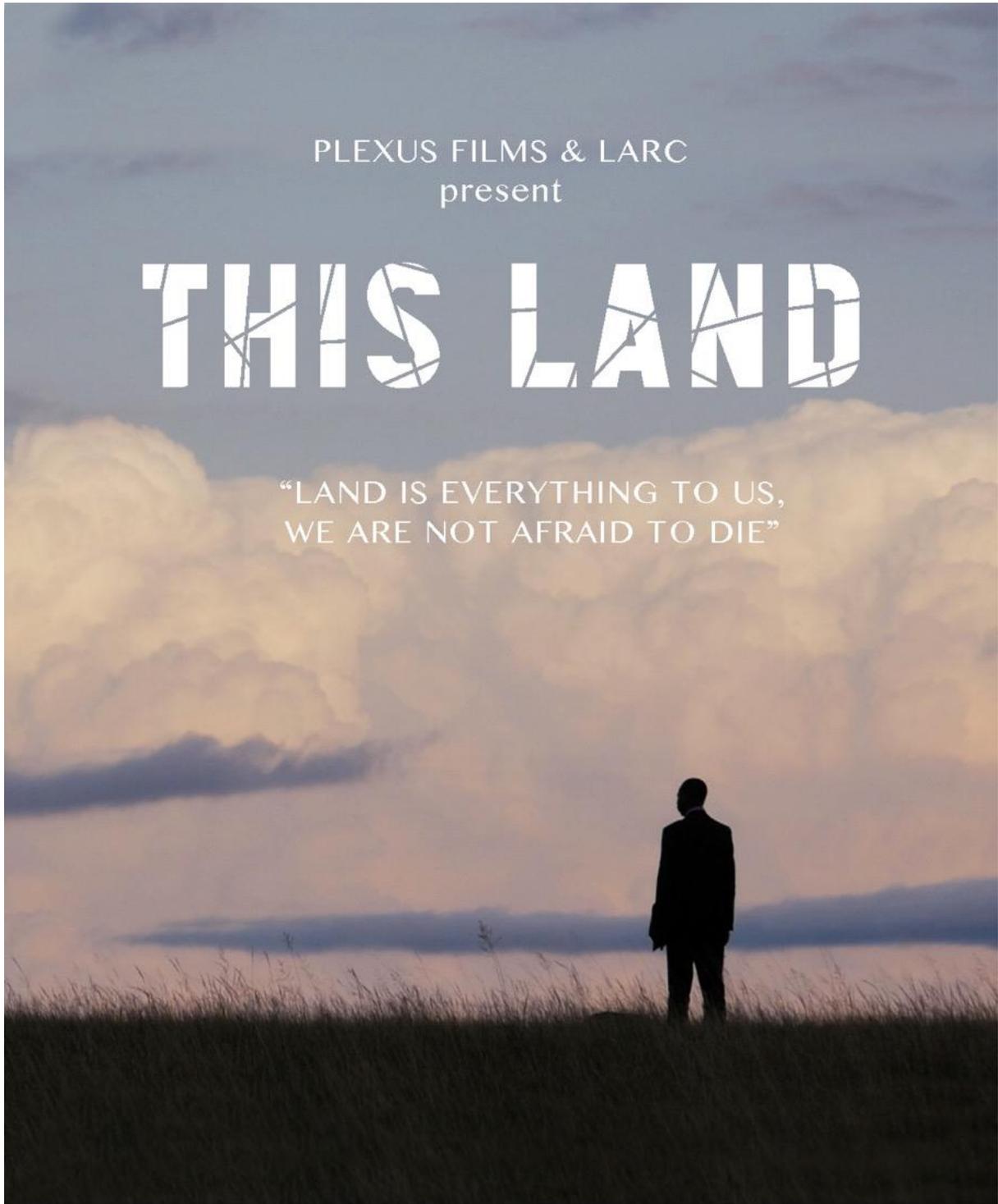


PLEXUS FILMS & LARC  
present

# THIS LAND

“LAND IS EVERYTHING TO US,  
WE ARE NOT AFRAID TO DIE”



VENUE

DATE

TIME



## THIS LAND DOCUMENTARY

*“We have seen that the chiefs are selling land to business people, mining companies, giving land to foreigners to build malls. We know that sometimes our land rights are not properly written in the law. But we know that traditionally we have a land right”*



Mbhekiseni Mavuso, Makhasaneni, Kwazulu-Natal, South Africa  
- **LAND RIGHTS ACTIVIST**

THIS LAND is a powerful 48-minute documentary, about a small village, as they oppose the development of a mine and assert their right to the land on which they live.

