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Stealing The Crust

By Kevin Bloom
& Sasha Wales-Smith



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Photography by Daniel Born



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The Land and Accountability Research Centre (LARC) is based in the University of Cape Town's Faculty of Law. LARC forms part of a collaborative network, constituted as the Alliance for Rural Democracy, which provides strategic support to struggles for the recognition and protection of rights and living customary law in the former homeland areas of South Africa. LARC is particularly interested by the ways in which laws and policies frame power relations within these areas and threaten ongoing initiatives for democratic change and accountability at the local level.

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Under the land that belongs to the Bakgatla Ba Kgafela lie the richest platinum deposits on earth. But a toxic alliance between government, traditional chieftaincy and major mining houses has stood between the community and its wealth. Could this be the largest state-sanctioned, business-perpetrated fraud in the history of Big Mining in South Africa?



CONTENTS

Foreword.....	i
I. The Great Diversion.....	01
II. Sleight of Hand.....	06
III. The King from the North.....	10
IV. Now We're Sharing the Same Dream.....	14
V. Lancing the Boil.....	24
Author Biographies.....	31





Mmuthi Pilane, Motlhabe headman, on the road to the Pilanesberg Platinum Mine. **Photo: Daniel Born**

FOREWORD

No road to riches for SA mining communities

There is a cruel irony to the naming of the road that links the North West Province mining towns of Rustenburg and Brits to the economic capitals of Pretoria and Johannesburg.

It is known as the Platinum Highway. But the only glitter along the bleak multi-lane N4 highway is the shimmering reflection off the newer tin shacks amongst the sprawl of desperate poverty that lines the road.

All that reaches for the sky here is the infrastructure of waste dumps and headgears of the mines that pull the platinum-group ores from the ground below and set them trucking down the Platinum Highway to be refined, smelted and sold for dollars that mostly find their way into accounts in London, New York and low-tax island havens such as Guernsey.

The irony is not lost on the people who live amongst the mines owned by renowned giants of the industry such as Anglo American Platinum, Impala Platinum and Lonmin – and more recently a set of newer players taking on the indigenous-sounding camouflage of names such as Itereleng, Sedibelo and Sibanye. The owners of the mined land, whose rights are rooted in occupation, custom, inheritance and law, have been trying for decades to claim the elusive benefits of the industry that changed their lives

when platinum began to challenge gold as the primary source of South African export earnings.

Time and again, communities, local committees and small civic organisations have hammered at the doors of their traditional authorities, demanding an accounting for the royalties and dividends promised in serial contracts for the lease of their land – and for the missing schools, clinics, roads and small-business opportunities listed in the Social and Labour Plans to which mines have had to commit since apartheid gave way to democracy. Time and again, they have been rebuffed by traditional leaders who refuse them a hearing, and by courts that endorse the assumed authority of those traditional leaders.

Where frustrations have exploded in protest against councils, traditional leaders or the mines themselves, police have repeatedly taken the side of power against the people. Meetings are banned or broken up. Thugs on the payrolls of traditional leaders have bullied and beaten community members who ask why, on the back of a platinum boom that peaked in 2008, they have been left thirsty, hungry, mostly unemployed and often ill from the industry's pollutants. Denied an explanation for the absence of promised development that would have lifted them out of poverty, they are left to walk the dirt tracks of settlements a stone's throw from the cordoned Platinum Highway, whose tolls they could not afford if they could borrow a car for a day.

Reversing this lived reality for communities like the Bakgatla Ba Kgafela and the Bapo Ba Mogale, whose land blankets rich portions of the fabled platinum belt, is not on any near horizon. But the still unfinished story told in this booklet does vindicate those who have tried so long and hard to prove that they were being robbed by their own traditional and government leaders of the revenues and opportunities that were their due. Here, at last, is the hard evidence of correspondence, minutes and financial statements that show how an elite triumvirate of mining companies, politically connected empowerment beneficiaries and traditional leaders have systematically stolen the assets of one such rural community – the Bakgatla Ba Kgafela – and diverted the revenues owed to them into corporate and personal accounts.

The full story of the dispossession of the Bakgatla Ba Kgafela has yet to emerge, but much of the information so long denied suddenly began to surface in 2017 when Judge George Maluleke was appointed to head a commission of inquiry into the rightful leadership of the community. The Commission's terms of reference unexpectedly included a mandate to investigate the management of the Bakgatla community's finances.

The evidence that has come to the fore and was presented to the Commission emerged partly with the help of the Land and Accountability Research Centre (LARC) in the Department of Public Law at the University of Cape Town. LARC, previously the Rural Women's Action Research

Programme at the Centre for Law and Society, has sought for almost a decade to help communities to call their leaders to account for the receipt, management and disbursement of revenues due from mining, as well as the opportunities promised by mining companies.

The Concerned Bakgatla Ba Kgafela Anti-Corruption Organisation (Cobaco) was formed by a number of community members in 1998 to demand accountability from the traditional authority and the premier of North West Province for royalties and other benefits promised to owners and residents whose land had been taken for or affected by mining. What, they wanted to know, had happened to the R6.2 million annual royalty paid by Anglo Platinum from 1982 until 2006, when the royalty right was traded for an ownership share in Rustenburg Platinum Mine? What, if anything has flowed from that transaction to the people on the land? And what benefit has accrued from the community's share of gate takings from the Pilanesberg National Park that overlapped onto their land?

They could hardly have guessed at the actual scale of the misdirection of the benefits that carried their name, but never their address.

Evidence revealed in this booklet refers to several purchases on behalf of and payments to the Bakgatla "tribe" – transactions in billions of rand that most in the community did not approve, did not know about and did not benefit from. Nor could they have known that the Forest Town

house in Johannesburg, in which former president Jacob Zuma entertained his rape accuser, Fezekile "Khwezi" Kuzwayo, was bought for his use by a lawyer paid for from the community's hidden accounts.

