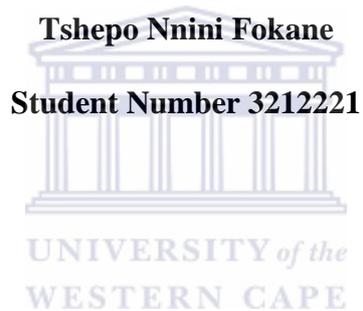


**(RE)CONSTRUCTED COMMUNITIES UNDER LAND RESTITUTION: A CASE  
STUDY OF THE POPELA LAND CLAIM**

A mini-thesis submitted in partial fulfilment of the requirements for the  
degree of Masters in Philosophy (Poverty, Land and Agrarian Studies)



Institute for Poverty, Land and Agrarian Studies (PLAAS)

Faculty of Economic and Management Sciences

University of the Western Cape (UWC)

**May 2015**

## **DECLARATION**

I declare that '*(Re)constructed Communities under Land Restitution: A case study of the Popela Land Claim*' is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.

**Tshepo Nnini Fokane**

**May 2015**



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**Supervisor: Professor Andries du Toit (University of the Western Cape, South Africa)**

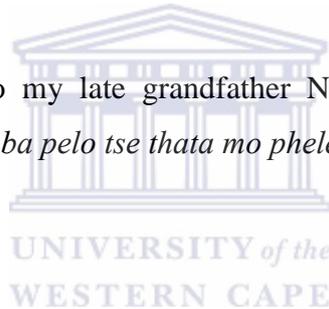
## ACKNOWLEDGEMENTS

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I give thanks to the Popela claimants, for your patience, understanding and continued support throughout this process. I am forever humbled by your generosity as you welcomed me into your homes, and provided me with key data that has made this research possible. And, to the residents of Ga-Sekgopo, thank you for showing me great hospitality.

This dissertation is dedicated to my late grandfather Ntatemoholo “*Mannetjie*” – April Motsamai Fokane – “*Ho ya rona ba pelo tse thata mo phele*”



## **ABSTRACT**

### **(Re)Constructed Communities under Land Restitution: A Case Study of the Popela Land Claim**

Tshepo Nnini Fokane

MPhil Mini-thesis (Poverty, Land and Agrarian Studies), University of the Western Cape.

This dissertation explores the notions of *community identity* as they relate to *land restitution*. Specifically, the dissertation examines how community is (re)constructed in the Popela case study by examining how the claimants (former labour tenants) have framed their experience of dispossession and their understanding of their rights in land. Oftentimes, claimant groups will articulate their shared history as it relates to the land, and within this narrative they will seek to highlight the legitimacy of their claim. In this regard, rural communities tend to submit claims for restitution on the basis of the forced dispossession of the tribe. In contrast, labour tenants' claims for restitution are based on the dispossession of grazing and cropping rights linked to their labour as individuals.

The dissertation explores how the Popela claimants have (re)constructed their community identity. It shows that their discourse is characterized by conflicting notions of community and belonging, and traces the connections between these contradictions and the concessions the claimants had to make in adopting definitions and terms that have been imposed on them. It argues that while claimants appear to have accepted the Constitutional Court's view of the basis of their claim, a 'hidden transcript' of commitment to community identity still persists, carefully hidden from public view in order to be awarded restitution.

## **KEYWORDS**

*Community*

*Identity*

*Labour Tenants*

*Discourse*

*Land Restitution*



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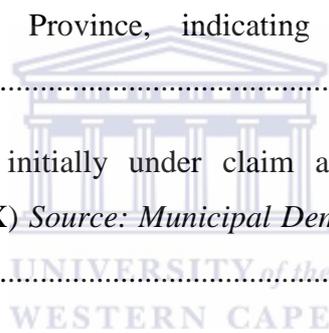
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## CHAPTER 1 – INTRODUCTION TO THE STUDY

### 1.1 Introduction

The centenary of the Natives' Land Act 27 of 1913 marked a milestone in the history of land ownership in South Africa. As a direct result of this and subsequent legislation, many communities and individuals were dispossessed of their rights in land, as Africans were not allowed to own land outside of the scheduled areas prescribed by the State (Hall 2009: 2). Under the Natives' Land and Trust Act 18 of 1936, an estimated 80 percent of the population was confined to 13 percent of the total land surface in the country which was earmarked for Native reserves (Walker 2008: 43). The Restitution of Land Rights Act 22 of 1994 provides individuals and communities that were dispossessed of their rights in land after 19 June 1913<sup>1</sup> as a result of past discriminatory laws and practices, with comparable redress through land restitution. The eligibility of land claimants requires a closer examination of how the concept of *community identity* is (re)constructed within the context of land restitution.

In discussions on land restitution, claims for the restoration of rights in land are often rooted in the understanding of these rights for communities or for individuals. The constructs of *belonging*, *identity*, and membership of *community* are focal points in restitution cases, as are the feelings of loss (of assets and identity), despair, and powerlessness that accompany the narrative of land claims (James, 2007: 253; du Toit 2000: 82).

Community is a social construct which is informed by the context in which individuals live, and sometimes includes their shared experiences, identity, and values (Agrawal and Gibson 1999: 630). And the discussions of conceptions of community in relation to land restitution have focused on the nostalgia of the dispossession and the significance of land in constructing a community's identity (Fay and James 2009: 1). The late Professor Botman's (2013) remarks during the commemoration of the Natives' Land Act revealed the assumption that "...without land people don't have history, can't have an identity and don't have unity." Similarly, Neves (2006: 203) attested that "it is therefore through land that origins are described, that people affectively 'belong', membership of communities is asserted, and the full trappings of social citizenship claimed."

Inasmuch as land restitution is rooted in moral principles, it is still implemented within a legal framework which is often influenced by processes of State bureaucracy (Fay and James

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<sup>1</sup> The Natives' Land Act was enacted on 19 June 1913

2009: 1). Accordingly, this dissertation investigates how the concept of community identity is (re)constructed by the claimants in the Popela case study and how this (re)constructed identity has also been informed by the State's implementation of land restitution.

## **1.2 Research Problem, Rationale, and Objectives**

As a pillar of land reform, land restitution has been exacerbated by challenges of poor group cohesion and fractured social networks, which have burdened claimant groups especially at the domestic and household level (de Wet 1994: 367). Admittedly, there is substantial documentation and research on the finalisation of land claims, the role of the State in providing post-settlement support, and some literature on how the notions of community identity and community composition have been (re)constructed under land restitution. Thus, this dissertation seeks to contribute to the ongoing discussions on land restitution by setting out how claimants and the State understand and articulate a community's rights in land.

The Popela case study is significant because it illustrates the tensions in how community is (re)constructed as the basis of the right to restitution, as well as the underlying social factors that have informed this process. The Popela community first filed a community claim for restitution of the farm Boomplaats (located in Limpopo province). A further nine claimants who were also members of this community, lodged an alternative claim as individuals for the same farm. The Land Claims Court considered both land claims concurrently and dismissed the community's claim and the individuals' claim. Following an appeal, the Constitutional Court subsequently awarded the individual claimants restitution in 2007, but denied that there was a valid community claim. The Popela case thus functions as a useful opportunity to study the dynamics of the construction of community-based and individual rights within the restitution process.

## **1.3 Research Questions**

The above considerations provided a clear basis for defining research questions. Firstly, consider that community identity in the context of restitution is continually under (re)construction by claimants. For a claimant group to assert their rights in land as a community, they must present themselves as having a shared history and a common identity which is based on shared rules that previously governed their access to land, under the Restitution of Land Rights Act. However, communities are heterogeneous and there are

sometimes conflicts in the ways that claimants articulate their identity firstly as individuals, and then as members of a claimant group. As Walker (2002: 5) notes, land is inextricably linked to the social identity of many rural citizens. Fay and James (2009: 2) highlight that “moral discourses about righting past injustice through restitution may obscure its exclusionary aspects or its tendency to reinforce existing forms of social differentiation.”

A related observation is that the State seeks to redress past inequalities through the Restitution of Land Rights Act. Accordingly, the State occupies a central role in the submission of claims for restitution, the investigation of such claims, negotiation with the claimants and landowners, adjudication and ultimately the implementation of restitution (Fay and James 2009: 8). And, claimants are reliant on State resources such as archival evidence in order to legitimise their land claims (Ibid).

This understanding forms the basis of the dissertation. And this means that any meaningful discussion of these issues must begin with the primary research question: *How is community identity (re)constructed by the claimants at the household, extended family, and clan level, paying attention to gender and lineage?* In order to address this question, I have also considered the subsidiary concern: *How does the claimants’ (re)construction of community identity relate to the State’s implementation of restitution?*

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#### **1.4 Research Methods**

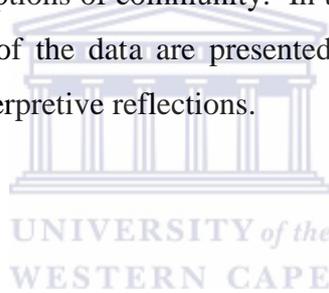
I undertook a *qualitative research design* because of its focus on the context in which data is obtained and measured (Baxter and Jack 2008: 544). Furthermore, I used *semi-structured interviews* as they allowed participants to actively contribute to the research process (Rapley 2001: 309). I undertook a *discourse analysis* that allowed me to understand how meaning is constructed through “... the study of language-in-use” (Gee 2011: 8). As de Cillia, Reisigl and Wodak (1999: 157) noted, a discourse is integrally linked to social practices and recognises that the participants also play a role in shaping (or constructing) their realities.

This dissertation aimed to analyse how key constructs relating to community and identity are understood by the Popela claimants, and to explore how this is aligned to the State’s implementation of restitution. Furthermore, I intended neither to adjudicate on who is legitimate in their (re)construction of community identity, nor to critique the land reform process. In undertaking the analysis of findings, I was guided by various authors, namely Charles van Onselen’s (1990; 1997) work on rural paternalism in the south-western

Transvaal, Stuart Hall's (1992) work on the construction of national identity and the sense of belonging. In addition to these authors, I also relied on James C. Scott's (1985; 1990) work on the power differential between the weak and those in positions of authority especially within the context peasant economies. Throughout this dissertation I have referred to the key constructs first identified by these authors to better articulate how I understand the (re)construction of community identity in the Popela land claim.

### **1.5 Outline of the Dissertation**

This dissertation is organised into six chapters, including this introduction. In the second chapter, I present the social and historical background of the Popela claim and the respective court judgements in addition to international court judgements on the definitions of community. In the third chapter, I present an overview of the literature on the historical context to the claim. The fourth chapter outlines the research design and methodology, as well as an overview of the conceptions of community. In the fifth chapter, the findings from the interviews and the analysis of the data are presented. Finally, in the sixth chapter, I present some conclusions and interpretive reflections.



## CHAPTER 2 – PRESENTATION OF THE POPELA CASE STUDY

### 2.1 Introduction

In this chapter, I present the historical background to the land claim and the demographic profile of the Popela claimants. The case was first heard in the Land Claims Court (herein after referred to as the LCC); an appeal was made to the Supreme Court of Appeal (herein after referred to as the SCA); ultimately the Department of Land Affairs<sup>2</sup> then referred the case to the Constitutional Court (herein after referred to as the Court). All three courts, respectively, deliberated on the claimants' assertions that they are a community or part of a community, as outlined in the Restitution of Land Rights Act (herein after referred to as the Restitution Act). In each judgement, the respective court applied a different approach in determining the nature of the claimants' rights in land as the Popela community and as individuals. As I outline below, this land claim centres on the claimants' relationship with the former landowners (the Altenroxels) prior to their dispossession, and how this relationship is understood by these claimants and the State.

### 2.2 Historical Profile of the Popela Claimants

#### 2.2.1 *The Land under Claim*

The farm under claim – Boomplaats 408 LT – is located in the Mooketsi area in Mopani District, which is located in the eastern part of Limpopo province (see Figure 1). The Popela community initially filed for restitution of the following farms: Boomplaats 408 LT, Goedgelegen 409 LT, Vreedzaam 822 LS, Ramatoelaskloof 411 LT, Boschplaats 407 LT and Goedgedacht 382 LT which are also adjacent to Ga-Sekgopo location (see Figure 2). The community, which comprised 197 claimants, organised themselves into the Popela committee (Popela Communal Property Association) which was formed in 1995 with the purpose of seeking restitution; Ramothaba Phineas Maake was the chairman of this first committee.