The documentary film **This Land** was commissioned by the Land and Accountability Research Centre (LARC) at the University of Cape Town. The intention of the project is to raise awareness about the escalating abrogation of rights to land of rural communities by politically connected elites with interests mainly in mining, and to build solidarity amongst affected people and communities.

Assisted by government officials and facilitated by a range of current and proposed laws and amendments that seek to dilute the constitutional, statutory, informal and customary rights of

rural people, these elites strike deals with traditional leaders purporting to speak for communities.

We are using the film as a resource to bring awareness to rural citizens; to stimulate national dialogue and to advocate for the development of legislation that secures the tenure of individuals and families in traditional communities.

This includes ensuring that people are not unfairly denied access to their land, that natural resources necessary for living are not contaminated, and that the benefits from the minerals in community land flow to the people on the land fairly and in an accountable manner.

## Amending the Property Clause

*Nokwanda Sihlali and Zenande Boozi*

Since the 2017 ANC Conference, supplemented by Cyril Ramaphosa's State of the Nation address in February 2018, the land debate has intensified and there is a renewed interest in fast tracking land reform. The motion for amending section 25 of the Constitution (the "property clause") to allow for expropriation without compensation, brought forward by the EFF leader Julius Malema, was adopted with a vote of 241 in support and 83 against.

The matter has been referred to the Constitutional Review Committee chaired by Mr. Vincent Smith and Mr. Lewis Nzimande, which must report back to Parliament by August 30 2018. The constitutional review committee will be hosting public meetings on the proposed review of section 25 of the South African constitution. The outcome of these hearings could determine whether land can be expropriated without compensation, playing a key role in the future redistribution of land in South Africa.

However, according to some land experts, activists and High Level Panel report chaired by former president Kgalema Motlanthe, the current failures in land reform are not due to the inadequacy of the Constitution. The state has failed to articulate and provide for the exercise of its extensive powers to achieve land reform, and give effect to the positive rights provided for in section 25.

Thus, they do not believe that s25 Constitution should be amended to allow for expropriation without compensation for the following reasons:

1. The Constitution allows for significant intervention by the state in the existing distribution of wealth in SA. Illustrated by:
  - a. The obligations it places on the state to reverse injustices of the past;
  - b. The rights in the BOR that provide for access to housing; healthcare; social security; food and water.
2. To this end, when interpreted properly, section 25 already allows for expropriation without compensation for the purposes of land reform.
3. Section 25 has two functions:
  - a. prohibiting the arbitrary deprivation of property - a procedural right against property being taken with no legal justification;
  - b. gives the state power to achieve land and related reforms aimed at reversing the effect of colonial and apartheid dispossession.
4. Throughout section 25, land reform is confirmed as an appropriate legal justification for the deprivation of property:
  - a. Section 25(2) and (3) empowers the state to expropriate land in the public interest - public interest includes land reform (section 25(4));
  - b. Section 25(8) provides that no provision of section 25 can be interpreted in a way that interferes with the ability of the state to take steps to achieve land reform.

5. The above subsections read together illustrate the commitment of section 25 to remedy the consequences of pre-constitutional South Africa, based on the dispossession of black South Africans
6. The rest of section 25 provides positive rights that are aimed at achieving land reform and requires laws to be passed to fulfil these rights:
  - a. Section 25(5) requires land redistribution;
  - b. Section 25(6) requires land tenure security reform;
  - c. Section 25 (7) requires land restitution for people dispossessed after 1913.
7. The power of expropriation is limited by the requirement that a law about it be passed and that just and equitable compensation be paid.
  - a. What 'just and equitable compensation' is must be considered in the context of the Constitution and the provisions set out above.
8. Thus, if read properly the requirement to pay just and equitable compensation can be read to include the payment of no compensation.
9. What is necessary is that the law required by the Constitution be clear about the exact limits of state power in expropriating.

Also:

- a. The point of departure must remain just and equitable compensation, providing for no compensation in clear instances for land reform alone

Courts must remain the final decision-makers of whether in each case no compensation is just and equitable

10. *Simmer & Jack Proprietary Mines LTD v Union Government* a case from 1912 says the state has the power to expropriate without compensation - but it must be clearly set out
11. *First National Bank of SA v Commissioner of SARS* the ConCourt in 2002 said expropriation without compensation clearly defined in law is permissible

## The Traditional and Khoi-San Leadership Bill

*Monica De Souza Louw, Thiyane Duda and Ayesha Motala*

The stated aim of the Traditional and Khoi-San Leadership Bill (TLKB) is to provide recognition of Khoi-San communities, leaders and councils; as well as combine all laws on traditional leadership to create a single law. However, the Bill has been criticised for reinforcing apartheid geography and its effects. It does so by adopting and merely renaming structures created by colonial and apartheid laws.