By 2014, the feisty, but unfunded Cobaco was still fighting for a toehold in the unequal battle with their Kgosi, Nyalala Pilane. Blocked by a traditional council based on recycled apartheid-era policies, laws and tribal boundaries, by courts that routinely found in favour of traditional leaders and by an unresponsive provincial government, Cobaco was unable to penetrate the network of at least 39 companies set up to funnel mining benefits into the pockets of the connected elite.

Assistance from an independent strategic litigation fund allowed Cobaco to renew the legal battle in 2015 with demands to the traditional council and the province for a record of payments into the so-called D-Account held by the province on behalf of the Bakgatla Ba Kgafela community. News of the renewed initiative encouraged two whistle-blowers to share information they had on Pilane's management of the community finances – enough to help lawyers supporting the search to start asking the right questions, even if they did not yet get useful answers. Cobaco also was able to get confirmation from the office of the Auditor General that the required annual audit of their D-Account had not been performed even once since 1994. Nor had the account of any other traditional community been tested because none had ever been presented as required.

Around the same time, the Public Protector, then Thuli Madonsela, released reports that detailed the systematic fleecing of the neighbouring Bapo Ba Mogale community by their Traditional Council, associates of the ailing Kgosi Bob Edward Mogale and London-based Lonmin plc. At least R600 million had disappeared from the community's unaudited D-Account, she reported.

The Public Protector also investigated the management of the Bakgatla's affairs and, in 2012, the Traditional Council's own accounting firm itemised serious breaches of financial oversight. Many of the points raised emerged again at the hearings of the Maluleke Commission.

Community members packed the Commission hearings in Rustenburg as details tumbled from Pilane's hidden archives of how their own funds were used to fight them in court and to fund the extravagant lifestyles of their leaders.

What these records, now amounting to tens of thousands of pages, have shown is that the Bakgatla, a community of 350 000 people in 32 villages between Sun City and the Pilanesberg National Park, had been systematically stripped of their assets. Guernsey-based Pallinghurst Resources Limited, chaired at the time by veteran miner Brian Gilbertson, described the plan to secure control of the Bakgatla's resources in a closed briefing to directors, calling it "identify, acquire, consolidate". And that is exactly what they did.

Subsequent evidence presented to the Commission, which is not covered in this report, adds stunning detail of further misspending and maladministration by or on behalf of the Bakgatla Ba Kgafela Traditional Council. These include R82.75 million in unexplained "consultancy" fees to a firm headed by one of Pilane's business partners, a further R45 million in consultancy fees on a R1 billion transaction in which the community had only a 6% interest, and the pledging of community assets as security for personal debts incurred by Pilane.

The first draft of this Bakgatla history, based on preliminary evidence that emerged before Judge Maluleke who died in August 2017, is told in this report by Daily Maverick correspondent Kevin Bloom and Sasha Wales-Smith, an independent researcher working with LARC. The report was carried by the *Daily Maverick* on 1 February 2018 under the headline: *Stealing the Crust: How the Bakgatla Ba Kgafela were robbed of their inheritance*. The Commission resumed work in 2018 under Advocate Sesi Baloyi, triggering the release of more documents about the Bakgatla's finances.

The central question addressed in this piece – how the Bakgatla came to lose control over their farms and land, and then the corporate assets for which they were traded – is answered in the history of colonial, apartheid and, incomprehensibly, post-apartheid policy and law concerning the rights of people living under traditional authority in rural areas. Colonial powers treated traditional

leaders as the unchallengeable representatives of their people (the tribes). Apartheid law codified the elevation of traditional leaders, defined the physical boundaries of their authority and imposed the identity of the tribe on anyone living within those boundaries. Though most of the 17 million people living in those rural areas that had been designated as “homelands” assumed that democracy in 1994 would erase that architecture of apartheid, this did not happen. Instead, the democratic government adopted the boundaries and identities of apartheid and began to legislate the recognition of traditional leaders accordingly.

Homeland residents whose forebears and families had occupied the land for decades, and sometimes centuries, were denied the rights of ownership – from secure tenure to the right to decide on its use – under colonial and apartheid rule and again after 1994. They could not and still cannot say no to mining or any other development on their land.

The dizzying series of multi-billion-rand transactions described in this report – and details that continue to emerge – show how multi-national corporations plotted in this unequal context to gain control of the mineral-rich farms owned by the Bakgatla to create a platinum-mining giant. Initially known as the African Queen Project, the R25-billion mega-mine, created over six years, was renamed in 2012 to Sedibelo Platinum Mines Limited. On paper, the Bakgatla community is a key beneficiary of the deals. On paper, they own 25% of the mine.

But as a visit to the area or even just a drive along the Platinum Highway will show, the people whose land was taken to allow access to the metals below have seen almost nothing of the wealth this mining project has created. Their informed consent was never sought. The promised benefits did not materialize. That which should have been theirs has been squandered by their leaders, recklessly traded away in a series of ill-judged transactions or, possibly, hidden in offshore accounts.

It has proved to be a formula so useful to the elite triumvirate that no one in power seems willing to challenge or try to reverse it. Instead, legislation currently working its way through Parliament proposes further to entrench the marginalization of ordinary people under the dictatorial authority of traditional leaders and councils. Unless it is stopped, the set of new laws will make it easier and safer for traditional leaders, corporations and government to repeat the story told in this booklet.

Brendan Boyle
September 2018



Villages surrounding the Pilanesberg Platinum mine in the North West in South Africa have severe unemployment, lack of basic infrastructure and are without running water, despite being on one of the richest reserves of platinum in the World. The owners and tribal chief in the area are accused of stealing over R25 billion that was supposed to be spent on developing the surrounding area. **Photo: Daniel Born**

I. THE GREAT DIVERSION

Motlhabe, a village of around 3,000 people in North West Province, is a settlement from where it is possible, if the wind is right, to inhale thick clumps of dust from the rock waste dump of the Pilanesberg Platinum Mine, one of the most lucrative open-cast mines on earth. The village is located on the western fringe of the Bushveld Igneous Complex, a two-billion-year-old geological phenomenon that contains up to 90 percent of the world's known reserves of platinum group metals, or PGMs, being palladium, ruthenium, rhodium, osmium, iridium and platinum itself.

