

**TAASISI YA UTAFITI NA UTETEZI WA HAKI ZA ARDHI  
(HAKIARDHI)**

## **KONGAMANO LA 6 LA KITAIFA JUU YA MASUALA YA ARDHI**

***“UHAKIKA WA ARDHI NA RASILIMALI ZA TAIFA KAMA  
NGUZO MUHIMU KATIKA KATIBA MPYA”***

**MADA III :THE RIGHT TO LAND RESTITUTION AS  
INSPIRATION FOR MOBILISATION — Marc Wegerif**

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## **CHAPTER FIVE**

### **The right to land restitution as inspiration for mobilisation**

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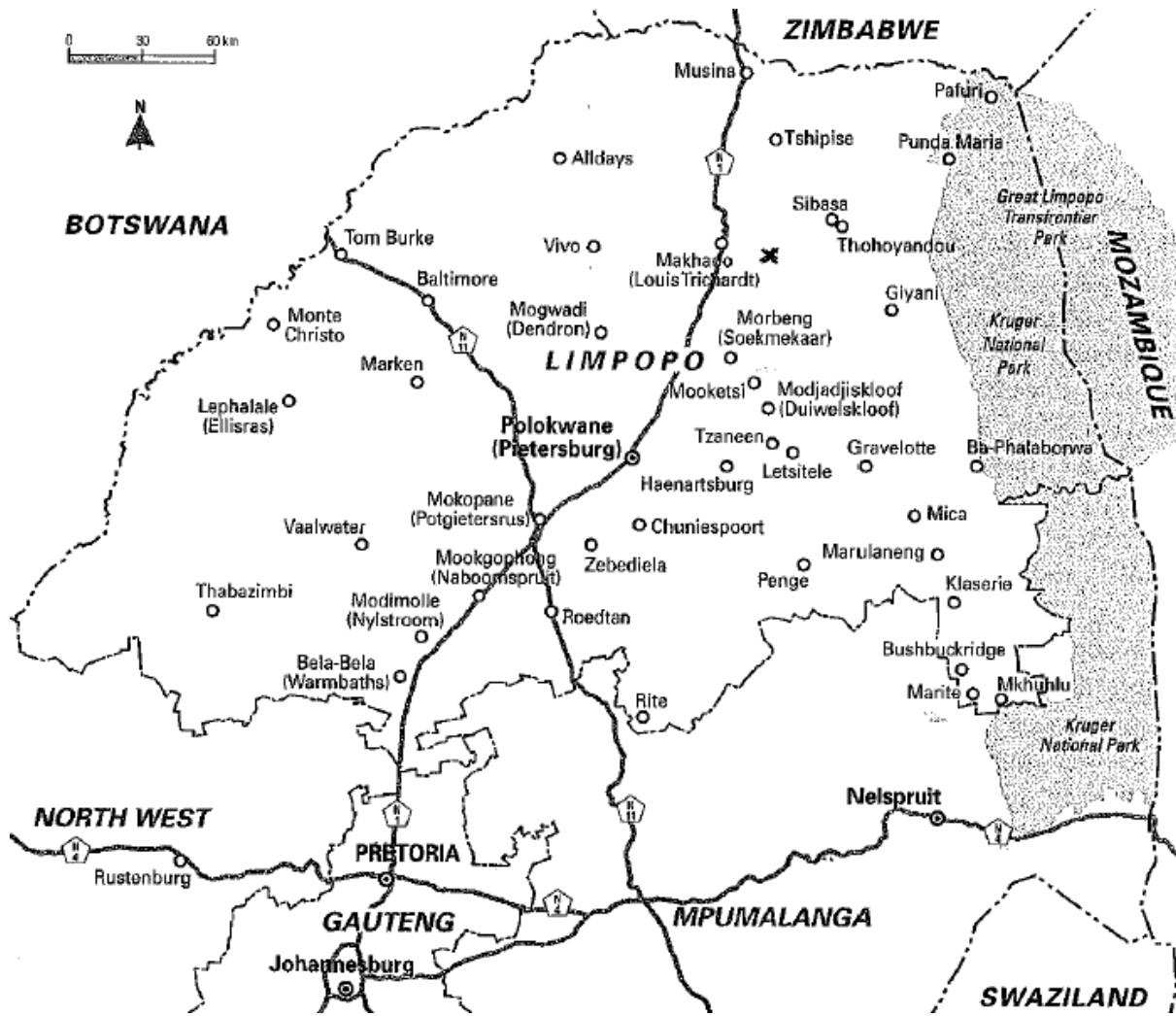
#### **INTRODUCTION**

