



Photo: Shannon Herd-Hoare

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FOREWORD

“Now more than ever, we must abandon the performative and embrace the authentic. Our essential mental shifts require humility and patience. Focus on real internal change. These human transformations will be honest, raw, ugly, hopeful, frustrated, beautiful, and divine. And they will be slower than keener academics are used to. Be slow. Let this distract you. Let it change how you think and how you see the world. Because the world is our work. And so, may this tragedy tear down all our faulty assumptions and give us the courage of bold new ideas.”

Aisha S. Ahmad

I came across the quote above in an article published in April 2020, the early days of the global Covid-19 pandemic and of lockdown in South Africa.

I wrote it out and stuck it up on my fridge back in 2020 and it has been a helpful daily reminder as we navigated our way through the past two years. What I have returned to time and again is the idea of ‘abandon(ing) the performative and embrac(ing) the authentic’. During this period, which has been characterised by much reinvention and change, the idea of committing to authenticity over performance for its own sake has provided firm footing in unfamiliar terrain. It has guided how I have sought to engage with my colleagues and think about LARC’s work during these challenging times. I believe therefore that this newsletter is a reflection of how LARC has endeavoured to make authentic contributions towards more meaningful social change.

The Pietermaritzburg High Court handed down judgment in the Ingonyama Trust matter in June 2021. This unanimous judgment is an enormous victory for the people who live on land administered by the trust in KwaZulu-Natal. The Court found that the Trust acted unlawfully in issuing leases to people who are already the ‘true and beneficial owners of the land’ in terms of Zulu customary law and the Ingonyama Trust Act. The judgment, authored by Deputy Judge President Madondo, went beyond that, to also

say that the way leases were issued abrogated citizens’ constitutional rights to tenure security, such as the informal rights to land which are protected by the 1996 Interim Protection of Informal Land Rights Act, and the rights of people with old-order Permission to Occupy (PTO) certificates. The Court found that all leases concluded by the Trust over residential, arable, communal, and commonage land are unlawful and invalid. The Court has ordered that the Trust repay the rental that has already been paid to it by lessees. The judgment vindicates the bravery of the community applicants and affirms customary law land rights, a most welcome outcome.

We were disappointed to learn that the Traditional and Khoi San Leadership Act (TKLA) had been signed into law by the President, despite the multiple efforts of rural activists to make known their concerns about this law. Following the commencement of the Act and after collective discussions the decision was taken to bring a legal challenge against the TKLA. The traditional governance team has been focussing their energies on working with the legal team in preparing the founding papers for this legal challenge. The legal team has opted for a procedural challenge that places the law-making process under scrutiny. LARC’s governance team spent many years monitoring the TKLA’s passage through the houses of Parliament and all the data gathered through these monitoring activities has formed the basis for

this procedural challenge. Our land valuation research in Makhasaneni was conducted to contribute toward developing best practice in the determination of just and equitable compensation for communities who are faced with a potential loss of community land rights. It provides empirical evidence to support that people are dependent on land-based livelihoods, such as cultivation, livestock husbandry, wild resource collection and outgrower timber, to survive. Thus, the inclusion of compensation for loss of access to these livelihood activities should be included in compensation negotiations. Using a mixed-methods approach, the study presents the degree and frequency of use of land-based livelihood activities, estimates the Rand value derived from the engagement in land-based livelihoods per household per year and unpacks the intangible connections to the land which support a sense of place and deeply felt spiritual welfare.

As the year draws to a close, I would like to take this opportunity to extend sincere thanks to our partners, donors and colleagues. There is hard work ahead as the team works on policy interventions, legal strategies and research, but we look forward to working with you, as we traverse it all.

All of us at LARC wish you a restful holiday season and safe entry into the New Year.

Nolundi Luwaya
LARC Director

MEET THE TEAM



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Director



Monica de Souza Louw
Deputy Director &
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Finance
Administrative
Officer



Amilinda Wilkinson
Administrative
Officer



FAREWELL BUT NOT GOODBYE – ANINKA RETIRES



We would like to acknowledge Dr. Aninka Claassens, the Founding Director of LARC who retires at the end of this year.

