed to limit conflict between whites and blacks. However, blacks maintained that the aim of this Act was to meet the demands of white farmers for more agricultural land and to force blacks to work as labourers (*South African History On-line*.)

The Native Land Act was implemented when the Masakaneng community was forced off their land in 1968. They were deemed to be encroaching on the white area, seeing that they were living approximately 6 km from the main town, Groblersdal. They were relocated to a place called Motetema where they are currently residing. If these people wanted to enter into town, they were expected to have documents in their possession indicating that they were employed by a white person. The same applied to the Bakgaga Ba-Kopa and Bakwena Ba-Kopa communities, which were forcibly removed from Thabantsho (Maleoskop) and Magagamatala (Braakfontein) respectively. This removal dispossessed them of their land and they were relocated in 1962 to the Tafelkop area.

b) The Group Areas Act of 1950

This Act was promulgated to ensure that the principle of separate residential areas for different race groups in urban areas could be enforced. When taking note of the forced removals of the Masakaneng community from their land and their relocation at Motetema in 1968, it becomes evident that this action was based on the socio-political principle of separate existences for different race groups. This principle formed the basis of the Group Areas Act.

This particular group of blacks had to vacate an area where they could prosper, and was relocated to a small area between mountains. The government of that time's policies disallowed non-Europeans to reside in their original area, particularly because it was situated near a main town.

c) The Bantu Self-governing Act of 1959

The Bantu Self-governing Act was promulgated in 1959 to establish Bantustans and establish the reserves as the political homeland of black South Africans.

The Bakgaga Ba-Kopa and Bakwena Ba-Kopa tribes were forcibly removed from the farms, Thabantsho (Maleoskop) and Magagamatala (Braakfontein). These tribes were resettled against their will in the Tafelkop area to form part of the Lebowa self-governing state at that time. (Bantustans such as Lebowa were established following the promulgation of the Bantu Self-governing Act mentioned above.) The forced resettlement of the tribes was implemented during 1962 in terms of the Blacks Resettlement Act reaching back to 1954.

The end-result of the above-mentioned Acts and other regulations dealing with land matters was that the majority of blacks had to settle in the self-governing states. According to Thwala (2003:2) this was a political strategy of the government at that time, and it successfully ensured that farms where the blacks initially resided were reserved for whites or for members of the government of the day, which was "lily

white”. This is ideologically seen as a political ploy to ensure that the farms were not in blacks hands and that they did not own the land where they were resettled.

2.1.2 Acts passed by the post-1994 government

In the new dispensation Government gave special attention to the issue of land rights and land reform. Based on the Constitution of the Republic of South Africa the following Acts were passed by the post-1994 democratic government. The aim was to address the socio-political injustices and aberrations of the previous governments:

- The Restitution of Land Rights Act 22 of 1994 (as amended)
- Communal Land Rights Act 11 of 2004

a) The Constitution of the Republic of South Africa, 1996

The Constitution, protecting citizens’ basic human rights, opened the way to reflect on land rights. By doing so, the Constitution helped to shift the focus to equitable redress for the injustices of the past, such as the forced resettlement of communities.

Section 25 (7) of the Constitution states the following:

A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, by an Act of Parliament, either to restitution of that property or to equitable redress.

Individuals or members of the community who wish to make land claims are fully entitled to do so in terms of the South African Constitution. They have a right to seek legal advice in case they are not assisted properly.

b) Restitution of Land Rights Act 22 of 1994

The Restitution of Land Rights Act 22 serves as a resource to provide restitution of rights to land. This concerns persons or communities who were dispossessed of land in terms of the racially based legislation by the previous regime. The Act’s aim is to

make it legally possible for the land to be restored to the original owners eventually. The following communities (under their traditional leaders) lodged their claims to the Land Claims Commissioner:

- the Masakaneng, Bakwena Ba-Kopa under Kgoshi Boleu Matsepe-Kopa;
- the Bakgaga Ba-Kopa under Kgoshi Rammupudu Boleu II.

These communities cited certain sections of the above mentioned Act when they submitted their land claims. When the Land Claims Commissioner responded to these claims, be it in the positive or negative, they would refer to certain sections of the Act.

- A **negative** response would mean the Regional Land Claims Commissioner (RLCC) rejected the claim and that the submission was therefore unsuccessful.
- A **positive** response would mean the RLCC accepted the validity of the lodged claim. The submission was therefore successful and the community needs to pursue the process further.

The standard procedure for communities to follow when submitting documents or information can be found in certain sections of the Act. The following section serves as evidence that the three communities followed the guidance from the Act.

(i) The Masakaneng community's claim

Mgadi (2001a) informed the Groblersdal Transitional Local Council that the Masakaneng community lodged a claim on portion 2 of the farm Klipbank 26 JS. This was done in terms of the Restitution of Land Rights Act 22 of 1994.

(ii) The Bakwena Ba-Kopa's claim

In an interview with Kgoshi Boleu Matsepe-Kopa, he said that the claim for Braakfontein and 25 other farms were made in terms of the Act and submitted to the

Restitution of Land Rights in July 1993. However, there is no document from Kgoshi Boleu Matsepe-Kopa to support this.

(iii) The Bakgaga Ba-Kopa's claim

"Gilfillan (1997) informed the Bakgaga Ba-Kopa community of Section 11 (7) of the Restitution of Land Rights Act, 1994 (Act 22 of 1994), as amended. Notice was hereby given in terms of Section 11 (1) of the Restitution of Land Rights Act, 1994 (Act no: 22 of 1994) that a claim for the restitution of portions of the farm Rietkloof 166JS had been lodged. This was done in terms of Section 10 of the Act (South Africa: 1997:1103)"

On 01 August 1997, the Regional Land Claims Commissioner responded to the land claim, which the Bakgaga Ba-Kopa tribe had submitted. The tribe was informed of the provisions of Section 11 (7) of the Restitution of the Land Rights Act, 1994 (Act 22 of 1994), as amended.

(iv) The amended Sections taken into account

It is important for the community submitting their claim to the Land Claims Commissioner (LCC) to ensure that any action is in terms of the Act. More importantly, they should also take cognisance of the laws that have been amended. If this is not done, one party may act in terms of the old section instead of the amended one, and in that case the action will be unlawful.

Subsection 2 (1) amended

Before the amendment, Subsection 2 (1) stipulated the following:

A person shall be entitled to restitution of a right in land if he or she is a person dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws or practices.

The amended subsection stipulates:

*A person shall be entitled to restitution of a right in land if -
He or she is a person or **community** dispossessed of a right in land after 19 June 1913 as a result of past racially discriminatory laws **or practice or direct descendant of such a person** (my emphasis, H.M.P.).*

b) Communal Land Rights (Act 11 of 2004)

The Communal Land Rights Act aims to provide legal security of tenure by transferring communal land to communities or by awarding comparable redress to the persons concerned. The Act applies to the three communities as it is explained below.

(i) The Masakaneng community's settlement

The claimed portion of Klipbank 26 JS was transferred to the beneficiaries. The minutes of a meeting that took place at Masakaneng indicated that the Minister of Land Affairs and Agriculture at that time, Thoko Didiza, attended the meeting. The researcher learnt from a discussion with Rev. Mdluli, who resided in Masakaneng until 1968, that the Minister announced in the meeting officially that the land claim was a success.

(ii) The Bakwena Ba-Kopa's settlement

There is also evidence of meetings between government and the community on the land claim on the farm Braakfontein (Magagamatala) by this community. Should the settlement be finalised, the community will officially have ownership of the farm transferred to them in terms of this Act on a date still to be determined by Government.

(iii) The Bakgaga Ba-Kopa's settlement

The Bakgaga Ba-Kopa community lodged a land claim on Maleoskop (Thabantsho). A settlement was finalised and a section of the farm was re-allocated to the community. The section has been legally transferred to the community and is presently owned by the community in terms of the act in 2003.

2.2. OTHER RELEVANT LITERATURE

In addition to the legislative framework, a few literature sources form the basis of the discussion and are valuable as they outline how the communities were treated unjustly by government before 1994. These sources were listed in the previous chapter, under 1.9 b).

2.2.1 Land research action

There is evidence of disparity between the white areas and the areas where members of the three communities under discussion were relocated to. The white areas are currently well developed with an infrastructure, business sector and essential services in place. In the areas where blacks were relocated one can discern a distinct lack of services, such as water, housing and electricity.

Only recently, from 1994 onward, the present government put measures in place to help bridge the gap between the areas previously occupied by whites and those areas that, under the old apartheid government, were set aside for blacks. The black communities will be able to develop the land areas returned to them. The inhabitants could later apply for title deeds, in contrast to deeds of grant in the townships and permission to occupy land in areas where the traditional leaders reign.

In doing this mini-dissertation, literature related to land and agrarian reform in South Africa was consulted. Currently the land issue is a major influence on political and development thought in South Africa. When looking at land reform issues in South

Africa, it is clear that the literature dealing with these issues link land reform to the socio-political transformation of society as a whole.

2.2.2 Developmental issues

When drawing attention to these developmental issues it is evident that the previous government paid more attention to the development of cities, towns and farms. Whites resided in cities, towns and farms. Blacks had to commute to the white areas to provide labour for the whites.

According to Thwala (2003:3) the historical dispossessions of land and segregation in South Africa also contributed to a serious neglect of human rights and dignity, which lead to acute inequalities within the South African society. This scenario is depicted by the developmental gap that exists between rural and urban areas, but also between cities or towns and the townships where blacks reside.

The situation in areas that belonged to self-governing states is deteriorating fast. The infrastructure in these areas has been neglected and an important goal of the government post-1994 is to develop these areas. It will, however, take government many years to bridge the gap between the level of development in the former self-governing states and the areas that were set aside for white settlement.

The inadequate development of basic infrastructure like roads, water and electricity in black areas is a clear sign of disparity that emanates from the handling of land issues in the past. The previous Government had no intention of developing the black residential areas the same way as the white areas. The present Government is attempting to bridge the developmental gap that exists between the areas previously settled by blacks and whites respectively. By reclaiming land and ultimately settling near areas previously occupied by whites only, blacks (and other “non-whites”) will be able to benefit from better services in more developed areas.

2.2.3 Policy options for land reform in South Africa

In this section the policy options for land reform that the communities in this study face, will be investigated. The question subsequently arises: What new institutional mechanisms are put in place to help further the process? First, the options of the communities will be touched on briefly.

- The **Bakwena Ba-Kopa** will have to wait until settlements on the claimed farms have been reached, before they can draw up business plans.
- The **Bakgaga Ba-Kopa** had a section of Rietkloof re-allocated to them and they had to make decisions on how to use the land optimally. After deciding on methods to develop the land and utilising the other land sections for human settlement, they were allowed to approach the Municipality to assist them in drawing up viable business plans.

This mini-dissertation deals with mechanisms for implementing land reform processes. It takes a good look at procedures that are followed when land is acquired, such as the option of “willing buyer, willing seller” or that of re-appropriation of land by Government. Other issues concerning land reform, as well as arguments on how land reform issues should be dealt with, are examined.

The option of mutual compliancy

The prevalent South African option is the practice of “willing buyer, willing seller”, therefore this study will touch on it briefly here. The one consequence of this option for land acquisition is that the process is prolonged to the detriment of the land claims beneficiary:

- properties need to be acquired and transferred one by one
- a business plan or a design for a farm has to be drawn up for each land transfer (Cliffe, 2007:1).

The land from which the Bakgaga Ba-Kopa and Masakaneng communities were removed in 1962 and 1968 respectively, were transferred by the Department of Land Affairs to the beneficiaries in 2003. After the transfer of land the communities need to draw up business plans. The communities also need to ensure that the local municipality is involved and that it does render the required services to the communities. The business plans will further indicate to the municipality the way in which the communities plan to develop the farms transferred to them.

In the case of the Bakwena Ba-Kopa, the community leaders will have to approach Government to ensure that the farms they claimed are relocated to them. Thereafter they will have to follow the same process as the two other communities mentioned above.

2.2.4 The land question in South Africa: The challenges of transformation and redistribution

The land issue in South Africa poses an acute socio-political question (with definite socio-economic spin-offs): **How important is land reform to the people of South Africa today?**

a) Socio-economic complications

Politically the land issue can easily lead to an emotional debate spanning the future and the past in South African politics. Walker (2004:1) depicts the situation as follows:

The narrative local-level redress regularly involves complication in the form of competing claims on specific sections of land. Economically and socially the importance of land reform is more difficult to compute.

Currently land reform is hugely significant to communities and members of those communities who (themselves or their ancestors) were dispossessed of land. These people have emotional attachments to the land concerned and will use all means at

their disposal to ensure that the land is returned to them. This is part of the challenge the present government faces.

The issue of land reform has the potential of sparking emotional debates, in the sense that it continually causes community members to reflect on how they (or their ancestors) were removed. Furthermore this has political implications, seeing that non-Europeans were forcibly removed to create living space for members of the previously advantaged white communities, or to make way for the projects of the previous government.

b) Political motives

According to the argument this discussion document follows, the forced removal of the Masakaneng community was entirely politically motivated, seeing that the government at that time implemented the applicable laws. The aim of the laws was to ensure that the blacks of this community were removed from areas near the main town and relocated against their will in an area further away from the white community.

The government of that time was acting politically in terms of the Group Areas Act of 1950 and the promulgation of Bantu-Self Governing Act of 1959. In the same manner the Ba-kopa tribes were forcibly removed from their land in 1962 and re-settled in an area that also fell under the self-governing state of Lebowa.

The Restitution of Land Rights Act 22 of 1994 provided the legal framework for a process of land reform in the form of redressing injustices of the past. After 1994 the Masakaneng community members and the Ba-kopa tribes instituted land claims to have their dispossessed land returned to them. The process of land reform under the new government gave these people an opportunity to regain their dignity in claiming back the land from which they (or their ancestors) were removed.