This chapter is an initial exploration and sharing of experiences and ideas based largely on a case study of a group of small farmers who have occupied and are producing on land that they believe they have an historical right to. The group, called Mahlahluvani – although they include people from other communities and claimant groups – are part of a land claim that has been lodged on the land they now occupy, but the claim is not yet settled. I open with an account of a day with one of these farmers and then give an overview of the occupation and the extent and nature of the production at Mahlahluvani. Reference to other cases, Davhana and the Vukeyas, show that the Mahlahluvani experience is not a unique phenomenon. I then explore lessons from these experiences for five key issues in land reform: the nature of production; leadership; conflict; people-driven land reform; and debates on the property clause in the Constitution.

In the context of a failing land reform and land restitution programme in South Africa that is neither returning sufficient amounts of land to people nor facilitating the effective utilisation of the little land returned (Hall 2004; Wegerif 2004; Ministry of Agriculture and Land Affairs 2005), I believe the people of Mahlahluvani and other land occupations are showing us a potential way forward. They are deserving of support, provided that support does not undermine the initiatives they have taken. Land reform debates could also benefit from more empirical and in depth research on these kinds of examples, and I hope with this chapter to stimulate some debate and interest in further such research.

The material presented here is based on my own field work, where I was privileged to spend a little time with some of the farmers, and on the field work notes and interviews carried out by Themba Maluleke and Tshililo Manenzhe, formerly of a local NGO, Nkuzi Development Association (Nkuzi), and both now working for the Programme for Land and Agrarian Studies (PLAAS), University of the Western Cape. The research also involved carrying out a participatory rural appraisal style mapping exercise with the farmers, informal conversations, site visits and observation. This research is part of a PLAAS-run project focusing on the impact of land redistribution on poverty reduction and livelihoods. I am grateful to PLAAS, Nkuzi and the researchers involved for allowing me to use the material. The views expressed here are my own and not necessarily the position of any organisation that the project or I may be associated with.

Map of Limpopo (x marks the location of Mahlahluvani)



## MAHLAHLUVANI

### A day on the farm

It was just before six on an April morning, the sun had not yet risen, as we set out from the three *rondavels* (dwellings) that make up the homestead of Xikalamazula<sup>1</sup> Sithole, his wife Johanna and their family in the village of Nwaxinyamani, Limpopo province. Xikalamazula led the way followed by his eight-year-old grandson Godsave and Johanna. I stayed close to Xikalamazula chatting to him as we walked briskly in the dawn light along a bumpy mud road between further homesteads all crowded onto small plots, around 30 by 30 metres in size.<sup>2</sup>

We were setting out for a day's work in the fields that Xikalamazula illegally has cleared and planted on; land he believes is rightfully his. His parents were removed from the land in the late 1950s while he was a small boy. Despite the land claims process being run in terms of the Restitution of Land Rights Act Xikalamazula and other members of the Mahlahluvani community have not yet had their land returned, but a group of close to 40 families have decided not to wait any longer and have occupied the state owned land. They have been threatened with eviction, but continue farming; Xikalamazula says his family has to eat.

Xikalamazula and his wife have been farming the land for five years now. He said he started ploughing there as he was hungry and was going to their "*marumbini*" (the place where they used to live). He only got to standard two (grade four in primary school) and his wife has less education, neither of them speaks English. Xikalamazula has found it difficult to get work, something he attributes partly to the disability he has in one foot that causes him to limp, but is not great enough for him to get the state disability pension. Some time ago he lived in Alexandra, Johannesburg, and worked for a white person in the garden of their large house in the wealthy suburb of Sandton. He has not had a regular job for a long time and is too young to get an old age pension. He has survived doing some "piece jobs"<sup>3</sup> and sometimes cutting and selling firewood. One day he was at a meeting at the Chief's<sup>4</sup> house and heard that people could get back their land. When he saw others were ploughing at their *marumbini* he decided to join them.

Xikalamazula has three children, one still at school and the others out of school, but unemployed. Two of his children live with them at home and the other is in Makhado, formerly Louis Trichardt (the nearest town about 40 kms away). He also has two grandchildren living at home. One receives a child support grant of R190 per month, which is the only source of income aside from what the family can sell of what they produce and gather on the land. Almost all they produce is used for home consumption and some firewood that they bring back is sold to get the cash needed for things like school fees and buying seeds.