Aninka established the Rural Women’s Action Research Project (RWAR) and under her guidance the project carved out the niche work that LARC now continues. RWAR together with their partners were instrumental in the campaign against the Traditional Courts Bill and raising the profile of rural land struggles. In 2016 RWAR grew into LARC and as the Founding Director Aninka continued to establish

the Centre as a place of expertise in our field. Aninka herself has an excellent track record of publications, speaking events and extensive research experience which she has worked to model for and teach to all who have worked alongside her. Over the period 2016 – 2018 Aninka was part of the High-Level Panel on assessing legislation in SA and its ability to accelerate change that was chaired by Former President Motlanthe, she chaired the sub-committee on Land and travelled across the country attending public hearings. Of course, her time at UCT is only part of the story of Aninka’s work and she spent many years in the 80’s and 90’s working to support communities facing forced removals under apartheid laws and later working with the new government to craft some of the early land reform legislation.

We are deeply grateful to Aninka for her years of hard work and dedication, and we wish her well as she shifts gears.



FAREWELL

We will also be saying farewell to two of our colleagues soon – **Zenande Booi**, Land Team Leader and **Fezeka Ntsanwisi**, Research Assistant to the Mining team. We wish them the best both professionally and personally as they move into their new positions respectively.

Zenande will be taking up a position at Fordham University whilst Fezeka will be resuming her PhD studies at UCT.

While we will miss the day-to-day interaction with you both - you’ve been an indispensable part of our team - we know you will continue to do well and achieve major milestones.



HIGHLIGHTS 2020 - 2021

LAND, LAW AND CHIEFS IN RURAL SOUTH AFRICA BOOK LAUNCH

On 20 July 2021, LARC, SWOP and Wits University Press co-hosted a virtual launch of the book, *Land, Law and Chiefs in Rural South Africa*, edited by William Beinart, Rosalie Kingwill and Gavin Capps. LARC researchers, Ayesha Motala and Thiyane Duda, each contributed co-authored chapters to the book, titled *“The Abuse of Interdicts by Traditional Leaders in South Africa”* (chapter 6) and *“Resisting the Imposition of Ubukhosi: Contested Authority-Making in the Former Ciskei”* (chapter 7).

[LEARN MORE](#)

JOURNAL OF SOUTHERN AFRICAN STUDIES SPECIAL EDITION CHAPTERS

A special edition of the *Journal of Southern African Studies* (JSAS) was published online in 2021 (Vol 47 Issue 2). Two of LARC’s researchers, Monica de Souza Louw, Thiyane Duda and LARC Chief Researcher, Dr. Aninka Claassens, contributed chapters to this edition, titled *“Finding Roles in Unseen Places: Government Action Conferring Roles on Traditional Authorities in South Africa”* (MdSL), *“Traditional Authority in South Africa: Reconstruction and Resistance in the Eastern Cape”* (TD) and *“Editorial Citizenship and Accountability: Customary Law and Traditional Leadership under South Africa’s Democratic Constitution”* respectively.

“A WOMAN IS A STRONG PERSON: LIVED EXPERIENCES OF RURAL WOMEN ACTIVISTS” BOOKLET

On 25 May 2021, the Land and Accountability Research Centre in cooperation with the Heinrich Böll Stiftung Cape Town hosted a virtual launch of the booklet: *“A Woman Is A Strong Person”: The Lived Experiences Of Rural Women Activists*. The booklet celebrates and draws light to the stories of four rural women land activists and is written by LARC researchers Ayesha Motala and Nokwanda Sihlali. The booklet is distributed to rural communities during workshops and fieldwork, and it is also available online.

[LEARN MORE](#)

“LAND-BASED LIVELIHOODS MATTER IN MAKHASANENI” RESEARCH REPORT

In May 2021, after six weeks of intensive fieldwork in the community of Makhasaneni, Kwa-Zulu Natal, LARC published a research report titled, *“Land-based livelihoods matter in Makhasaneni.”*

Makhasaneni residents relied on the surrounding natural landscape as a source of food, construction materials, and livestock fodder. This study made use of participatory methods and household surveys to place an economic value on the use of natural resources per household per year.