Motlhabe's traditional headman, a destitute man in his early 50s named Mmuthi Pilane, believes that these two facts add up to a third fact that is equally significant. According to Mmuthi, if the combined land claims of the Bakgatla Ba Kgafela, the Tswana sub-group to whose star the village and its people are unwillingly hitched, had to be assessed and evaluated against the group's *actual* combined assets, the difference would run—dependent on the price of platinum—to somewhere in the region of R25 billion. Which, if true, would make the Bakgatla Ba Kgafela, whose individual members number around 350,000, the victims of the largest government-sanctioned, business-perpetrated fraud in the history of Big Mining in South Africa.

“So Mmuthi Pilane is the son of Elias Mainole Pilane,” says Mmuthi, by way of explaining his own duty to lead, and thereby the legitimacy of his people's claim to the land.



Mmuthi Pilane, headman of the village of Motlhabe. **Photo: Daniel Born**

“Mainole Pilane is the son of Kobedi Pilane, who was the headman of this village from 1931 until 1945. *His* father is Kautlwale Pilane, the son of Chief Pilane the First.”

Mmuthi is sitting beneath an umbrella thorn when he says this, and he is looking to the south, to a mountain range named for the man he has just mentioned. It was this “first” Pilane, the great *kgosi* who reunited the Bakgatla after they had been scattered by the *Difiqane* of the early nineteenth century, after whom the Boers christened the range the “Pilanesberg”. Today, the descendants of Chief Pilane are anything but close. Since 2009, in fact, Mmuthi has been leading a secession bid against the Bakgatla Ba Kgafela’s current chief—his distant, exponentially richer, exponentially more powerful cousin.

Enter Nyalala Pilane, the former taxi company boss and labour unionist who became *kgosi* in 1996, back when the country was full of hope and the mines were full of the stuff that was going to fund—at long last—the creation of an equal and just society. Like the moment in which he rose to power, Nyalala Pilane was once an embodiment of South Africa’s “better tomorrow”: Madiba was two years into his tenure as the world’s most beloved head of state, the social objectives of the Reconstruction and Development Programme hadn’t yet been sacrificed on the altar of global capital, and the price of platinum (although nobody in the North West could’ve known it) was about to hit a decade-long dream run. Unfortunately, by the first half of 2008, when platinum had risen six-fold to peak at around \$2,200 per ounce, members of the extended Pilane family were hatching a plan to stop Kgosi Nyalala in his tracks.

Stop him from doing what? The correct answer, as per the evidence submitted to the Maluleke Commission—the exhaustive inquiry chaired by the late Judge George Maluleke into whether, among other things, Kgosi Nyalala had ever been a real or legitimate chief—is “maladministration” and “alleged corruption”.

Except that Mmuthi Pilane prefers the term “theft”. “After my father passed in 2009,” he says, “I was mandated by this community to enquire about the land claim, chieftainship, and all those things. All our revenues are going to Nyalala, but we get back nothing in return.”

Mmuthi Pilane’s complaint was one of a number, but unlike the others, his had made it all the way to the Constitutional Court, which ruled in 2013 that Kgosi Nyalala had unlawfully prevented the Motlhabé secessionists from gathering.

And so, concealed in Mmuthi’s enduring—and enduringly futile—attempts to break away from the main group, we find an important difference: Mmuthi has steadfastly refused to seek the assistance of Kgafela Kgafela II, the *kgosikgolo*, or “paramount” chief, of the entire Bakgatla nation in both Botswana and South Africa. The other complainants not only went the mainstream legal route in attempting to remove Nyalala from power, they also appealed to traditional law in the person of the *kgosikgolo*. Back then, this “king from the north” saw himself as a friend of Nyalala, and therefore declined to help. By 2016, however, Kgafela Kgafela II and Nyalala Pilane would be involved in an all-out war, the main theater of which was the central auditorium of the Rustenburg Civic Centre, where up to a thousand members of the Bakgatla Ba Kgafela would gather each day to watch the soap opera known as the Maluleke Commission unfold.

Over the last 18 months or so, the various perplexities have at one time or another undone most of the role-players in the Commission, including the advocates and lawyers, the accountants and auditors, the historians and genealogists, and even the chair himself—who passed away in August 2017, a month before he was due to submit his interim report, at the age of 76. As a guide through this confusion, then, it is best to remember a simple question: who benefits?

“The matter of the fraud over Bakgatla property, human rights violations and impunity towards the constitution,” noted Kgafela Kgafela II, in one of the hundreds of pages of testimony he submitted to the Commission, “is so serious as to dwarf concerns over genealogies, claims to the throne and peripheral disputes over membership to the royal family or its definition.”

In short, the king from the north, no paragon of transparency himself (as we shall see), was saying that the Maluleke Commission was a diversion. The real story was *not* the identity of the rightful chief, but how and why the Bakgatla continued to live in poverty when they had irrefutable claims to some of the most valuable real estate on earth. The story, in other words, was about Big Mining: its underlying ethos, its cynical alliances with traditional authority, and—most important—its innate drive to cut deals that served only its own interests.



II. SLEIGHT OF HAND

However the Maluleke Commission gets judged by posterity, it has brought up into the light a host of shadowy evidence regarding South African Big Mining in general and Anglo American in particular, who through their subsidiary Rustenburg Platinum Mines (RPM) have been mining Bakgatla land since soon after the end of World War Two.