According to Walker (2004:2) a land reform programme can and should have the following objectives as its priorities:

- **Redress wrongs of the past and provide social justice for victims** of forced removals in the more recent past (rather than a more distant and irretrievable colonial one) through the process of restitution. Land restitution is written into the Constitution of South Africa (1996) and this commitment to land reform has to be honoured.
- **Legal recognition and mechanisms** to enforce the customary land rights of families (and individuals within families) as well as communities living on state-owned land in the former Bantustans. This should include demarcating boundaries for groups and households and transforming rights into other forms of tenure (leasehold, freehold) – as the need arises locally.
- **State acquisition of privately-owned land** to establish a range of different types of rural settlements and projects for the poor, landless, land-hungry households and individuals from these (communal) areas, as well as those from commercial farms.

The focus should not be on agricultural projects only. Land reform should be delinked from the current emphasis on land for agricultural development and aligned more closely with the broader strategies for development in the community concerned.

- **State protection for the enhancement of women's social standing and providing more economic opportunities** through practices of land reform legislation, policy and implementation.

What is of importance here is to advance women's rights within the communal family structure and households. This also means promoting gender equality in land reform projects where women should be regarded as individuals on equal terms with men.

The land question in South Africa is a direct response to socio-political issues related to land reform. There is a need to redress the injustices that victims of forced removals suffered and to work towards healing of emotional scars.

In all instances the interviews in this study have shown that members of all the communities concerned were emotionally and psychologically affected when they were forced to leave their land. Some ended up losing property, including cattle, when they were relocated. Their way of life changed drastically, making it necessary to adjust significantly to the conditions in their new settlement areas. Redressing the past will contribute largely to healing the wounds inflicted by forced removals.

Helping victims of forced removals to secure land tenure will make these beneficiaries realise the advantage of land reform, because at the end of the process they will occupy a section of land that belongs to them officially. To own property will help maintain a positive attitude toward Government – and give people the assurance that Government utilises all legal avenues to lend a helping hand.

Where community members plan on using portions of the claimed land to launch their own business ventures, Government should assist and play its role to ensure that the community reaches its economic goals. Government can do that by helping those who are interested in such a venture to draw up business plans, and to work out developmental aims and strategies.

It is crucial to help women advance in land reform projects. The majority of women in all communities have the necessary zeal, skills and capacity at their disposal to benefit the entire community. Women's ability for capacity-building can be channelled and used constructively where land has been given back to the people. The positive outcome of this will be the empowerment of the community at large.

The three communities in this study can benefit greatly from Government, provided they make well-informed and specifically community-based decisions on how to develop the land reallocated to them. While waiting for land claims processes to take its course, communities can learn from other communities by seeking guidance on land use.

2.2.5 The pace of land reform in South Africa

The South African Human Rights Commission (SAHRC) supports the furthering of democracy in South Africa and thereby maintains a preferential option to serve the landless in South Africa. The SAHRC is concerned with the pace of land reform within the policy framework of the constitutional democracy.

The mandate and functioning of the SAHRC is described in Chapter 9 of the Constitution under the heading “Independent Institutions”. These institutions were created to support democracy in South Africa. The SAHRC had to consider the complaint, voiced by landless people and others, that the pace in which land injustices have been redressed is insufficient and that the plight of citizens who are socially vulnerable has not received enough attention.

The Commission therefore recommended that the Department of Land Affairs introduce communication and education programmes on land reform (Anon, 2004:2). According to the Council, the denial of access to land to the majority of the country’s citizens during the apartheid-era is one of the greatest challenges that the fledgling South African democracy faces.

The SAHRC consequently identified three broad areas of land reform, which reflects this challenge. These areas are land redistribution, land restitution and tenure reform. The challenges that impact on the pace of land reform are outlined below.

a) Land redistribution

The main challenges for just distribution are the following:

- There is a scarcity of viable commercial agricultural land in South Africa.
- Present land owners do not to sell their land willingly.
- Land is an expensive commodity.
- There is inadequate support for economic development after the transfers have taken place.

- No integrated centralised institutions exist to co-ordinate other services that the beneficiaries need (Anon, 2004:3).

b) Land Restitution

The main challenges for rightful restitution of land to the affected communities can be summarised as follows:

- The huge number of unsettled claims, lack of support from some land owners and a budget allowing only minimum resources make it difficult to meet the deadlines.
- Illiterate claimants cause delays in the processing of claims (Anon, 2004:4).

c) Land tenure reform

The main challenges for effective reform can be indicated as:

- Weak implementation of legislation.
- The lack of institutional and financial support.
- Poor knowledge of legislation resulting in inadequate compliance.
- The scarcity of land available to provide secure tenure for beneficiaries.

d) Land reform in the communities

When focusing on the three communities that are the subject of this study it is evident that the land claims were affected by the three broad areas of land reform as identified by the SAHRC.

(i) The Masakaneng community's progress

Although settlement was finalised in 2003, the Masakaneng community is still struggling to co-ordinate the necessary services. Beneficiaries need essential services, such as water and electricity. The beneficiaries eventually formed a splinter

group challenging the Board of Trustees (BOT). They accused the Board of moving at a pace that is too slow, delaying beneficiaries from settling on the claimed land.

There is an urgent need for Government intervention (locally and provincially) to ensure that the legislation is implemented effectively without unnecessary delays. Such an implementation will help bring the community together to deal with any challenge related to the land they claim.

(ii) The Bakwena Ba-Kopa's progress

The lack of financial support from the Government has resulted in the slow pace of settling the claims lodged by the Bakweni-Ba-kopa community. The Regional Land Claims Commission (RLCC) officials from Limpopo Province have conceded that there was no budget to pay off the present owner of the claimed farm. This is according to a discussion with an RLCC official in 2010.

(iii) The Bakgaga Ba-Kopa's progress

Rietkloof has already been handed back to the Bakgaga Ba-Kopa community. Nevertheless, there are no centralised institutions to co-ordinate the restoration of the remaining sections of land. This has led to beneficiaries accusing each other of taking over the benefits of the restored land section. In this case it is important to implement the legislation strictly to make sure that everything is done according to the book.

Brief resume of the study thus far

This chapter (2) reflected on legislation and relevant documents related to the land issue. From the literature it became apparent that the main role-players have a urgent task. That is to ensure that all the necessary actions are taken so that the beneficiaries can indeed have the land re-allocated to them. It was demonstrated that the land reform is not without stumbling blocks and frustrations for those concerned. However, guided by the applicable legislation, success is possible.

Chapter 3 will concentrate on interviews with the following role-players:

- traditional leaders of the two Ba-kopa tribes;
- members of the Board of Trustees for the Masakaneng community;
- officials from the Land Commission in the Limpopo Province.

This following chapter (3) will review the findings of these interviews as well.

To conclude: The three communities, Bakwena Ba-kopa, Bakgaga Ba-Bakopa and Masakaneng, lodged their land claims. The lodging was guided by legislation drawn up after 1994. The drawing up of the legislation was necessary, seeing that land ownership is crucial for the development of people who were previously disenfranchised. This legislation enabled the communities on the relocated land to design strategies that could help them utilise the land for the benefit of all beneficiaries. Where the process still has to be followed to reach a settlement, beneficiaries will also be covered to until a settlement is reached.

CHAPTER 3: INTERVIEWS, REVIEW AND INTERPRETATION OF THE FINDINGS

The interview and review of the findings in this chapter will consider how beneficiaries responded and how Government intervened in dealing with challenges encountered during the process.

3.1 ORIENTATION

The discussion will focus on the interviews that are relevant for each community. This will be followed by the review of findings from the interviews. The role played by the three levels of government in each of the relevant communities will be examined.

The ultimate success of land reform in South Africa should be measured in terms of whether this process is able to lead to equitable land distribution and the upgrading of people's livelihood (Van Zyl, *et al.*, 1996:132).

When one examines the impact of land reform claims on the communities within the Elias Motsoaledi Local Municipality, one has to consider whether it ultimately benefits the beneficiaries or not. The study will also focus on the relationship between Government and the three communities under discussion. Throughout the interaction between Government and the communities the role-players encountered various challenges. The study will reflect on the strategies Government and the communities followed to deal with the challenges and whether the problems were resolved or not. Proposals to address the unresolved challenges will be expressed.

The members of the communities concerned experienced humiliation because of the racial legislation of the previous government. However, when they were dispossessed of the land they occupied, they did not despair. Eventually the opportunity arose and the new dispensation initiated legislation to empower the landless. Leaders of the relocated communities began the processes by approaching

the Department of Land Affairs. The idea was either to have the land restored to them or to be compensated for it.

It was a difficult task for members of any of these communities to embark on a campaign for land claims. However, through the assistance of the relevant government departments and the Non-Governmental Organisations (NGO's), they succeeded or made progress with their claims. Lastly this chapter will review the interpretations of findings focusing on the relationship between Government and the three communities under discussion.

3.2 LAND CLAIMS BY COMMUNITIES WITHIN THE ELIAS MOTSOLEDI LOCAL MUNICIPALITY

Any land claim will have an impact on the community concerned. In the Elias Motsoaledi Local Municipality three communities were affected by forced removals. As mentioned, these are the Masakaneng, Bakwena Ba-kopa and Bakgaga Ba-kopa communities.

Two of the three communities were originally one tribe before they were dispersed by the forced removals. Under the stewardship of their traditional leaders they did not give up hope. During the new dispensation they started to investigate procedures to claim their land. These tribes are the Bakwena Ba-Kopa and Bakgaga Ba-Kopa. The other community resided in Masakaneng near the town of Groblersdal.

The affected communities lodged their land claims, and the outcome and impact of the restitution process differed from one community to another. The nature of the impact depended on the nature of the individuals or groups concerned and how Government responded to the requests from the communities. Further details about the experience of the affected communities are given below.

The forced removal of communities was an extremely traumatic experience for the members of the affected communities. Kgoshi Boleu Matsepe-Kopa gave more

details of the situation during 1962. When the community members thought they had settled in Magagamatala, where they had already build beautiful formal houses, it became clear that the white government intended to remove them from that location. The area around Magagamatala (Braakfontein) had good fertile soil and was suitable for cattle farming.

The apartheid regime was well organised and overpowered the Ba-kopa tribe. In 1963 they reluctantly moved to Rite next to Mafato, where they are currently settled under Kgoshi Boleu Matsepe-Kopa.

3.3 INTERVIEWS CONDUCTED

The researcher conducted interviews in order to establish the real facts with regard to the following issues:

- The level and the *nature* of the interaction between Government and the beneficiaries of the land claims.
- The extent to which Government would *assist* the beneficiaries during the process of lodging land claims.
- How, in the opinion of Government or the beneficiaries, interaction between the main role-players should be *improved* to maximise the benefit for the beneficiaries.

Interviews were conducted by means of questionnaires. The interviews took place with leaders of the beneficiaries within Elias Motsoaledi Local Municipality, as well as identified officials from the land commission.

3.4 THE REMOVAL OF THE BA-KOPA TRIBE UNDER KGOSHI BOLEU I

According to a letter sent to the Land Advisory Committee from the Bakgaga Ba-kopa Royal Council (1993), the Ba-kopa tribe lived in Thabantsho around about

1860. The Boer Republic Government and missionaries had a vested interest in the area and subsequently came into conflict with the Ba-kopa tribe.

Towards the end of November 1863 a Boer Commando gathered to attack Boleu in his hill fortress. Their motivation was to discipline Boleu and to reinstate the ZAR's hold on the Ba-kopa (Boshoff, 2004:460).

The intention was to appropriate the area as their own life space. However, the Ba-kopa tribe won the battle this time.

The government of that time continued the process of removing the Ba-kopa tribe from Maleoskop. In 1962, a century later, the apartheid government succeeded in removing them by force from Thabantsho-(Maleoskop) and relocated them against their will at the new area, Tafelkop.

3.4.1 The Bakwena Ba-kopa – under Kgoshi Boleu Matsepe-Kopa

The researcher arranged an interview with Kgoshi. In the case of Bakwena Ba-Kopa under Kgoshi Boleu Matsepe-Kopa, they were still awaiting final feedback from the Land Restitution Court. The interview shared light why the process took such a long time to be finalised. The interview was *semi-structured* and the same questions were put to the relevant Land Claims Commissioners. (Semi-structured implies no set interview schedule – see the definition in 1.9 of this dissertation under *Methodology*.)

All applicable information taken from the semi-structured interviews with the above mentioned stakeholders were analysed and evaluated. The information was recorded on hard copy.

a) Review of the findings: Bakwena Ba-Kopa

The Bakwena Ba-Kopa under Kgoshi Boleu Matsepe-Kopa began lodging their land claim in 1995. The area they are claiming is known as Magagamatala (Braakfontein). According to the reliable information from Kgoshi Boleu Matsepe-Kopa, the Land Claims Commission (LCC) has responded to their claim, although some matters still

have to be finalised before the claimed land can finally be transferred to the community. The owners of the sections of the farm have responded positively when they were approached on the basis of willing buyer, willing seller. The frustration the community faced was that the Department of Land Affairs did not budget sufficiently to pay the sellers during that financial year (2009/10).

Community members' frustration is driven by the fact that there was no fixed commitment in the budget for funds in the new financial year starting in March 2010 to have money available for the purchase. The only promise is that the purchase will be reconsidered in two years' time.

The communication with Kgoshi Boleu Matsepe-Kopa presents a picture that shows signs of progress with their land claim. The farm Magagamatala (Braakfontein) has already been assessed with a view to processing a land claim. On 1 September 2009 the value of the land was estimated at 50 million rand. However, there is another side to this claim which the community did not accept readily. This entails budgetary constraints.

Both Kgoshi Boleu Matsepe-Kopa of the Bakwena Ba-Kopa and K. A. Manamela of the Land Claims Commission (LCC) in the Limpopo Province agree on the situation after the assessment. Government has not budgeted sufficiently for the settlement with the present owners. The indication is that even in the next financial year there will be no funds available for this settlement. There is a promise that the settlement will be budgeted for in two years' time. According to K. A. Manamela, drawing up a budget is the responsibility of National Government.