[LEARN MORE](#)

SOMKHELE S54 COURT CASE

On 7 May 2020 Tendele Coal (Pty) Ltd, which owns Somkhele open cast coal mine, launched an application in the Pietermaritzburg High Court seeking to have the court confirm the amount they had determined to be payable under section 54 of the Mineral and Petroleum Resources Development Act (MPRDA) to 24 families residing in Somkhele in Kwa-Zulu Natal. This amount would be deemed compensation for the losses or damages the communities are likely to suffer as a result of being relocated.

The outcome of this case will be significant as no case law exists on the question of what constitutes adequate compensation for loss or damage as contemplated by section 54 of the MPRDA. Over and above the 24 families, this case will have lasting impacts on all households facing relocations and economic displacement in South Africa due to mining.

LARC and Richard Spoor Inc Attorneys (RSI) undertook representing the families against the case brought against them by Tendele. LARC and RSI, along with expert evidence from partners, put together an incredibly strong case against Tendele. We illustrated the issues such as Tendele’s refusal to compensate families for their land and its failure to properly engage with affected rights holders that were in violation of constitutional

Photo: Sithe Gumbi

HIGHLIGHTS 2020 - 2021

rights. As a result, this matter – which was due to be heard on 17 June 2020 – has since been postponed. Mediation between Tendele and some of the 24 families is ongoing.

[For more information see article by LARC researcher, Ramabina Mahapa](#)

MONITORING TCB IN PARLIAMENT – AN OVERVIEW TO DATE

LARC's Governance team has continued to monitor developments on the processing of the Traditional Court's Bill (TCB) by the National Council of Provinces' (NCOP) Select Committee on Security and Justice (The Select Committee) and the National Assembly's (NA) Portfolio Committee on Justice and Correctional Services (The Justice PC). The Bill was introduced in the 5th Parliament in 2017, followed by a public participation process by the Justice PC in 2018. In March 2019 at the end of the 5th Parliament, the NA passed the Bill and referred it to the NCOP for concurrence. The NCOP revived the Bill in the new Parliament (6th) and this was followed by a process of public participation by Provincial Legislatures (PLs) in late 2019 and early 2020. LARC researchers and some of our rural community partners attended some of the hearings and made submissions to PLs. However, there was a poor turnout from rural communities, which is possibly due to fatigue around the TCB, as this is the third attempt to pass this Bill into law.

Mandates from the provinces were considered by the Select Committee in November 2020 and the Bill was then passed by the NCOP and referred back to the NA in December 2020, with seven provinces in support. The Western Cape and KwaZulu-Natal were the only provinces that voted against. The Bill is currently with the Justice PC and it has generated a lot of debate within the Committee. The bone of contention is the constitutionality of the Bill after the removal of the opt-out clause. The current Justice PC has raised the fact that the opt-out clause was removed by the previous Justice PC, against the Parliamentary Legal Advisor's legal opinion, which stated that this will render the TCB unconstitutional. The new Justice PC requested a new legal opinion from the same Parliamentary Legal Advisor on

the constitutionality of the TCB after the removal of the opt-out clause. The new opinion was presented in March 2021 and stated that the TCB is constitutional as opting out remains expressed in the Bill, however, now it is expressed implicitly compared to before when it was expressed explicitly. LARC analysed the new legal opinion and submitted the analysis to the Justice PC.

During deliberations on the new legal opinion, the Committee questioned the change in the Legal Advisor's opinion. Unsatisfied with the Legal Advisor's explanation, the Committee decided to seek a new legal opinion from external counsel. The was despite pressure from the Department of Justice and Correctional Services for the Committee to pass the Bill and leave the constitutionality question to the President and the Constitutional Court later. The Committee is expected to meet soon to consider the new legal opinion from external counsel and resume the processing of the Bill thereafter.