Established in 1947, the year-on-year profits out of RPM's Union Section Mine, which tracked the skyrocketing demand for platinum coating in the catalytic converters of post-war motor vehicles, were typical of the apartheid-era triumphs of Anglo American at large—meaning, Union Section's financial reports were typical of the sleights-of-hand of apartheid's mining czars at large. Harry Oppenheimer inherited the corporation from his father in 1957, turned it into a conglomerate of truly world-beating proportions, used his position to slam the Afrikaners in government for their expedient brand of racism, and yet neglected to mention—let alone liberate—his own golden goose: cheap, black migrant labour. By 2006, with the Oppenheimers gone but not forgotten, Union Section was the company's third largest platinum producer in a country that was still responsible for the vast majority of the world's supply. It was also a classic example of how Big Mining's business ethos had been upgraded for the post-apartheid age.

In order to meet the requirements of the Mineral and Petroleum Resources Development Act of 2002, which

vested all mining rights in the state, RPM embarked on a series of deals to convert their old order rights to new order rights. On Union Section, they sold 15 percent to the Bakgatla Ba Kgafela, represented by Chief Nyalala Pilane, for R420 million in cash. Ostensibly, the deal was struck for the ultimate benefit of the historically disadvantaged claimants to the land. But, as per documents thrown up by the Maluleke Commission, things did not work out as advertised. The acquisition of the 15 percent shareholding in Union Section came at a heavy price for the Bakgatla—mainly because, since the conclusion of the deal in late 2006, the fine print has been hitting them on a number of fronts.



Under the land that belongs to the Bakgatla Ba Kgafela lie the richest platinum deposits on Earth. But a toxic alliance between government, traditional chieftaincy and major mining houses has stood between the community and its wealth. **Photo: Daniel Born**

First was the cancellation of RPM's annual royalty payments to the Bakgatla. Known as the royalty-for-equity swap, this was one of the earliest examples of a model that would become widespread across the platinum belt—a model that almost never turned out well for the land's poorest and most powerless inhabitants. An example familiar to the *Daily Maverick* was the R540 million deal concluded in 2014 between the mining conglomerate Lonmin and the Bapo Ba Mogale, the community with a recognised claim to the land under which the notorious Marikana mine sits. As the *Daily Maverick* reported in 2016, not only had the 40,000 members of the “Bapo” never seen a cent in return on their new equity stake, they had also been stripped of an alleged R800 million by the same traditional leaders who purported to negotiate with Lonmin on their behalf, a figure mostly made up of interest on royalty payments from Lonmin since 1994.

Lonmin, like many other mining/community relationships in South Africa, revealed a pattern: a single unelected individual speaking for an entire community, with the strings of traditional chieftaincy pulled at will by the highest bidder, and the big rewards reaped by the self-same players as in the days of high apartheid.

Kgosi ke kgosi ka marafe. The king is the king by the grace of the people. In the case of the deal between the Bakgatla Ba Kgafela and Anglo American Platinum, according to shareholder agreements that the people never saw—this would be established under oath at the Maluleke Commission—the Bakgatla had thrown in at a nominal fee

the surface rights to their land for all of Union Section's present and future mining activities. They had unknowingly decided, in order to raise money for the transaction, to take out a loan of R435 million from Rand Merchant Bank. And they had unwittingly agreed, as a condition of this loan, to take forward hedging cover to counter the risk of changes in the price of platinum.

All of which meant that for the financial years 2007 through 2015, as per the financial records of the Bakgatla Ba Kgafela Traditional Authority (BBKTA), expenses incurred by the community came in at R902.2 million. This was made up of R649.7 million in loan repayments and R259.5 million in payments to government in taxes and royalties. The take home of the community for these eight years, after received payments from the deal of R1.18 billion, was R256 million.

In absolute terms, however, it wasn't anything close to that—because the R256 million was sunk into the bank account of the BBKTA. And the BBKTA, it will be noted, is none other than the personal and private office of the community's unelected, and nowadays almost entirely unloved, chief.



III. THE KING FROM THE NORTH

“My father installed the regent in 1996 to rule as a caretaker over the section of the Bakgatla tribe living in South Africa,” writes Kgafela Kgafela II, in his memoir *The King’s Journal*, of the appointment of Nyalala Pilane. “[He] became too powerful, and a lot of tribal money was at his disposal, but he refused to account for it whilst entrenching himself in the royal seat.”

But this opacity went both ways. On 11 December 2009, as per the public record of the Maluleke Commission, the BBKTA passed a resolution that promised to pick up the bills “for the king of the Bakgatla Ba Kgafela... Kgosi Kgafela II, who reigns both in Mochudi, Botswana, and in Moruleng, South Africa.” The resolution further promised to take care of the day-to-day operational costs of the office of the traditional authority in Botswana.

Initially, it was R1 million for the subsistence costs of Kgafela II, R4,3 million for the operating costs of the Mochudi traditional authority, and R400,000 for renovations to the tribal offices in Mochudi. But clearly that wasn’t enough, because six days later, on 17 December 2009, another resolution was signed. This one promised a further R5 million for all of the above, with the salaries of the employees in Mochudi serving as the sole additional item.

Thus may it long have lasted, a lesser king in South Africa paying the expenses of a greater king in Botswana, had

Kgafela II not been charged in 2010 with criminal assault for ordering the flogging of his own subjects in Mochudi. Presented in *The King’s Journal* as a “fierce conflict” between Western and traditional values, the charges saw Kgafela II flee Botswana for South Africa, where he shackled up with his relatives in Moruleng while plotting to challenge the authority of his country’s constitution. It was during the first few months of his stay in Moruleng, according to Kgafela II’s advisors, that he discovered the “rot” in the affairs of the BBKTA—a discovery that apparently led to his call for a forensic audit.