The path we were following left the houses behind going first through open land used for cattle grazing and then working its way between fields planted with maize and other crops. Xikalamazula looked with disdain at the withered maize stalks visible in most of the fields we passed: "This soil has nothing, you are wasting your time to try and grow crops here," he said. The path became narrower and started to rise until we were climbing a steep slope surrounded by thick bush. As we got higher we found ourselves surrounded and soaked by a morning mist.

Eventually we reached the blue gum trees that form part of a commercial plantation and then from the top of the ridge joined a track used by the forestry vehicles and followed this down towards the valley where Xikalamazula and others are farming.

An hour and ten minutes after leaving Nwaxinyamani we were walking along the forest track when we arrived at a rough gate in a fence made from sticks and thorn bushes. Looking over the gate one could suddenly see a whole valley that had been cleared and planted with maize and other crops, as well as a few small huts in the different fields that covered the slopes of the valley and the hills on the opposite side.

Before starting work Xikalamazula called out to his neighbours to see who was around. A few voices answered from across the valley. With the mist it was hard to see anyone, but there was smoke rising from a hut some distance away indicating someone was already cooking or just warming themselves. It was a Tuesday morning after the long Easter weekend and it seemed that the other farmers were slower than usual in arriving to work in their fields. The misty morning and rain may also have encouraged some to delay at home. As the day wore on more farmers passed by and could be seen working in their fields. One neighbour came over and discussed plans for the funeral of one of the farmers who had passed away a few days before. Xikalamazula suggested the farmers should all meet in the next days and contribute R5 each to assist with the funeral expenses. The person who had passed away was a man in his late fifties who had been working for a few years on the land. I asked what would now happen to his land and Xikalamazula explained that the man's wife who had been working with him on the land would continue, as they were now her fields.

There was also a discussion with a few of the neighbours about cattle getting into the fields and eating maize. A woman farmer said she had found cattle in the fields the day before and chased them out, but had not been able to find where they had got through the fence. The crudely constructed perimeter fence that they all assist in maintaining surrounds Xikalamazula's and a dozen or so other fields in that valley. Between each plot are smaller fences made of sticks that mark the boundaries, but in most cases would not deter cattle or other animals.

The main task for the day was harvesting maize. We collected the maize cobs putting them into cloths tied around our shoulders and then transferring them into sacks when the cloth was full. Xikalamazula wanted to collect the maize that was close to a beehive while it was still cold and misty, as he knew the bees would not be active in those conditions. He gave Godsave an old atchar<sup>5</sup> bucket and got him to start collecting some small tomatoes growing amongst the maize stalks. After a while Johanna went to another part of the field to harvest peanuts. She came back with a small sack of peanuts and was also chewing on some sugarcane.

Godsave soon sat next to the hut playing a game with some sticks and stones. There was no pressure for him to work, now and again he helped and when we walked back he was carrying a bag for a while, but Xikalamazula soon took it from him. Godsave is going to school and was apparently not in school that day as his uniform was not ready; this should have been the first day back at school after a few weeks holiday.

At some point while we were working Sarah, a widow living near Xikalamazula in Nwaxinyamani, arrived and started harvesting maize in her field. Her husband passed away about five years ago and as she had no work Xikalamazula suggested she come and join them in farming.

After about an hour working the mist turned to light rain that we endured for a while before taking refuge in the hut. The round thatched hut of about three and a half metres' diameter was used for storing some of the produce from the fields and items such as the old buckets and sacks used for collecting crops. More valuable tools like axes and hoes are carried home or hidden in the bush to

avoid theft. Half the floor of the hut was covered in a mound of maize cobs harvested by Xikalamazula, a smaller pile of maize belonged to Sarah. There were quite a number of pumpkins in a pile, some firewood, and pots used for cooking lunch. On a previous visit I had some *Mcomboti* (home brewed beer made from maize and sorghum) that Xikalamazula had in a five-litre container, this time there was no sign of the beer.

When the rain stopped we went back to the fields. Xikalamazula now worked on the land that had been ploughed by Sarah and I joined him there. Sarah's plot is within the field fenced by Xikalamazula and there was no boundary visible to me between her fields and his. Despite the lack of any very visible boundary and the assistance we gave with harvesting she and Xikalamazula were very clear on what was her crop and what was his. At one point as I reached to pull a maize cob from the stalk Xikalamazula, whom I thought was absorbed in his own work, stopped me and said "that is mine." I left the stalk and moved further to the side ploughed by Sarah taking care to check where Xikalamazula stopped harvesting. All the maize we picked in her field went into a separate sack and was stored separately although in the same hut.