ULTRA AND THE KWADINABAKUBO COMMUNITY

LARC was approached by the KwaDinabakubo Residence Association (DRA) for assistance with issues related to land that was meant to be given to a portion of the Ngcolosi traditional community after they had been moved to make way for the construction of the Inanda Dam in 1987 in KwaZulu-Natal. After decades of conflict, the housing development had only been partially completed but because of how long it took for issues sparked by tensions resulting from the conduct of the community's traditional leaders to be resolved, more even homes are needed for members of the displaced families. When it became clear that more land was needed to ensure all the displaced families were provided for, members of the DRA discovered that a significant portion of land that had been provided as compensation had been sold by the traditional leader to eThekweni municipality without consulting or obtaining the consent of the community.

LARC's Land team has been working with the community to rectify and reverse the impact of the corrupt conduct of their traditional leader.

LARC Researcher, Janet Bellamy previously compiled a report using information that our researcher based in Durban, Sithe Gumbi, had been able to obtain from officials from the Department of Rural Development in KwaZulu-Natal on various issues related to the KwaDinabakubo case.

Land Lead researcher, Zenande and LARC researcher, Sithe have been in continuous engagement with officials in KZN CoGTA and Rural Development to implement resolutions and find ways to rectify the violation of the community's IPILRA rights. They have also been engaging with Members of Parliament that form part of the Portfolio Committee on Agriculture, Rural Development, and Land Reform for them to play their oversight role and assist us in pushing for the resolution of outstanding issues.

When the DRA approached LARC, they were at an impasse, with reports by COGTA and Rural Development seemingly having absolved the Chief of any wrongdoing. With the further information the Land team researchers were able to uncover, and the report produced using that information obtained, we were able to revive attention to the struggles of this community and force relevant government stakeholders to take another look.

As a result of our research in assisting the KwaDinabakubo community we were able to highlight the gaps in ULTRA and the potentially harmful impact of its operation on rights protected in the Constitution and IPILRA. ULTRA allows for the transfer of land to traditional councils with no recognition of or protection for rights held by families and individuals. In illustrating the impact of the operation of the relevant sections we were able to prevent the expansion of their operation with the intended Amendment to ULTRA.

PILG 2021 REPORT: "REFLECTIONS ON DEFENDING AND ADVANCING SOCIAL JUSTICE DURING THE COVID-19 PANDEMIC IN SOUTH AFRICA"

The Public Interest Law Gathering (PILG) is an annual civil society convening of people and organisations who use law as a tool to advance social justice in South Africa.

Started in 2011, PILG is an annual event which brings together public interest law practitioners, NGO researchers, community activists, law students, academics and donors. In 2021, the 10th iteration of PILG was held on 13 and 14 October (PILG was paused in 2020 due to the impact of the COVID-19 pandemic). While it takes place every year, PILG forms part of continuing conversations within the public interest law sector. These conversations traverse issues such as the critical, cross-cutting social justice challenges of the time, the impact of public interest legal work, the strategies and methodologies that the public interest law sector uses, what different movements, campaigns, cases and organisations might learn from one another, and what future collaboration could look like.

LARC hosted a panel entitled, "Rights and accountability in customary law: Developments backward and forward for rural communities." The panel consisted of Monica de Souza Louw (ARC Deputy Director and Governance Lead Researcher), Ayesha Motala (LARC Researcher), Thiyane Duda (LARC Researcher), Wilmiën Wicomb (Legal Resources Centre) and Nokwanda Sihlali (LARC Researcher).

[The full report can be downloaded here.](#)



Photo: Shannon Herd-Hoare



Photo: Shannon Herd-Hoare



II MAKHASANENI RESEARCH

The researchers at LARC set out to understand the contribution of the natural environment to the Makhasaneni residents' (1) household economy and (2) spiritual welfare. Shannon Herd-Hoare and Ncedo Mngqibisa collected data between Nov-Dec 2019 and January-Feb 2020. The following section explores the methods used to collect the data and then highlights some of the key findings from the research.