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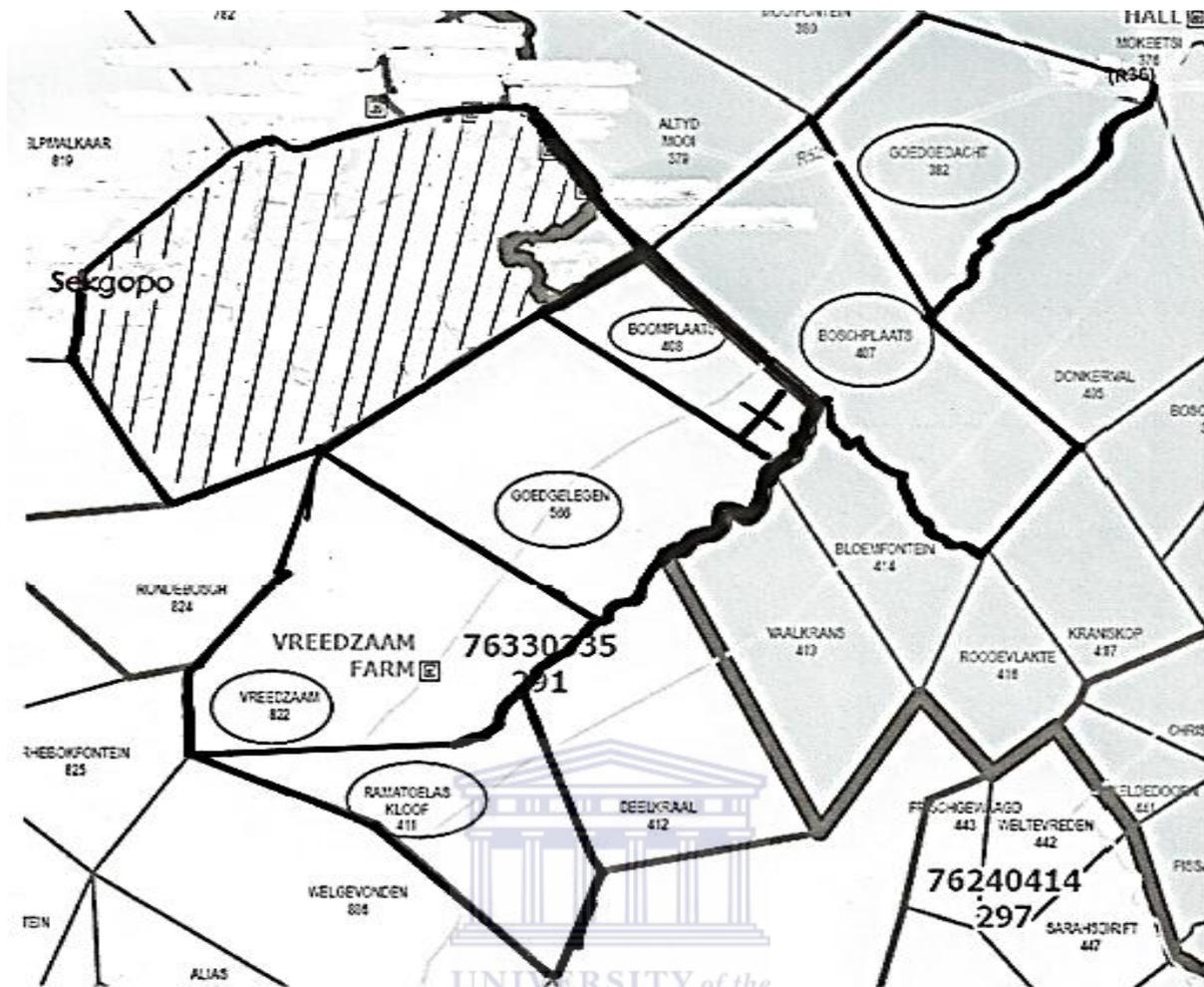
<sup>2</sup> The Department of Land Affairs is now the Department of Rural Development and Land Reform



is worth noting that according to Rudman (2009: 192) the Altenroxel family were also the owners of this company. By 2005, August Altenroxel had retired; however he continued to live on Goedgelegen 566.

Goedgelegen Tropical Fruits has since been incorporated into Westfalia Fruit which is one of the largest commercial growers of avocados and tomatoes in Limpopo. In order to understand the commercial value of the land under claim, it may be helpful to add that the Mooketsi Valley has a high concentration of commercial farms, with up to 65 percent of South Africa's tomatoes produced in this region (Department of Water Affairs and Forestry 2006).

Many claims for land restitution lodged in the former Northern Province (Limpopo) and Mpumalanga are based on labour tenancy or beneficial occupation as black South Africans were able to access and use land through rent tenancy and sharecropping prior to 1913 (Gilfillan 1998: 322). Consequently, it is estimated that up to 70 percent of Limpopo province is under claim for land restitution though this data varies by each district (Hall, Wisborg, Shirinda and Zamchiya 2013: 50). Moreover, Ramutsindela (2007: 464) argues that Bantustans in Limpopo were created in relative proximity to the areas from which claimants were removed citing many instances where communities were forcibly removed over relatively short distances so that they continued to supply labour to adjacent farms after having been dispossessed of their rights in land.



**Figure 2: Map of Six Farms initially under claim adjacent to Ga-Sekgopo location (Boomplaats is marked with an X) Source: Municipal Demarcation Board LIM333, Greater Tzaneen**

### 2.2.2 The Basis of the Community Claim

The claim on the six farms was based on the assertion that the community are the descendants of Chief Popela Maake, after whom the community is named, who is the last-born son of Chief Mampše who reigned over the Mooketsi region. The claimants explain that Mampše originated from Mametša and was part of a splinter tribe of the Bakgaga\*. Mampše is revered as a brave warrior who defeated several other tribes in the Mooketsi region during the mid to late 1800s. Claimants add that after Mampše defeated a tribe, he would install one of his descendants as the Chief of that tribe to rule in his stead. Accordingly, the claimants explain that they are the rightful rulers of the Mooketsi region because Mampše has founded many of the other tribes such as the Batlou, Letswalo, Malatji, Mogale, Mamaila and the Sekgopo chieftaincy.

Claimants explain that Mampše's grave lies on Goedgelegen 409, and that many years after Mampše died, Popela supposedly settled on Boomplaats to found the Popela community.

According to Mönnig (1967: 229) it was custom for the high-ranking sons of a baPedi Chief to break away from the tribe following the Chief's death in order to found their own clans, and these sons would typically be accompanied by their brothers who were born of the same mother. By virtue of his seniority as the oldest known descendant of Mampše, Popela is regarded as the founding father of this community. Mönnig (1967: 253-255) highlights that amongst the baPedi, a Chief is "... the father of his tribe, its executive head, commander in chief of its army, its legislator and supreme judge, and its supreme priest and ritual head."

The Popela community claimants are derived from the Maake, Malahlela, Malemela, and Ramashaba clans. According to the claimants, Popela Maake's sisters married outside the clan but were unhappy in their respective marriages. Hence, they returned to Boomplaats with their children at some point in the clan's history. These children carried their fathers' surnames (Malemela, Malahlela and Ramashaba) and proceeded to inter-marry amongst the Maake clan, which has further expanded the Popela community. Delius (1996: 21) comments that it was the custom amongst the baPedi to marry their cousins as it would strengthen family bonds. Furthermore, claimants maintain that Chief Popela had 12 wives and over 80 children and these children in turn entered into polygamous marriages.

The claimants argue that Boomplaats was initially part of a designated black area as it shares a boundary with Ga-Sekgopo, and they explain that the fence separating the farms from Ga-Sekgopo was only erected in recent years. In this respect, Mr Gassel (then owner of Boomplaats) wrote to the Transvaal Native Affairs Department (herein after referred to as the NAD) in 1926 seeking permission to erect a fence which would run along the mountain to separate the farm and Ga-Sekgopo. What is more, the claimants maintain that the Maake clan lived along the foothills of the mountains surrounding Ga-Sekgopo before it was declared a native location under Chief Sekgopo.<sup>4</sup> However, the claimants do not provide any clarity as to how Chief Popela and Chief Sekgopo maintained good relations or how their respective chieftaincies were able to co-exist in such close proximity.

The claimants' historical account differs from the records of the NAD survey published in 1905. According to the NAD Mampjia<sup>5</sup> (who claimants believe is a reference to Mampše) ruled the Bakgaga\* ba Mahupa clan, which settled in Duiwelskloof, until he died in the mid-

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<sup>4</sup> Chief Sekgopo was granted a Native Location in 1890; Ga-Sekgopo was later part of the Lebowa homeland/Bantustan (Native reserve). Lebowa was declared a self-governing territory in 1972.

<sup>5</sup> It is possible that Mampjia is the incorrect spelling of Mampše; the same could be said for Mahupa which is taken to mean Maupa and Sekhopo taken to mean Sekgopo.

1870s. Incidentally, the NAD report states that Mampjia took refuge with Chief Sekhopo and that he ultimately died in the Mooketsi area. According to this report, Mampjia was succeeded by Sitibele, who was succeeded by Mahupa. Mahupa participated in the rebellion of 1894 against the Boers and subsequently fled to Mashonaland (Zimbabwe) to escape imprisonment, only returning to South Africa in 1902. Consequently, the report concludes that the members of the Bakgaga ba Mahupa tribe were all living on white-owned farms by the early 1900s (NAD 1905).

I need not explain these deviations, so I will only highlight that many of the State surveys on African tribes in the early 1900s rely almost exclusively on the interpretations of ethnologists, yet at that time, not all tribes were formally recognised by the Government of the day. This bears some relevance to the claim as I outline below.

In 1937, the NAD tried unofficially to restore ancient tribal land to Chiefs in Letaba District (now incorporated into Mopani District) under the Natives' Trust and Land Act (Hay 2012: 373). However, this was unsuccessful because of the overlapping rights in land; several claims made by Chiefs in the region were dismissed as they could not prove that their forebears were the rightful owners of these farms (Ibid). Specifically, in the Letaba district Hay (2012: 374) argues that "... from 1840 to 1937, a period of almost a hundred years, settlement on the land and the balance of 'strength' between the different chiefs in the area had been dynamic and undergone significant change." Consequently, the NAD had discovered the difficulty in resolving these disputes also stemmed from the fact that "farm boundaries clearly do not correlate with 'tribal' boundaries, and tribal boundaries change" (Hay 2012: 373).

### **2.2.3 The Referral of the Claim**

Ultimately, the Regional Land Claims Commissioner (herein after referred to as the RLCC) referred only the claim for restitution of Boomplaats 408 LT to the LCC for judgement on the community claim, in May 2000. In August 2001 the RLCC referred an alternative claim, by nine individuals who were also members of the Popela community, for restitution of the same farm to the LCC. As explained in the LCC,<sup>6</sup> the "individual claims are submitted as an alternative to the community claim, and will have to be considered if the community claim fails." Under the individual claim, the claimants sought restitution for the portion of land on

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<sup>6</sup> *Popela Community v Department of Land Affairs and Goedgelegen Tropical Fruits (Pty) Ltd* 2005 (2) SA 618 (LCC) para 2.

which their homesteads lay as well as the land immediately surrounding it, which was approximately 800m<sup>2</sup>. In addition, these individuals jointly claimed the remaining land for grazing and cropping, to be held in undivided co-ownership.

In March 2003, the claimants on the individual and community claims reduced the size of the land under claim. The claim now concerned the cadastral unit, formerly known as the remaining extent of Boomplaats 408 LT, but excluded certain portions of the land on which claimants had previously worked.<sup>7</sup>

These individual claimants lived and worked on Boomplaats in 1969 when their rights in land were terminated by the landowners. All of whom were related to Chief Popela Maake (either as his sons, daughters-in-law or his nephews). The individual claimants were Tholo Johannes Maake, Ramothaba Phineas Maake, Mabule Isaac Maake, Mabu Petrus Maake, Seakwane Wilson Malemela, Rapelo Abram Maake, Mokwati David Maake, Mamoribula Maake\* and Mmaselelo Mosibudi Maake\*. It is worth noting that Mamoribula Maake\* and Mmaselelo Mosibudi Maake\* are the wives Masekela William Maake and Josias Leubela Maake respectively; Masekela William Maake and Josias Leubela Maake are former labour tenants who passed away before the claim was referred for judgement. Very briefly the first seven claimants that I have listed are all men; these are the sons and one nephew of Popela Maake (being Malemela) and the final two claimants that I list are the wives of Popela Maake's sons (see Appendix I).

From 1969, the nine individual claimants continued to live on Boomplaats and worked as wage labourers for the Altenroxels. However, eight of these originally dispossessed individuals have since passed away and are substituted by their descendants as claimants and co-claimants. Most of their descendants now live in the village of Ga-Sekgopo known as "*phukubje*" (the place of the jackals) which is adjacent to Boomplaats, as Figure 1 indicates. From 1969, the claimants and their descendants began to vacate Boomplaats (either by choice or by eviction) – this relocation from Boomplaats continued even after 1995 when the Popela claimant group formed their Communal Property Association (herein after referred to as a CPA).

I should explain the shifting patterns in agricultural production on Boomplaats in order to provide the context surrounding the dispossession. The claimants share that following the

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<sup>7</sup> I do not have any record of the actual hectares under claim.

sale of the farm to Goedgelegen Tropical Fruit (now Westfalia Fruit), they observed the following key changes: when the farm was still owned by the Altenroxels, they almost exclusively farmed tomatoes and papaya; when Goedgelegen bought the farm, the new owners then started to farm avocados and mangoes. Westfalia Fruit is one of the largest growers of sub-tropical fruit in Limpopo and specialises in production of avocado and tomatoes; Westfalia is also a subsidiary of Hans Merensky Holdings. After 1993, the claimants explain that Westfalia told many of their elderly parents to vacate the farm as they were too old to continue working – Westfalia then increased production and introduced a new workforce. These are some factors which prompted the Popela clan to file for restitution. I now outline the court proceedings and the respective judgements of the various courts that heard this case.