Johanna worked in a different part of the fields collecting pumpkin leaves and flowers. The work proceeded at a steady pace and hours passed. We were not over-straining ourselves and chatted now and again as we worked and to other farmers who passed by. The maize cobs varied in quality, many were eaten a bit by some worms and others were clearly not of the ideal size, but nevertheless a substantial crop was being harvested. It is hard to estimate the total amount of maize the family will get this season. By the time I was there they had hired a bakkie (pick-up-truck with a 1 ton load capacity) to take two loads to the village in addition to the sacks they carried back themselves (since the visit two more bakkie loads have been taken to the village). Certainly they will have considerably more than they can eat this year and will either store for next year or sell some. Of great importance is also the fresh maize they pick and eat on a daily basis when it is ripe. When asked to estimate how much maize they eat in that way before the harvest Xikalamazula explained that they had for about two months eaten at least two cobs each while working in the fields, they roast these on the open fire, and then carried home with them for the family a further 12 to 15 cobs every day.

Thomas Ndlovu, the brother to Johanna, stopped and took shelter with us during the rain when he was on the way to his fields. Later we saw him when he was coming back and Xikalamazula asked Thomas if it would be possible to use some of his land, which is next to a small river, for planting vegetables such as cabbage and spinach. Xikalamazula's plot is quite high up the hill and not close to any water; if he can plant next to the river on the land of his brother-in-law he says he will water by hand and be able to grow vegetables throughout the dry winter. Xikalamazula suggested clearing the land to be used and, after getting the crop, leaving this cleared land for Thomas to use in the future. He emphasised that land belonged to Thomas, as it had been the fields of the Ndlovu family before they were removed. The discussion did not finish with any clear agreement; Thomas seemed he may agree, but was also a little cautious.

The total land area fenced by Xikalamazula could be around three hectares, including the land currently used by Sarah – it is hard to measure due to the contours of the land and the uneven shape of the plot. Xikalamazula and his wife ploughed the whole area with hand hoes and have also cleared the bush themselves. There remain a few areas of bush within the fenced fields that could still be cleared. A few shade trees have also been left in place. There are graves of Xikalamazula's grandparents on the plot adding weight to his historical claim to that area. As well as the field crops there are a number of pawpaw trees and lemon trees on the plot.

Early in the afternoon I went with one of the neighbouring farmers, Daniel Khumalo, to look for Pushy Hlongwane, the first man to return to Mahlahluvani to farm. He had begun farming in 1998 on land previously occupied by his parents near a stream at the bottom of the valley. Others had apparently followed his example. I was interested to find out more about this man who had reportedly started the land occupation that had now led to large amounts of previously unused land being ploughed. We walked through several fields. At the bottom of the valley alongside a small stream was a line of sugar cane. One of the huts we passed had neat rows of maize cobs tied by their stalks and suspended upside down from the ceiling. On another plot neat rows had been shaped in steps along the contour of the hillside and the farmer was preparing to plant an early winter crop of vegetables.

Daniel gave the same reasons as Xikalamazula for settling on the land, saying it was his family's *marumbini* and his family had been hungry. He added that he had seen people coming back with maize and other produce from the land and had asked where they were coming from. One day he joined them and started clearing his own piece of land.

When we got to Pushy's fields no-one was to be found, only a dog to frighten away intruders, monkeys and bush pigs. The rectangular hut, incorporating a "*toolu*" (a traditional structure used for maize storage that keeps the maize off the ground) full of maize, was locked with a padlock. There were numerous avocado and mango trees on the plot as well as pawpaw, lemons and sugar cane. A large number of pumpkins could be seen through cracks in the hut door and there was maize, peanuts, beans and sweet potatoes visible in the fields.

When I later did get to interview Pushy Hlongwani he said that he had begun farming in the area "after hearing that people must get their land back if they were removed" and because of hunger (interview 13 March 2006). He only reached standard two at school and used to work in a steelworks outside Pretoria. He lost this job in about 1981 and then survived doing "piece jobs" around Makhado until he started farming. He says the ploughing he does now is much better than the work he did in the past

Walking back from Pushy's fields we took a different route going past Daniel's fields where we found his wife and a friend sitting by a fire in their hut. Daniel took his hoe and dug up some sweet potatoes that he gave to me. He said he sells sweet potatoes in the village at R10 for a four kg atchar bucket.