KEY CHARACTERISTICS ABOUT MAKHASANENI

Makhasaneni village covers an area of approximately 16 km². There is some uncertainty on the number of households in the village, but aerial photos reveal approximately 300 households which scatter the landscape. There are approximately 8 permanent residents per household, which consist of an equal average number of adults (4) and children (4). No Betterment Planning has occurred in the area, and as a result a diverse range of land-use types exist between homesteads. These include cultivated plots (home gardens, fields and amadumbe fields), small-scale plantations, and communal rangeland for livestock grazing and wild resource collection. Two-thirds of the households generated income from off-farm

income generating activities (R32 716) (e.g. wage labour on neighbouring Mondi plantations or commercial farms, spaza shops, the trade of sorgum beer, hairdressers, and builders etc.), but only 12% of all households had a member that was full-time employed. Almost all households (87%) received social grants, including child, old age pensions and disability grants, which contributed R27 551 per household per year. All households were involved in some degree of land-based livelihoods which is described in detail in the results section.

METHODS

The research combined multiple methods, such as (1) a workshop, (2) household surveys, and (3) key informant interviews, to generate an accurate depiction of life in Makhasaneni.

(1) Workshop

There were approximately 40 residents in the workshop who discussed the range of important natural resources in Makhasaneni. This involved making lists of which resource was collected the most frequently or in higher volumes. The location of natural resources in Makhasaneni was identified in a projected aerial photo of the village. This was useful to determine where livestock graze or men hunt, and important areas which contribute to their spiritual connection to the land.

(2) Household surveys

Surveys were conducted with 100 random households in the village. Households were selected by numbering each household on an aerial photo and then pre-selecting them at random. The survey contained

questions on the number of resources used in the household, the quantity each resource was collected in, and the length of time in the year that the resource was used for. The perceived economic value per resource was also recorded. This provided data for the economic value of each resource per household. The figures recorded in this report are the average values for each resource across all the interviewed households.

(3) Interviews

20 interviews were conducted with people in the village to get an extra understanding of land and natural resource use in the community and to get expert knowledge on specific resources. These included individuals who owned many livestock or elderly residents who had spent their entire lives in the village.

RESULTS

People in Makhasaneni relied on a range of livelihood strategies, these included (1) off-farm ventures (i.e. activities that did not involve the land) such as selling Zulu beer or vetkoek, hairdressers, etc. (2) social grants and (3) land-based livelihood activities (i.e. strategies that involve reliance on the land). Land-based livelihood strategies were typically used in combination with each other and included (a) home garden and field cultivation; (b) livestock ownership, (c) use of wild resources (such as firewood, poles or medicinal plants), and (d) small-scale forestry. These various activities supported people in Makhasaneni in multiple ways such as: (a) providing produce for daily use in the household which allowed for the household to save money as they did not have to purchase it in the shops, (b) the generation of cash through selling produce, and (c) the provision of a back-up plan in stressful times when there was no other option available to the household – for example if there was an unexpected funeral cost a goat could be sold to generate the cash income needed, or if a member of the household lost their job then crops can be cultivated to feed the family.

Land-based livelihoods were

the highest contributing sector, representing 58% of the overall livelihood income portfolio. This means that the land contributed more to people's livelihoods than both off-farm income (18%) and grant income (24%).

(1) Cultivation

Almost all households (92%) cultivated to some extent in either home gardens or fields. Most households cultivated for both household use and for trade (63%).

Green maize (i.e. maize cobs) was the most widely grown crop for household use (84% of cultivator households), with other important vegetables such as spinach (58%), imifino (56%), pumpkin (53%), tomato (49%) and cabbage (47%). The average value derived from crops grown for home use was R29 697 per year.

Amadumbe was the main crop cultivated for trade (80% of cultivator households). Other crops such as sweet potato, spinach, cabbage and tomato were also commonly traded. The income generated from selling produce was an average of R29 606 per household involved in crop trade per year.

Makhasaneni was valued for its fertility and crop potential. One female elder claimed, "This land feeds us. We are not obliged to go the shop, everything we need to eat is in the garden. No one can claim to be going to bed without food like they do in towns. Because we produce ourselves, we share too; if somebody does not have, we don't sell to them, we just give them". Cultivation was also seen as a mode of self-satisfaction and fulfilment.