Whatever Kgafela II’s motivations for shining a spotlight on the affairs of the BBKTA, a 121-page report was sent on 25 June 2012 from the desk of Willem du Preez, director of BDO Risk Advisory Services, to the desk of Nyalala Pilane. Four years later, the Maluleke Commission would open portions of it to the public. The report had been comprised of, among other things, 25 pages on the BBKTA’s corporate governance practices (there were none); five pages on its expenditure policies (no procurement processes were in place); a six-page review of its human resource policies (neither Kgosi Nyalala nor members of the traditional council appeared to have employment contracts in place); three pages on its “lack of consolidated financial information since December 2008” (an oversight that caused particular concern for BDO in respect of “mining related investments”); and 20 pages on “suspicious transactions”.

Typical of these transactions was the unbudgeted payment of R1,38 million to an outfit called Thomathabiso Construction CC, whose sole owner had neither an architect's license nor a commercial address, for "renovations to the perimeter wall" of the royal palace. Or the unbudgeted payment of R976,000 to Pheto Development and HR Services, which also had no commercial address, for the "restructuring" of the office of the *kgosi*. Or the unbudgeted payment of R2.85 million to BLH Africa Ventures, for services provided in respect of a youth soccer tournament. On it went, incorporating so-called business trips to Sofia, Milan and Beijing that turned out *not* to be business trips (although the air tickets were business class and the hotels were five-star), until the report arrived at the R174 million Moruleng Stadium, built as a training ground for the 2010 FIFA World Cup. As far as BDO were concerned, the stadium was running at an annual loss of R1,43 million, an expense—like the construction of the stadium itself—that was ultimately for the account of the 350,000 members of the Bakgatla Ba Kgafela.

The king from the north, even though a further resolution out of the Moruleng BBKTA had guaranteed him quarterly payments of R1,8 million (effective from 1 September 2011), was by this point sticking firmly to his guns. He wanted Nyalala Pilane gone. On 30 July 2012, citing "ill health" that needed his "full and uninterrupted attention," Pilane offered his resignation to the *kgosikgolo*. On 1 August 2012, Kgafela II sent back a letter accepting the resignation, and made mention of an "appropriate retirement package" that had been discussed in the presence of "the other royal

uncles". On 14 August 2012, the criminal trial of Kgafela II resumed in Botswana, with a warrant for his arrest issued in Gaborone. The very next day, Nyalala Pilane retracted his resignation.

At the Maluleke Commission, on 9 November 2016, Advocate Richard Moultrie—who was representing Merafe Ramono, a third claimant to the chieftainship of the Bakgatla Ba Kgafela—put it to Kgafela II under cross-examination that this entire chain of events represented the "traditional leadership version of a well-planned corporate takeover." Kgafela II would spend most of the rest of the day denying the allegation, arguing in world-class legalese that every move he had made was for the good of his people. In the final analysis, of course, it was just another day at the Commission that served the agenda of the absent mining companies, a fact that could not have been lost on the king from the north.

"From the foregoing," testified Kgafela II, "it is evident that taxpayer money amounting to about R3.4 billion has been injected into mining operations initiated by Nyalala Pilane over Bakgatla land without the requisite authority. Such mining operations have now been interdicted by court orders since 3 September 2015."

That R3.4 billion, which has more accurately been reported as R3.24 billion, came from the Industrial Development Corporation—it remains the single largest investment into the mining sector ever made by the state-funded body. The

beneficiary was a mining conglomerate called Sedibelo Platinum Mines, a company in which Nyalala Pilane was listed as a director.



IV. NOW WE'RE SHARING THE SAME DREAM

Almost a year to the day before the 2008 financial collapse reintroduced the concept of “austerity” to the developed world, the ancestral lands of the Bakgatla Ba Kgafela became the target of a newcomer to the platinum mining sector: Pallinghurst Resources Limited, a private equity and venture capital outfit incorporated in the British crown dependency of Guernsey, an island in the English Channel famous for taxing its companies at a rate of zero percent. Founded in September 2007 as a “limited life mining investment fund,” its objective, the company would later inform *Daily Maverick*, was simply to bring its shareholders “a high overall return”.

Which was the special skill-set of Pallinghurst’s chairman, who had been appointed at the time of the company’s listing on the Bermuda Stock Exchange in late 2007. Brian Gilbertson, former CEO of the world’s largest resources conglomerate BHP Billiton, had also been the executive chairman of Gencor Limited when it led the post-1994 transformation of the South African mining industry, the

executive chairman of Vedanta Resources when it became the first Indian company to achieve a primary listing on the London Stock Exchange, and the brains behind the \$30 billion merger of state-owned Russian assets that created the most powerful aluminium conglomerate on earth. As the managing director in his early career of Anglo Platinum’s RPM, Pallinghurst represented something of a homecoming for Gilbertson. Where he had once helped the former to gain recognition as the world’s leading producer of platinum, he was now promising to turn the latter into the world’s most efficient supplier of PGMs. Dubbed the “African Queen Project,” its top-line PGM strategy was “identify, acquire, consolidate”.



Under the land that belongs to the Bakgatla Ba Kgafela lie the richest platinum deposits on Earth. **Photo: Daniel Born**

Identify where? This part of the strategy was handled by the company’s “investment manager,” another entity with tax

haven provenance called Pallinghurst (Cayman) GP LP, and the assets identified were three adjacent PGM deposits on the western limb of the Bushveld Igneous Complex just north of the Pilanesberg range. Their names were Pilanesberg Platinum Mine, Magazynkraal and Sedibelo Project, and while they were pitched to investors as “individually attractive,” it was asserted that “combining the properties and mining the ore as a single entity” would increase efficiencies and maximise profits through a dependable law of value creation known as “economies of scale”.

How would Pallinghurst acquire the properties? Both Gilbertson and his lieutenant, Pallinghurst CEO Arne Frandsen, had unrivalled experience in PGM deal-making through their earlier associations with RPM and Impala Platinum Holdings. Both men had also assumed lead roles in the formation of Incwala Resources, a black economic empowerment (BEE) investment vehicle with an 18 percent interest in the aforementioned Lonmin PLC. Based on these credentials, at the core of the African Queen Project was a series of “logically sequenced transactions”.