When I got back I found Xikalamazula collecting thin poles that he was going to use to build a "*toolu*" at his place in Nwaxinyamani. He also chopped up some old blue gum poles that he bound together to be carried back to the village for firewood.

As we worked we ate a few of the raw peanuts that Johanna had collected and I got a piece of sugar cane. Xikalamazula decided, I think out of sympathy for me, to leave earlier than usual (he said they normally stay until four or five in the afternoon). Another reason was they had not brought maize-meal to cook that day. So at about two-thirty, after seven and a half hours in the fields, we started gathering all we would take with us for the journey home.

The walk back was mostly down hill, but this time we were carrying heavy loads, with everyone assisting. We were carrying fresh maize cobs from some late planted maize that would be eaten today, tomatoes, pumpkin leaves and flowers, a large pumpkin, peanuts, sweat potatoes, sugarcane, and two different types of wood, one that would be used to cook the meal and one to build with. We also had a sack of dry maize cobs that they are moving bit by bit down the hill before taking it for grinding at the

mill in the next village. I realised we were carrying everything the family would need to eat and cook that evening, aside from water and the maize-meal that they still had left at home from last years crop.

About ten hours after arriving I said goodbye to the Sithole family and drove away carrying gifts of sweet potatoes and sugar cane. I had also gained a renewed belief in the need for and potential of land reform if it can be truly driven and shaped by those who want to produce.

### **Overview of the occupation**

The people of Mahlahluvani were removed from the land east of Ribolla Mountain over a number of years, mostly in the 1950s, as the land was taken over by different white farmers and Tsapekoe (a large commercial farming enterprise, originally a parastatal) estates that produced tea and other crops. The land is on an escarpment about 40 kms to the east of Makhado in an area that became a border between the former Bantustans of Venda and Gazankulu. While most of the Xitsonga speakers were moved to the village of Nwaxinyamani to the south, the Venda speakers, who had been living in the same area, were moved to the village of Mashau to the east.

The area has fertile soil, a temperate climate with no frost, and good rainfall due largely to the escarpment conditions. The terrain includes steep slopes and valleys and several perennial streams. A plantation of eucalyptus trees currently covers most of the state-owned land, with some indigenous bush and forest left on the steeper slopes.

In the mid 1990s four different land claims were lodged, in terms of the Restitution of Land Rights Act, on the same land. The claimant groups / communities are Mahlahluvani, Mashau, Piet Booie, and Davhana. At the time of writing, none of these claims had been formally settled and the negotiations around them have been filled with conflict and riddled with ethnicity-based tensions.

As we saw above, while there has been no progress in the formal settlement of the land claims a number of families, such as the Sitholes, coming from across the different claimant groups, have started to clear the land and produce. These farmers have cleared the bush and occupied unused pockets of land, largely leaving the eucalyptus plantation alone as the forestry company would not have allowed them to chop down the trees.<sup>6</sup> The leadership of the land claims committees, recognised by the Commission on Restitution of Land Rights (the Commission), have tried to discourage the claimants from clearing the land and producing. Legal actions against the land occupants were also initiated by the Commission and the Department of Public Works, but have come to a halt partly because of negotiations led by Nkuzi. Some occupiers have been discouraged, but others continue to produce and clear more land.

During my fieldwork, a number of the farmers reported starting to plough in the area after seeing Pushy Hlongwani ploughing there and coming back with crops. Others who had joined more recently had seen other members of the community producing and benefiting from the production. Almost all said that they are occupying land because of hunger and that they have returned to their “*marumbini*.” This was not a planned or dramatic land occupation, but the gradual encroachment of individuals acting quietly to improve their lives akin to the “everyday forms of peasant resistance” described by Scott (1985).

A look at the results of structured household interviews, carried out by Themba Maluleke, gives an indication of the significance of farming for the families currently producing in Mahlahluvani. Of the 37 families interviewed, the heads of household comprised 19 men and 18 women, 11 of these widows.



These families include 140 adults (71 women and 69 men) and 59 children (under 16 years of age). 70 of the adults are unemployed, 22 get old age pensions and four are disabled, although not all four get a disability pension. Only 11 of the 140 adults have formal jobs, mostly positions such as builders and shop assistants, with only a few having white-collar or professional jobs such as teaching. The rest are housewives, still attending school, doing “piece jobs,” or informally self-employed with activities such as running a “*spaza*” shop.<sup>7</sup> Based on their income, excluding the production on the occupied land, 20 of the 37 households interviewed live below the internationally recognised poverty line of \$1 per person per day and a further seven households live on less than \$2 per day per person.<sup>8</sup> The average income per person per month across all the families is R354.