### **2.3 Land Claims Court Judgement**

The LCC heard evidence from the claimants as well as the respondent before deciding on the individual and the community claims for restitution. The judgement, *Popela Community v Department of Land Affairs and Goedgelegen Tropical Fruits (Pty) Ltd* 2005 (2) SA 618 (LCC), was handed down in June 2005. The RLCC submitted that the claimants were a community as they exercised their rights in land independent of the successive landowners on Boomplaats. Further, the RLCC submitted that the claimants were granted rights in land through shared user rules, in accordance with the requirements for a community, as defined in the Restitution Act.<sup>8</sup>

The claimants called witnesses who testified that following Chief Popela's death in 1940, they elected Mr Petrus Maake as the "Induna"<sup>9</sup> (sectional head in a community) whose duties were to resolve any disputes amongst the clan. Mr Wilson Malemela testified that Petrus Maake was an authority on Boomplaats, who allocated ploughing fields and indicated where homesteads could be built. The witnesses did not make any reference to Chief Popela's role in the clan whilst they lived on Boomplaats, as they had either never met him or they were too young to remember him.

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<sup>8</sup> The Restitution of Land Rights Act defines community as "any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group."

<sup>9</sup> The Constitutional Court defined an "Induna" as the head of a section of a community, vested with authority to decide traditional disputes.

The respondent called witnesses who argued that the Popela claimants were reduced to labour tenancy whilst living on Boomplaats, and that their labour tenancy was subsequently terminated in 1969 as decided by the Altenroxels. Thereafter, the labour tenants were hired as wage labourers (farm workers). The Altenroxels ordered the claimants to stop farming their own plots and required them to dispose of their livestock herds within two years. Prior to 1969, there were already tenant families that had relocated to Ga-Sekgopo. These increased in number until by 1969 there remained only nine tenant homesteads on Boomplaats. These witnesses further corroborated that from 1938 to 1968, there were 32 individual huts that belonged to labour tenants working on Boomplaats, and by 2001 there were only six former-tenant families living on the farm.

The former landowner, Mr August Altenroxel testified that the claimants were all entitled to plough an area of 45 hectares during the time they lived on Boomplaats. He explained that the labour tenants were allowed to build huts and were entitled to cropping and grazing rights on Boomplaats. This was in exchange for working on the farm for two days a week without any pay; tenants' wives and children also provided labour on Boomplaats under this arrangement. Further, August Altenroxel stated that labour tenants were allowed to keep a maximum of ten head of cattle, as well as some sheep and goats, per homestead. Yet, the claimants contended that Popela Maake alone kept up to 200 head of cattle, as well as other small livestock. August Altenroxel stated that he knew of Popela Maake but he refuted that there was a "Kgoši" (Chief) who resided at Boomplaats; August had worked on Boomplaats since he was 17 (in 1951). Furthermore, he testified that Petrus Maake was a foreman appointed by the Altenroxels to supervise the labour tenants.

This argument was supported by the testimony of Mr MF Maake (no relation to the claimants) who was a self-proclaimed expert on the tribes in the Lebowa homeland. Mr MF Maake was certain that Petrus Maake was not an "Ntona" but rather an "Induna". He testified that the former is appointed by a "Kgoši" (Chief) to represent him in a tribal area and can be regarded as a Headman who presides over a given population, whilst the latter is akin to a foreman appointed by management to supervise workers. (The Constitutional Court later established that this argument was spurious; an "Ntona" and an "Induna" carry the same authority in communities).

Mr Bertie Van Zyl, a prominent farmer in Mooketsi who testified for the respondent, used the term "*batho ba go berekela boroko*" (people who work for a place to sleep) as a substitute

for the term “labour tenants” in his testimony, which further articulated the exact terms of tenancy on farms in the region.

### **2.3.1 Judgement on the Community Land Claim**

As mentioned before, the RLCC requested that the LCC first decide on the community claim to establish if the Popela claimant group was eligible for restitution as a community, as stipulated in the Restitution Act. In the event that this community claim failed, the LCC was requested to consider the individual claim. The community claim was dismissed on these key grounds: the Popela community was not found to have been dispossessed of its right in land (if that community even existed to begin with) and the dispossession did not occur after 19 June 1913.

The claimants’ legal counsel argued that the Popela community was able to retain its identity on Boomplaats under the authority of Chief Popela, and later Petrus Maake as Headman, much like the Ndebele-Ndzundza community. The LCC ruled that the Popela claimants did not have “an accepted tribal identity” and hierarchy, unlike the claimant group of *Ndebele-Ndzundza Community: In re Farm Kafferskraal*.<sup>10</sup> Despite living on a white-owned farm, the LCC ruled that the Ndebele-Ndzundza community had retained their identity<sup>11</sup> as “the Ndzundza branch of the Ndebele tribe.” The LCC contended that the Ndebele-Ndzundza community remained under the authority of its Chief, had shared user rules which determined access to the land and were not supervised by the white landowners. Moreover, the LCC argued that the Ndebele-Ndzundza retained “...the ancient customs and traditions of the Ndebele-Ndzundza people” whereas the Popela claimant group<sup>12</sup> did not retain their customs and traditions when they lived on Boomplaats.

Furthermore, the LCC ruled that the Popela community was not dispossessed of its rights in land after 19 June 1913, as the community had already lost indigenous title by the time Boomplaats was first registered in private ownership in 1889. Again making reference to *Ndebele-Ndzundza Community: In re Farm Kafferskraal* the LCC ruled that whilst “...the grant of registered title does not necessarily extinguish communal ownership under indigenous law, in the present case [Popela] it must have done so.”<sup>13</sup> The LCC inferred from

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<sup>10</sup> *Popela Community v Department of Land Affairs and Goedgelegen Tropical Fruits (Pty) Ltd* 2005 (2) SA 618 (LCC) para 53-54

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

<sup>13</sup> *Supra* para 61

the individual claimants' respective claim forms that they sought restitution of their indigenous rights in land as the Popela community. Moreover, the claimants' legal counsel submitted that the Popela community was "a community of labour tenants" which was most likely informed by the LCC ruling in favour of the claimants *Ndebele-Ndzundza Community: In re Farm Kafferskraal*; however the LCC did not find any evidence to support that submission in the Popela land claim.<sup>14</sup>

Here, I briefly discuss the *Ndebele-Ndzundza Community: In re Farm Kafferskraal* ruling. The farm under claim was Kafferskraal 181 JS in Groblersdal (Mpumalanga Province). The Ndebele-Ndzundza claimants argued that they were the *de facto* (factual) owners of Kafferskraal,<sup>15</sup> as no white person had lived on the farm since it was registered in private ownership in 1872. The claimants were able to support this argument with archival records and communication from the registered landowner that the farm had largely remained under the control of the claimants and their forebears. However, the Ndebele-Ndzundza community were refused the opportunity to purchase Kafferskraal as it was not located in an area earmarked for Native occupation. Consequently, the State purchased another farm, Goedgedacht 379 in Limpopo province (which later formed part of the Lebowa homeland), and in 1939 many of the community members relocated to this new farm. However, some other Ndebele-Ndzundza community members remained on Kafferskraal and were consequently reduced to labour tenancy. As the LCC<sup>16</sup> explained in this case, "forceful removal is not a pre-requisite for dispossession." The LCC ruled that it was due to past discriminatory laws and practices "that the claimant was turned into a community of labourers or labour tenants on their own land or land which they had occupied as their own."<sup>17</sup>

### **2.3.2 Judgement on the Individuals' Land Claim**

Having determined that the claimants were not a community, the LCC considered the individuals' land claim. The individuals' claim was subsequently dismissed on these key grounds: the dispossession did not occur after 19 June 1913 and the dispossession was not as a result of racially discriminatory laws and practices.

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<sup>14</sup> *Popela Community v Department of Land Affairs and Goedgelegen Tropical Fruits (Pty) Ltd* 2005 (2) SA 618 (LCC) para 56

<sup>15</sup> *Ndebele-Ndzundza Community: In re Farm Kafferskraal* 2003 (5) SA 375 (LCC)

<sup>16</sup> *Supra* para 20-21

<sup>17</sup> *Ibid*

However, the LCC found that the labour tenants held individual rights in land due to the nature of their relationship with the Altenroxels. Furthermore, the LCC ruled that the claimants did not hold any rights in common in 1969 when labour tenancy was terminated. Each tenant was given a choice to accept the new system of wage labour or to leave the farm. And, the Altenroxels maintained that none of the tenants were forced to leave Boomplaats, and that those who left did so voluntarily.<sup>18</sup> Thus, the LCC found that the individual claimants had a right in land, because they were dispossessed of their grazing and ploughing rights as labour tenants in 1969.

Next, the LCC determined whether the dispossession was a result of racially discriminatory laws or practices. To determine factual causation and legal causation, the LCC referenced the judgement in the *Minister of Land Affairs and Another v Slamdien and Others*.<sup>19</sup> In this judgement, the LCC first determined factual causation by applying the *condictio sine qua non* (without which it could not be) test to establish if an act or an omission was a necessary condition for a particular outcome or result.<sup>20</sup> Thereafter, the LCC determined legal causation by establishing whether the abovementioned outcome was a direct result of the act or omission.

The claimants' legal counsel argued that the Altenroxels had terminated labour tenancy due to the Bantu Laws Amendment Act 42 of 1964. Under Section 22 of this legislation, the State prohibited the registration of any new labour tenancy contracts, and further prohibited farmers from employing labour tenants, as stipulated by the Minister of Native Affairs. In addition, the claimants' legal counsel argued that the Department of Bantu Administration had also compelled farmers to terminate labour tenancy by 1970.<sup>21</sup> However, the LCC ruled that there was no factual connection between the decision to terminate labour tenancy and the broader legislation – partly because the Altenroxels had already terminated labour tenancy prior to 1970. Thus, the LCC determined that the Altenroxels had terminated labour tenancy to increase productivity. The LCC concluded that the claimants benefitted from this termination of labour tenancy, as a monthly wage was introduced in lieu of their grazing and

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<sup>18</sup> *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) para 45

<sup>19</sup> *Minister of Land Affairs and Another v Slamdien and Others* 1999 (1) BCLR 413 (LCC) para 38

<sup>20</sup> *Ibid*

<sup>21</sup> Department of Bantu Administration and Development issued a Labour Guidance Letter on 25 August 1969, Paragraph 2 (a) (ii) "Farmers should gradually decrease labour tenants in their duties so that the system at the end of 1970 has vanished as previously indicated..."

cropping rights. This was informed by August Altenroxel's testimony that he did not believe the claimants were happy with the labour tenancy arrangement.<sup>22</sup>

In addition, the LCC made reference to *In Re Kranspoort Community*, in which the LCC established causation by determining if the Restitution Act was intended to remedy the particular loss of rights in land<sup>23</sup>. In the Popela land claim, the LCC ruled that the loss of individual grazing and cropping rights, as a result of the termination of labour tenancy, was not considered the type of dispossession that the Restitution Act sought to remedy.

## 2.4 Supreme Court of Appeal Judgement

The case was then referred to the SCA, *Popela Community and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2006 (2) SA 21 (SCA), and judgement was handed down in September 2006. The SCA first deliberated on the individual claim and upheld that the claimants were dispossessed of their individual grazing and cropping rights. Thereafter, the SCA considered whether the dispossession was the result of past, racially discriminatory laws or practices as outlined in the Restitution Act. This consideration firstly took into account the effects of the aforementioned Bantu Laws Amendment Act. The SCA subsequently ruled that this legislation did not result in the termination of labour tenancy on Boomplaats.

Next, the SCA considered whether the dispossession was the result of a past, racially discriminatory practice. The claimants' legal counsel contended that, by virtue of the prevailing political climate of separate development under Apartheid, the Altenroxels had terminated labour tenancy in accordance with the regulatory framework imposed by the State.<sup>24</sup> However, the SCA ruled that the Altenroxels' decision to terminate labour tenancy could not be attributed to any racially discriminatory practice as mandated by the State. Furthermore, the SCA contended that other farmers who were members of the Mooketsi Farmers' Association were already terminating labour tenancy "as early as 1960" which was not influenced by any incentive or regulation introduced by the State. The SCA ruled that in all likelihood the Altenroxels' decision was beneficial to the labour tenants since they did not experience good crop yields or successful livestock farming because of the nature of their tenure.<sup>25</sup> In summary, the SCA ruled that there was no discernible causal link between the

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<sup>22</sup> *Popela Community v Department of Land Affairs and Goedgelegen Tropical Fruits (Pty) Ltd* 2005 (2) SA 618 (LCC) para 58

<sup>23</sup> *Kranspoort Community Re: Farm Kranspoort* 48 LS 2000 (2) SA 124 (LCC) para 72

<sup>24</sup> *Popela Community and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2006 (2) SA 21 (SCA) para 13-14

<sup>25</sup> *Supra* para 12

Altenroxels' decision to introduce the wage system and a past, racially discriminatory law or practice.

With respect to the community claim, the SCA upheld that “the farm residents never belonged to a group cohesive enough to be characterized as a community in terms of the Act.”<sup>26</sup> However, the SCA did not dismiss the community claim on these grounds. Rather, they argued that<sup>27</sup> “if the individual claimants were not dispossessed in the circumstances contemplated by the Act no community of which they formed a part can be said to have been dispossessed within the contemplation of the Act.” Thus, the SCA used the dismissal of the individuals' land claim to further dismiss the community's land claim.

Ultimately, the SCA dismissed the appeal and imposed a cost order on the Department of Land Affairs and the claimants on the grounds that the individual claimants had subjected the LCC to “wide-ranging criticism” through their appeal.<sup>28</sup> What is more, the SCA observed that the Department of Land Affairs had dedicated substantial resources toward the Popela community claim as it was significant for the implementation of land restitution, and had far-reaching consequences for similar land claims submitted on the basis of labour tenancy.