In the main, the Bill creates divided citizenship between urban and rural citizens, with the most marginalized South Africans subjected to chiefly rule without any choice of opting out. The bill encourages elite capture as it vests all decision making with traditional institutions to the exclusion of community members.

This Bill also allows traditional councils to enter into agreements and partnerships with municipalities, government departments and, most importantly, “any other person, body or institution” without getting the consent of the community, who are the owners of the land. This is a common unconstitutional practice that many communities are complaining about and amounts to dispossession of communal

land by traditional councils without compensation and this Bill seeks to make it legal

Many grassroots civil society organisations view the Bill as the government's way of taking rural citizens back to apartheid days by resuscitating the Bantustans and subjecting them to the rule of traditional leaders without the possibility for opt-out.

## Ingonyama Trust Act

*Nokwanda Sihlali*

A day before the much anticipated report of former President Kgalema Motlanthe's High Level Panel recommended to Parliament that it should be disbanded, the Zulu King's Ingonyama Trust Board urged KwaZulu-Natal residents to swap their land rights for leases.

In reassessing the laws that affect rural citizens, especially those residing in KwaZulu-Natal, where 2.8 million hectares of land are vested in the Ingonyama Trust, with the king as the trustee and the Ingonyama Trust Board being the administrator of the land affairs, the panel criticized the ITB's record and proposed that it should be disbanded.

The Panel motivates for the repeal of the Ingonyama Trust Act to bring KwaZulu-Natal in line with national land policy, and to secure land tenure for the communities and residents concerned. If repeal is not immediately possible, substantial amendments must be made. They must secure the land rights of the people affected, and ensure that the land vests in a person or body with proper democratic accountability.

The Witness and other newspapers on 20 November 2017 published adverts suggesting that the Permission-To-Occupy (PTO) certificates that rural residents have used to confirm their land rights would no longer be enough.

The first advert said:

“All people, companies and other entities holding land rights on Ingonyama Trust land in terms of the Permission To Occupy (PTO) are hereby invited to approach the Ingonyama Trust Board (ITB) with a view of upgrading these PTOs into long-term leases in line with Ingonyama Trust Board tenure policy”.

There are many issues with the purpose and wording of the adverts. The first being the manner in which PTO holders are implicitly forced to forfeit ownership of their land. The advert tells residents that people need a lease agreement as proof of residence for purchasing cellphones, opening a bank account or even to vote. It suggests that they have no alternative if they want to engage proactively as South African citizens.

The second issue is that ITB/IT is effectively taking ownership away from people and forcing them to pay for land that they already own. This completely abrogates their property

ownership rights and opens them up to potential dispossession if they fail to make lease payments. Though the leases are presented as an upgrade of existing rights, we know from its reports to Parliament that the ITB's rental revenue rocketed from a few thousand rand before the residential leases were implemented to R96.1 million in the 2015/2016 financial year. There is no evidence in the reports that any substantial share of this income has benefited ordinary residents.

<http://www.customcontested.co.za/ingonyama-trust-wants-people-of-rural-kwazulu-natal-to-pay-rent-for-land-they-already-own/>

## Interim Protection of Informal Rights Act

### *LARC Factsheet*

In 1996 IPILRA was introduced to provide immediate protection to vulnerable rights holders whilst parliament was developing a more comprehensive and permanent law. Informal land rights were elevated to the status of property rights, in that the Act provides that people may not be deprived of informal rights to land without their consent, except by expropriation.

The former Land Rights Bill of 1999 was meant to replace IPILRA, however because this process is yet to be finalised - IPILRA has been subjected to renewal annually since its inception. Interim Protection of Informal Land Rights Act (IPILRA) has been renewed every year to fulfil section 25(6) of the Constitution. IPILRA protects “informal rights to land”. These informal rights are defined to include rights to use, occupy or access land in terms of customary law in the former Kwa-Zulu and other former homeland areas.

Section 2(1) provides that people who have such informal rights to land may not be deprived of these rights without their consent. They may only be deprived of land without their consent if the disposal of the land is approved by the majority

of those who hold such rights within an affected community. If they are deprived of the land based on a community decision, they are entitled to compensation.

## Mineral and Petroleum Resources Development Act

### *Zenande Booï*

The MPRDA makes the state the custodian of all the mineral wealth in South Africa and tasks it with allocating mining rights. It does not require the consent of the owner or occupier of land before a mining right is granted or can be exercised. For mostly white landowners with registered title deeds, the practice is that a mining company negotiates with the owner and agrees, usually through legal representatives, on a surface lease that includes compensation for any loss that results from the exercise of the mining right.