All 37 respondents said that their lives had got better since becoming part of the land occupation. This compares with only six out of 12 respondents from the Monyomane redistribution project and ten out of 13 at the Dikgale redistribution project saying their lives had got better when asked the same question, with the rest saying it was the same or worse.<sup>9</sup> The families plough around 130 hectares of land in total. Eighteen of them would like to plough more land if they could get it, most asking for just one or two more hectares. Those who do not want more land say they are too old or do not have the resources to use it at the moment. Some of them would use more land if they could get more resources. The main crops are maize, peanuts, beans, pumpkins (grown as much for the nutritious leaves and flowers as for the pumpkin itself), onions, and sweet potatoes. Farmers who are close to the streams are growing spinach, cabbages and other vegetables. Most of the farmers have some fruit trees including avocados, mangoes, bananas and pawpaw. There are also considerable amounts of sugar cane and small amounts of other crops such as tomatoes and chillies interspersed with the main crops.

Most of the produce is used by families for their own consumption with some local sales. Many of the people interviewed do not sell on a regular basis, but rather sell when they need cash. For example some reported selling bags of maize to pay for school fees and others reported small sales driven by cash needs such as selling sugar cane to a neighbour in order to buy bread. A few of the wealthier farmers are more actively marketing and selling produce for cash, but mostly locally in the villages where they live. Cutting and selling firewood, from the occupied land and surrounding forests, for own use and for sale is an important part of the livelihood strategies of many of the families.

The farmers at Mahlahluvani have developed informal organisation that involves them coming together in meetings to share information and discuss matters as required. They assist each other with activities such as funeral arrangements and fencing as much of the fencing is shared. The demarcation of different people’s pieces of land seems to be done by individuals in interaction with their immediate neighbours and is loosely informed by where each family used to live and plough before the forced removals. It is not possible for everyone to go back to exactly where his or her family were before due to the forestry plantation. While respondents said there was no conflict between them some said if there were difficulties it would be resolved by Pushy or Xikalamazula calling people together to find a solution. Xikalamazula seems to be one of the most active members while Pushy appears quiet and reserved, he does not stand out as a leader in the group meetings, but he is clearly respected.

#### **Mahlahluvani occupation not unique.**

The Mahlahluvani land occupation is not an isolated case. Without seeking them out, I came across and visited two other occupations in the area. A few kilometres west of Mahlahluvani Chief Davhana has occupied an old government house, allocated plots of land to another 50 families and started farming on the surrounding land. Davhana has grown 6 000 tomato plants and 1 500 makadamia nut tree seedlings that he is planting (interview). He has been supplying butternuts, cabbages, and other

crops to a supermarket in Makhado. Davhana sees this as his and his people's land that he has a right to settle on although he is aware that the land claim lodged is not yet settled.

About 25 kilometres south east of Makhado land was returned to the Shimange claimants in 2001. As is typical of many settled land claims, the Communal Property Association (CPA), which owns the farm, is absorbed by conflicts and there is no effective management of the land. While a few individuals are involved in small-scale production, much of the land is underutilised, and the tractor donated by the government has broken down and has not been used for some time.

In contrast, a group of six interrelated families, the Vukeyas, are involved in intensive production on an adjacent piece of land. The Vukeyas are part of the Shimange land claim, but their land has not been returned, apparently due to an error in the investigation by the Commission. On hearing the claim was settled the Vukeyas returned to what they believe should be their land; technically they are illegal land occupiers. The result of this is that they are not subject to any government run business planning and not involved in the conflicts within the CPA.

The Vukeyas have started ploughing the fields that their families used to occupy and started building houses to stay in. The plots are between four and eight hectares each and are used for growing amongst other crops maize, peanuts, beans, pumpkins and chillies. They are also planting fruit trees such as mangoes. One of the families is selling produce in the neighbouring villages and to shops in town.