This leaves the community to deal with an unfinished assignment by the Department of Land Affairs. The pace of dealing with the land reform seems to have been slow from the start. The change in administration from one province to another (Mpumalanga to Limpopo) also contributed to the delay in finalising the process. It took close to two years to transfer the relevant files from Nelspruit in Mpumalanga to Polokwane in Limpopo. Kgoshi and the official from the LCC concur that the process of change in administration caused the delay.

Another issue of dissatisfaction that Kgoshi Boleu Matsepe-Kopa raised was that some of the farms are claimed by other tribes as well. This situation of competing claims also contributes to the delay in completing the process.

b) Land claimed by the Bakwena Ba-Kopa

The researcher's verbal communication with Kgoshi of the Bakwena Ba-Kopa tribe ascertained that their first land claim was lodged to the Commission of Restitution of Land Rights in Pretoria in 1993. A re-submission was made in 1994. Although there are no formal documents, Kgoshi could still vividly recall the important details, including the officials who received the written submission. The first submission, according to Kgoshi, was received personally by Ms. Eva Mashinini, and the follow-up submission was received by Mr. B. J. Van Rensburg, who was the acting Director of Land Affairs.

It emerged from the conversation with Kgoshi of the Bakwena Ba-Kopa that this tribe is not only laying a claim on Braakfontein. Claims have also been made on three farms where part of the community resided at some time. **Table 2** lists these farms:

Table 2: Farms that had claims on them

Name	Progress
Welverdiend 24 Js	Preliminary research
Varkenskraal 19 Js	Verification stage
Weltevreden 165 Js	Pending Preliminary research

Regarding the three farms mentioned above, claimants have been identified and verified, or this is about to be done. Although some progress has been made, there are still some challenges and obstacles to overcome.

The main challenge for the community is that it is not only the Bakwena Ba-Kopa tribe that laid a claim to those farms. It happens that one farm is claimed by two or three communities. This makes it difficult, seeing that the counter-claims will obviously slow down the pace, as the tribes may end up disagreeing on the correct

approach. One tribe may opt for a Communal Property Association while the other may opt for a Board of Trustees.

A document (of unidentified origin) received by Kgoshi on 01 September 2009 provides valuable information. In addition to the farms mentioned above, the Bakwena Ba-Kopa tribe and other tribes submitted counter-claims on some other farms. The counter-claims on a number of farms were the result of tribe members insisting that they or their descendants once lived on these farms and were relocated. **Table 3** below depicts these farms:

Table 3: Farms on which claims and counter-claims have been made

Name	Other claimants	Progress made	Challenges
Braakfontein 187 Js	Mampuru community	To be submitted	Budget constraints
Blaaubank 168 Js	Ndebele Ndzundza, Makwana Rakgalakane community and community	Verification process on	Verification prolonged
Diepkloop 44 Js	Ndebele Ndzundza, Makwana Rakgalakane community and community	Offers made to present owners	Other owners objected
Diepkloof 186 Js	Makwana and Rakgalakane communities	Verification started	Other owners objected
Elandsplaats 48 Js	None at the time of recording	Preliminary research	More research needed
Loskop south 53 Js	None at the time	Preliminary	Further

	of recording	research	research needed
Goedgedacht 72 Js	Bakgaga Ba-Kopa.	Preliminary research	Further research needed
Groofkop 185 Js	Ndebele-Ndzundza		
Haakdoorndraai 169 Js	Bakgaga Ba-Kopa	Preliminary research	Further research
Kaalfontein 49 Js	None at the time of recording	Preliminary research	Further research
Kameeldoorn 71 Js	None	Preliminary research	Further research
Kruisrivier 74 Js	Ndebele-Ndzundza	Valuation stage	Negotiations to start
Laagersdrift 76 Js	Ndebele-Ndzundza	Sale agreement for extension of Portion 3 signed	Consolidation of the remaining extensions
Leeukraal	None	Preliminary research	Identification process slow
Mineral Range 190 Js	Lehlakong and Mampuru communities	Verification done and Portions 6 and 7 valued.	Bakwena Ba-Kopa not in the CPA
Proberen 164 Js	Bakgaga Ba-Kopa	Preliminary research	Further research
Rhenosterkop 47 Js	None at the time of recording		
Rietkloof 166 Js	Bakgaga Ba-Kopa	Settled in favour of the Bakgaga Ba-Kopa	Internal challenges
Ringer 73 Js	None at the time		

	of recording		
Rooikraal 188 Js	Ndebele-Ndzunda	Portion 2 settled for Ndebele-Ndzudza	Disputed by other land owners
Welgevonden 45 Js	None at the time of recording		
Waterval 184 Js	Ndebele-Ndzudza	Valuation stage	Registration still to start
Wintershoek 189 Js	Mampuru Community	Negotiation stage	None

In an interview with Kgoshi Boleu Matsepe-Kopa he confirmed that the information above is the same as the information given on the status report of 01 September 2009. From this report it is evident that there is some progress made on these farm claims. **Table 4** shows the evidence of the progress made on some of the claimed farms.

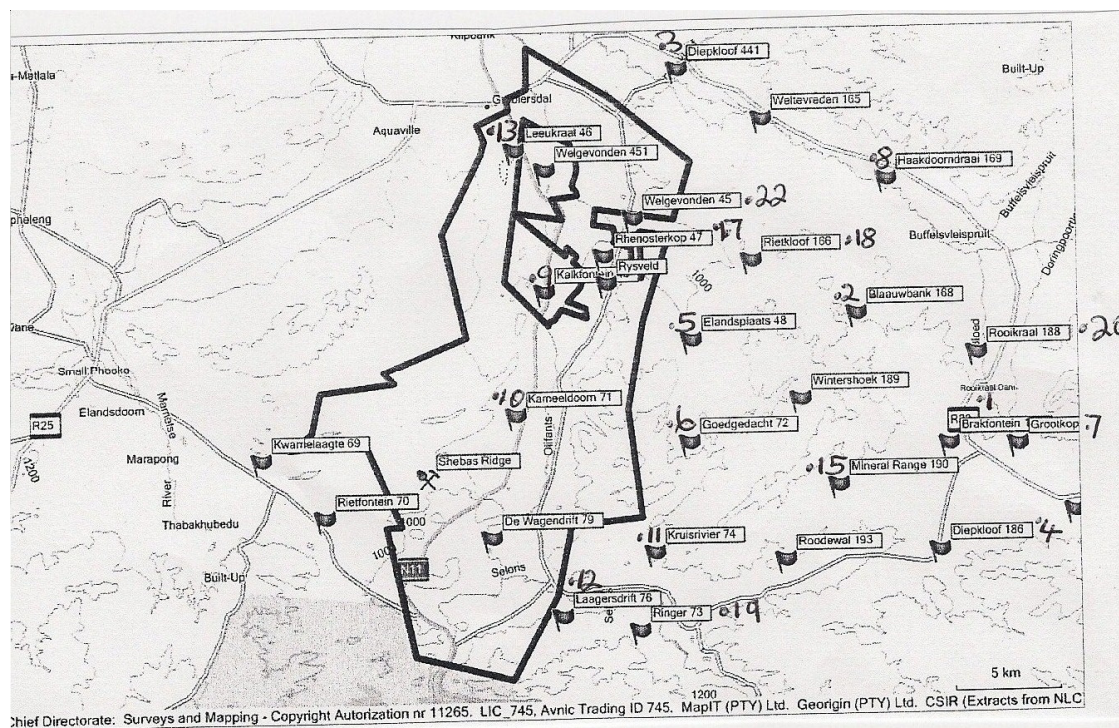
Table 4: Progress made on the claimed farms

Name of farm	Status	Challenges
1. Braakfontein 187 JS	Terms of reference for valuation submitted	Budgetary constraints
2. Blaaubank 168 JS	Verification scheduled for October 2009	Other tribes that laid claims were initially not included; names not yet unveiled
3. Diepkloof 44 Js	Offers presented to land owners	Some of the land owners did accept the offers. Names not yet unveiled

4. Diepkloof 186 Js	Verification scheduled for October 2009	Some of the land owners did not accept the offers
5. Elandsplaats 48 Js	Preliminary research	Further research
6. Loskop south 53 Js	Preliminary research	Further research

The map indicated as **Figure 1** below shows some of the farms that were claimed in addition to Magagamatala (Braakfontein).

Figure 1: Farms also claimed in the area



The numbers on **Figure 1** depict the farms as indicated below:

1. Braakfontein 187 JS
2. Blaaubank 168 JS
3. Diepkloof 441 JS
4. Diepkloof 186 JS

5. Elandsplaats 48 JS
6. Groedgedacht 72 JS
7. Grootkop 185 JS
8. Haakdorindraai 169 JS
9. Kaalfontein 49 JS
10. Kameeldoorn 71 JS
11. Kruisrivier 74 JS
12. Laagensdrift 76 JS
13. Leeukraal
14. Welgevonden 45 JS
15. Mineral Range 190 JS
16. Rhenosterkop 47 JS
17. Rietkloof 186 JS
18. Ringer 73
19. Rooikraal 188 JS
20. Wintershoek 189 JS
22. Welgevonden 45 JS

Competing claims on farms

Kgoshi pointed out further that, although they initially submitted a claim for Braakfontein, the Land Claims Commission indicated to them that the Mampuru Community (one of the Bapedi tribes) had also laid a claim to the same farm. It was also discovered that the Mampuru community laid land claims to the other 26 farms close to or next to Braakfontein.

The Land Claims Commission sought the intervention of the Land Claims Court. The Court issued an order to stipulate that the Matsepe community (Bakwena- Bakopa) and the Mampuru community lodged claims on farms adjacent to Braakfontein. The Court recommended to the Commission on Restitution of Land Rights to refer all those outstanding restitutions to the Land Claims Court for adjudication (*Land Claims Court of South Africa Register, 2000.*)

According to Kgoshi Boleu Matsepe-Kopa's knowledge in 2009, the Court had not yet adjudicated on the conflicting land claims mentioned above. Seeing that

Government is under financial constraints the community is pursuing other options to secure funds to buy land where present owners are prepared to sell.

Although, according to Kgoshi Boleu Matsepe-Kopa, the Bakwena Ba-Kopa lodged a claim on 25 farms, the RLCC: Limpopo so far only confirms the claim laid on Magagamatala (Braakfontein).

c) Intervention by Government

After having to wait a long time (approx. 16 years) there is light at the end of the tunnel for the Bakwena Ba-Kopa community. The RLCC: Limpopo arranged a series of meetings where various stakeholders were committed to fast-tracking and finalising the claim lodged on Magagamatala (Braakfontein). As already indicated, the Bakwena Ba-Kopa community was not the only community that laid a claim on the farm Magagamatala (Braakfontein).

The RLCC: Limpopo (2010) invited stakeholders to a follow-up meeting. The purpose of the meeting was to give the stakeholders an update on the progress made on the Magagamatala claim and to discuss the way forward. The following stakeholders were invited:

- Department of Local Government and Housing: Limpopo
- Department of Agriculture: Limpopo
- Sekhukhune District Municipality
- Elias Motsoaledi Local Municipality

The minutes of the meeting show that working together with the Minister of Rural Development and Land Reform (at that time, Land Affairs) and the National Council of Provinces (NCOP) played a major role in securing funds for the purchase of the farm on which the claim was made. The minutes further indicate that each role-player/or stakeholder made a pronouncement or commitment on the land claims in the following regard:

(i) Regional Land Claims Commission: Limpopo

The agreement awaits the signature of the Minister and the targeted date for the transfer was set for 31 March 2011. More meetings will be convened in order to update all the role-players and stakeholders regularly.

(ii) Elias Motsoaledi Local Municipality

The Mayor made a commitment to communicate on a political level with the Minister by November 2010. The purpose of the interaction will be to ask the Minister to handle Magagamatala (Braakfontein) as a special case, ensuring the speedy transfer of the claimed land to the Bakwena Ba-Kopa. Secondly, it would serve as a test case for the development of rural areas to benefit all rural areas in South Africa.

(iii) Department of Local Government and Housing (DLGH)

The Department will support special development on the claimed land, as well as any land use, be it mining in case of sufficient mineral deposits, or agriculture and human settlement.

(iv) Department of Agriculture: Limpopo

The area around the claimed land, and particularly Magagamatala (Braakfontein), will be visited. The purpose of the visit will be to acquaint the Department further with the area and to analyse the required infrastructure for development.

d) Input by the spheres of Government

According to Kgoshi Boleu Matsepe-Kopa the following spheres of government played their roles accordingly.

(i) National government

At this stage Government at national level has not yet stepped in directly, seeing that the community is consulting with the Land Claims Commission. The National government is responsible for setting policies that will provide implementation guidelines (Vander Elst: 2008:22.) The policies will guide the DLGH and the Department of Agriculture in whichever way they decide to support any community.

(ii) Provincial government

The need has not yet arisen to refer the matter directly to the provincial government in Polokwane. When the time is ripe to approach the provincial government, the community believes doors will be opened and opportunities will present themselves. Then the community will approach the provincial government with a list of equipment required to develop the claimed land after the settlement.

(iii) Local government (Local municipality)

Thus far the local municipality was not approached for assistance.

e) Interaction with the Land Claims Commission

Of the most important input in the process of land claims and re-allocation of land to the dispossessed communities is the Land Claims Commission.

(i) Facilitation of the process

The Land Claims Commission in the Limpopo Province is playing its role as expected. The community expects the RLCC give assistance to help speed up the process of finalising the claim. The function of the RLCC is facilitating the process to ensure that the purchasing of the farm from the present owners is well budgeted for. The Land Claims Commission has indicated, however, that progress is only hampered by financial constraints.