## **2.5 Constitutional Court Judgement**

The Department of Land Affairs appealed to the Constitutional Court – *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) – to have the cost order overturned and for the claimants to be awarded restitution of Boomplaats. The Court handed down judgement in June 2007. The Court began its deliberations with the understanding that the case rested on<sup>29</sup> “whether the termination of labour tenancies by private farmers entitles labour tenants to redress under the Restitution of Land Rights Act”.

### ***2.5.1 Judgement on the Community Claim and the Individual Claim***

With respect to the community claim, the Court elaborated on the history of forcible dispossession, beginning with the loss of indigenous land rights experienced by the Popela community over the years, until the community was coerced into labour tenancy. The Court explained that the claimants' forebears exercised undisturbed indigenous rights whilst living on Boomplaats as they raised families, buried the deceased in the communal graveyard in

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<sup>26</sup> Supra para 16

<sup>27</sup> Supra para 17

<sup>28</sup> Supra para 18

<sup>29</sup> *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) para 1

accordance with their customs (practising ancestor reverence), and subsisted on the land by means of cultivation and livestock rearing.<sup>30</sup> The Court stated that when the Altenroxels began to farm, they found the Maake clan already living on Boomplaats as labour tenants. By 2007, the Court added, three tenant families still lived on Boomplaats whilst the others had since relocated to Ga-Sekgopo.

Within this context, the Court reiterated that the loss of indigenous title falls outside the scope of the Restitution Act as there was no remedy available to claimants dispossessed of their rights in land prior to 1913. However, the Court elaborated that registered title does not extinguish indigenous rights in land, making reference to the abovementioned *Ndebele-Ndzundza Community: In re Farm Kafferskraal*. Furthermore, the Court explained that the Popela claim differed from the Ndebele-Ndzundza claim, as the RLCC had submitted the Popela claim on the basis of the loss of labour tenancy rights.<sup>31</sup>

Moreover, the Court pointed out that the Popela claimants had not sought to have their indigenous rights in land restored to them, unlike the claimants *In Re Kranspoort Community*. In order to understand this reference, I digress again to provide details of the claim in which the Kranspoort community sought restitution of the farm Kranspoort 48 LS in the Soutpansberg region (Limpopo province). Kranspoort was initially purchased by the Dutch Reformed Church in 1863 after which the Church allowed the inhabitants to live on the farm as missionary converts. This practice continued until 1956 when the State began to remove some members of the Kranspoort community under the Group Areas Act 41 of 1950. By 1964, the State had forcibly removed all families (including those with a permit to remain on the farm) from Kranspoort.

The Kranspoort claimants subsequently submitted a claim for restitution, as a community comprising 78 people who were either the originally dispossessed individuals or the direct descendants and other relations of such persons.<sup>32</sup> In the event of this community claim being dismissed, the same claimants submitted an alternative claim for restitution, as individuals. These claims were submitted on the basis of beneficial occupation, since the residents of the farm derived their rights in land from membership to the mission station.

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<sup>30</sup> Supra para 36

<sup>31</sup> Supra para 23

<sup>32</sup> *Kranspoort Community Re: Farm Kranspoort 48 LS 2000 (2) SA 124 (LCC)* para 43-45

Furthermore, the Kranspoort community sought restoration of their rights in land, and for those rights in land to be upgraded to full ownership as stipulated in Section 35 (4) of the Restitution Act.<sup>33</sup> *In Re Kranspoort Community*, the LCC determined that in order for the community claim to be considered, there must be a community, or part thereof, at the time when the claim was submitted and decided; however the community composition need not be the same.<sup>34</sup> In this claim, the LCC ruled that the Kranspoort community was dispossessed of their rights in land. Furthermore, the LCC ruled on the feasibility of restitution by taking into account the size of the land under claim, as well as the number of claimants who were living on the farm Kranspoort at the time of the 1955/6 removals – 157 families (estimated at 800 individuals).<sup>35</sup> This consideration bears some significance for the Popela case study as I will explain in subsequent chapters of the dissertation.

Returning to the Popela case study, the Court found that the LCC had wrongly dismissed the community claim on the basis that the claimants did not conform to the accepted notions of a community.<sup>36</sup> The Court found that Popela claimants were indeed a community at the time of dispossession of indigenous land rights in 1889, as well as in 1969 when they were dispossessed as labour tenants, and the Court ruled that the Popela community still existed when the claim was lodged in 1995. This ruling was made with an understanding of the systematic dispossession suffered by rural communities throughout history.<sup>37</sup>

With this understanding of the nature of the claimants' rights in land prior to 1969, the Court ruled that the Popela community did not derive rights in land from shared rules because each tenant had a separate and individualised relationship with the Altenroxels. Further, "the registered owner made it clear that he did not heed any rules of the community on land occupation."<sup>38</sup> The Court emphasized that labour tenancy was "a transaction between two individuals rather than one between the landlord and a community of labour tenants."<sup>39</sup> Accordingly, the Court ruled that the individual claimants were dispossessed of their individual rights in land as labour tenants.

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<sup>33</sup> Under Section 35 (4) the LCC may restore to claimants a right in land or grant such rights on alternative land owned by the State, and the LCC may also adjust the nature of such rights that were previously held by the claimant/s which includes determining the type of tenure that the claimants will enjoy.

<sup>34</sup> *Kranspoort Community Re: Farm Kranspoort 48 LS 2000 (2) SA 124 (LCC)* para 31

<sup>35</sup> *Supra* para 87

<sup>36</sup> *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd 2007 (6) SA 199 (CC)* para 43-44

<sup>37</sup> *Ibid*

<sup>38</sup> *Supra* para 45 - 46

<sup>39</sup> *Ibid*

### 2.5.2 *Judgement on Discriminatory Laws and Practices*

The Court then deliberated on whether the labour tenants were dispossessed of their rights in land as a result of past, discriminatory laws and practices. In order to give context to the socio-political climate in which the Altenroxels terminated labour tenancy, the Court outlined the legislative framework from 1913 (when the Natives' Land Act was passed) up until 1970 (when the State prohibited labour tenancy). Thus, the Court explained how all these Acts introduced by the State served to curtail the rights in land for black South Africans.<sup>40</sup>

Furthermore, the Court outlined that the Altenroxels were in a position of authority over the claimants precisely because of the State's discriminatory laws and practices. The Court highlighted that the nature of labour tenancy (as an individualised contract) required that each landowner amend the labour arrangement with each tenant on their respective farms. Consequently, labour tenants were coerced into the system of wage labour as they did not possess the social and economic power to refuse the new terms of their tenancy. This, the Court explained, differed from State-led forced removals as in other cases of dispossession.<sup>41</sup>

The Court awarded the individual claimants restitution of the remaining extent of Boomplaats 408, excluding the land on which the tenants had formerly worked. The Court also dismissed the cost order imposed by the SCA.<sup>42</sup> However this claim has not yet been finalised and the claimants are still awaiting restitution eight years later. I was informed that the RLCC had initially negotiated for the purchase of only 55 hectares from Goedgelegen Tropical Fruits (now Westfalia Fruit) to be restored to the individual claimants (Mabunda 2013). Since, 2008 the RLCC has committed to restoring the claimants to a larger portion of Boomplaats, and has considered purchasing the entire farm, due to the inability of the land to accommodate all the direct descendants of the individual claimants.<sup>43</sup> As part of this agreement, the RLCC had proposed that the claimants enter into a strategic partnership with Westfalia, which has since been rejected by the descendants of the nine individual claimants (Mohale 2015). Roodt (2013) adds that the delays in finalising the claim can be attributed to Westfalia's refusal to allot the claimants a portion of land on which they will have access to water; some of the claimants' descendants wish to return to Boomplaats to undertake livestock farming and subsistence farming.

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<sup>40</sup> Supra para 57-63

<sup>41</sup> Supra para 74

<sup>42</sup> Supra para 83

<sup>43</sup> *Land Access Movement of South Africa v Chairperson of the National Council of Provinces*

The claimants shared that the RLCC was due to award them with nine title deeds, by mid-2015 but this has not yet happened. At the time of writing this dissertation, the Popela claimant group has filed Court papers with the Constitutional Court, along with five other applicants in order to compel the State to prioritise the finalisation of existing claims before re-opening the submission of new land claims in the *Land Access Movement of South Africa v Chairperson of the National Council of Provinces* case (herein after referred to as LAMOSA case).<sup>44</sup> In the LAMOSA case, with court papers compiled in early 2015, the Popela claimants are one of six applicants who oppose the Restitution of Land Rights Amendment Act 15 of 2014 under which the State has extended the cut-off date for claimants to file for restitution to 30 June 2019. The Amendment Act stipulates that priority be given to the finalization of those claims lodged before 31 December 1998 (the earlier cut-off date for the lodgement of land claims). And on this basis the Popela claimants, duly represented by the Legal Resources Centre (herein after referred to as the LRC) will return to the Constitutional Court to seek finalisation of their land claim (at the time of writing this dissertation the court date had not been set). Also in the LAMOSA case, the claimants appeal to the RLCC to purchase Boomplaats for the claimant group to be held and managed communally under the Popela CPA as opposed to being awarded individual title deeds.

## 2.6 Discussion

The Popela case study demonstrates that the interpretation of the Restitution of Land Rights Act can be applied to dismiss claimants' rights in land, as witnessed in the LCC and the SCA. Specifically, the LCC judgement highlights the assumption that a claimant group can only be considered to be a community if it has a tribal identity under the authority of a Chief, such as the Ndebele-Ndzundza community. As mentioned, it was the Popela claimants' legal counsel which sought to draw the correlation between the Ndebele-Ndzundza claimants and the Popela claimants, although the latter was a claim made by labour tenants. This comparison may have been well-intentioned, if only to highlight the variances in how claimant groups have exercised their rights in land, and how the State has understood these rights. In this context, however, the comparison between the two claimant groups served to reinforce the notion of rural communities as homogenous tribal groups. Even when the Popela claimants asserted that they are indeed a community which currently comprises the descendants of

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<sup>44</sup> Ibid

Chief Popela, the LCC was then able to use the Ndebele-Ndzundza claimants as the barometer for establishing a community's rights in land.

The claimants failed in their attempts to secure their aboriginal title as the descendants of Mampše and, more recently, Popela Maake. In fact, these attempts resulted in the respective court rulings that the claimants did not hold any rights in land in common on Boomplaats, dating as far back as 1889. This is reminiscent of Robins' (2000: 61) observation that in cases of restitution based on aboriginal title, when communities have attempted to illustrate that their "tribal identity" is continually under construction and is not fixed, it has inadvertently resulted in these claims being undermined or dismissed.

To quote the 1976 judgement for the Mashpee Warnpanoag Tribal Council, Inc., the attempt to show that the Mashpee community identity has been (re)constructed was perceived by the Judge in this case as "...fuzzy and opportunist" (Ibid). To better understand the parallels between the two claimant groups I will outline some details of the Mashpee land claim. In August 1976, the Mashpee Warnpanoag Tribal Council, Inc., claimed restitution on 16,000 acres (6475 ha) in Cape Cod (Massachusetts, USA). The key issues to be considered were: is the Mashpee Tribe in fact an Indian Tribe as determined by the US legislation and is this tribe dispossessed of rights in land through past discriminatory laws. The Mashpee lost this case as they failed to show that they conformed to the accepted notions of an Indian Tribe, but in 2007 following several appeals, the Mashpee received Federal recognition as an Indian Tribe.

The Mashpee case, though premised on a different set of legislation in another part of the world, bears striking resemblance to the Popela case study, in that the Mashpee community identity was contested by the US Federal Court despite their assertions that they are in fact members of an Indian Tribe. Thus, the legal definitions of community (and the interpretation of the relevant legislation) in the context of land claims sometimes serve to uphold claimants' rights in land and in other instances serve to undermine their claims.

More locally, there are other instances which highlight the limitations of how the Restitution Act has been interpreted as seen *In Re Makhukhuza Community Claimants*<sup>45</sup>, where the Makhukhuza Tribe (based in KwaZulu-Natal) comprising 98 households submitted a claim for restitution of 19 farms in 1998. The RLCC in KwaZulu-Natal initially awarded the Makhukhuza community restitution; however the landowners in this case subsequently

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<sup>45</sup> *Makhukhuza Community Claimants* (LCC 04/2009) [2010] ZALCC 26

argued that the claimants were in fact labour tenants. After and after further investigation, it was found that the office of the RLCC of KwaZulu-Natal had made an administrative error in how the claim was categorized. Consequently, the Makhukhuza community was awarded 966 hectares under restitution as a claimant group, though they were recognised as labour tenants. This case, though different from the Popela land claim, also highlights the technicalities in the implementation of restitution.

In the Popela case study, the Constitutional Court explained that the Restitution Act defines community broadly, so as to accommodate a variety of claimant groups. Accordingly, the Court's finding that the Popela claimants have remained a community since the 1800s took into account the socio-historical context in which the claimants were dispossessed of their rights in land even as labour tenants. As I will outline in the dissertation, claimant groups are compelled to (re)construct their community identity in accordance with these aforementioned assumptions in order for the State to recognise their rights in land.

During the respective court cases (heard in the LCC, SCA and Constitutional Court), comparisons have been made between the Popela claimants and other claimant groups which have been awarded restitution. But such comparisons fail to acknowledge that communities have continued to exist, whether or not a court of law or act of parliament acknowledges their existence. Thus, I think it important to bear in mind that the Popela land claim is unique; at the heart of the inquiry is how the claimants and the State have understood labour tenancy, and the historical context which has informed this type of labour arrangement.