The first step was to form a highly attractive, broad-based BEE partnership with the Bakgatla Ba Kgafela, who, at the time, held significant interests on the Magazynskraal and Sedibelo properties. In October 2007, one month after the formation of Pallinghurst Resources, the Bakgatla-Pallinghurst Joint Venture (Pty) Ltd—or “BPJV”—was incorporated in South Africa. The shareholding of BPJV was set at 50.1 percent to the Bakgatla and 49.9 percent to the “Pallinghurst

Investor Consortium,” an entity controlled by Pallinghurst Resources in Guernsey and a company registered as “AMCI ConsMin” in the Cayman Islands, with Investec Bank and an organisation called “NGP Midstream and Resources LP” also listed as partners. The bent of this consortium towards offshore tax havens was further reflected in its investment vehicle, Pallinghurst Ivy Lane Capital, a subsidiary once based in Mauritius but nowadays in Luxembourg.

When *Daily Maverick* put it to Pallinghurst Resources that tax havens are a risk in the extractive industry value chain, they responded thus: “Guernsey is not a ‘tax haven’ but is rather a leading jurisdiction that adheres to Global Forum international standards on transparency and information exchange. It is a well-established and highly regulated jurisdiction, which is closely aligned with the UK.”

Still, according to the earliest available documents to outline the terms of the joint venture, a “shareholders agreement” signed on 31 May 2008, the deal was largely meant to benefit the 350,000 citizens of South Africa who could identify as Bakgatla Ba Kgafela. As per the wording of the shareholders agreement, *both parties* believed that “the merger and joint development of Sedibelo, Magazynskraal and the Pilanesberg Project [had] significant financial, operational and strategic advantages.”

When the Bakgatla first joined Pallinghurst as their BEE partner, they owned 90 percent of Itereleng Bakgatla Mineral Resources (Pty) Ltd—or “IBMR”—a community-

owned company established in 2003 to house their mineral rights on the Sedibelo properties. They also had the option to an 80 percent shareholding in Magazynskraal. But, once the joint venture with Pallinghurst was formed, the Bakgatla agreed to use the company as the “exclusive vehicle” to house their PGM interests.

In other words, with the blessing of the BBKTA, Kgosi Nyalala Pilane signed over almost all of the Bakgatla’s mineral rights to the joint venture. He also offered the community’s interests in Rooderand, another prized asset, to BPJV. In effect, the only significant holding excluded from the deal was the 15 percent in Union Section Mine—unless of course it made “future commercial sense” for the Bakgatla to sell those too. As joint venture partner, Pallinghurst Investor Consortium secured pre-emptive rights to half of the Bakgatla’s interests in Magazynskraal and to 49.9 percent of the shares in IBMR at “fair market value”.

And so, because of the sheer scale of the assets that the Bakgatla had signed away, the BPJV shareholders agreement was truly unique. It did, however, bear certain tonal similarities to the deal the Bakgatla had struck with Anglo Platinum two years before. Both deals begged the question: were the ordinary members of the Bakgatla aware of what “they” had done?

Which brings us to the second step in the “logically sequenced transactions”—the so-called “Moepi Acquisition”. From the get-go, Pallinghurst Resources had the Pilanesberg

Platinum Mine in its sights. With two opencast pits under construction, good roads, water supply and power lines, the mine was expected to reach full capacity by 2009; it promised investors payback within two-and-a-half years. Gilbertson knew that ownership of this asset was the “cash cow” that could fund the consolidation and development of his entire portfolio of PGM investments.

The only problem was that the mine was the lead project of Platmin Ltd, a PGM exploration and development company listed on the Toronto Stock Exchange and London’s Alternative Investment Market. Platmin controlled the mine, plus three other properties in Limpopo and Mpumalanga, through a 72.39 percent shareholding in their South African operating subsidiary, Boynton Investments. The remaining 27.61 percent of Boynton was held by Platmin’s BEE partner, the Moepi Group of companies.

Securing control of Platmin was therefore pivotal to the African Queen Project. But, given that Platmin was fast becoming the world’s next great PGM producer, it was unlikely to part with a large equity stake. There was only one course for Pallinghurst to chart—in partnership with the Bakgatla, they would need to buy out Platmin’s local partners, and then systematically increase their joint shareholding until a controlling interest was reached.

In December 2007, like an opening trick by a master magician, the BPJV struck a deal to buy 100 percent of the shares in the Moepi Group of companies. This gave them a

27.61 percent interest in Boynton, enough for the BPJV to replace Moepi as Platmin's BEE partner. All they needed to do next was wait.

The opportunity came ten months later, on the back of the financial crisis, when credit markets crumbled and PGM prices tanked. Platmin was suddenly unable to make good on the repayments for the project loan it had taken out to finance the final stages of construction on the Pilanesberg Platinum Mine.

To save it from insolvency, Pallinghurst offered Platmin \$175 million in immediate equity funding. The payment was structured in three transactions, and bought Pallinghurst and the Bakgatla outright control. The Pallinghurst Investor Consortium poured in \$125 million and loaned the Bakgatla a further \$50 million. Together, this gave the joint venture 69.8 percent of Platmin's share capital. Lastly, the BPJV exchanged their 27.61 percent interest in Boynton, held via their ownership of the Moepi Group, for new shares in Platmin. Brian Gilbertson and Arne Frandsen were immediately appointed to the Platmin board.

Next, step three: the Magazynskraal acquisition. The Bakgatla owned 26 percent of the company that held the new order prospecting rights to this farm, with an option to increase their shareholding to 80 percent if they came up with R161 million to cover a "bankable feasibility study". It wasn't quite this simple, but Pallinghurst effectively "bought" the study for its empowerment partner—and *voilà*,

they owned 80 percent of another prime piece of platinum real estate. Pallinghurst then paid the Bakgatla R1.6 billion for 33.33 percent of their shares in Magazynskraal—which would have valued this early stage project, almost six months after the global financial crash, at R4.8 billion. From the available documents, it's not clear to *Daily Maverick* how much of the R1.6 billion was actually received by the Bakgatla, as over R1 billion was used to settle debts owed to Pallinghurst.