According to a conversation with Mr. M. Matsepe (in 2010) the Mampuru community and the Ndebele Ndzundza lodged claims on some of the farms which are also claimed by the Bakgaga Ba-Kopa. He indicated further that the Land Claims Court issued a court order (4 August 2010) that called upon the Bakwena Ba-Kopa and the Mampuru communities to co-operate in their claims on Magagamatala (Braakfontein).

This co-operation implies that the two communities should agree on the manner the claiming process should unfold and also on which mechanisms to develop helping them deal with any difference that may arise. He further indicated that the community intends to use the claimed land (Braakfontein) for essentially two purposes:

- agriculture in terms of crop farming and livestock, seeing that the soil is suitable for both types of farming;
- business, or commercial activities, such as mining.

The above options are possible, according to Mr. M. Matsepe, seeing that the municipality at local and district level as well as departments in other sectors show the willingness to assist them. He also mentioned that the community is thinking ahead of pursuing the claims on the other 25 farms. The RLCC: Limpopo will have to make a formal pronouncement soon on the status of their claims on the other farms. The community at large is eagerly awaiting this development.

Mr. H. Matsepe (2010), a member of Bakwena Ba-Kopa community, has confirmed that members of the community at large, not only Kgoshi, are cognisant of the land claim. Although he did not specify the number of claimed farms, he indicated that the community lodged land claims on some farms and that there is a clear indication of progress with the claim to Magagamatala (Braakfontein). He further indicated that towards the end of September 2010 a meeting with government officials would focus on laying out the progress made on this claim. The community would be led by a committee of seven (7) co-operating with government officials.

An interview (in 2010) with Mr. M. M. Rakgetsi, a member of the beneficiary committee, corroborates what Mr. H Matsepe said (as mentioned above). According to Mr. Rakgetsi, the land claim was lodged a long time ago in 1995 (approx. fifteen years before this study). It is only in 2010 that signs are emerging that sound progress is being made. This progress shows during deliberations in meetings between the community and the RLCC: Limpopo officials and their agreement on the following dates:

- **06 June 2010** – *Purpose:* Report-back on the negotiations of the settlement of the land claims on the farm Braakfontein 187JS.
- **12 September 2010** – *Purpose:* Give the beneficiaries an update on the operation of the CPA.
- **13 September 2010** – *Purpose:* Meeting of stakeholders regarding the Bakwena Ba-Kopa and Mmpuru communities' land claim on the farm Braakfontein 187 JS.

Mr. Rakgetsi also confirms that out of the 26 claimed farms, there is a clear indication that progress is being made on the claim on Magagamatala (Braakfontein). In the meeting indicated above, the community had the opportunity to communicate personally with the RLCC. Here feedback was also given on progress regarding the land claim.

The interviewee indicated that the community intends to use Braakfontein for crop and livestock farming. He concluded that the response from the RLCC: Limpopo on the other 25 claimed farms is not clear and were given only verbally.

An interview with Kgoshi Boleu Matsepe-Kopa (in 2009) made it clear, although things were moving at a slow pace, there is an element of progress. Documented evidence in the form of reports also shows that the Land Claims Commission is putting strategies in place with the focus of ensuring that the land is restored to the rightful original owners. According to facts deduced from a discussion with Mr. K.A Manamela (in 2009), Government encountered some financial constraints, with the result that the R 50 m. budgeted for restitution on Braakfontein could not be finalised.

In the case of the Bakwena Ba-Kopa's land claim for Braakfontein and other 25 farms, there seems to be no sense of urgency from the side of Government. The fact that Government is not able to budget for the settlement, even in the next financial year, is cause for concern. In the interview with Kgoshi Boleu Matsepe-Kopa, it became clear that the tribe intended to seek legal advice, or has already done so. This will be an embarrassment to Government, should they not address the process according to the immediate needs of the community.

Although the community has been patient throughout, it seems that this patience may be running out. On the other hand, the indication is that the Land Commission cannot speed up the process and will have to wait for funds from the National Government.

As was already indicated, the Bakwena Ba-Kopa tribe had acknowledged the fact that other tribes that lived with them on the claimed farms. Therefore, the Bakwena Ba-Kopa tribe is trying its utmost to work hand in hand with other claimants. According to a discussion with Kgoshi Boleu Matsepe-Kopa, meetings are being planned with other claimants where they will aim for a common approach towards speeding up the matter and sustaining the restitution programme.

(ii) Assistance to the Bakwena Ba-Kopa

The progress made on the land claim by the Bakwena Ba-Kopa has provided concrete evidence that the community has indeed lodged a valid claim. The RLCC has the duty to assist the community to realise their objectives. The RLCC played its part in ensuring progress is being made regarding one of the claimed farms, Braakfontein. The onus now lies with National Government to ensure a sufficient budget to purchase the farm from the willing seller who presently owns the farm.

The letter the Kgoshi wrote on behalf of the community is a clear sign that the community is not relaxing their actions. Instead, they are exploring every avenue to get the RLCC to inform them about any progress up to then (i.e. the date on the letter that Kgoshi sent to the RLCC).

The land claim by Bakwena Ba-Kopa is long overdue. Therefore Government should employ all their resources, human and natural, to help fast-track the process. Failure to do so may result in impatience from the community. This could cause a gradual decline in the community's trust of Government. On the other hand, the more the process is prolonged to purchase the land from the present owners, the more expensive the farms may be in the long run.

After discussions with Kgoshi Boleu Matsepe-Kopa, members of the community of Bakwena Ba-Kopa and officials of the RLCC: Limpopo the researcher found little documentation that gives further, formal information on this issue. The lodging of the claim itself cannot be linked to a particular document from the community, the Traditional Council, the local municipality and the RLCC: Limpopo. However, it is evident from the communication with the stakeholders that the land claim was indeed lodged. As was already indicated, Kgoshi mentioned this situation without referring to any document as the source of that information.

The court order that was mentioned, made reference to the claim lodged by Bakwena Ba-Kopa and the Mampuru and advised the two communities on how to tackle the matter amicably. Meetings were later scheduled by the RLCC: Limpopo to ensure that relevant stakeholders and role-players meet to discuss matters of the land claim in Magagamatala (Braakfontein). The meetings are a clear confirmation of such a land claim, although no formal evidence exists of sufficiently archived documents.

The intervention of the National Council of Provinces, the Minister of Land Affairs and Development and also the Mayor of the local municipality provide additional evidence that all three spheres of Government are well conversant with the land claim lodged at Magagamatala (Braakfontein).

After discussions with Kgoshi and officials of the RLCC: Limpopo the researcher could establish the mind-set of the community. The community members were of the opinion they have done all that is expected of them to prove their rightful claim to the land. They are currently waiting on Government to intervene and ensure the

settlement of the claim. Initially the RLCC: Limpopo gave the impression that they had their hands tied, seeing that the Provincial Government had no budget to purchase the claimed land from the present owners.

As the study has already stated the series of meetings arranged by the RLCC: (Limpopo) serves as evidence of Government intervening in the process as is expected of them. It is also significant that the RLCC: Limpopo went to the extent of targeting March 2011 as the date to finalise the settlement. This fact is convincing enough evidence of Government's intentions in this regard and the community will be delighted by this. The Bakwena Ba-Kopa therefore has to wait for Government to make progress and should follow Government's advice on the further actions that are expected of them.

3.4.2 The Bakgaga Ba-Kopa – under Kgoshi B. H. Rammupudu II

A semi-structured interview was arranged with Kgoshi Rammupudu Boleu II and, with his permission, also one member of the Royal Council. Another interview was held with a community member, Mr. M. J. Matsepe. He represents beneficiaries who are not satisfied with the manner in which the process is being managed. Another semi-structured interview was conducted, with the respondent, the relevant Land Claims Commissioner.

The purpose of the interviews was to acquire all the facts for a thorough picture of the claims process. With regard to Kgoshi and the Royal Council it, the aim was to establish whether the community members were satisfied with the outcome of the whole process. Seeing that they were in a position to identify issues that still need attention, the researcher asked suggestions as to how these issues should be addressed. The research showed that of some of the beneficiaries' dissatisfaction revolved around the following issues:

- No legal management structure was established to administer the affairs of the restored property.
- Kgoshi administers the restored property by himself.

- Kgoshi entered into a lease agreement with the mining company without consulting the beneficiaries.

Based on the document from the Bakgaga Ba-Kopa Local Authority, the tribe submitted an application for land restoration on 15 October 1993. As already indicated, the tribe was lodging a claim on Thabantsho, also known as Maleoskop. Documents from the Commission on Restitution of Land Rights are evidence of Government's preparedness to assist the tribe in rescuing the land they claimed. This willingness is a sign that Government is indeed committed to the process of land restitution for this tribe.

The land claim subsequently was submitted by Kgoshi Rammupudu Boleu II on behalf of the Bakgaga Ba-Kopa Tribe to the Regional Land Claims Commissioner for the Mpumalanga Province. The Commission on the Restitution of Land Rights was to investigate the claim in terms of the provisions of the Act "in due course" (SA, 1997:1103).

Another undated correspondence from the Commission on the Restitution of Land Rights indicates that the Departments were still allowed to lease the buildings from the community, even if the application was approved. This is a clear indication that Government was prepared to assist the community by helping them to benefit from the infrastructure on the claimed land. The document mentioned further that the Department of Public Works took the responsibility of investigating the land and ensuring its transfer to the community.

At present (2011) on the land is a platinum mine, Blue Ridge Platinum (Pty) Ltd, that began operating in 2006. The Bakgaga Ba-Kopa stand to benefit considerably, provided the tribe seeks professional advice on negotiations with the mining company in order to ensure that the community at large benefits from the profits of the mine.

Although the members of the Bakgaga Ba-Kopa are the immediate beneficiaries to the land claim, other neighbouring communities are to benefit as well. Individual

members of the neighbouring communities will benefit by getting employment and securing business opportunities. It will be a constructive exercise for the Bakgaga Ba-kopa to extend the benefits to neighbouring communities. They will be viewed as a community that takes an interest in the plight of its neighbours. This could mean that Government will extend their assistance more readily to the community (and benefit the whole area), be it financially or by facilitating further development.

a) Land claim by the Bakgaga Ba-kopa

The letter, dated 12 October 1993, signed by Kgoshi Boleu Rammupudu II and members of the Royal Council, serves as evidence that the process was initiated in order to lodge a claim for the land restoration.

The document indicates further, that according to legend, in 1864 the Boer Republic Government, the missionaries and a Swazi regiment attacked the Ba-kopa tribe. Scores of people were killed (although the precise number is not known). Kgoshi Boleu I was also killed on top of the Mountain, Thabantsho.

The tribe started to negotiate with the South African Government authorities to have their land at Thabantsho-Maleoskop returned to them. According to the above mentioned document, which was signed by Kgoshi Boleu Rammupudu II and his Council on 12 October 1993, Thabantsho-(Maleoskop) is surrounded by the following farms:

- Blaauwbank 168 JS
- Weltevreden 165 JS
- Goedgedacht 72 JS
- Elandsplaats 48 JS
- Rietkloof 166 JS
- Haakdoorndraai 169 JS
- Buffelsvallei 170 JS
- Probeeren 164 JS
- Diepkloof 44 JS

- Varschwater 23 JS
- Welverdiend 24 JS
- Mooiplaats 121 JS
- Tafelkop 120 JS
- Hartebeesfontein
- Potgietersloop
- Tuschenhein

b) Review of the funding: Bakgaga Ba-Kopa

The letter, dated 01 November 1996, is a report to the Land Affairs Department. The report updates the reaction of the Land Affairs Department (LAD) to the request of Boleu Rammupudu II. It also reported on the members of the Restitution Committee and acknowledged and applauded the support and advice which the Land Affairs Department rendered to the community.

There is a clear indication of the interaction between the community and the Commission on the Restitution of Land Rights. The letter, dated 01 August 1997, from the Regional Land Claims Commissioner: Limpopo Province and Mpumalanga, acknowledged the land claim that was submitted by the community.

The correspondence further reflects on an insert in the *Government Gazette* no: 18167 of 01 August 1997. The *Gazette* invited comments and information in writing on the land claim, to be handed in to the Regional Land Claims Commissioner within 30 days of the notice. There is no record to indicate the reaction the RLCC received from the communities.

The *Government Gazette* gives notice that a claim for the restitution of land rights on the portions of the farm Rietkloof 166 JS has been lodged in terms of the Restitution of Land Rights Act, 1994. Mothibe (1997) requested the community to state the following facts:

- How the community came to live on the land.
- The period of occupation.
- The rights to the land held by the community.
- The racially based laws applied at the time and the supporting documents.

The above is proof enough of the Commission's acknowledgement that the claim was indeed lodged. However, a record of the response from the tribe could not be located.

c) Main role-players

As the process continued, the Department of Land Affairs entered into negotiations with all parties concerned. A document dated September 2001 with no day indicated, outlines the input of the following role-players:

(i) The Department of Land Affairs

Role: Acted as the respondent on behalf of the state, because claims for land restitution are, strictly speaking, against the state. It had a constitutional obligation to support and implement the restitution process.

(ii) The South African Police Services

Role: Acted as the department that made use of the claimed land (at that time). It had the responsibility to make improvements to structures on the claimed land.

(iv) The Department of Public Works

Role: Acted as the custodian of the land used by the SAPS. It fulfilled the role of the property's caretaker.

The negotiations centred on the response of the state to the community's claim on the land they identified. According to this document, dated September 2001, all of

the role-players mentioned above agreed to the offer made by the state. They also agreed, that if the claimants should reject the offer, the matter should be referred to the Land Claims Court. The offer referred to two areas of the claimed land:

- those to be retained by the state;
- those to be restored to the community.