This process is clear because the rights, including the nature of the rights held, are registered in the Deeds Office in the name of the holder. It is a very different story for black rural communities and people living on land that falls under the jurisdiction of traditional leaders. In such instances the registered nominal owner of the land is the Minister of Rural Development and Land Reform.

The actual holders of rights, and the nature of the rights they hold, are not formally recorded. The practice in such instances has been that the Department of Mineral Resources encourages mining houses to engage with officially recognised traditional leaders rather than with the people who actually hold rights to

the land and will directly be affected by mining. In both the North West Bakgatla ba Kgafela and Eastern Cape wildcoast Xolobeni contexts, the officially recognised traditional leader is a shareholder in the mining operations.

## **Traditional Courts Bill**

*Thiyane Duda*

The Traditional Courts Bill is before Parliament for the third time. While the current version is an improvement on its previous iterations, the portfolio committee on justice and correctional services seems determined to reverse these improvements. The bill was first introduced in Parliament in 2008, but was withdrawn. It was reintroduced in 2012 but lapsed in 2014 after being rejected by a majority of provinces in the National Council of Provinces. It faced widespread opposition from many sectors of society, especially rural citizens.

Previous versions of the bill were opposed as unconstitutional for several reasons: it did not provide for women to represent themselves or participate as members in traditional courts; only courts at the level of senior traditional leader were recognised; and only senior traditional leaders could preside over the courts. The bill proposed penalties that could include an order to provide free labour, deprivation of customary entitlements such as land and banishment from the community. It did not provide for opting out when summoned by a traditional court.

A reference group consisting of traditional leaders, the government and civil society was formed in 2015 to consider issues identified in the previous versions of the bill. The 2017 draft was informed by the outcomes of the group. Many concerns raised about previous drafts of the bill are rectified in the 2017 draft. It captures the voluntary and consensual nature of customary law by enabling people to opt out of the jurisdiction of superimposed “tribes” and of specific traditional courts.

Concerns, however, remain about the practical implementation of these improvements.

<http://www.customcontested.co.za/how-mps-are-pushing-back-against-the-traditional-courts-bill/>

## Restitution of Land Rights Amendment Bill

### *LARC Factsheet*

On the 5th of October 2017 LARC attended the Rural Development and Land Reform portfolio committee meeting where honourable P. J Mnguni of the ANC presented the memorandum of a private member's bill initiated by himself for the Restitution of Land Rights Amendment Bill. He has pushed for certain amendments to the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) ("the Act") such as:

- Extending the date for lodging a claim for restitution to five years after the commencement of the Restitution of Land Rights Amendment Bill, 2017
- To make it an offence to prevent, obstruct or unduly influence a claimant or any other person from pursuing his or rights as provided for in the Act
- To criminalise the lodgement of fraudulent claims; to regulate the appointment, tenure of office, remuneration and terms of conditions of judges of the Land Claims Court ("the Court")
- To further amend certain provisions aimed at promoting the effective implementation of the Act.

The Restitution of Land Rights Act (No. 22 of 1994) was passed in 1994. Its goal was to offer a solution to people who had lost their land as a result of racially discriminatory practices such as forced removals. This included people who were dumped in Bantustans and put under traditional leaders.

We must roll back the legacy of land dispossession resulting from colonialism and apartheid. But in the current context and in its current form, the new Restitution of Land Rights Amendment Bill is unlikely to meet the needs of rural people,

and could well undermine their land rights as protected by Sections 25(6) and 25(7) of the Constitution.

## Communal Property Associations Act

### *LARC Factsheet*

Under colonialism and apartheid, millions of black people had been dispossessed of their land and their land rights. It was an urgent priority of the new democratic government to restore land to black South Africans and to secure their land rights against powerful actors, including the state (who had been a dispossessor under apartheid).

Since the land reform programme would involve the transfer of land from the state and private landowners to black South Africans, a legal entity needed to be created through which land reform beneficiaries could acquire, hold and manage property.

The new legal entities needed to accommodate and be able to adapt to a range of de facto land-holding practices, many of which were group-based. Unfortunately they have often failed to mirror or adapt to realities on the ground; focus has been too much on compliance with the Act, not enough on how they work smoothly for groups. Communal Property Associations (CPAs) were established to meet these challenges.