I would argue that many of the notions of community which were formulated by the LCC and the SCA have been founded on social science research in which communities are thought to have high levels of group cohesion and elements of commonality as suggested by Kaufman (1959). Accordingly, these notions of community have further influenced how the Restitution Act has been interpreted by the LCC in the Popela case study and other land claims such as *Ndebele-Ndzundza Community: In re Farm Kafferskraal* and *In Re Kranspoort Community*. Moreover, all three court judgements demonstrate that the State does not hold a unitary view on community construction (or composition) within land restitution. Thus, the Popela case study highlights that in some instances, land claimants and the State (re)construct different notions of community identity for the purposes of upholding or denying claimants' rights in land in the process of restitution.

## CHAPTER 3 – REVIEW OF THE LITERATURE: COMMUNITIES’ RIGHTS IN LAND

### 3.1 Introduction

As mentioned above, the Restitution of Land Rights Act enables communities, individuals or part of a community, which have been dispossessed of a right in land subsequent to 19 June 1913, to claim for restitution. This right in land can be registered or unregistered and possible claimants include labour tenants, sharecroppers, beneficiaries of a trust, and those claimants that enjoyed beneficial occupation of the land for at least ten years prior to the dispossession. Specifically, Section 1 (a) of the Restitution of Land Rights Act defines community as “any group of persons whose rights in land are derived from shared rules determining access to land held in common by such group, and includes part of any such group.”

I should also highlight that the 1913 cut-off date as the basis for restitution has been challenged by some communities, land activists and researchers on the grounds “...[that] by 1913 property rights of indigenous communities had already been seriously eroded” (Gilfillan 1998: 319). However, this is not the only criticism of the Restitution Act; other scholars have noted the challenges in how the composition of claimant groups also serves to reinforce pre-existing social hierarchy (Robins 2000; James 2000b). As previously mentioned, the Popela claimants initially sought restitution of Boomplaats (in addition to the neighbouring farms) on the basis that their forebears had lived on the land for centuries, giving them a moral claim to the land. However, the Constitutional Court explained the limitations of the Restitution Act for claimants that were dispossessed prior to 1913.<sup>46</sup>

In addition, the Court commented that communities who once enjoyed indigenous ownership of land (such as the Popela claimants) were coerced into accepting the terms of tenancy as declared by landowners after their land was registered in private ownership.<sup>47</sup> Through this system of feudal relations, in addition to the legislative framework in the country (during Apartheid), the Court explained that many rural communities have been systematically dispossessed of their rights in land. In spite of the Court’s findings, the Popela claimants have subjectively (re)constructed their community identity which deviates from the way that

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<sup>46</sup> *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) para 21

<sup>47</sup> *Supra* para 37-38.

the State views (through the LCC, SCA and Constitutional Court) the claimants, as I will discuss in the dissertation.

There is a disjuncture between the claimants' views on how they (re)construct their identity as a community, and the basis on which the Court has granted them restitution as individuals. In order to better understand this disjuncture, I will now outline the historical context which has contributed to the claimants' understanding of their rights in land as members of a community. It is important to begin with an examination of the early formulations of *African peasantry*, as well as the history of *labour tenancy* and *rural paternalism*, in order to showcase how rural communities (such as the Popela claimants) have managed to retain some measure of community identity even though they have lived on farms registered to white landowners.

As I explain in this chapter, rural communities have learnt to adapt to these circumstances, and in part this too has contributed to how they (re)construct their community identity. I dare not propose that labour tenants have always found this arrangement beneficial – however I believe that the Popela claimants devised means to exploit this system that was imposed on them. In subsequent chapters I will recount in detail how the clan has lived on Boomplaats since the 1800s and how, by their own admission, they prospered under labour tenancy.

### **3.2 History of African Peasantry in South Africa**

The historical context in which *African peasantry* emerged bears some relevance to how the Popela claimants have understood their rights in land. From the late 1800s, labour was acquired from Africans either by force – since they were captives – or tribute from Chiefs who colluded with Colonial powers (Trapido 1978: 27). Rennie (1979: 40) explains that, “when white farmers took land, they also gained control of the people on it.” Consequently, it became important for the colonizers to retain control of African labour by means of coercion, and concurrently to retain control of the land (Ibid). The Popela claimants contend that they descend from a line of Chiefs who reigned over vast tracts of land and bred large livestock herds in the Mooketsi region. I am highlighting this context to shed some light on how the Constitutional Court affirms the existence of the Popela community but doubts that the claimants' forebears could have resisted being coerced into working for white landowners given the political landscape of the Transvaal from the 1800s.

Prior to the South African War (1899–1902) white farmers were typically engaged in stock farming, but after the War they began to farm cash-crops, which were more labour intensive. This necessitated that landowners turn to their black tenants for assistance (Bundy 1979: 212). One such tenancy arrangement during this time was inter-racial sharecropping, under which landlords received half of the harvest – as indicated by the term “farming on the halves” (Keegan 1983: 216). However, the landlord’s share would increase if he availed his own oxen, ploughing implements or the seed to the tenants (Ibid). Black sharecroppers were better equipped as farmers due to their skills in animal traction, and were better able to withstand adverse weather conditions coupled with poor capital inputs (Keegan 1986: 638). The author asserts this was because “Africans could rely on extensive networks of kinship and the ethics of communality and reciprocity” (Ibid).

“Sharecropping was an ill-defined relationship and it was never formally recognised in law or in settler consciousness as a fully-fledged system of production” (Keegan 1983: 209). However, Keegan (1983: 208) contends that this relationship was able to endure because landlords learned to confine their demands on the tenants’ labour, lest their tenants resist and depart from the farm in search of more favourable tenancy elsewhere. Accordingly, black tenants entered the Colonial economy as cash-crop producers (Keegan 1983: 217). It is important to understand why inter-racial sharecropping was perceived as a threat to the existing social order of Colonial domination over resources and the labour of Africans (Ibid). As Rennie (1979: 40) remarked “...sharecropping and rent tenancy occurred in the context of the development of an African peasantry.” However, Byres (1983: 9) observed that sharecropping by its design was built on the imbalance of power between landlord and tenant.

It is worth noting that sharecropping contracts were entered into with homestead heads in black tenant families (Keegan 1983: 220). By virtue of the additional labour from tenants’ families, the landlord was assured that his or her fields would continue to be cultivated, even in the absence of the male homestead head (Keegan 1983: 215). And homestead heads were equally assured that the labour drawn from tenant families would ensure continued crop yields, which provided the entire tenant family with security of tenure (Ibid).

Within this context of quasi-feudal relations, tenant families had to devise means to ensure the survival of the homestead, as sharecropping placed a labour burden on household production (Trapido 1978: 32). For instance, adolescent males were sent to work for the landlord whilst the more physically strong members of the homestead (adult men) would

remain behind to focus on household production (Ibid). Consequently, inter-generational conflicts and deep-seated tensions emerged between fathers and sons because of this labour arrangement (McClendon 2002: 52).

The key tensions revolved around the obligation on tenants' sons to provide labour to the landlord, which deprived them of the opportunity to accumulate their own cattle or wealth which would allow them to marry (McClendon 2002: 59). Cattle, as Bradford (1987: 37) noted, were vital to the social and political hierarchy amongst African men living in rural areas during that period. Adolescent males were unable to refuse their fathers' demands due to the social constraints which compelled them to remain subservient to the homestead head (Van Onselen 1997: 197). What is more, adolescent males were equally required to obey the demands of the landlord. Thus, "the adolescent black male found himself in the particularly uncomfortable position of having both an 'ideological' and a biological father" as Van Onselen (1997: 197) noted. Similarly, the homestead heads were also subordinate to landlords who regularly modified or extended labour contracts (Bradford 1987: 41). Additional tensions arose when landlords insisted on making use of women's labour on their farms; this deprived the homestead of much-needed family labour as tenants' plots were usually cultivated by their wives (Bradford 1987: 37).

As Keegan (1983: 220) explains, it was not all black tenants living on white-owned farms who became sharecroppers; some tenants lacked the technical skills and tenacity, whilst others were only able to live on farms through the extraction of their labour (labour tenancy). In addition, aspirant white commercial farmers were resistant to inter-racial sharecropping and disapproved of the arrangement because it deprived them of access to cheap black labour (Van Onselen 1990: 107). To these farmers, inter-racial sharecropping threatened the existing social order as it provided a measure of social and racial equality between blacks and whites (Ochiltree 2004: 50). Following State intervention, many African sharecroppers faced eviction from the farms on which they had been living and consequently had to seek new tenancy arrangements, usually as labour tenants in order to remain on these farms (Trapido 1978: 55). Feinberg (2006: 123) notes that the enactment of the Natives' Land Act resulted in the mass exodus of sharecroppers and the eviction of squatters living on white-owned farms, especially in the Orange Free State. Some of these African tenants who refused to relinquish their existing freedoms and become labour-tenants, migrated with their livestock

herds and would sometimes work with landlords to evade controls enforced by the State and resist evictions even after 1913 (Murray and Williams 1994: 317).

### **3.3 Labour Tenancy and Rural Paternalism**

As I have alluded above, *labour tenancy* was born out of the restrictions that the State imposed on Africans living on white-owned farms under the Natives' Land Act. The Natives' Land Act required Africans to provide 90 days of labour to a landowner in order to be recognised as farm labourers, and were consequently permitted to remain living on the farm (Lacey 1981: 158). Those Africans who did not provide the requisite labour were then classified as squatters – even though they paid cash rent – and could be forcibly removed from the farms on which they had lived most of their lives (Ibid). “Labour tenancy was, of course, the form of securing and exploiting a labour force specifically protected by the 1913 Act” (Bundy 1979: 232). I propose that some of this literature bolsters the Constitutional Court’s assertions that the claimants were left with little choice but to accept the conditions of labour tenancy imposed on them by the Altenroxels and the preceding landowners.

I believe it is important to consider the observation by Keegan (1983: 210) that “the distinction between sharecropper and labour tenant was often blurred.” In some instances landlords depended on labour tenants’ oxen to plough their land, and could give a portion of the proceeds to the labour tenants, which was not too dissimilar to sharecropping (Ibid). In other instances the labour tenants’ oxen were used to supplement the landlord’s oxen; thus the arrangement did not conform to the conventional terms of labour tenancy. Keegan (1987: 75) adds that sometimes tenants would undertake a mix of sharecropping and labour tenancy in line with their “shifting family fortunes and circumstances.” I deliberate on whether the Popela claimants might have engaged in a similar ‘*mixed-tenancy*’ arrangement, though their historical account does not indicate any such occurrence.

As in the case of sharecropping, married homestead heads entered into labour tenancy arrangements which then bound the entire tenant family to provide labour to the landlord (Lacey 1981: 169). Furthermore, the period of labour was not stipulated and labour tenants’ contracts continued year on year, with little record of any such agreements (Keegan 1987: 131; Rennie 1979: 41). Many of these contracts were verbally agreed upon and tenants neither fully understood, nor knew their rights and obligations (Keegan 1987: 131). In an effort to improve their savings and financial security, many labour tenants invested in

increasing their livestock herds, which could be relocated in the event of evictions. Consequently, many evictions were a result of labour tenants' ever increasing herds in the face of land scarcity (Keegan 1983: 223).

However, the intimacy of farm life required landlords to make concessions on how they related to their labour tenants (Bradford 1987: 43). Accordingly, there are historical accounts of landlords in other parts of the country who allowed tenants to dip their livestock for free (Ibid). Labour tenants typically enjoyed access to water, and were allowed to harvest firewood on the farms where they lived. Some landlords also allowed their tenants to feast on any livestock that died on the farm as McClendon (2002: 54-55) documents on farms in Kwa-Zulu Natal. Charles van Onselen (1997; 1990) explains that such occurrences were neither random, nor altruistic acts; rather, these actions formed part of the systematic domination of labour tenants under rural paternalism. By appearing to be magnanimous – much like '*a good father and husband*' – the landlord was assured of the tenants' gratitude and loyalty (Van Onselen 1997: 204-205). Accordingly, when these '*debts*' had to be repaid the tenant would comply with the arduous labour requirements as obligated by the landlord (Ibid).

McClendon (2002: 59) contends that even on farms where labour tenants received wages, these "...wages were so small that it was clear that labour tenants were working for access to land, not for money." This system of rural paternalism was premised on quasi-kinship interactions between landlord and labour tenants; however, the landlord retained his authority on the farm due to his social rank (Van Onselen 1997: 202). It is important to consider Keegan's (1986: 645) assertion that it was due to the nature of farming on the Highveld (northern parts of the former Transvaal) with bouts of inactivity that did not require a full time labour force, and for this reason white farmers preferred to employ labour tenants. Further, white landowners had access to tenants' oxen and ploughing tools, and labour tenants' wives and children were available as additional labourers (Ibid).

Still, the nature of labour tenancy was primarily feudal because white farmers were reluctant to formalize labour contracts despite the pressure from the State to regulate these working relations (Rennie 1979: 41). One such attempt to regulate labour tenancy was the introduction of the Master and Servants' Law (Transvaal and Natal) Amendment Act 26 of 1926, under which labour tenants in the Transvaal endured even more coercive conditions as they were compelled to work for a period of six consecutive months. During these six

months tenants were typically only allowed to cultivate their own plots on Sundays, which further spurred their indebtedness to the landlord as they were not able to produce enough crops for their own subsistence (McClendon 2002: 109). Furthermore, if any member of the tenant homestead failed to provide sufficient labour, the entire family could be evicted (Lacey 1981: 161). For women their situation was even more tenuous under labour tenancy, as they faced eviction upon the death of their male partner with whom the landlord had an agreement (Weideman 2004: 373).