In February 2004, the land the Bakgaga Ba-Kopa occupied in Thabantsho (Maleoskop) was partly restituted by the new democratic government (Lekganyane, 2007:8). From to a discussion with by Mr. C. M. Maipushe the researcher got the indication that the Land Claims Commission assisted in the organisation and formation of the Land Claims Committee. Through the committee, a meeting was held with the beneficiaries where the formation was discussed of the Communal Property Association or the Board of Trustees.

Furthermore, it emerged that an outside agency, called Fundile Africa, played a prominent role in the training of the members of the Trust. They also rendered well-needed assistance in developing the business plans and the formation of the steering committee.

d) The land claim: Benefits and obstacles

The interaction also indicated the benefits of the land claim in favour of the beneficiaries. The following benefits are positive outcomes of the land claim:

(i) Livestock and cattle farming

The land has at least three camps where about fifteen (15) individual farmers safely keep their goats, sheep and cows. All in all, about 1 500 animals are kept there. One of the farmers on another farm breeds pigs. This enterprise is at an initial stage and about 30 pigs are kept.

(ii) Leasing of infra-structure

The claimed land had a number of existing buildings in the form of houses, storage houses, garages and a hall. These immovable properties, a hall for public meetings, a hostel for the mine workers and an office block were being leased to a mining company that was mining platinum on the Maleoskop farm. The entire community will reap the benefits of the payment for the lease agreement. Seeing that the mining company conducts its business activities within the community's territory, it is bound to plough back other benefits into the community (e.g. commercial enterprises in the region) in addition to the payment regarding the leasing of the land.

(iii) Employment opportunities

It is understandable that the mining company employed many skilled workers from other parts of Africa (approx. 500) and from Southern Africa (approx. 400 workers from Lesotho). However, it also employs a number of unskilled individuals from the Bakgaga Ba-Kopa community. Other companies who are conducting business in the Maleoskop area also make use of community members. The mining company also created an opportunity to expose the youth in the community to a project dealing with mining activities, such as geology and mining engineering.

Notwithstanding the local benefits, there are some obstacles and draw-backs to the land claims process as a whole.

(iv) Insufficient support from the LCC

Although there are clear signs of benefits in the form of employment and business opportunities for community members, it became clear that the community is not yet convinced that the Land Claims Commission played its part sufficiently. The information below indicates that the community expects more assistance from the Commission:

- The RLCC did nothing to help establish the formation of the Board of Trustees (BOT). This is besides the fact that the community had a formal meeting to choose the Board. The leadership in this community is of the view that the RLCC had an obligation to assist them in establishing the BOT.
- It is the responsibility of the Land Claims Commission to help the community securing the title deed. However, the Commission is moving at too slow a pace to ensure that the deeds office finalise the title deeds soon.
- The community of the Bakgaga Ba-Kopa could only have a section of the farm, Maleoskop, restored as phase 1 of the settlement. They are still awaiting restitution funds for the remaining portions, which shall be dealt with as phase 2 of the settlement. Although promises were made, the community has been waiting since 1993. This is a period of approximately 16 years.

Finally, the community is requesting more assistance from the Land Claims Commission in the form of the following actions:

- Endorsing the formation of the Board of Trustees.
- Coming up with a developmental plan for the restored land.
- Maleoskop: The process should be speeded up to ensure speedy development of the land.
- The establishment of a BOT should be treated as a matter of urgency, followed by the training of the members.

On the side of the Land Claims Commission, the interaction with Mr. K. A. Manamela yielded the following information:

- The commission has done all in its power to ensure that the land is restored to the original owners.
- The onus now rests on the beneficiaries and all the stakeholders to ensure that the community leaders meet and decide on the best usage of the land.
- There are two options at the community's disposal. They can opt for human settlement or business development.

- Another important requirement is that the community should make an informed decision through their leaders as to the manner in which physical, immovable property would be safeguarded and utilised for the benefit of the entire Bakopa tribe, without exception. Some roles are expected to be played by government and other roles by the community. Consequently there will be mutual expectations from the RLCC and the community.

e) Intervention by spheres of Government

According to Mr. C. M. Maipushe, the secretary to the Bakgaga Ba-Kopa authority, all three spheres of Government assisted in the process. Each sphere's contribution to the process is highlighted below.

(i) National Government

The National Government gave extensive assistance by ensuring that the medium sized training camp within Maleoskop was eventually moved elsewhere in the country. The public works buildings that the SAPS utilised are now available to the community.

(ii) Provincial Government

The Provincial Government is constantly available whenever the community has questions. Community members have access to the offices, including the Premiers' office in order to ask for assistance in developing the restored portion of the land at Rietkloof.

(iii) The Local Government (Municipality)

The Elias Motsoaledi Local Municipality has been handy in advising community representatives whenever they sought assistance. The municipality officials are always on hand to give direction to the relevant offices, be it Provincial or National,

when members seek advice or guidance on matters related to the development of the land they acquired.

f) Interactions with the Land Claims Commission

The LCC facilitated the land claim by making sure that the relevant information was availed to the community. However, the stakeholders are still waiting for guidance on how to establish a Board of Trustees. It is the task of the LCC to advise the community on how to establish a Board that the majority of the beneficiaries will support.

An interview with Mr. M. J. Matsepe, secretary for the Thabantsho Beneficiaries Association (2010) indicated that some community members who are beneficiaries felt that they were given a raw deal. They complained that only a small group of beneficiaries reap the fruits of the settled land claim. They felt strongly that these are the beneficiaries who established Bakgaga-Bakopa Motheo Trust with Kgoshi. For them the Trust is benefitting a few individuals only, instead of all beneficiaries.

Mr. M.J. Matsepe recommended further that the National Land Claims Commission should intervene to facilitate a speedy resolution of the dispute. He substantiated his argument and displeasure by producing a Bakgaga Ba-Kopa (Maleaskop) memorandum of understanding. The memorandum was signed by the following role-players:

- Chief Land Claims Commissioner: Mr. Tozi Gwanya.
- Chairperson of the Bakgaga Ba-Kopa Land Claims Committee: Mr. J. Matsepe.
- Boleu Rammupudu II: Kgoshi of the Bakgaga Ba-kopa community.
- Deputy Minister of Agriculture and Land Affairs: Adv. Dirk du Toit.
- MEC for Public Works, Roads and Transport: Mpumalanga: Mr. Jabulani S. Mabona.
- MEC for Agriculture, Conservation and Environment: Mpumalanga: Ms. Candice Mashego-Dlamini (Memorandum, 2004, pp. 11-12).

The objective of the above memorandum was to draw up a framework for the land claims process and the manner to settle the claims. Any amendment to the agreement were to be in writing and signed by all parties concerned (Memorandum, 2004: 5).

According to Mr. M. J. Matsepe (2010) the establishment of the Bakgaga Ba-Kopa Motheo Trust is in violation of the signed memorandum. He therefore requested that the Land Claims Commission should intervene.

The argument from Mr. Matsepe, as stated above, is backed up by correspondence from the RLCC: (Limpopo) that alludes to the conflict within the Bakgaga Ba-Kopa community. The document refers to two bodies dealing with matters of the land claim. The Thabantsho Beneficiary Association (TBA) is in conflict with Bakgaga Ba-Kopa Motheo Trust (cf. Regional Land Claims Commissioner: Limpopo, 2009:2). Concerns of the Thabantsho Beneficiary Association are briefly outlined as follows:

- Neither the Communal Property Association (CPA) nor any management structure was formed to administer the affairs of the property.
- Kgoshi Boleu Rammupudu II administers the restored property as his own.
- Kgoshi Boleu Rammupudu II entered into a lease agreement with the mining company (Blue Ridge Platinum Pty Ltd) without consulting the beneficiaries (cf. Regional Land Claims Commissioner: Limpopo, 2009).

g) Input from the spheres or Government

According to Mr. M. J. Matsepe, all three spheres of Government played their role in the land claims process.

(i) National Government

The Department of Safety and Security attempted to block the Committee's retention of the land, because they wanted the SAP training camp to remain on the premises.

On the other hand, the Department of Public Works that owns the building used by the Safety and Security Department, helped with the transfer.

(ii) Provincial Government and the municipality

At that stage there was no interaction between the community, the Provincial Government and the municipality. All activities of the land claim lodge were with the RLCC

h) Interactions with the Regional Land Claims Commission

The community expected the RLCC: Limpopo to ensure that a legal body was established in terms of the Memorandum of Understanding, but this body failed to meet their expectations. The community is still awaiting assistance from the Commission. Instead of the envisaged legal body, a group of community members formed a Trust. This was not done in consultation with the community at large but by a group of people providing for their own interests. There is also a view that the LCC took too long (approx. 16 years) to finalise the claim and this could have taken a shorter period.

i) Benefits for the Bakgaga Ba-Kopa

The Bakgaga Ba-Kopa tribe has successfully laid claim to a section of Rietkloof (Maleoskop or Thabantsho). From discussions with Kgoshi Boleu Rammupudu II and the secretary of the Bakgaga Ba-Kopa Royal Council, Mr. C.M. Maipushe (2009), it became clear that the community has already started reaping the fruits of their fathers and forefathers' efforts that defended their land. On the land there are some structures, which were used by the South African Police Services (SAPS). These structures were part of the package when the land was handed over to the Bakgaga Ba-Kopa community in 2004.

The structures are valuable property that can be used to improve the quality of life for most of the community members. According to the secretary of the Bakgaga Ba-

Kopa Royal Council, Mr. C. M. Maipushe, beneficiaries are already reaping the fruits of the land claim. However, it seems that much still needs to be done before the majority will be convinced that the activities are for the benefit all.

According to an interview with K. A. Manamela (2009), the LCC is ready to step in and assist the community to make sure that everyone enjoys the benefits to the fullest with the least complications. However, it is the responsibility of the entire community to speak with one voice when deciding on projects that will benefit the majority.

Drawing from an interview with Mr. C. M. Maipushe, a number of examples can serve as evidence that the community benefits from the land claim. It is of utmost importance that Government, acting through the LCC, must be convinced that all beneficiaries participate in all the activities regarding the use of land and of the properties that belonged to the South African Police Services. If that was the case, Government will initiate programmes which will give optimum assistance.

It is up to the community to decide which structure will enable all beneficiaries to participate or be well-represented when land issues are discussed and important decisions are made. The community has the option of establishing the Communal Property Association (CPA) or the Board of Trustees. Whatever the structure, it shall be the decision of the community members who serve as a mouthpiece for the beneficiaries. From the time when the land was handed over to the community in 2004, up to the present, there should have been concrete evidence of development in the Tafelkop area where the tribe is settled, which is not the case. However, blame should not be levelled at any individual beneficiary or leader from the community. It is the responsibility of all beneficiaries as individuals or as a group to accommodate each other and ultimately arrive at a workable solution.

Although the community still has some way to go, it has been brought to the researcher's attention that the land was partly restituted. It is important that the community continue to follow the correct channels to claim the remaining sections of Rietkoof 166 JS (Thabantsho) until the whole farm is fully restored to the community.

This is possible, given the fact that the Regional Land Claims Commission has indicated that the community members are entitled to claim the entire farm.

3.4.3 The Bakwena Ba-Kopa and Bakgaga Ba-Kopa

The Bakgaga Ba-Kopa laid a claim to a section of Rietkloof and this portion of the farm was handed over to them. Other documents show that this tribe has laid claim to some of these surrounding farms as well. They eventually laid claim to the 26 farms, some of which surround Rietkloof.

At a certain period in history these two tribes were one, but were split because of persecution by the Boers, spearheaded by the missionaries (as was already shown in the *Historical background* dealt with in this study). Seeing that they initially were one tribe and later became neighbouring communities, they ended up wrapped in counter claims on the same area when some other farms were claimed.

The counter claims make it imperative for these tribes to deal well with each other. This interaction will ultimately lead to the tribes having to address any misunderstandings that may arise. This will be done in the interests of all the members of the two tribes.

3.4.4 The Masakaneng community

The farm called Masakaneng is located approximately 3km from the town Groblersdal in the Limpopo Province. This forms part of the farm Klipbank 196 JS. Interviews were scheduled with the Chairperson and Secretary of the Board of Trustees, two beneficiaries of Masakaneng, as well as with the responsible land commissioner. It took the form of semi-structured interviews. The purpose of the interviews was twofold:

- Establishing how the process unfolded until the land was officially restored to the beneficiaries.

- Finding out how the Land Claims Commissioner facilitated the process of bringing all beneficiaries on board to help allay the fears of the community and beneficiaries at large (this was very important information).

The majority of the working class within the Masakaneng community were employed in town and on the neighbouring farms. They earned a low income and could not afford to build houses with wooden or steel doors and window frames.

According to Mr. L. D. K. Legoabe, black people started to settle on the farm, presently taken to be a section of the Klipbank farm, from 1939. The inhabitants were relocated to settle in this area, after being forcefully removed from their houses in and around the farms where the town of Groblersdal is located. These people had to be removed to make way for the development of the town.

a) Land claim: Masakaneng

According to the chairperson of the Board of Trustees, Mr. L. D. K. Legoabe, the land claim was lodged formerly four days before the 31st December 1998 in terms of the Restitution of Land Rights Act (Act 22 of 1994, amended). According to Mr. L. D. K. Legoabe, the Masakaneng Land Claims Committee did not submit a letter but handed in a list of beneficiaries to the office of Regional Land Claims Commission in Mpumalanga. Nqana an official of the RLCC (2001) corroborates the date of the lodging of the claim and validates the information from the chairperson of the Board of Trustees.

The above information (from the RLCC) was given in response to the claim. This shows that the claim was not frivolous and not vexatious, as is stipulated by the Restitution of Land Rights Act (ACT 22 of 1994, amended). The document further indicates that the Land Claim Court issued no order in respect of the claim. The following information gives a picture of the progress made:

Evaluation report by the RLCC was submitted to the Municipality.

- Evaluation report by the owners was submitted to the RLCC.

- The RLCC intended to have the claim finalised by the end of June 2001.
- The Municipality advised the community to draw up a plan that would ultimately be accommodated in the Intergrated Development Programme (IDP) of the Municipality.