(2) Livestock

A similar percentage of households owned cattle (41%) and goats (52%), although cattle ownership was preferred as cattle were used for a greater range of goods and services. The average herd size of goats was 9 and for cattle it was 7. Poultry was owned by 77% of households, and there was an average of 17 chickens per household.

Important uses of cattle were for sale, slaughter for meat and rituals, milk, lobola and manure. The average value of all these services to the household was R54 831 per year. Goats were kept for sale and slaughter and the average value from both services was R11 899. Poultry was kept for eggs, sale, and slaughter and the average value amongst chicken owner households was R 2 777 per household per year.

Although livestock and poultry were important for household consumption and generating money, they were also a culturally potent icon. Cattle and goats were described as important ways in which people maintain meaningful connections with their ancestors, in pursuit of spiritual direction to navigate life. Ancestors were acknowledged to ensure the wellbeing and health of the family, the society and nation. They were responsible for bringing rain, making crops grow and for the healthy growth of children. The kraal was also important as it was said to be both pleasing to the ancestors and to represent a culturally potent symbol of a 'proper African homestead'. One respondent claimed, "A house without a kraal is just a house not a home" and another noted, "If you don't have a kraal – it means those cows are not yours."

To us the kraal is so important that we don't own it...it belongs to our ancestors. If you don't own a kraal it means that you have forgotten your ancestors."

(3) Wild resources

All households were involved in the collection of wild resources (e.g. firewood, thatch, poles, berries, medicinal plants, etc.) with an average of 11 different resources collected by each household per year. The most widely used wild resources were medicinal plants (92% of households), fuelwood (89%), stirrers (83%), poles (76%), and thatch (74%) which were collected by more than three-quarters of all sampled households.

In this study, the average value of resources consumed and traded was R23 638 per household per year. When extrapolated across the whole

village, consisting of approximately 300 households, the estimated total value of wild resources for the entire village was R7.1 million per year.

(4) Small outgrowers

Half of all sampled households were involved in the small-scale timber industry. A key factor determining involvement in timber production was the availability of land, usually 'old fields'. Therefore, those involved in the industry usually inherited both forestry knowledge and established plantations from their parents or grandparents. The average value the last time a grower felled their plantation was R7 650. Given that gum and wattle (the most common species) were felled every seven-years, that is approximately R1 093 year.

CONCLUSION

Overall, wild resources were the most participated in sector (all households), while arable agriculture contributed the highest economic value to the household. Outgrower timber production was the least participated in sector, with only half of all households in the sample, and the lowest contributing sector to the household economy. These land-based livelihood activities were not just strategies of survival or self-sufficiency in the economic sense, but also related to issues of cultural identity. The continual investment into and development

of what were described as 'traditional activities', such as the purchase or sale of livestock, the change of land-use categories from rangeland to outgrower forestry, and investment of time and labour into cultivated plots, etc., suggested a deep dependence on the land which was essential to their agrarian identity- an essential element of being a rural inhabitant.