## **IMPLICATIONS FOR LAND REFORM**

### **Nature of production**

In the situation of Mahlahluvani we see poor people making their own choices – without government, NGO or consultant intervention – about the type of production they want to and can engage in. What we can learn from this is of much more value than any response to a theoretical question about what people would like to do should they get land, since we see people acting in real circumstances, making decisions informed by what they would like as well as the conditions that constrain them. They have managed to go forward with production with no assistance from the government or anyone else. The outcomes are very different from the scenarios where government officials and consultants are involved in advising and drawing up business plans that have almost always been commercially focussed and in many cases have never been implemented (Lahiff 1998; Wegerif 2004). Although further analysis is required, the level of production at Mahlahluvani, and of the Vukeyas and Davhana, appears to be very good especially considering the low input costs and when compared to the majority of settled land claims and redistribution projects.

### **Leadership**

At Mahlahluvani we see an interesting example of effective informal organisation. The group is clearly deriving confidence from their shared struggles to get land and produce. There seems to be an important social dimension to their interactions and there is practical assistance provided in harvesting and through taking joint responsibility for things such as fencing. They also share ideas and information and copy and learn production techniques from each other.

Leaders have emerged from amongst the group in the form of people like Xikalamazula and Pushy. There is no indication that either of these men derives authority from traditional leadership connections, wealth, or education. Xikalamazula plays a facilitative role in bringing people together

and Pushy is turned to for advice if needed. Importantly, each family runs their own production on their land, making their own decisions and coming together with the others as it suits them.

In contrast, the leaders of the formal land claims committee (such as the Chairperson and Deputy Chairperson) are not ploughing on the land, are wealthier and more educated. They have cell phones, cars, and speak English. They are easy for the Commission staff to deal with and appear to derive power from the recognition that the Commission gives them. These leaders have tried to tell those ploughing to stop and in turn they have been threatened and told to stay away from the land.

I would characterise these different types of leadership as being a “production leadership” emerging from among those actually producing, based on the respect the fellow producers have for them, and a “political leadership” that gains power from its ability to interact with and be recognised by external authorities such as government officials. The “production leadership” derives authority from the initiative and skills shown in production. The “political leadership” wins support though being articulate in the language of government officials and being able, due to their resources such as transport, phones and their political skills, to manoeuvre and engage in the organisational politics required of people who wish to benefit from government programmes.

The administrative and legal complexity of government land reform programmes – whether restitution, redistribution or tenure reform – along with a lack of any specific support to assist the less educated and less wealthy to access these programmes seems to be systematically drawing out “the political leadership” at the expense of the producers who have the interest and ability to utilise the land.

### **Conflict and ethnicity**

The government frequently complains about the conflicts within and between communities delaying the settlement of land claims in Limpopo (Didiza 2003; Gwanya 2003), and the situation around Ribolla Mountain is a worst-case scenario with four competing claims, ethnic divisions and leadership disputes. Certainly a difficult situation to resolve, yet the farmers at Mahlahluvani have overcome all of these divisions and conflicts and got on with production.

In meetings of the farmers at Mahlahluvani there is frequent switching between Xitsonga and Tshivenda and farmers from Mashau and Nwaxinyamani, from former Venda and former Gazankulu, work alongside and assist each other.

In discussions with some of the farmers they said that they had always lived together as one community. There has also been intermarriage that has helped to cement bonds across what some see as ethnic divides. It appears to really only be at the level of the land claims committees and the “political leadership” that ethnic and other divisions come to the fore as leaders try to use whatever advantage they can to bolster their power with control of land, people, and access to officials.

An example of the farmers’ ability to deal with what could easily be seen as a recipe for conflict came up in discussions with Pushy who is Xitsonga speaking and stays in Nwaxinyamani. His parents’ graves are on a piece of land that is now being ploughed by Mr Masindi who is Tshivenda-speaking and lives in Mashau. Despite Mr Masindi ploughing around another family’s graves there is no conflict. While Pushy started ploughing in a fertile part of his parents’ former land that is close to water, Mr Masindi started by the graves as the land his parents used to plough is under the eucalyptus

plantation. Pushy says that since he knows Mr Masindi and that he was living in the area before they were all removed there is no conflict between them.

The farmers at Mahlahluvani have for the last years found ways to accommodate each other regardless of ethnic origin or other such factors. Thus they have in practice overcome divides that the Commission still finds insurmountable.

### **People-driven land reform and the property clause**

There has been much talk of the need for people-driven and demand-led land reform as well as the related concept of community-driven development (Binswanger and Aiyar 2003; DLA 1997; Gupta et al 2003; Lahiff 2005). No strategies are being implemented, however, that are effective in making this a reality in South Africa. At Mahlahluvani we see a truly people-driven process and consequently outcomes that respond to people's needs and are quite different from what is coming out of official land claim settlements and redistribution projects.