The community members became impatient and the Mayor urged them to stay calm, seeing that the Municipality was doing its utmost to make sure that the community was provided with basic services, such as water, electricity, housing and roads (Masakaneng Community, 2001a).

Mgadi (2001b) addressed a letter to the Groblersdal Transitional Local Council and not directly to the community of Masakaneng. In this letter he submitted clear evidence that the community had lodged a claim. The correspondence indicates that the claimed land was for Portion 2 of the farm Klipbank 22 JS and that the owner is the Groblersdal Transitional Local Council (TLC). It further noted that all the stakeholders were invited to a meeting scheduled for 04 June 2001 in Groblersdal.

Nqana (2001) submitted a Memorandum of Acceptance of the claim lodged by the Masakaneng community, which was represented by the interim committee, known as the Masakaneng Land Claims Committee. According to the letter the committee was chaired by Mr. L. D. K. Legoabe. This letter was addressed to the Masakaneng community confirming that the Regional Land Claims Commission (RLCC) accepted the lodged claim and that the Land Claims Court issued no order in respect of the claimed land.

According to Nqana (2001), he thereafter informed the municipality that the land claim for Klipbank 26 JS, portion 2 was published in terms of the Restitution of Land Rights Act (Act No. 22 of 1994).

There is a comprehensive record of the Masakaneng negotiations which took place during meetings (Masakaneng community, 2001:b). The record was prepared by the RLCC and submitted to the community and the Mayor at that time who was the

appointed representative of the municipality and was urging for a speedy settlement of the claim.

The RLCC of the Mpumalanga Province also published a notice on June 2001. The publication gave notice of the fact that a claim for the Restitution of Land Rights had been lodged on behalf of the Masakaneng community and their descendants regarding the farm Klipbank 26 Js (SA, 2001: 22 321). It invited parties that had an interest in the claim to make submissions within 30 days from the date the notice was published (SA, 2001:22 321).

(i) Reactions to the land claim

Jojo Tanks (Pty) Ltd is one of the companies that had vested interests in the claimed land. Du Plessis (2006) addressed a letter to the local municipality about alleged squatters at Klipbank. The company complained about the squatters on the claimed property that they have leased from the Masakaneng community. They stated that the squatters erect conspicuous structures that deface the property. According to the company, the people who were staying on the farm were not removed by force and were compensated for their land. However, no evidence is provided to back up this claim. Jojo Tanks (Pty)Ltd requested the municipality to intervene and facilitate the resolution of the problem.

Minutes of the meeting held on 21st June 2001 convened by the RLCC of Limpopo (2001:6) indicates that the company named Apex Plastics (Pty) Ltd and Mr. F. J. Fouché also raised complaints against the land claim. Their legal representative laid out the following points of dispute:

- The claim that the Masakaneng community was dispossessed of *bona fide* benefit rights.
- The fact that the Masakaneng community qualified as a *bona fide* community for the purpose of lodging a land claim.
- The allegation that the Masakaneng community did not receive just and equitable compensation for the land.

- The assertion that sufficient evidence existed for the RLCC to conclude that the claim was *prima facie* valid.

As already indicated, members of the Masakaneng community initiated their land claim in 1998. It was successful. The process was finalised on 23rd June 2003 and in December (Agreement, 2004:1-8). Masakaneng was officially transferred to the beneficiaries.

(ii) The claim to the portion of the farm

The community's pursuance of the section of the farm to be restored led to the following agreement:

- The Greater Groblersdal Municipality (currently Elias Motsoaledi Local Municipality) was the registered owner of Portion 2 of the farm Klipbank 26 JS. Ownership was held in the form of title Deed T27707/1943 and the size was 128 6121 ha.
- The Greater Groblersdal Municipality would not contest the claim lodged by the Masakaneng community on Portion 2.
- The municipality and the Masakaneng community will honour the contracts of lease they entered into with the municipality before the settlement of the land claim.
- The Commissioner of Restitution on Land Rights indemnifies the municipality from any further claims on the portion transferred to the Masakaneng community.
- The Commissioner of Restitution on Land Rights will pay remuneration with regard to the structures that the municipality erected. The Regional Land Claims Commissioner of Mpumalanga committed the payment of R790 000 and the municipality accepted the offer.
- The payment would be in cash upon registration of transfer of the property sold out of the municipality in the name of the Masakaneng community. The payments would be subject to approval by the Minister of Land Affairs and Agriculture in terms of the Restitution of Land Rights Act (Act 22 of 1994).

- The municipality would transfer the property after payment was made.
- The Agreement Document was signed at Groblersdal on 15 December 2004 by the following role-players:
 - The acting municipal manager
 - The Mayor
 - A representative of the Masakaneng Community Trust
 - A representative of the Regional Land Claims Commission

The signed document bears testimony to the fact that the land had been transferred to the community.

An interview with Rev. D. B. Mdluli (2010), who is also one of the beneficiaries, shed light on the process. It became apparent to the researcher that the process of the land claim progressed well, until the members who were given the mandate by the beneficiaries to lead the process, started to act without that mandate. According to Rev. Mdluli, the problems stem from the following actions.

The community opted for the establishment of a Communal Property Association (CPA). Evidence of this is the Masakaneng CPA Constitution copy (dated 2 November 2001). The leaders however, decided to change the option and founded the Board of Trustees without soliciting approval of the community, and began calling meetings under the banner of the Board of Trustees. This is corroborated by an article from a local newspaper (Anon, 2009:8). According to the article the concerned group of beneficiaries raised the following objections:

- The people complained that they were not consulted during the formation of the Trust.
- The change from the CPA was done without the knowledge of the people.
- The Trust was creating wealth for the Board of Trustees.
- The claimed portion of the farm was turned into a business venture instead of human settlement.
- The Board of Trustees delayed the process of moving the beneficiaries back by discouraging them to occupy the claimed land for residential purposes. This led

to some beneficiaries erecting temporary structures on the farm and other people who were not beneficiaries erecting structures and settling there.

Rev. Mdluli added that the Board of Trustees misread the facts when they made the allegations that people had settled illegally in Masakaneng after the land claim was finalised. He argued that demarcation lines showed clearly that the erected structures were outside the boundaries of the portion claimed by the Masakaneng community. He added that he tried to explain this to the Board of Trustees and the municipality but no one was prepared to listen to him.

However, eventually officials from the Regional Land Claim Commission: Limpopo gave cognisance to that fact and a meeting with them was scheduled for 13 March 2010. The officials of the Regional Land Claims Commission were accompanied by four land surveyors. According to Rev. Mdluli, the purpose of involving the land surveyors was to establish the exact boundaries of the claimed portion. The Board of Trustees was represented by two members, Mr. Thulare and Rev. Mohlala.

The letter inviting the municipality to a meeting with the concerned group and the Board of Trustees indicated that a follow-up meeting was held on 14 April 2010. The purpose of the meeting was to arrive at a workable solution to ensure that the beneficiaries meet and agree on strategies to utilise their land.

From an interview with a senior community member (2010), a teacher at Groblersdal Bantu School, it became clear to the researcher that some of the blacks, who are currently settled in the Motetema township, were removed from Masakaneng. This teacher concluded from this fact that the place was called Masakaneng, because the majority of the people were staying in informal housing structures. He agreed that the people were removed from Masakaneng in 1968. However, according to him, the removal was not forced on the community. They were rather resettled under the pretext that, compared to Masakaneng, they would enjoy a better arrangement in the new area. Of course, after arriving at Motetema, they at first had to stay in temporary, corrugated houses and later on could move into four-roomed formal brick houses.

He further indicated that some of the beneficiaries began the process of lodging a claim for Masakaneng in and around 1993. He had never fully participated in the process of the land claims but supported the cause by attending meetings organised by the Board of Trustees in Motetema. This retired teacher was also aware that a group of concerned people challenged the BOT. He was also concerned that this group was allegedly involved in selling the sites at Masakaneng. According to him, legal action had to be taken against the illegal occupants, especially because some of the occupants might be illegal immigrants in the country and might be contributing to crime in that area.

The Land Claims Commission went all out to make sure that the beneficiaries of Masakaneng succeed in their campaign to get the land restored to them. It became clear from a discussion with the Chairperson of the Board of Trustees, Mr. L. D. K. Legoabe, that the Land Claims Commission was still prepared to assist the community in utilising the land to the best of their ability. However, this is yet to be realised after the transfer in 2004, because the beneficiaries could not agree on how to utilise the land.

The community needs to first agree on a strategy, and then prepare a business plan that should be submitted to the local municipality. The municipality will then arrange a meeting with the Land Claims Commissioner and the Board of Trustees, where agreement will be reached on the services that have to be rendered by the municipality. The municipality is eagerly awaiting the business plan from the community and is prepared to provide the required services.

Correspondence between the municipality and the community clearly indicates that the community members are not unanimous on this matter. It is apparent that the majority of the community members have lost their trust in the Board of Trustees. Some beneficiaries called a committee into being to challenge the Board of Trustees. A meeting on 18 November 2007, attended by 300 people, was held and a new committee was elected. The older committee refuses to hand over the relevant documents and is delaying the process further (Makgata 2008:6).

The concern of the newly established committee is that the Board of Trustees was established without the involvement of the beneficiaries. They were accused of desperately trying to hold onto power, and delaying the progress and development of the land claim (Makgata 2008:6). There is no evidence that members of the new committee liaised with Government officials at any level.

The biggest challenge in the Masakaneng community is the situation where some of the beneficiaries took advantage of the rift and are selling sites within the Masakaneng property. The selling of the sites is illegal and is compromising the process of officially drawing up a business plan to facilitate development in the area. No record has been kept of the number of sites sold and of the people who officially own a particular site.

This will present a huge challenge to the development before an agreement can be reached, because some members have already began building permanent structures on sites that have not yet been demarcated. Currently, about twelve (12) permanent structures have been erected. When the business plan is ultimately submitted, the land will be surveyed and the property will be demarcated into sites.

In order to address the challenge at Masakaneng, the municipality is co-operating with the Board of Trustees and the RLCC: Limpopo. A series of meetings, not less than five, were held on this matter. A letter, dated 18 August 2008, from the Municipal Manager was addressed to the alleged “invaders” of the land and advised them to vacate quickly to avoid legal action against them. They are also informed that they would forfeit their payment of the sites, because they could not provide proof of such payment. There is also documented evidence of internal communication by memoranda between the Municipal Manager and the Mayor trying to arrive at a workable solution for the benefit of all the Masakaneng beneficiaries.

Mr. L. J. Kabini, the Municipal Manager (2008) expressed the management’s frustration about the following situation:

- the Commission's delay in finalising the human settlement;
- the Trust's inability to finalise the beneficiary list that would guide the size of the grant;
- the Council's insufficient measures to stop the invasion of the claimed land.

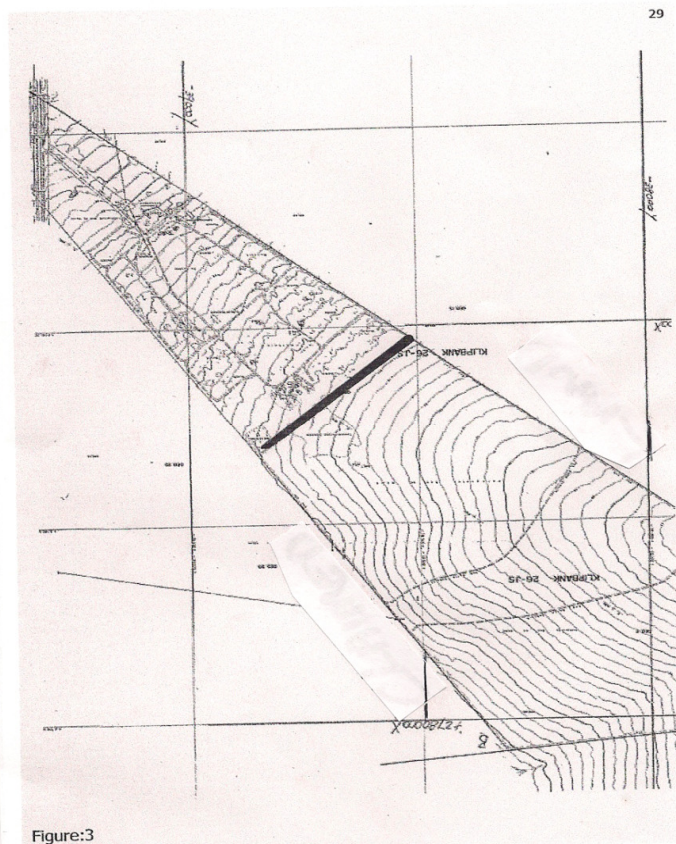
The RLCC: Limpopo also tried to intervene and help resolve the deadlock. Maphoto (2009) invited the municipality to a meeting which was also attended by the Board of Trustees of the Masakaneng Community Trust and other stakeholders. The purpose of the meeting was to address the problem of the illegal settlement.

(iii) The site of the claim

The following maps provide a broader picture of the Masakaneng site, the topic that emerged during interviews with various community members. The maps give specific evidence that the community occupied this land before they were relocated.

- The map in **Figure 2** indicates the location of the land claimed by the Masakaneng community.
- **Figure 3** shows the Masakaneng graveyard. The tombstones give evidence that some of the community members were buried there. Those were black people as indicated by the surnames on the tombstones.
- **Figure 4** shows the remains of the foundation of Groblersdal Bantu School.

The site of the graveyard and the remains of the school's foundations were confirmed by Rev. D.B. Mdluli. According to him, he attended school at Groblersdal Bantu School up to standard six (now grade 8) and his brother was buried in the Masakaneng graveyard.



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Figure 2: Location of the land claimed by the Masakaneng community

The portion of Klipbank, (Klipbank26 JS) claimed and subsequently relocated to the Masakaneng community is the part below the thick black line as indicated on the map. The other section belong to private citizens and the state.