The fourth and ultimate step in the Pallinghurst buying spree—before the triumphant *consolidation* phase could be put into effect—was the acquisition of the Bakgatla's most highly-prized asset: the Sedibelo Project. The Bakgatla owned 90 percent of this asset through IBMR, with Canadian miners Barrick Gold having earned the remaining 10 percent after their completion of a bankable feasibility study. Before we précis how the fourth step went down, however, allow us to remind you that Pallinghurst had locked the Bakgatla into an agreement in 2008 to acquire half the shares in IBMR at "fair market value".

When Barrick Gold decided to quit the South African industry in 2010 due to the global recession, Pallinghurst put the plan in motion. Through their investment vehicle, the Mauritius-registered Ivy Lane Capital, they advanced a loan to the Bakgatla to buy back 10 percent of shares in IBMR and other infrastructure from Barrick Gold. Then, based on an independent valuation, Pallinghurst offered the Bakgatla \$99.8 million for the purchase of 49.9 percent of the total

share capital in IBMR. And the Bakgatla, represented by Kgosi Nyalala Pilane, accepted.

Was the equivalent of around R790 million (minus the loan from Ivy Lane Capital amounting to some R230 million) “fair value” for two of the Bakgatla’s most strategic properties, when a single yet *adjacent* property, Magazynskraal, had recently been valued by Pallinghurst itself at almost R5 billion? We’ll never know, because there is zero available evidence to show that during this process the Bakgatla sought to procure any independent due diligence to ensure that a) their assets were disposed of in the best interests of the community, or b) they received the best possible price.

However, it was probably the purchase of Sedibelo West for \$75 million that counted as the deal of the decade for Gilbertson. This property was immediately adjacent to the Pilanesberg Platinum Mine and shared the same shallow PGM deposits. By expanding their operations onto Sedibelo West, the Pilanesberg Platinum Mine planned to quadruple their production over the next five years, bringing significant value to Platmin and their major shareholders, Pallinghurst and Co.

For the deal to happen, IBMR agreed to abandon their mining rights on Sedibelo West. Once the Department of Mineral Resources had given their approval, IBMR sold Sedibelo West to Platmin for \$50 million (plus tax). A further \$25 million was paid to the Bakgatla as commission for concluding the agreement. In total, it cost Platmin less

than R650 million to double their resource base and begin working towards their annual PGM production target of 250,000 ounces.

After what was heralded as a landmark transaction, Kgosi Nyalala MJ Pilane was appointed to the board of Platmin to represent the community in the company’s affairs. “Today’s announcement cements a long-standing partnership between the traditional council of the Bakgatla and Platmin,” said Gilbertson in a statement on 23 March 2011, “and will deliver value to shareholders, community members, and indeed to South Africa.”

By December 2012, the African Queen Project was finally realised. Pallinghurst’s strategic partnership with the Bakgatla had secured for Gilbertson and his investors a controlling stake in one of the world’s top five PGM resource bases. Within a period of almost six years, they had successfully executed their strategy to acquire the Pilanesberg Platinum Mine, Sedibelo and Magazynskraal properties. Following DMR approval, agreements were signed between Platmin, Pallinghurst, the Bakgatla and Anglo Platinum to combine the properties into a single contiguous “Mega Mine”.

Once the consolidation was complete, the Industrial Development Corporation invested R3.24 billion to develop the newly formed company into a “PGM producer for the 21st Century”. Again, this remains the IDC’s largest equity investment into the South African mining industry to date.

At the time of writing, the main shareholders in the joint venture are: Pallinghurst Ivy Lane Capital at 27.64 percent; the Bakgatla Ba Kgafela “tribe” at 25.74 percent; the IDC at 15.75 percent. Anglo Platinum’s RPM holds 5.35 percent, with a Mauritius-based entity called “Ridgewood Investments” at 5.18 percent and Investec Bank at 4.58 percent. The last listing, before “other minority shareholders,” is a company identified as “Pallinghurst EMG African Queen LP” at 6.66 percent.

Renamed “Sedibelo Platinum Mines Limited,” the mega mine is valued at between R20 billion and R25 billion. To date, the 350,000 members of the Bakgatla Ba Kgafela have not received a cent in dividends.



V. LANCING THE BOIL

On an autumn day in 2017, Mmuthi Pilane stood up from his seat beneath the umbrella thorn in Motlhaba and escorted us in our car to the rim of an enormous opencast pit. The Pilanesberg Platinum Mine, Mmuthi said, as we drove the three short kilometers to our destination, had fenced off portions of the farms to which the residents of the village had “legitimate claims”. He pointed to the borehole water buckets that the villagers were still using because of the unreliability of the municipal supply. He showed us a

vegetable smallholding that was supposed to be for the village but that the mine was allegedly harvesting and selling for profit. He outlined, as we rounded a corner to come upon a colony of earth-moving machines, the apple core-like remnants of a mountain known as Phatswane.

“That’s where the ancestors were buried,” he said. “The mine has not told the community where the bones are.”



Villages surrounding the Pilanesberg Platinum mine in the North West in South Africa have severe unemployment, lack of basic infrastructure and are without running water, despite being on one of the richest reserves of platinum in the World. **Photo: Daniel Born**

In April 2017, *Daily Maverick* attended a briefing session with all five members of the executive committee of the Bakgatla Ba Kgafela Community Property Association (CPA), in an office just inside the Manyane Gate of the Pilanesberg

National Park. The CPA had been involved in something akin to a civil war with the BBKTA since 2005, when a *kgotha kgothe* (large customary gathering) had been held with representatives of 29 of the 32 villages that comprised the Bakgatla group. A decision had been taken at that gathering to set up a legal vehicle that would control and administer the Bakgatla's properties in terms of the Restitution of Land Rights Act of 1994. "This is where everything changed," said CPA member Tshephiso Tebyane. "What was the role of the traditional authority now? They must only handle *traditional* matters."