The current government procedures for the settlement of land claims and implementation of redistribution projects tend to be disempowering to the beneficiaries, especially the poor and those with little education. Furthermore, the current paradigm sees the Commission and Department of Land Affairs pushing people into large-scale commercial farming; a form of production that people such as those producing at Mahlahluvani have little skills and interest in. It is only the more educated and wealthy that will have a voice and space in such a paradigm. In the face of these dominant views and the snails pace of official land reform the occupation of unused land offers a way in which the poor can shape their own land reform initiatives and meet their livelihood needs.

Many of those who want a far-reaching land reform not limited by the protection of existing property rights have criticized the property clause (Section 25) in the South African Constitution and point out its protection of private property (Ntsebeza 2007). More progress may have been made, however, if people like the farmers at Mahlahluvani were told how the Constitution asserts "that South Africa belongs to all who live in it" (Preamble to the Constitution of South Africa, Act 108 of 1996). Landless people's feeling that they have a right to land could be reinforced by emphasising that the Constitution gives those who had land taken away a right to get their land back (section 25(7)) and that land can be taken from landowners for land reform (section 25(2) and (4)).

The discourse of the right to restitution of one's land provides the perfect opportunity for mobilising the direct actions of the poor through which they will lead and shape land reform. Hundreds of thousands of people have by being part of lodging land claims as communities, groups and individuals expressed a demand for land. Many of us in NGOs have been too clever in explaining to them the complexity of the Constitution and the law. We have been too good at convincing people of technicalities such as there being a difference between the restitution of a right to land and restoration of the land itself. We could continue to subvert people's desire for their land into the bureaucratic malaise of the complex restitution of land rights procedures, or it could be channelled into campaigns and direct actions to get land.

There are, however, risks attached to such an approach. Widespread land occupations especially if driven by political motives, as seen in Zimbabwe over the last years, can lead to the loss of production, conflicts, instability, and other negative outcomes. The addition to our Constitution of a social obligations clause similar to that of the Brazilian Constitution offers a potential way of dealing with the risks while giving real Constitutional support to the notion of people's right to occupy and use

unused land. In chapter three the Brazilian Constitution creates a concept of a “social function” for rural land that to be met requires land to be adequately used in a way that preserves the environment, respects labour laws, and benefits the owner and labourers. The same chapter gives the government powers to expropriate land not performing its “social function” and further gives ownership of land to a landless person (a person not owning any other rural or urban property) who occupies and makes productive use of rural land, up to a maximum size of 50 hectares, for a period of five years. This clause has been important to the land occupation strategies of movements such as the MST (Landless Rural Workers Movement) that have settled hundreds of thousands of families on close to five million hectares of previously unused rural land in Brazil (Branford and Rocha, 2002). Such a clause in the South African Constitution could give a right to poor and landless people and those who were dispossessed in the past to occupy and use unused or underused land, thereby affirming that the land is a national resource that is there for those who can work it. This could give enormous impetus to a truly people driven land reform, not so much because of the legal mechanisms it would open up, but the message that it would send to people like the farmers at Mahlahluvani and others who may want to follow their example.

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## ENDNOTES

<sup>1</sup> Xikalamazula, a bracelet made of goat's skin, is the nickname Morgan Sithole was given as a boy when he did traditional dancing.

<sup>2</sup> We spoke informally in Xitsonga, Xikalamazula's mother tongue, a language I learnt while staying for some years not far from the site of this research. The research methodology was accompaniment, observation, and informal discussion.

<sup>3</sup> Piece-work is temporary work, normally manual labour and only obtained and paid for day by day. Typically this involves waiting on the side of the road to be picked up by builders or people needing an extra hand in the garden for the day.

<sup>4</sup> Chiefs, often referred to as traditional leaders, continue to occupy positions of authority in rural South Africa. The positions are hereditary and often still command considerable respect from community members as well as being recognized in legislation.

<sup>5</sup> Atchar is a type of mango pickle popular in South Africa.

<sup>6</sup> There have been conflicts with the forestry company when the land occupiers felt that land was being cleared to plant more trees or when the company felt the occupiers threatened their trees.

<sup>7</sup> A "spaza" shop is a small local shop with a limited range of basic items for sale, normally operating from a private home.

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<sup>8</sup> Financial calculations have been made based on an exchange rate of \$1 to R7.

<sup>9</sup> Monyamane and Dikgale are two projects in Limpopo that have been studied as part of the same research undertaking and where the same questionnaire has been administered.