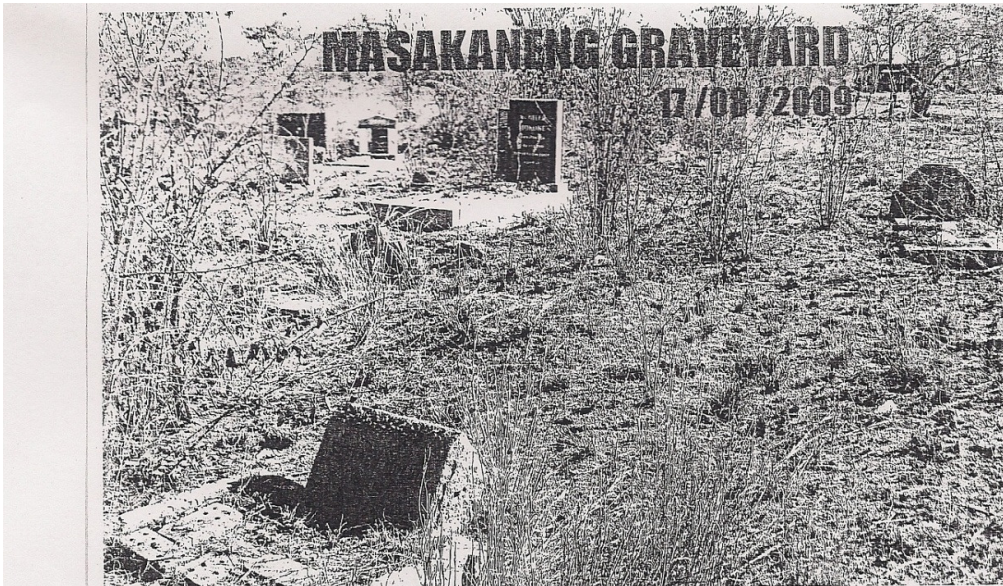


Figure 3: The Masakaneng graveyard.

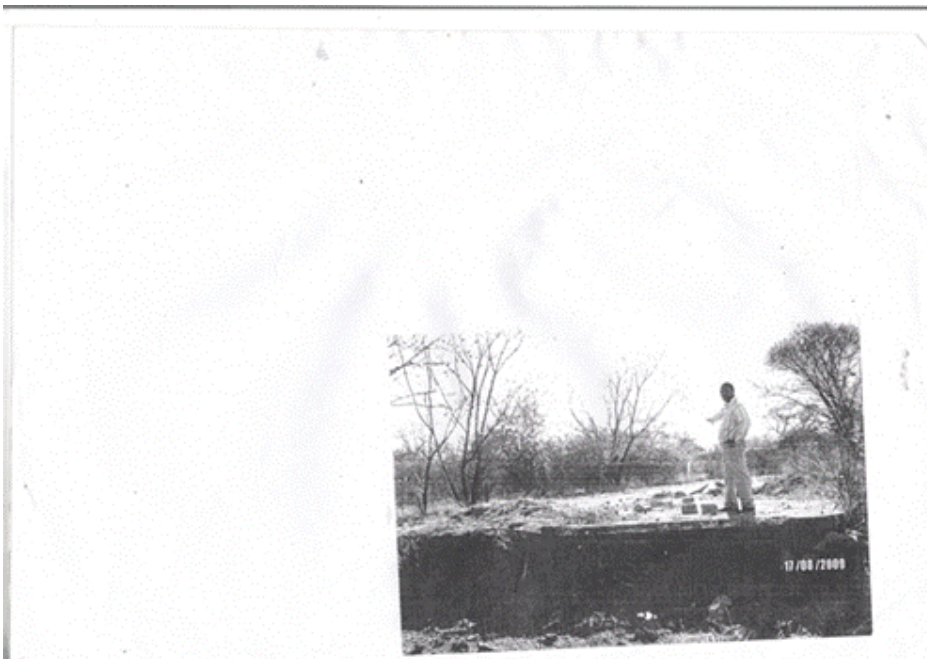


Figure 4: The foundation of the Groblersdal Bantu School.

Figure 4 above shows the remains of the Groblersdal Bantu School. The person standing on the foundation is Rev. Mdluli. He went on to identify a grave as belonging to a family member (his brother) as stated by **Figure 3** above.

b) Interaction between the Masakaneng community and Government

This community involved the Land Commission in Mpumalanga when they initiated their land claim. The local municipality (Elias Motsoaledi) was by then co-administrated by both the Limpopo and Mpumalanga Provinces. The cross-border arrangements complicated matters for the beneficiaries when they wanted to claim the land. However, the beneficiaries did not concede defeat, and in 2004 the land was re-allocated to them.

From discussions with members of the Board of Trustees and officials from the Land Claims Commission it is evident that the Board members have good intentions for the usage of the land. However, the conflict between the legal Board and the concerned group is affecting the development earmarked for the community, whether it entails human settlement or business ventures.

The Land Claims Commission is also prepared to assist the community to ensure that the land is utilised to the benefit of all in the long run. From the input of a member of the Board and an official from the Land Claims Commission it becomes clear that the development of the land (human or commercial) is delayed by the existing conflict. The Land Claims Commission indicated that standard procedures need to be followed when they want to help the community develop the land. Certain steps must be followed. However, because of the conflict the progress is not even at an interim stage.

Before moving to the interim stage of development, the beneficiaries must meet and decide how they are going to utilise the land re-allocated to them. It is impossible for the Land Commission to embark on the interim stage, without knowing whether the community settles for human settlement or economic development of the site.

The community needed to submit a formal report to the Land Claims Commission on the community's resolution on how to use the land. Without such a consensus report all efforts will be fruitless. The RLCC is prepared to meet both the legal Board and the Committee of the concerned group to work towards a solution. However, up to

the present time, the meeting has not been possible, because it the RLCC cannot yet persuade the two interest groups to meet.

There is one specific factor that hampers the meeting of the two groups. This is the fact that some of the leaders of the concerned group have started to collude with members who are not beneficiaries, in the selling of sites. The Board of Trustees sought legal advice and there is a possibility of imminent action being taken against the concerned group.

The onus now lies with the Board of trustees to make sure that the process is speeded up. It is up to the Board to take action against the invaders and the members who are selling the sites illegally. Should the Board succeed in this, the Land Claims Commission and the local municipality will be able to possibly assist the community fully in any option they would pursue.

c) Review of the findings: Masakaneng

The community, acting through the Board of Trustees, started negotiations in 1995 with the land owner, the then the Groblersdal Town Council and the Office of the Land Commissioner. A number of meetings were held between 1995 and 2000, until the claimed land was restored to the community in 2004. The meetings took place on the following dates:

- 8 June 2001
- 21 June 2001
- 23 August 2001
- 26 August 2002
- 22 June 2003

Official records testify that the Land Claims Commission agreed to pay an amount of R790 000.00 as the purchase price of the property. The local municipality (currently known as Elias Motsoaledi) accepted the above amount as payment for the said property. The municipality agreed to transfer the land, Portion 2 of the farm,

Klipbank, to the Masakaneng Community Trust. This was to be done after payment had been made (Agreement, 2004: 6).

After the transfer the land would belong to the Masakaneng community (Agreement, 2004: 3). The agreement was, however, subject to certain conditions, which read as follows:

1. *The municipality and the Masakaneng Community Trust will honour all contracts of the lease entered into before the signing of the agreement.*
2. *The Commissioner for the Restitution of Land Rights will indemnify the municipality with regard to any claim by any previous owner.*
3. *The municipality will not be responsible for the provision of services on the claimed land, until funds are allocated in terms of a yearly budget (Agreement, 2004: 3-4).*
4. *Transfer of the property referred to shall be given by the Greater Groblersdal Municipality to the Masakaneng Community Trust as soon as payment has been made (Agreement, 2004: 3-6).*

The process of payment and the transfer of the land to Masakaneng community went on smoothly. The community represented by the Board of trustees and the local municipality are currently in possession of the document signed by representatives from all parties, on 15 December 2004.

According to the Board of Trustees and taken from the interview with an official from the Land Claims Commission, some challenges still lie ahead regarding the development of the claimed land. The main role-players have also been slow in making suggestions for a strategic plan for the development of the land and the settlement of the beneficiaries. On the other hand, the beneficiaries are also not helping the process by their increasing impatience.

d) Input by the spheres of Government

According to the chairperson of the Board of Trustees, the following spheres of government and the Board of Trustees played their roles in the process as explicated below.

(i) National Government

The National Government played a very insignificant role in the process. The only part they played was during the celebration of the success of the claim in 2003. The National Government was represented by the Minister of Land Affairs who gave the key-note address.

(ii) Provincial Government

They also did not play a significant role. It seems they did not see the need for direct involvement. The provincial government was not attending meetings even when invited and this ended up delaying the process. Another aspect is that the Board of Trustees are of the view that the provincial government is focusing on the concerned group who may not be beneficiaries. This is at the expense of the beneficiaries. The Board expressed the view that Government is focused more on the concerned group. This may imply a reproach from the BOT that Government is biased towards the concerned group.

(iii) Local Government

The Elias Motsoaledi Local Municipality is ready to render services as required, however, the conflict between the legal board and the concerned group is disabling the municipality to step in and provide services.

e) The Land Claims Commission

The Land Claims Commission also does not seem ready to play its expected role according to the Board of trustees. This can be improved provided the land claims commission interact with the legal body (Board of trustees) instead of the concerned group. This will mean that all the activities carried out, be documented. The legal body will also be able to interact with government for the drawing up of the business plan that will be used as a guideline for the provision of the much needed services.

f) The Board of Trustees

The Board is in need of support from all spheres of government. The support should be in the form of guiding and facilitating duties and functions of the land commission.

When examining the available resources to tackle the obstacles, the following becomes clear:

- The National Government is still prepared to provide a grant for the development of the property.
- The lease agreements provide financial resources in the form of payments.
- The settlement plan is not in place and the land claim commission has to apply for a grant.

The Board of Trustees is looking forward to co-operate with all three spheres of government, in order to ensure that Government provide the required assistance in the process of settling the land claim.

Brief resume of the study thus far

This chapter (3) focused on interviews with stakeholders including the Board of Trustees, ordinary beneficiaries and the committee challenging the legality of the Board of Trustees in Masakaneng. Within the two Ba-kopa tribes the two traditional leaders and some of their followers were interviewed. In the case of the Bakgaga Ba-

Kopa tribe, a committee of beneficiaries disagreeing with the community Trust was also interviewed.

The researcher gathered information about the interaction between the communities and the RLCC. The data was collected through verbal communications (interviews and discussions) as well as taken from relevant documents. From this information it is evident that Government went all out to do what was expected of them. The affected communities will have to play their role to ensure that they join hands with Government. In this way their objectives with the settling of the land claims can be realised.

Chapter 4 provides the conclusion. This chapter (4) will evaluate the relationship between Government and the three communities. It will also suggest possible solutions to the challenges within the three communities.

CHAPTER 4: CONCLUSION

The process of land restitution progressed in terms of legislation that came into being in the new post-1994 democratic dispensation. All three communities – the Bakwena Ba-Kopa, Bakgaga Ba-Kopa and Masakaneng – lodged land claims guided by the applicable legislation. On the same score the Regional Land Claims Commission (RLCC) referred to the relevant legislation when they responded to the claim. This enabled Government and the communities to communicate in an effort to ensure that the land claims process runs as smoothly as possible.

This closing chapter will focus on the evaluation of the relationship between all three spheres of Government and the communities concerned. The interaction that took place between Government and the three communities under discussion presented some challenges to all parties concerned. The study will examine how the parties co-operated to help remedy the situation.

The chapter will end with a conclusion stating whether the interaction between Government and a particular community resulted in overcoming the challenges or not. The evaluation of the interaction between the three spheres of Government and each community will focus on the guidance existing legislation and policies provide in the processing of land restitution.

4.1 BAKWENA BA-KOPA COMMUNITY

The interaction of the Bakwena- Ba-Kopa community with all three spheres of Government can be outlined and evaluated as follows.

4.1.1 National Government

The researcher's communication with Kgoshi Boleu Matsepe-Kopa and other members of the community yielded no evidence as proof that Government at this

level interacted with the community. That is the case, even though the claim was submitted directly to the Department of Land Affairs, as Kgoshi indicated. However, a recent meeting was held in 2010 where the chairperson of the National Council of Provinces (NCOP) was in attendance. This is a positive sign, which shows that the National Government is willing to assist in the process.

4.1.2 Provincial Government: Mpumalanga and Limpopo

The claimed farms were initially under the administration of the Mpumalanga Province. At a later stage the area was transferred to the Province of Limpopo and presently forms part of the province. There is an indication that the Departments of Agriculture and Local Government are ready to assist after the settlement.

Challenges and obstacles

The change in administration led to the delay in processing the claim. Therefore a period of nearly fifteen years elapsed before signs of progress started to emerge.

4.1.3 RLCC: Mpumalanga and Limpopo

The findings indicated that the RLCC's of the two provinces played their roles.

Challenges and obstacles

The change of administration from one province to another, as indicated above, affected the pace of reaching a settlement. The reason was that the files had to be exchanged and at times the RLCC: Limpopo had to collaborate with the RLCC: Mpumalanga to verify some of the facts.

4.1.4 Local Government: Elias Motsoaledi

At the initial stage there were no clear signs of the part the municipality took in the process. However, during 2010 there were meetings where the municipality and the

community held talks on the matter. The Mayor, Mr. L. M. Seloane, played his part by seeking an audience on behalf of the community with the Minister of Land and Rural Development. This yielded constructive results, seeing that currently there are positive signs that Government is ready to buy the farm from the present owners.

Challenges and obstacles

There is no indication of possible obstacles thus far. The challenge that Government in all spheres may face is how to ensure that the community does not lose its patience. The message should be conveyed that relevant land claim procedures are being pursued to finalise the settlement.