Schirmer (1995: 512) argues that in the mid-eastern Transvaal (specifically Lydenburg), labour tenancy affected the tenant family structure, especially on the maize and wheat farms where nuclear families became the norm due to the shortage of grazing and cropping land available for tenants. Whilst extended families were more prevalent on the farms with absentee landlords where there were fewer restrictions on the plot size for labour tenants and the conditions under which tenants provided their labour (Ibid). The Popela claimants' historical account indicates that when they resided on Boomplaats they kept large numbers of livestock and lived as extended families even though Boomplaats was not owned by an absentee landlord. Thus, the literature further compounds the question of how communities were (re)constructed within the context of labour tenancy. The Constitutional Court affirmed that Petrus Maake was Headman of the portion of land over which the claimants enjoyed *de facto* rights (factual possession).<sup>48</sup> As I will explain in the dissertation, the claimants retained some measure of autonomy whilst they lived on Boomplaats; this assertion is largely informed by the claimants' historical accounts of how they understood their tenure.

Whilst interactions on the farms in the Transvaal were characterized by coercion, excessive force, and victimization, a “*cultural osmosis*” also occurred as a result of inter-racial sharecropping as van Onselen (1990: 107) explains. Nonetheless, this “*cultural osmosis*” occurred within the confines of a racial etiquette which compelled black tenants to remain subservient to white landowners (Van Onselen 1990: 116). This “*cultural osmosis*” often replicated and imitated many of the Colonial power dynamics. And, in order to ensure their survival black sharecroppers learnt to become “*cultural chameleons*”, by adopting different personas when they interacted with the landowner on the farm and when they were seen out in public (Ibid).

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<sup>48</sup> *Department of Land Affairs and Others v Goedgelegen Tropical Fruits (Pty) Ltd* 2007 (6) SA 199 (CC) para 36

On some farms in the south-western Transvaal, in the absence of a Chief, the white landlord presided over a traditional court and settled disputes amongst sharecroppers or tenant farmers (Van Onselen 1990: 119). Other instances of this “*cultural osmosis*” were more pronounced during key events on the farm such as end of harvest festivities when the white landlord provided an animal to be slaughtered or provided sharecroppers with the grain to brew traditional beer; during these times all residents on the farm would partake in festivities – landlord and tenants alike (van Onselen 1990: 110). Though Van Onselen (1990) wrote extensively on inter-racial sharecropping, his observations are still applicable in the context of labour tenancy, and are relevant to the Popela case study as I explain in forthcoming chapters.

Even with this literature in mind, it is still difficult to locate labour tenants in narratives of restitution because many tenant families were evicted through the adverse conditions under which they lived as landowners evicted unwanted farm occupants and squatters from their land at will (Gilfillan 1998: 322). With the State’s support white farmers moved to adopt wage labour, and were aided by the influx controls which regarded squatters and farm dwellers in rural areas as surplus labour, who could be forcibly relocated or mobilized as part of the black labour force (Williams 1996: 12). When labour tenants’ contracts were terminated, their homesteads were destroyed and their cattle confiscated, impounded or sometimes sold to the landlord at a reduced price; they had little legal recourse (Ibid). Typically the tenants were given up to three days’ notice to relocate and consequently became “grasshoppers of the field” as described by a Chief in Ladysmith, Kwa-Zulu Natal (Bradford 1987: 57).

### **3.4 The Right in Land**

James (2000a: 150) comments that inequality and hierarchy have persisted in restitution claims because the notions of belonging and membership to a community have often excluded or alienated some members of the claimant group. Yet historically, under communal tenure, it was the membership of the group, shared relationships and accompanying obligations that would take precedence over actual individual ownership of property (Du Plessis 2011: 49). Furthermore, the degree to which members of a community enjoyed access to, and use of, land for grazing and ploughing, was determined by members of that group. These members also had the right to deprive outsiders of enjoying these access and user rights under communal landownership (Claassens and Cousins 2004: 139).

However, I cannot assume that the tenets of communal tenure applied to labour tenants who lived together, such as the Popela claimant group. Rather, it was the nature of the paternalistic relationship between the labour tenants and landowners which most likely informed how they exercised rights in land. Ideally, the key tenets of communal tenure are premised on inclusive access to land for members of a community; however there exists the possibility that some community members will limit other members' rights in land under communal landownership.

Thus, in implementing restitution, the LCC can mandate claimants to form a legal entity such as a CPA or Trust for the purposes of managing the land following restitution. Under the Communal Property Associations Act 28 of 1996 a group of claimants must constitute themselves into a legal entity in order to register their rights in land. Such an entity may be a Communal Property Association (CPA), Trust, Association or a Section 21 Company. These entities are premised on shared decision-making and protection of shared rights in land. I concur with Li (1996: 505) that the notions of shared power and decision-making as well as equitable access to resources (such as land), fail to reflect the dynamic nature of communities. Because of clan dynamics in the Popela case study, the Court's decision that the portion of Boomplaats be awarded to the individual claimants to jointly own and manage, does not ensure that all these individuals will now enjoy shared access rights, as I explain in this dissertation.

Restitution has been beset by challenges, and the cumulative effect in some instances has been that "communities not torn apart by the process of dispossession often disintegrate once resettlement took place" (Weideman 2004: 200). This can be attributed to social differentiation amongst claimants on the basis of their links to the land, their class, gender, age, socio-economic mobility, power, and level of education (Ibid). Similarly, Pienaar (2005: 65) cautioned that defining community in simplistic terms has romanticised land restitution (especially in the case of embedded claims) without taking into account the potential conflicts between the law and local customs.

The Popela case study exemplifies this conflict: the Constitutional Court has awarded restitution to individual claimants and since these individuals were all married under polygamy, there are several direct descendants who are now entitled to rights in land. In such instances, the Restitution and Reform Laws Amendment Act 18 of 1999 stipulates that

restitution is awarded to these individuals by lines of succession.<sup>49</sup> In light of this Amendment Act, women within the claimant group are seemingly assured of their rights in land as wives and daughters of the individual claimants.

In the context of land reform, Walker (2003: 143) observes that “while the patriarchal household may be a site of oppression for women, it is also a source of identity and support, providing membership in a social network that is often the only effective resource poor women have.” Various scholars (Meer 2013: 11; Weideman 2004: 370) contend that because restitution is premised on restoring rights in land, women may find themselves ineligible to make any claims independent of their husbands, fathers, and sons, as their rights are not typically recognised. Thus, it is within the context of patriarchy that some women are able to enjoy rights in land; with respect to these claimants this sometimes stands in stark contrast to the norms and customs of the Popela clan as further explained in the dissertation.

As a consequence of the continued wave of forced removals, occurring from the late 1800s onwards, there have been overlapping rights in land between original rights-holders and later arrivals such as tenants and squatters (Cousins 2008: 118; Hall 2009: 12). Thus, in upgrading the tenure of original rights-holders the State has also been required to upgrade the rights of tenants, farmworkers, and squatters (James 2000b: 637). Moreover, forced removals and consolidation of the former homelands resulted in “...the creation of patchworks of farms occupied by groups of diverse origin and identity,” (Cousins 2008: 118).

In light of the above, Weideman (2004: 202) comments that “the process of restitution is biased toward the submission of unitary claims and favours communities that can be represented by a single institution or organisation.” Yet, not all claimants have had a shared experience and history with the land, and some claimants might have exaggerated the extent to which they depended on the land in a bid to legitimise their claim for restitution (James 2000a: 154). Moreover, the concept of community in land restitution is premised on the experience of shared struggles of dispossession and destruction of community, despite differences in the circumstances of individuals (James 2000b: 634). In the context of land restitution, community is “...a concept which excludes as much as it incorporates” (Ibid).

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<sup>49</sup> Land Restitution and Reform Laws Amendment Act 18 of 1999 Section 2 (4) states: “If there is more than one direct descendant who have lodged claims for and are entitled to restitution, the right or equitable redress in question shall be divided not according to the number of individuals but by lines of succession.”

For the purposes of this dissertation, I consider how these assumptions have influenced the ways in which claimant groups (re)construct their community identity under restitution.

### 3.5 Discussion

In the literature review above, I explored the complex issues raised by restitution cases in contexts where indigenous communities found themselves reduced to the status of labour tenants through the systematic restrictions on their rights in land. This process was the direct result of the prevailing socio-political and socio-economic climate of the Transvaal dating back to the 1800s. Van Onselen (1990: 100) argues that it was the advent of the gasoline-driven tractor in the 1940s that heralded the decline of sharecropping in South Africa, as Afrikaner farmers were no longer heavily reliant on their black tenants for their ploughing skills. In addition to the gasoline-driven tractor, Keegan (1986: 646) observes that it was the introduction of mechanical harvesting and threshing machines which further curtailed the role of black tenants on commercial farms. “Black productive resources and household labour became expendable to white farmers and the seasonal nature of labour demands on the farms declined substantially,” (Keegan 1986: 647). Thus, labour tenants found themselves with few options but to accept the system of wage labour or face eviction from the farms on which they and their forebears had lived for many generations.

And, in many instances where land claimants have sought restitution, a powerful sense of investment in ‘community’ may remain. More broadly, land restitution is thought to restore the dignity of the dispossessed claimants because, in this sense, restitution is cathartic (James 2000a: 156). Moreover, claimants often maintain that the land under claim holds significance for their future physical and spiritual health because of the burial of the deceased on the land and the accompanying importance of physical proximity to their ancestors; these factors have strengthened claimants’ requests to be awarded restitution (James 2000a: 157). Horn (1998: 20) adds that “there are moral claims in land which transcend legal rights to title.” And as John Dube<sup>50</sup> remarked in 1912, community identity has been intricately linked with rights in land for many rural communities because “if we have no land to live on, we can be no people” (Feinberg 2006: 119).

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<sup>50</sup> The South African Native National Congress (SANNC) was founded in 1912 to unify the response to the loss of the right to vote which also affected the rights of black South Africans (Natives) to own land and John Dube was the first president of the SANNC. The SANNC later became the African National Congress (ANC) which was founded in 1913.

*Discourse* is shaped both by struggles of past and present socio-historical and socio-political factors, and in land reform there may be competing discourses because of the complex history of landownership in South Africa (MacDonald 2003: 169). On one hand, the State proposes that land reform is significant for the redress of social injustices and, within this discourse of *land restitution*, “justice means the restoration of the land” (Mesthrie 1999: 24). On the other hand, the State maintains that land reform must contribute to poverty alleviation through job creation and food security (MacDonald 2003: 157). Furthermore, claimants’ discourses on land reform often embrace land reform as a vehicle for social justice (especially in cases of restitution) and as a means through which the State can recognise their need for access to land for sustainable livelihoods (MacDonald 2003: 159).

As my review of the literature pertaining to the Popela case study shows, it would appear that labour tenant claims do not conform to the conventional narrative of forced removals, as is often the case in other submissions for restitution. At the same time there is little doubt that labour tenancy, which is founded on feudal relations, warrants restoration of rights in land. There are, however, grounds for being sceptical about whether the Restitution Act provides an appropriate framework for redress; it seems to me that the incorrect interpretation of the legislation continually reinforces problematic assumptions about claimant groups.

With respect to community claims for restitution, Jannecke (2005: 50) highlights that in order for communities to assert their rights in land under the Restitution Act, they often have had to present:

...clear unambiguous accounts of community dispossession. Lawyers in turn have emphasised cultural authenticity and tribal continuity to ensure that they meet the tough requirements of legal evidence, procedure and precedent.

This passage highlights an interesting conundrum for communities seeking restitution. Evidently, there is an expectation that communities must conform and present a palatable community identity which the various courts can digest. Robins (2000: 60) elaborates that when communities are compelled to submit claims which are premised on their aboriginal title and historic origins, this tends to reinforce the Colonial or Apartheid discourses on “tribal identity”. On occasion, this has been to the detriment of claimant communities, such as the Popela claimants, because they have not been able to conform to this notion of tribal identity.

With this literature in mind, it is important that I also consider the core notions of *community* so that I may better understand the claimants' views on their sense of *community identity* within the land claim.



## CHAPTER 4 – RESEARCH METHODOLOGY

### 4.1 Introduction

This chapter outlines the theories on the *construction of community identity*. These theories informed the research design and the research methods used in this dissertation. This chapter details the selection of research informants (whom I have referred to as the claimants), and the data collection methods used. I utilised the components of ethnographic research questions, making reference to the work of James Spradley (1979), which is concerned with understanding the informants' world view. Furthermore, the methodology indicates how the data was analysed and interpreted in exploring how community identity has been (re)constructed within the Popela case study. To this effect, I made some reference to Stuart Hall's (1992) framework on narratives of national identity, which has been adapted and applied in the context of land rights struggles by Crystal Jannecke (2005) in her doctoral research on the construction of communal identity.