Beneficiaries of the land reform, restitution and redistribution programmes who want to acquire, hold and manage land as a group can establish legal entities to do so. The Communal Property Associations Act 28 of 1996 provides for government registration of CPAs and also government oversight to enforce the rights of ordinary members. At its Land Summit in September 2014, the Department of Rural Development and Land Reform (DRDLR) released a new policy on CPAs. The CPA Amendment Act is currently under consideration by the National Council of Provinces.

<http://www.larc.uct.ac.za/larc-factsheets>

**For more information on This Land:**

**Facebook:**

<https://web.facebook.com/ThisLandDoc/>

**Twitter:**

[https://twitter.com/ThisLand\\_Doc](https://twitter.com/ThisLand_Doc)

**Website:**

<http://www.thislandfilm.com/>

**You can also watch it for free on Afridocs:**

<https://afridocs.net/watch-now/this-land/>

The High Level Panel which was chaired by former president Kgalema Motlanthe to assess the progress of key legislation has been summarised into two pagers for easy reading.

These two pagers can be accessed on:

<http://www.larc.uct.ac.za/hlp-summaries-2018>

**Organisations that assist with land issues:**

PLAAS does research, policy engagement, teaching and training about the dynamics of chronic poverty and structural inequality in Southern Africa, with a particular emphasis on the key role of restructuring and contesting land holding and agro-food systems in the subcontinent and beyond.

<https://www.plaas.org.za/>

Tel: +27 (0)21 959 3733

The Rural Women's movement (RWM) has been fighting for indigenous women's rights to own land and to be treated equally since 1994. For more than 20 years we have been working side-to-side with rural communities all over the country.

[ruralwomensmovement@gmail.com](mailto:ruralwomensmovement@gmail.com)

<https://www.facebook.com/ruralwomensmovement/>

The LRC is a law clinic that uses the law to pursue justice, democracy and the realisation of socio-economic rights in South Africa, through the promotion of public interest law. The law clinic has been promoting public interest law in South Africa for 28 years and more so since 1994, when South Africa became a democratic state, whereupon the clinic intensified its work for the development of a fully democratic South Africa based on the principle of substantive equality.

<http://lrc.org.za/>

Tel: +27 11 838 6601

Fax: +27 11 838 4876

Tshintsha Amakhaya is a civil society alliance for land and food justice in South Africa. Rural women and men stand united in solidarity to advance their rights and secure livelihoods. Our members are farm workers, farm dwellers, smallholder farmers, fisher folk, forest dwellers, livestock keepers, people on communal land and people on church land.

<https://amakhaya.org/>

Tel: 021 447 5096

Nkuzi is a non-profit section 21 company (97 20743/08) providing a range of support services to historically-disadvantaged communities wishing to improve their rights and access to land. Nkuzi started operating early in 1997 and now has 10 full time staff working throughout the Limpopo Province, northern parts of Mpumalanga Province and with farm residents in Gauteng Province.

<http://nkuzi.org.za/>

Tel: 015 297 6972

Ndifuna Ukwazi is part of Reclaim the City, a social movement of tenants and workers struggling with access to land and affordable housing who believe it is time to take the struggle justice and equality to the centre of the city, to the people who should live there, to the heart of power and to the land that matters. The movement has tapped into a deep sense of injustice in the city about the current model of exclusionary development, bearing in mind our history of apartheid spatial planning and forced removals. Reclaim the City now has two chapters in the inner city and surrounds.

<http://nu.org.za/reclaim-the-city/>

Tel: 021 012 5094

Abahlali baseMjondolo is a movement of the poor shack dwellers in Durban, Pinetown, Pietermaritzburg and other parts of the province and the Western Cape. Abahlali's call for land and housing in the cities has become a threat to the authorities, some NGOs and some academics who still believe that social change cannot come from the bottom, who still believe that democracy is all about being loyal to their authority. Such top down system has terrorized our society. In fact it is an insult to assume that poor people cannot think for themselves, that someone else must talk for them without their concern. In view of a rejection of this understanding a new living politic of the poor has been born.

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<http://abahlali.org/>

Phuhlisani Solutions provides comprehensive services and support for land reform and integrated rural development in South Africa. Together with our

rapidly expanding network of associates we are expanding into the SADC region.

<http://www.phuhlisani.com/view.asp?pg=contact&allow=yes>

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## Special Thanks:

We would also like to appreciate the support of the Bertha Foundation and Nelson Mandela Foundation. The seizing of this moment and ensuring that all South Africans have a chance to engage proactively with the film, would have not been possible without them. Our partners Sunshine Cinema and those working at grassroots level, namely ARD (Alliance for Rural Democracy), have assisted greatly in connecting us with local communities and for that we are incredibly grateful.