Possible solution

The possible solution in helping the community remain patient is that Government should, on a regular basis, keep the community members up to date on developments towards settling the claim.

4.2 BAKGAGA BA-KOPA COMMUNITY

The interaction of the Bakgaga Ba-Kopa community with all three spheres of Government (through meetings and negotiations) can be outlined and evaluated in terms of the following developments.

4.2.1 National Government

The Department of Safety and Security negotiated with the community, seeing that they were making use of the premises on the claimed farm. These premises are owned by the Department of Public Works and this Department is busy with a process to transfer the buildings to the community.

Challenges and obstacles

It takes a long while to finalise the transfer of the buildings owned by the Department of Public Works. The delay is leading to more misunderstandings amongst the beneficiaries about the option of the property holding and on how the matter should be managed in the process.

Possible solution

The solution lies in the hands of the beneficiaries. They should meet one another half way to reach an amicable agreement on the best form of property holding for the community. Should the parties be unable to reach an understanding on this matter, it may have to be settled by a court of law.

4.2.2 Provincial Government: Mpumalanga and Limpopo

The Mpumalanga Province handled the matter at the initial stages of the claim. They worked with the community by responding to their correspondence and advising them on matters that needed to be clarified. Eventually, in 1997 they published the claim in the Government Gazette. The process was handed over to the Limpopo Province when the administration of the area changed hands. The officials of the Provincial Government continued to guide the community until the settlement was finalised in 2003.

Challenges and obstacles

There is no evidence of insurmountable challenges that exist in the relationship between the community and the Provincial Government.

4.2.3 Local Government: Elias Motsoaledi

There is no record indicating any formal contact between the community and the municipality on the administration of the land that was given back to the community

after the land claim was successful. It becomes clear from discussions with community leaders that they plan to provide the municipality with business plans to indicate what form of assistance they require. The community's needs are the efficient delivery of basic services, such as water, sanitation and electricity for both the inhabitants and businesses. It is necessary to demarcate the sites to indicate the areas for human settlement and for business development.

4.3 MASAKANENG COMMUNITY

The interaction of the Masakaneng community with all three spheres of Government can be outlined and evaluated by keeping the following evidence in mind.

4.3.1 National Government

There is no tangible evidence of direct contact between the community and Government at national level during the process of the land claim. It was the RLCC who interacted directly with the community and community leaders. However, during the handover in 2003, the Minister of Land Affairs, Ms. Thoko Didiza, attended the ceremony.

Challenges and obstacles

There are neither challenges nor obstacles that can be linked directly to the National Government, according to information the researcher gathered from community members.

4.3.2 Provincial Government: Mpumalanga and Limpopo

The section of Klipbank that was ultimately handed over to the community was initially administered by Mpumalanga, and presently it is administered by Limpopo. There is no evidence of the way in which the Provincial Government is relating to the Masakaneng community. This should, however, not be seen as an indication of a

poor relationship. The reason is that there is no department at the provincial level that is directly involved in the actual administration of land claims. This is a national function which is executed through the Regional Land Claims Commission (RLCC).

4.3.3 RLCC: Mpumalanga and Limpopo

The matter of processing the claim was handled by Mpumalanga, until the area where the farm is located was handed over to the Limpopo administration. Currently the RLCC: Limpopo is responsible for the land claim and there is a record of regular contact with the community. A series of meetings were arranged with the beneficiaries' leaders and with the community at large. The aim of the meetings was to help address the needs of the community as a whole.

Challenges and obstacles

Talks between the community, community leaders and the community at large have not yielded results in resolving certain pressing issues. The primary issue is that a parallel committee has emerged (the concerned group) to challenge the present one (the Board). The result is that the community members are not unanimous on how to use the restored land optimally and are kept busy by the constant infighting.

Proposed solutions

It is important that the RLCC brings the two opposing committees together. This is not possible as long as they have not yet decided to allow the RLCC to mediate. The RLCC should not give up hope, but continue talks with the two committees, encourage them to meet and resolve their differences.

4.3.4 Local Government: Elias Motsoaledi

The municipality is doing its utmost to get the two committees to meet. At the time of this research (2010), the municipality has not yet succeeded in this. The two committees need to bury the hatchet, and give the Local Government (municipality)

the chance to intervene and render the necessary services. The municipality has the responsibility to provide the services but the infighting is frustrating their intention in this regard.

Proposed solutions

The onus lies with the community to bring the two committees to the discussion table. It is necessary to end the infighting, because both parties claim to represent the entire community. When the opposing committees will stop moving in different directions, it will help unlock the services that are available through the municipality. The municipality is unable to start rendering services, until the community managers come together and draw up a business plan to indicate which services are required.

4.4 FINAL ASSESSMENT

Finally, it is an undisputed fact that land reform is an emotional issue. This is especially true when one considers what the affected communities were subjected to during the era of the previous oppressive and discriminatory regime. Now that the post-1994 government decided to begin with restitution, it is important that the process of land reform is treated with the urgency it deserves. At the same time those involved in the processes and programmes of land claims should always make sure that they do not compromise the rights of any of the parties involved.

The two tribes, the Bakwena Ba-Kopa and the Bakgaga Ba-Kopa, were initially one tribe (as was shown). They were allegedly split by the activities of the previous regime by forceful removal from their land. When dealing with the claims of these communities, the Land Claims Commission should make sure their claims are addressed properly. The sensitive nature of their case should be taken into account. Although they split up, they remained neighbours, even when they finally settled where they are living currently. The series of legislation at hand will assist officials in all spheres of government to ensure that no one creates tension between the tribes.

This becomes even more vital, seeing that there are many incidents of competing claims to the same farms.

Regarding the Masakaneng community, although they were initially one community, several factors within the community made it more difficult to lay their claim to the land. On the other end of the scale, government officials should make sure that they use the correct legislation to convince opposing groups to meet and iron out their differences. This is in the interest of the Masakaneng community as a whole.

All three communities – the Bakwena Ba-Kopa, the Bakgaga Ba-Kopa and the Masakaneng – should make use of the relevant legislation and be guided by it. They should constantly keep the Constitution(1996) of the country in mind when they handle any misunderstandings and conflicts that may arise. They should also be open to scrutiny and allow qualified practitioners the room to guide them in programmes of land claims and the future usage of the restored land. This will definitely help communities to settle whatever differences they have, before it develops into a serious conflict.

It is extremely important for parties to settle their differences, because if differences are not resolved, conflict will delay the whole process and may even jeopardise the successful outcome of the initial good intentions. Where stakeholders and leaders in a community accommodate each other, differences of opinion are ironed out quickly, and communities can reap the fruit of their toils.

It is therefore necessary that Government should address this important emotional and national issue. To do this successfully, it is critical that all aspects are taken into consideration, especially the sensitive nature of land claims and restitution.

In this way both parties will feel accommodated and have the creative confidence to participate and contribute to the process. All the stakeholders, role-players and communities mentioned in this study, have emotional pasts. Their history is linked to the event where people were dispossessed of their land. They are looking forward to a brighter future where land is restored to its rightful owners. They should play their

part by responding positively to the challenge of using the restored land. This should be done by inviting government agencies and the private sector to contribute to the process and thereby help tackling the challenges that lie ahead.

The discussion in all the chapters highlighted the value of land to the communities that lodged land claims. Notwithstanding the fact that land is an emotional issue, the beneficiaries tried to tone down emotions when facing any challenge related to the land in question. This particularly was the case with the leaders of these three communities (as we have identified them throughout the discussion in this study).

Highly charged emotions have the potential of blowing any difficulty out of proportion. Should this happen, the leaders may lose their focus. This could result in the community at large losing its focus. The result could be that the beneficiaries fail to utilise the land profitably after the claim has been settled. Government at the various levels should pull out all the stops to ensure that communities that lodge land claims are properly guided and sufficiently assisted during the processes, as well as after the claim has been settled.

In closing

The discussion has indicated clearly that it was vital for all the parties involved in the land claims and land restitution to co-operate. Government could not have made any progress in the land reform activities if communities did not respond to Government's prompts. Communities would also not have made any progress or succeeded in their land claims if the doors of Government were closed and no guidance was given or assistance rendered.

Therefore, successful interaction and co-operation by all parties depended on the extent that implementation was guided by the existing legislation. To move outside the parameters of the legislative framework could hold dire consequences for the community's land claims. The success and progress made by the three communities on the land claims lodged, as well as Government's intervention in this matter, was based on the sustained co-operation from all parties concerned.

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Annexure 1

QUESTIONNAIRES FOR MA PROPOSAL

Researcher : H. M. Phaahla

Student No :
21294798

Supervisor :
Prof S. J. Zaiman

A. The Masakaneng Board of Trustees

Names of trustees interviewed and date of appointment of each trustee:

Mr. L. D. K. Legoabe: 2009

1. How did the Land Commission assist in ensuring that the land got restored to your community?
2. Did you encounter any obstacle during the Land Claim? If yes please name them.
3. What is the role played by the following in addressing the obstacles?
 - 3.1 *The National Government*
 - 3.2 *The Provincial Government*
 - 3.3 *The Local Municipality*
 - 3.4 *The Land Commission*
 - 3.5 *Yourself, as Masakaneng Board of Trustees.*
4. If you are positive about the assistance in addressing the obstacles, do you have enough resources available for sustained land utilisation?

5. If yes, what are the resources?
6. What would you suggest must the following role players do to improve their support?

6.1 National Government

6.2 Provincial Government

6.3 Local Government

6.4 Land Commission

B. The Land Claims Commission: Limpopo – The Masakaneng Community Land Claim.

Name of Land Claims Commission official and date of appointment:

<i>Manamela, K.A. 2009</i>

1. Did the Land Commission assist the Masakaneng community in developing the land?
2. Describe the level of co-operation from the beneficiaries.
3. Is the plan succeeding?
4. If yes, please give at least two clear examples of the success of the plan?
5. If no, what are the obstacles that led to the failure of the plan?
6. How did the community react to the obstacles?
7. Are there further plans from the Land Commission in assisting the community in ensuring that the claimed is fruitfully used?
8. If yes, what is the specific program?
9. How do you view the role of other government agencies/departments to ensure that the stakeholders and beneficiaries can deal with their challenges?

C. The Masakaneng beneficiary

Name of Land Claims Commission official and date of appointment:

Rev. D.B. Mdluli 2010

1. How did the Land Commission assist in ensuring that the land got restored to your community?
2. What is the role played by the following in addressing the obstacles?
 - 2.1 *The Provincial Government*
 - 2.2 *The Local Municipality*
 - 2.3 *The Land Commission*
3. Do you have any resources in case you are satisfied with assistance offered by the above?

D The Bakgaga Ba-Kopa under Kgoshi Boleu Rammupudu □□

Name of person(s) interviewed and his/her/their position in the community:

Mr. .M.C Maipushe: Secretary: Bakgaga Ba-Kopa Tribal Council 2009

1. How did the Land Commission assist in your successful land claim?
2. Is the community benefiting from the claimed land? Please substantiate with 2-4 examples.
3. Are you satisfied in as far as the role played by the Land Claims Commission in ensuring that the claimed land is utilised effectively and profitably? Yes or No.
4. What is your further recommendation for more assistance from the Land Commission or any Government Department?

E. Bakgaga Ba-Kopa under Kgoshi Boleu Rammupudu □□

Name of Land Commission official and date of appointment:

Mr. K. A. Manamela. 2009

1. What is the Land Commission doing in ensuring that the land claimed benefits the community at large?
2. Has the Commission linked the community with other Government Departments or private sector?.
3. If the answer in “2” above is Yes please name the Department or private sector concerned.
4. What role do other government agencies/departments play in the land claim?
5. How did the linkages made by the Land Commission benefit the community? Please briefly state at least four (4) examples.
6. What are the Commission’s further recommendations on the usage of the claimed land?
7. What is your further recommendation for more assistance from the Land Commission or any Government Department?

F. The Bakgaga-Ba Kopa under Kgoshi Boleu Rammupudu □□

Name of person(s) interviewed and his/her/their position in the community:

Mr. M.J. Matsepe, Secretary for Thabantsho Beneficiaries Association. 2010
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1. How did the Land Commission assist in your successful land claim?
2. What role did other government agencies/ departments play in your land claim?
3. Is the community benefiting from the claimed land? Please substantiate with 2-4 examples.
4. Are you satisfied in as far as the role played by the Land Commission in ensuring that the claimed land is utilised effectively and profitably? Yes or No.
5. If Yes or No, please substantiate with at least 3 examples.
6. What is your further recommendation for more assistance from the Land Commission or any Government Department?

G. The Bakwena Ba-Kopa under Kgoshi Boleu Matsepe Kopa

Name of person(s) interviewed and his/her/their position in the community:

Kgoshi Boleu Matsepe Kopa.2010

1. What is progress so far on the Magagamatala land claim?
2. Is the community satisfied with the role played by the land commission?
3. Are the other Government Departments assisting in the land claim?
4. What are recommendations you would like to make to the Land Commission on the land claim?
5. Do you have further recommendations you would like to make to other government agencies/departments on the land claim?

H. Land Claims Commission Official: Limpopo

Name of Land Claims Commission official and date of appointment:

Mr. K. A. Manamela: May 2009

1. How is the Land Commission assisting the Bakwena Ba-Kopa under Kgoshi Boleu Matsepe Kopa in their land claim?
2. Did the Land Commission link the community with other departments for further assistance?

Please name the Departments in "2" above if there are roles they played/are playing.

3. How do you view the role of other government agencies/departments in the Land claim?
4. What is your view of the way in which the Bakwena Ba-Kopa under Kgoshi Boleu Matsepe is responding to the challenges in the land claim?
5. Do you have further recommendations for the Land claim?

If any, please give the recommendations.

6. Do you have further recommendations for other government agencies/departments?

If any, please give the recommendations.