### 4.2 The Meaning of Community

Historically, social science and development practitioners have defined *community* using the key components of shared geography (territorial boundaries), size (small or limited group membership), and shared norms and values (common identity) as cited by Kaufman (1959: 9). Similarly, the State's definition of community under the Restitution Act tends to focus on the homogeneity of communities which articulates the mistaken assumption, about the structure of (especially rural) communities that they must conform to a particular identity. Kepe (1999: 421) contends that these types of definitions are limiting because of the assumptions that all communities consist of individuals that live together harmoniously, with shared economic activities, subsisting off the same livelihood, and shared social relationships of kinship, culture, history, beliefs, and customs. Furthermore, Kaufman (1959: 15) cautions against defining community in such simplistic terms and suggests that "community in the present-day world is always more a dream, an ideal, than a reality."

For the purposes of this dissertation, I rely on the definition of *community* proposed by Hill and Whiting (1950: 117) that "communities are no more than social systems – an organization of interconnected individuals, who are the bearers of human culture and who are also interacting symbolically." Thus, I do not question the existence of the Popela community or the claimants' shared identity; the Constitutional Court has already affirmed its

existence. Rather, this dissertation examines how the notion of community has been (re)constructed under the land claim. According to Colombo and Senatore (2005: 50) pre-existing frames of reference also play a key role in how people construct meaning, which influences how people view, interpret and explain events and ultimately decide on which course of action will ensue. “In essence, people confer meaning on the environment in ways that reflect their social and cultural experiences” (Stedman 2003: 673). Accordingly, I examine how the claimants’ experience of the dispossession has informed how they have since (re)constructed their notions of the Popela community.

Stuart Hall’s (1992) work on the five fundamental elements for the construction of the narrative of national culture has informed my interpretation of the data. Hall (1992: 277-293) explains that traditional societies are founded on the notions of shared history, with an emphasis on replicating the time-honoured traditions of preceding generations. This can be contrasted with modern societies which are premised on continual change and adaptation (Ibid). What is more, the author asserts that national culture is an imagined community. This is premised on Benedict Anderson’s (1983) earlier work on national identity in which he asserts that all nations are imagined communities, which is explained in further detail below.

National identity is unlike local *community identity* and for this reason I also turn to Crystal Jannecke’s (2005) adaptations of this framework. Jannecke (2005) uses a discursive analytic approach in the social and historical construction of communal identities for the Clarkson Moravian Mission and the Tsitsikamma Mfengu, which allow her to focus on the stories and histories told by the members of the Clarkson and Mfengu societies. Moreover, Jannecke’s (2005: 57) dissertation proposes that “language and discourse are understood as social phenomena enmeshed in relations of power, situations of conflict and processes of social change.”

Returning to Hall’s (1992: 293-295) list of elements, the first element is the *narrative* of the nation which is best articulated in the stories, images, historical events, rituals, and symbols that represent people’s shared history, experiences, successes and failures, and contributes to the sense of belonging that members of a group experience. Hall (1992: 293) explains that this is an imagined community which provides members of the group with a purpose and an identity, and brings relevance to their lives.

The second element is the focus on the *origins*, continuity and traditions through which the national identity is considered to be constant and enduring. The third element is the invention of *tradition* and repeated use of rituals which form a continued pattern of history aligned with the accepted identity (Hall 1992: 294). This is adapted from the work of Hobsbawm (1983: 1) who describes invented traditions as the set of practices that seek to instil norms and values in those who observe these practices.

The fourth element is the *foundational myth* relating to the origins of a nation, which provides a platform for people to reframe their history by endowing themselves with agency (Hall 1992: 295). This myth (re)constructs the historical disasters that have been experienced as victories and triumphs, and the fragmented history of the group is translated into ‘community’. Furthermore, the myth provides a narrative of the indigenous history that precedes Colonialism, thus constructing an alternative history of a people or nation (Ibid). The fifth element is the symbolic grounding that perpetuates the idea of an original or *pure community* of people who co-exist harmoniously (Ibid).

### 4.3 Qualitative research

In order to understand the claimants’ (re)construction of *community identity*, it was important that I immerse myself in how the claimants have related to one another following the Constitutional Court ruling. I am intrigued to explore the impact of the Court’s decision on the members of the claimant group, as the claimants are members of a clan and, more specifically, an extended family. Hall’s (1992) work explores the notions that identity is not a fixed construct but rather the result of the search for meaning and belonging. More specifically, Jannecke’s (2005: 60) dissertation explores how local community identity is influenced by the socio-historical and socio-political contexts in which people live. With this understanding in mind, I conducted qualitative research in order to learn how the Popela land claimants’ notions of identity have been influenced by their history and the land claims process.

Through qualitative research, I collected and analysed the data in a more natural setting with a focus on the context in which these processes happened (Golafshani 2003: 600). Furthermore, the author highlights that the researcher and the informants alike contribute to the research process, with each considered a specialist in their own right (Ibid). I used a case study as the research design because it allowed me to better understand the informants’ views through field work. As the researcher, I was akin to a biographer who documented a

particular phase of an individual's life (Zucker 2009: 5). Accordingly, I explored the Popela claimants' lives whilst they await finalisation of the land claim and restitution of Boomplaats.

Caelli, Ray and Mill (2003: 7-8) encourage researchers to employ rigour, which they explain as the process through which a researcher will systematically fact-check, verify data and even return to the field site to give informants feedback where possible. In addition, I determined to improve the validity of the research findings through extended fieldwork: I visited Ga-Sekgopo three times for a period of two weeks at a time, during which time I also visited Boomplaats. Moreover, I have remained in communication with the key informant who has given me insights on the finalisation of the land claim.

#### **4.4 Data Collection Procedures**

Since this dissertation is concerned with exploring how factors such as clan history, patriarchy, gender, and family dynamics contribute to the (re)construction of community identity, I concluded that I would need to observe and interview the claimants living in Ga-Sekgopo, as well as those claimants living on Boomplaats. My review of the literature on labour tenancy and the court judgements on the claim prompted me to seek out archival evidence and other documents, in order to understand the mitigating factors relating to the dispossession. These various methods assisted me to refine the scope of my inquiry and to determine the relevance of the data.

##### ***4.4.1 Participant and Other Observation***

I first observed the claimants during a night vigil in Ga-Sekgopo (July 2013) organised by Nkuzi Development Association (Nkuzi), a land-rights Non-Governmental Organisation (NGO) that has provided the claimants with legal representation during the court proceedings. The night vigil was only attended by men within the Popela land claim, and women were conspicuously absent from these proceedings. During the night a fire was kept burning outside, where the men gathered around and sung struggle songs, calling for the return of the land, and the attendees used chant and reply commands for camaraderie. The night vigil was followed by a picket to the farm Westfalia Fruits in Tzaneen, where Nkuzi handed a memorandum to the Westfalia management to finalise the claim.

Selepe and Edwards (2008: 2) find that the night vigil is a significant custom during mourning as it enables relatives and neighbours to offer support to the bereaved; it is typically held on the eve of the burial. Although, under Apartheid, night vigils served a dual

purpose as they also provided a platform for political mobilisation and agitation in a safe space (Hlongwane 2008: 143). Accordingly, the night vigil in Ga-Sekgopo served to commemorate the Centenary of the Natives' Land Act and to garner public interest for the finalisation of the land claim.

This night vigil served as my introduction to the claimants. I observed that initially claimants were apprehensive of me as a researcher. However, when I subsequently returned to Ga-Sekgopo to conduct interviews, more claimants showed interest in participating in the research. Observation was effective because it provided me with an opportunity to learn about roles and the rules of social interaction amongst claimants as noted by Mulhall (2003: 307-308). The author adds that when undertaking observation it is important for the researcher's role to be known and not concealed from the informants, for the purpose of informed consent (Ibid). Whilst in the field site, my role was known to all claimants and other role-players involved in finalising the land claim.

Within the interview site, informants overtly and covertly present themselves differently in different settings (Elwood and Martin 2000: 654). The interview site was an important component in how the informants and I interacted because of the micro-geographies. Elwood and Martin (2000: 650) explain that the micro-geography (or social geography) provides the researcher with data on the informants' social interactions such as their relationship with members of their community. In this case, I learnt more about the claimants' identity in the clan, their respective roles in the land claim, and how they related to their relatives.

The notion of a neutral venue became increasingly elusive because of the underlying issues of class, gender, ethnicity, power, hierarchy, and other social differentiators which also contribute to the interview process (Elwood and Martin 2000: 651). I experienced the importance of managing my identity as the researcher and projecting a non-threatening image in order to gain access to the informants and to build rapport (Mulhall 2003: 310). Still, it is the community gatekeeper (in this case study it was the key informant) who grants the researcher access to the claimants only after the researcher has satisfied the overt and covert cultural expectations (Ibid). The interviews all took place in the claimants' homes, which positively altered the power imbalance in favour of the claimants as the known experts in the Popela land claim.

#### **4.4.2 Informants**

Amongst the Popela claimants I selected a key *informant* who was familiar with the clan members and the other role-players (including State officials and legal counsel) that have been involved in the land claim. This key informant was a son of Ramothaba Phineas Maake (the former leader of the restitution committee founded in 1995). He had lived on Boomplaats from birth and had only relocated to Ga-Sekgopo in 2012 at the insistence of his wife. The informant also served as a model of how I should interact with other informants (the claimants) in the field site, as noted by Spradley (1979: 25). In selecting an informant, Spradley (1979: 51) recommended that the individual be readily available to the researcher as adequate time is needed to gain access to the claimants.

Another component of data collection was the *sample size*. In a discourse analysis a large sample can pose a challenge to the analysis, but Elliott (1996: 66) comments that it is important to aim for representative sampling. During the initial field visit I anticipated that I would interview 5 members of the Popela clan. On subsequent field visits, however, the sample size swelled as the key informant advised me to interview as many direct descendants of the nine individual claimants as I could in order to improve representivity. At the time that the interviews were conducted only 2 of the 9 individual claimants were still alive thus I conducted interviews with some of the direct descendants (wives and children) of the now-deceased individual claimants. Ultimately, I interviewed 23 informants who were a sub-set of the 197 claimants who filed for restitution as the Popela community – as indicated in the claimant family tree there are up to 147 claimants who are the direct descendants of the nine individual claimants. The informants that I interviewed were 9 women (who were the wives and daughters of the individual claimants) and 14 men (who were the sons, brothers and nephews of the individual claimants – one of which was a former labour tenant who was still living on Boomplaats up until his death in 2014). All of these interviews were conducted in the informants' respective homes in Ga-Sekgopo and a homestead on Boomplaats.

I also made an attempt to interview informants who were currently employed by Westfalia, however I experienced challenges in gaining access to these informants as the key informant was ultimately the gatekeeper who facilitated all of the interviews.

#### **4.4.3 Document Analysis**

As secondary sources of data, I analysed court judgements, newspapers, archival records, title deeds, and journal articles that relate to the claim or the key constructs of community

identity. These *documents* also served to corroborate the historical background, demographic profile, and social organisation of the field site understudy (Smart 2012: 152). Furthermore, such documents guide the research process by providing context and offering guidance on the interview questions (Bowen 2009: 29-31). This process was not linear, and I was prompted to further investigate the data and to formulate new research questions as I continually reviewed the relevant literature.

#### **4.4.4 Ethnographic Questions**

*Ethnography* which is concerned with observing, describing and understanding the unique realities of subjects, provided a model for me to understand how community identity is (re)constructed and I relied on the work of Spradley (1979). Spradley (1979: 17) cautions researchers not to impose any of their own language on informants as this will alter the meaning of the words and the nature of the interaction. One such example is *translation competence*, through which informants can learn to communicate in a manner and style that is understood by the researcher for ease of reference, even using the researcher's words or terminology (Spradley 1979: 19). To counter this, Spradley (1979: 73-74) offers that the researcher can employ the *verbatim principle* to make elaborate field notes, as I did. Thus, I avoided simply glossing over key data and depriving myself of the opportunity to determine at a later stage if it was relevant to this dissertation.

Using Spradley's (1979: 78-85) *descriptive questions* allowed me to develop rapport with the informants, which enabled us to explore boundaries, learn from one another, and begin to locate our respective positions in the research process. Accordingly, Spradley (1979: 86-91) identifies grand tour, mini-tour, example, experience and native-language questions as descriptive questions which all elicit further conversation.

Through grand tour questions, claimants were encouraged to share information about themselves from the position of an expert in the land claim; similarly mini-tour questions provided the opportunity to further explore areas of interest that were revealed through the grand tour questions. The example and experience questions called on claimants to share specific instances of their interactions under the land claim. Native-language questions provided me with an opportunity to learn the informants' language which further reduced translation competence.<sup>51</sup> I also conducted interviews with 5 officials from the Commission on the Restitution of Land Rights in Limpopo as I sought to better understand how the office

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<sup>51</sup> See Appendix II: Interview Questions

of the RLCC has also contributed to the discourse on the (re)construction of community identity under restitution.

*Interpretive ethnography* also informed the data analysis because it is focused on how the informants function daily, how they share similar experiences or world views, and the rules that govern their interactions (Smart 2012: 150). During fieldwork researchers should pay attention to the physical environment, people, activities that are undertaken, events in the community, and the sequences of such events (Reeves, Kuper and Hodges 2008: 512). In this regard, I found great value in examining the life cycle of the Popela claimants, especially the significant moments in the group's history, as suggested by Smart (2012: 150). These include the initial dispossession, the relocation to Ga-Sekgopo, the lodgement of the claim, the subsequent court proceedings, and the years that the claimants have awaited restitution to Boomplaats.