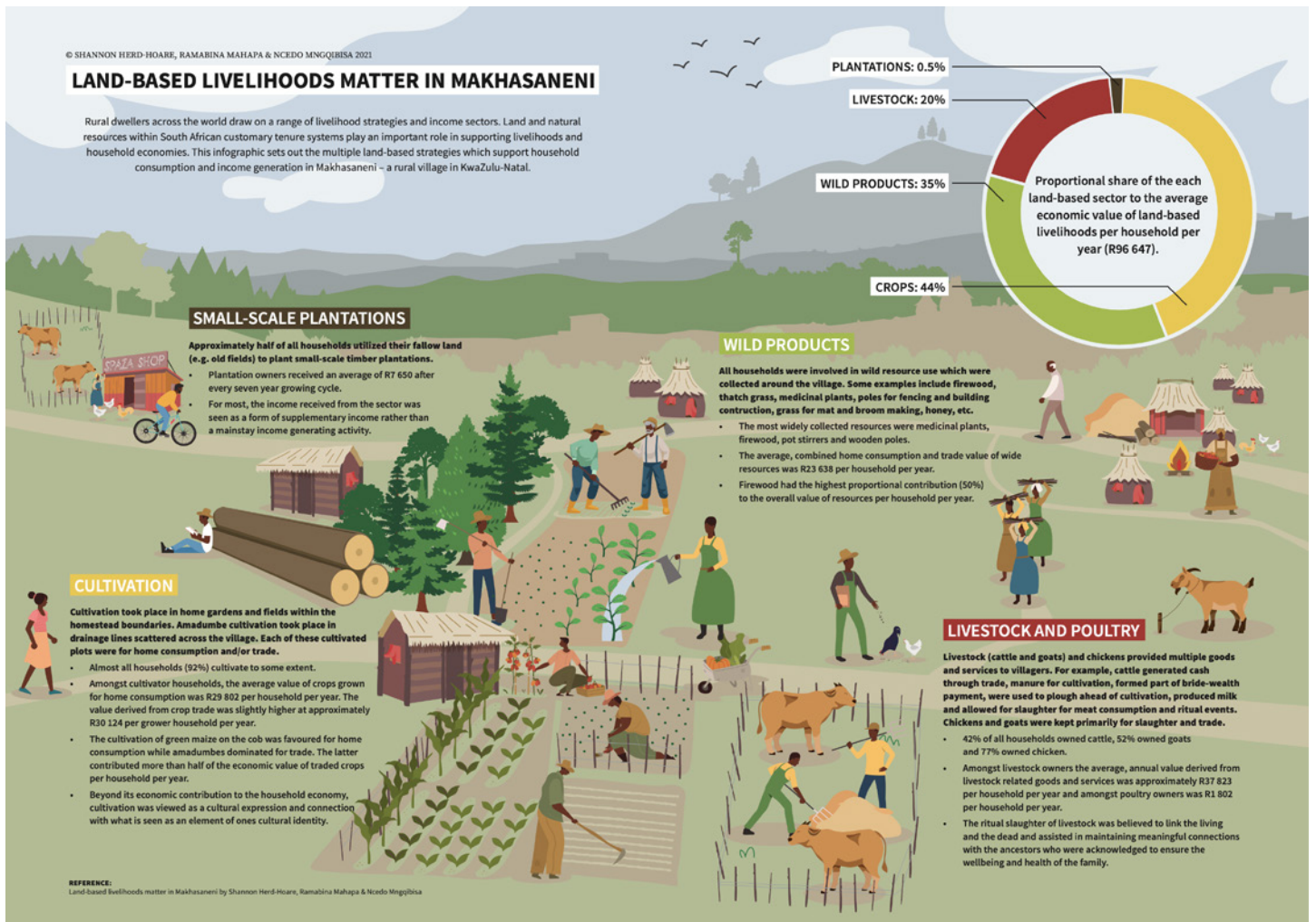


Photo: Sithe Gumbi



TKLA LITIGATION

Traditional and Khoi-San leadership Act 3 of 2019 (TKLA)

LARC has been working with lawyers from the Legal Resources Centre (LRC) and Richard Spoor Inc (RSI) in preparing for a legal challenge to the **Traditional and Khoi-San Leadership Act 3 of 2019 (TKLA)** on behalf of the Alliance for Rural Democracy (ARD) and other rural partners and communities. The legal challenge is procedural in nature, as it challenges the manner in which Parliament conducted public consultations on the Traditional and Khoi-San Leadership Bill (TKLB), which is found to be wanting.

This preparation for court comes after President Ramaphosa signed the TKLA into law in December 2019. In April 2020 lawyers for the ARD, Land Access Movement of South Africa (LAMOSa) and uMgungundlovu (Xolobeni) community wrote a letter to the President asking that the commencement of the Act be delayed until the legal challenge has been heard in court. There was no response to the letter and in December 2020 the commencement date of the TKLA was gazetted and published as 1 April 2021. On 8 April 2021, the National Assembly's Portfolio Committee on Cooperative Governance and Traditional Affairs engaged with the Department of Traditional Affairs on the implementation of the TKLA.