Bridgeman Sojane, general secretary of the BBKCPA, points to the farms on Bakgatla land that are being mined for the benefit of "outsiders". **Photo: Daniel Born**

But they didn't, according to Tebyane—instead, Kgosi Nyalala Pilane allegedly "colluded" in 2007 with Lulu Xingwana,

South Africa's then-minister of agriculture and land affairs, to create an alternative CPA. A series of judges heard appeal and counter-appeal until the matter arrived in August 2015 before the Constitutional Court, which ruled against Kgosi Pilane to recognise the original CPA as the lawful one. "We are struggling," Bridgeman Sojane, the CPA's general secretary, told us. "We had to sell our cattle to pay for the legal fees."

The five members of the executive committee then spoke in detail about their major concerns. They began with the 15 percent equity in RPM that had somehow "turned into debt". They wanted to know the amount and whereabouts of the money that the Department of Land Affairs had apparently paid the Bakgatla for their loss, during the PW Botha regime, of the land that became the Pilanesberg National Park. They wondered about the amount and whereabouts of the royalties that the park's game lodges owed the community. They questioned why the South African branch of the Bakgatla should be responsible for the millions paid to Kgafela Kgafela II between 2009 and 2011. And they laughed about all the sponsorships that the traditional authority had signed off. "We've even got a mall in Kigali," said Tebyane, "we would just love to find it!"

In a series of affidavits dated September 2013 and March 2014 the former premier of North West, Thandi Modise, testified that Nyalala Pilane was the "duly and legally recognised kgosi" of the Bakgatla Ba Kgafela, whereas Kgafela II was simply a pretender looking for a "golden opportunity".

Supra Mahumapelo, when he took over as premier in May 2014, managed on the surface to keep himself out of it—the judicial inquiry into the chieftainship was set up on his authority, and his name would only be mentioned five times, each time in a benign context, in the entire record of the Maluleke Commission.

That said, there was a trail of evidence that led from the palace of Kgosi Nyalala Pilane to the door of President Jacob Zuma, to whom Mahumapelo is politically aligned. It began with Victor Modimakwane, a nurse turned community activist who had been on the kgosi's tail for almost a decade (a judge had in fact granted Kgosi Pilane an interdict against Modimakwane in September 2009). At a session of the Maluleke Commission in March 2017, during lunch, Modimakwane approached us with a sheaf of papers that turned out to be the tax records of one Wycliffe Thipe Mothuloe, who was none other than Kgosi Pilane's lawyer, and whose name appeared in the Commission's paperwork 163 times. On the sixth page of the tax report, under the subhead "Summary of Previous Properties," Modimakwane pointed us to a property in Forest Town, Johannesburg, that Mothuloe had purchased in September 2009. Later, when we checked the plot number, it confirmed what Modimakwane had suspected—this was the house that belonged to Jacob Zuma just before he assumed the presidency, the house in which (among other things) he had allegedly raped Fezekile "Khwezi" Kuzwayo.

On 14 June 2017, when Kgosi Pilane appeared on the stage in Rustenburg to present his evidence-in-chief, we were sitting in the front row next to Modimakwane, who was flipping through his files to demonstrate the extent of the chief's inconsistencies almost as fast as he was offering them up. Most of these falsehoods had to do with Pilane's various claims that, in the early days, he was running the Bakgatla tribal office out of his own private account, when in fact the records of Anglo Platinum proved that from 1997 to 2000 the royalty payments to the office were at least R7.2 million. But in terms of the state capture tangent, there was one document that took the cake—and this was the document that Modimakwane showed to us during a short interlude between perjuries.

"Dear Mr Modimakwane," noted the letter from Pravin Gordhan on 16 August 2014. "Your letter to the President of the Republic of South Africa dated 27 February 2014 refers.

"Your letter contains serious allegations against Kgosi Pilane which are being investigated by the Hawks. It is therefore prudent that we allow them to do their work without interference. The MEC for Cooperative Governance and Traditional Affairs in North West has been apprised of the allegations of corruption and requested to give attention to the said allegations.

"The issue of legitimacy of Kgosi Pilane was addressed on a number of occasions by the Courts since 1996.

“The Committee of the Commission on Traditional Leadership Disputes and Claims is currently investigating a claim by a certain member of the royal family against Kgosi Pilane.”

Gordhan, who at the time was minister of cooperative governance and traditional affairs in President Zuma’s cabinet, then signed off by “imploring” Modimakwane to “allow the above mentioned processes to come to fruition.”

What happened instead is now history—a history that culminated in the multi-million rand sideshow, paid for by the 350,000 ordinary members of the Bakgatla Ba Kgafela, known as the Maluleke Commission. In too many respects, it doesn’t matter how it all turns out, because the Bakgatla Ba Kgafela have been robbed of their inheritance, and neither the Commission nor the South African government nor Pallinghurst Resources are going to compensate them for what they have lost.



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Kevin Bloom is a writer and journalist. He is the co-author of *Continental Shift: A Journey into Africa’s Changing Fortunes*, a seven-year, eighteen-country investigation into the forces shaping Africa in the 21st century. His first book, *Ways of Staying*, won the 2010 South African Literary Award for literary journalism, and was shortlisted for the Alan Paton Award. Kevin is an Honorary Writing Fellow at the University of Iowa, and a former Writing Fellow at the Wits Institute of Social and Economic Research.

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Under the land that belongs to the Bakgatla Ba Kgafela lie the richest platinum deposits on earth. But a toxic alliance between government, traditional chieftaincy and major mining houses has stood between the community and its wealth. Could this be the largest state-sanctioned, business-perpetrated fraud in the history of Big Mining in South Africa?



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