The legal challenge consists of a founding affidavit and about 30 supporting and confirmatory affidavits by rural communities and individual activists, as well as LARC researchers and student volunteers who monitored the public participation process on the TKLB. These affidavits draw on our records collected over

many years of monitoring the Parliamentary processing of the Bill. LARC researchers are also reviewing transcripts of audio recordings of hearings obtained from some of the Provincial Legislatures.

Although the legal challenge will focus on the procedure used to bring the TKLA into law, the Act has real life consequences for rural citizens. Section 24 of the Act allows traditional councils to enter into agreements and partnerships with third parties without requiring the consent of the affected land rights holders. Inadequate provisions for financial accountability by traditional councils are laid out in section 23. Section 25 enables government departments to allocate some of their functions to unelected traditional leaders and councils. The impact of these sections highlights why it was critical for Parliament to conduct proper, wide and inclusive public consultation, better than they did.

The case is expected to be launched before the end of this year. LARC, LARC and ARD collaborated to develop a booklet that explains the legal challenge against the TKLA and summarizes the key problems with the Act.

Photo: Shannon Herd-Hoare



CONTINUED WORK IN KWAZULU-NATAL BUILDING ON RESEARCH ON THE INGONYAMA TRUST

Ingonyama Trust Residential Leases

After years of preparation and dealing with delays, on the 11th of June 2021 the Pietermaritzburg High Court found that the Trust acted unlawfully in issuing leases to people who are already the ‘true and beneficial owners of the land’ in terms of Zulu customary law and the Ingonyama Trust Act.

The judgment, authored by Deputy Judge President Isaac Madondo, went beyond that, to also say that the way leases were issued abrogated citizens’ constitutional rights to tenure security. The Court found that all leases concluded by the Trust over residential, arable, communal, and commonage land are unlawful and invalid. The court ordered the Trust to repay the rental that has already been paid to it by lessees.

The court made important far-reaching findings against the Minister of Rural Development and Land Reform. It found that the Minister had breached her duty to respect, protect, promote and fulfil the right to tenure security of the holders of IPLRA rights in KZN. It ordered her to report back to the court every three months to explain the practical steps that have been taken and progress made to secure and record such rights. The first of these reports is due in the coming days.

The judgement was everything we had hoped for and more and is a ringing endorsement of what people have been saying about the strength and content of individual and family rights in customary law for centuries. The Minister has made public statements endorsing the judgment and findings made against her Department – undertaking to ensure it is implemented. However, as expected, the Ingonyama Trust has applied for leave to appeal the judgment in its entirety.

“THE
JUDGEMENT
WAS
EVERYTHING
WE HAD
HOPE FOR
AND MORE...”

01

Claassens, A.**5 August 2021**

'The Ingonyama judgment: Why the state must heed court orders to halt dispossession and deliver land rights' Daily Maverick [LEARN MORE](#)

02

Herd-Hoare, S., & Mahapa, R.**22 June 2021**

'The value of land for people displaced by mining cannot be measured in monetary terms alone' Daily Maverick [LEARN MORE](#)

03

Luwaya, N.**14 June 2021**

'The importance and significance of Ingonyama Trust judgment' Newzroom Afrika

[LEARN MORE](#)

04

Booi, Z.**12 June 2021**

'Trust ordered to refund land owners' eNCA

[LEARN MORE](#)

05

Booi, Z.**25 March 2021**

Section 25: 'Divergent views on court's role in determining when to expropriate without compensation, News24 [LEARN MORE](#)

06

Booi, Z.**24 March 2021**

Before the Portfolio Committee on the Parliamentary Monitoring Group website

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07

Booi, Z.**25 February 2021**

'The good, the bad and the ugly of the Expropriation Bill' Cape Talk

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08

Luwaya, N.**23 February 2021**

'Controversial Traditional Courts Bill will be challenged if passed in parliament' Business Day

[LEARN MORE](#)

09

Booi, Z.**9 February 2021**

'A decade in review: What it means to be a woman in South Africa' Daily Maverick

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Booi, Z.**8 February 2021**

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