A key step in conducting ethnographic research is discovering cultural themes (Spradley 1979: 190). To achieve this, I used the author's strategy of "immersion" during which I engaged with the informants in the field; this was interlaced with periods of withdrawal from the field site (Ibid). I also searched for cultural themes by identifying social conflict, cultural contradictions, and gender or power dynamics as documented by Spradley (1979: 200). These issues are elaborated upon in the following chapter of data analysis.

As I discovered, it was not easy to translate key constructs – such as identity, belonging, and community – from English into other languages. And, because the interviews were conducted in sePedi, seLovhedu, seSotho, and seTswana there was potential for *translation competence*. When some claimants observed that I did not speak fluent seLovhedu, they resorted to using English terminology where relevant to explain how the members of the clan relate to one another. To curb this incidence, I relied on the key informant to help me translate certain constructs after the interviews. Thus I endeavoured to learn the claimants' meaning of concepts and their insiders' language. I also hired two transcribers who spoke fluent seLovhedu to transcribe and translate the interviews from audio to text. I discovered, like MacDonald (2003: 169) that the same word can carry different meanings, or different words can have the same meaning; all of this reflected the diversity amongst claimants. After each field visit I built on previously learnt concepts and then had an opportunity to verify data previously collected.

#### 4.5 Data Analysis and Interpretation

A *discourse analysis* is concerned with socially constructed concepts and the meaning thereof (Riggins 1997: 2). However, discourse analysis has been criticized because of the emphasis on “everyday social construction of reality” (MacDonald 2003: 152). Despite this, I was motivated to undertake a discourse analysis because of the political, social, and economic contexts in which people communicate, and how these influence speech as outlined by MacDonald (2003: 156).

Furthermore, the discourse is concerned with the notion that language is “not only a means of communication but also an instrument of power” (MacDonald 2003: 155). Thus language is used as a tool that either gives significance or marginalizes the relationship between how people interact and their dominant thoughts and ideas (Jannecke 2005: 57). Accordingly, the constructs of “self” and “other” are framed as value judgements, and members of a particular group will employ these constructs to create a (physical or psychological) social distance amongst themselves (Riggins 1997: 5). This social distance is informed by the knowledge of one another’s history held by the “self” and “other” (Ibid). Riggins (1997: 11) highlights that “when one voice speaks for another, it is inevitable that the opinions of those who are underrepresented, appropriated, or silenced will be inaccurate to some extent.”

In a discourse, identity is built using language, key practices, behaviours, interactions, beliefs, and value systems (Gee 2011: 18). Speech or written texts are assigned meaning, which provides an opportunity to locate multiple identities and the practices of a person or community (Gee 2011: 30). Informants construct situated meanings based on how they understand their current context, and will also draw from past experiences (Ibid). Gee and Green (1998: 121) observe that language functions “as social action and [a] cultural resource.”

Jannecke (2005: 59-60) notes that for the ideological function of discourse, meaning has to be established and maintained through legitimation, dissimulation and reification. Through legitimation an act or construct is considered legitimate because it adheres to social norms, and is accepted and supported by that group of people. Legitimation is thus best articulated as the reasons why having rules and laws in place is necessary; the traditional grounds on which the sacred traditions and rituals are invoked; and the reasons why the authority figure within a community is considered to be an exceptional member of the group.

*Dissimulation* is the process through which an act or construct is concealed and disguised by deflecting attention away from the skewed power relations amongst members of a group. *Reification* is the strategy whereby a transient historical situation is misrepresented as if it is the norm or an ongoing reality (Ibid). “When groups within society are presented as being ‘without history’ through the deletion of agency and the constitution of time as an extension of the present, then a contribution is made to establishing and sustaining relations of power and domination” (Jannecke 2005: 60).

Jannecke (2005: 61) also examined the role of “common sense” in constructing identity and the general assumptions that highlight the imbalances of power in how meaning is assigned. The author defines *common sense* as “a reflection of the dominant discourse that people have come to perceive as natural and legitimate” (Ibid). She found that when meaning is assumed then natural ideologies are enacted under the guise of “common sense” which also influences how social identities are constructed and upheld (Jannecke 2005: 61).

This notion of “common sense” relates to Spradley’s (1979: 95) observation that “all cultural meaning is created by using symbols.” This meaning is constructed by informants as they interact with symbols in their environment; symbols can be the informants’ responses, their dress codes, facial expressions, gestures or other non-verbal cues (Ibid). In order to better understand the informants’ world view, researchers should listen for how a symbol (terminology) is used, as opposed to listening for the meaning of symbols (Spradley 1979: 97).

I also utilised HyperRESEARCH data analysis software which provides for richer analysis because the data set can be modified according to my preferences, as highlighted by Duff and Séror (2005: 323). The software did not negate my role as it was not a substitute for careful analysis; thus the researcher remains integral to this process (Smit 2005: 108-109). De Vaus (2001: 13) cautions against only acknowledging the data which supports the initial hypothesis, thereby ignoring any conflicting data. Researchers are encouraged to explore plausible rival hypotheses or actively search for data that will disprove the initially supported theory (Ibid).

When coding the data the researcher can employ *a priori* codes (codes developed at the start of the research) or inductive codes; I used inductive coding because I only knew which data was relevant after each field visit. Furthermore, coding happened concurrently with the

analysis of the codes, as suggested by Dohan and Sanchez-Jankowski (1998: 483). The codes that I identified were grouped under the patterns that I saw emerging in the transcripts. The codes that I developed after the first field visit were centred on how informants articulated their links to the farm Boomplaats, and the circumstances surrounding their dispossession. This was then cross-referenced with how the informants articulated their relationship to the former landowner (August Altenroxel). Throughout this process, I modified the codes according to the prominent themes and patterns that emerged in the transcripts.

#### **4.6 Ethical Considerations**

The concepts of *community*, *legitimacy*, *identity*, and *belonging* are central to this dissertation and it is important that I acknowledge that these constructs are also contentious issues for the claimants. I utilised informed consent forms to safeguard informants against unethical conduct on my part as the researcher. This dissertation adhered to the principles of respect, honesty, anonymity, and transparency. However, there have been limits to confidentiality, as the data I have collected has been used for the purposes of completing this dissertation. Therefore, I have coded the data set in order to maintain the anonymity of informants – accordingly, I have utilised pseudonyms for the informants that I interviewed. Anonymity is also important because informants are members of a clan and are all members of the same extended family, as mentioned before.

The ethics in practice or micro-ethics, as stated by Guillemin and Gillam (2004: 272), is concerned with all the ethical challenges or dilemmas that I encountered in the field. Interviews are largely informal and allow the researcher to gain candid data from informants (Reeves et al. 2008: 513). Guillemin and Gillam (2004: 271) counter that the interview is an unnatural social interaction engineered for the sole purpose of politely interrogating informants. Accordingly, I concluded all interviews by allowing the informants the opportunity to pose questions to me so that they also had an opportunity to undertake their own ‘research’. As a result of these interactions I became aware that the informants believed I was able to influence the finalisation of the land claim and their restitution to Boomplaats. I am also aware that my working with the key informant may have biased these claimants, since the key informant occupies a prominent position in the Popela clan.

Nonetheless, I sought to ensure ethical conduct by also respecting certain claimants’ decisions not to participate in the research. Sultana (2007: 381) writes that “the refusal to participate in the research also demonstrated the exercise of power and agency of (potential)

research informants in the field.” Furthermore, some informants may be unwilling to participate in the research when they discover that the researcher’s role is to generate the production of knowledge and not to influence key outcomes in the research site (Ibid). During my interactions with claimants I was transparent about my research objectives and I emphasized voluntary participation.

I did not seek to perpetuate any imbalances of power by engaging in “othering” as this “dehumanizes and diminishes groups” (Riggins 1997: 9). I also had to guard against projecting my desired responses onto informants because the focus of the research is not the examination of the claim; accordingly, I utilised my reflexive journal to record this incidence. Reeves et al. (2008: 513) note that *reflexivity* is a central component of ethnographic interviewing, because of the theoretical positioning of the researcher, which influences the research process. In my case, the theoretical positioning was informed by my background, motives for conducting the research, and my disciplinary socialization as explained by Caelli et al. (2003: 5). These factors influenced the choice of research topic, the research methods, and the findings considered most significant (Malterud 2001: 483).

As I have a background in community psychology I undertook the research with key assumptions on the role of the family in giving an individual a sense of belonging. Membership to the family, clan, and community featured prominently in the data analysis. Therefore, I have to acknowledge these inherent biases and remain vigilant to their influence on the research outcomes. Still, Finlay (2002: 542) advised that “with reflexive analysis, the self is exploited only while to do so remains purposeful.”

#### **4.7 Limitations**

When I embarked on the research I had no prior experience of working in the land sector and held a purely academic knowledge of restitution. As I experienced, State officials tested my knowledge of restitution by referencing key legislation, court rulings and individuals who they considered to be influential in the land sector. And I noted that in all interviews with these officials I was encouraged to study the judgment *In Re Kranspoort Community* for an example of how community identity is (re)constructed and understood by the LCC. The interviews with State officials and other role-players were informative, although I elected to exclude these interviews from the data set and subsequent analysis primarily because I felt that the informants provided me with sufficient data for the purposes of my enquiry. This might be attributed to my naiveté as I felt that utilising the officials’ interviews would extend

beyond the scope of my dissertation as I undertook this research for a mini-thesis which has a slightly more limited scope than a full thesis.

Another challenge that I experienced in employing ethnographic interview techniques is that the claimants were dispossessed in 1969, and I only conducted the interviews 45 years thereafter. Thus, I sometimes encountered that the more elderly informants could not thoroughly recollect certain details about the conditions on Boomplaats prior to the dispossession. For some informants their recollections were most vivid in relation to the more recent years during the submission of the land claim (since 2000) and the subsequent court proceedings. In these instances, I realised that I may be asking informants to (re)construct their notions of community identity in order to answer my questions. Golafshani (2003: 600-601) highlights that reliability in qualitative research is premised on the understanding that the “researcher is the instrument.” Thus, I have made note of these possible biases in my interactions with the informants in the final chapter of the dissertation.

#### **4.8 Conclusion**

The research methods and the framework for data analysis that I selected were intended to help me better understand how the claimants experienced their community identity, and how this has been (re)constructed during this process of restitution. These research methods provide insight into how the claimants interact with one another following the dispossession, and allowed me to observe key dynamics such as power relations and community structure.

## CHAPTER 5 – CONCEPTIONS OF COMMUNITY

### 5.1 Introduction

In this chapter, I analyse how the community identity of the Popela claimants has been (re)constructed, by presenting the key observations that I made whilst in the field. I explore how these informants have proceeded to (re)construct their identity whilst they await restitution. As the researcher, I am confronted with the difficulty that the claimants' discourse is littered with ambiguities. This implies that my account of how the claimants have (re)constructed their community identity will include internal inconsistencies. This does not imply that the discourse is incomplete or invalid; rather it compels me to take into account all the variances in this (re)constructed community identity. It should be noted that when I refer to "*the claimants*" I am talking about the informants that I interviewed, being the children and wives of the individual claimants who were awarded restitution by the Constitutional Court in 2007.

In the account below, I unpack the claimants' account of the basis of their claim into a number of distinct narratives or themes. To begin with I explore the *narrative of shared origins* which is focused on the shared lineage and parentage amongst the claimants that I interviewed. Subsequent to that, I elaborate on another important narrative – the *narrative of dispossession* which contains much emphasis on the claimants' relationship with Altenroxel. This narrative is also strongly concerned with the accompanying *narrative of betrayal*. Thereafter I highlight the instances under which these different narratives either overlap and support one another or come into contradiction with one another, as the claimants (re)construct their community identity. I also reflect on the *ambiguous nature of women's rights in land* in this land claim and how women have gradually been renegotiating their rights in land throughout Southern Africa, although this is not specific to cases of land restitution. I conclude with a summary of the (re)construction of the claimants' community identity.

### 5.2 *The Narrative of Shared Origins – "Batho Ba Mpa Tee" (The People of the Same Womb)*

Claimants articulated an important narrative: the *narrative of shared origins*. As mentioned before, the claimants assert that they are the rightful owners of Boomplaats, in addition to the neighbouring farms in Mooketsi, by virtue of their origins as a clan. The initial land claim

filed by the members of the community (encompassing six farms) is based on this understanding. As Fannie\* (son of Ramothaba Phineas Maake, 42) states: “*We claimed according to Sesotho custom.*” In using this terminology, Fannie\* infers that it is “common sense” that the baPedi people (particularly the Popela clan) subscribe to a custom that I, as a moSotho person, should already understand. This reminds me of Jannecke’s (2005: 61) observation that the notion of “common sense” is used to maintain certain power relations through which the dominant discourse can remain unchallenged. However, after further prompts, Fannie\* elaborates that these customs relate to rituals such as ancestor reverence and offering of libations, which give the clan a “legitimate” claim to the farms in Mooketsi. By extension, as Fannie\* relates, Mampše is a paramount Chief who has birthed many lesser clans in the region. As mentioned, there may be some truth to this assertion although it cannot be corroborated by any other source. Although this does not detract from Fannie’s\* feeling that the Popela clan have been wrongfully denied their birth right which is the farm Boomplaats (in addition to the neighbouring farms).

As I re-read Fannie’s\* statement, I recall Hall’s (1992: 295) writing on the foundational myth of a nation or a people. In this instance, the claimants’ origins as Popela’s descendants are located so far back in time (to the mid-1800s when Mampše reigned over Mooketsi) that they become mythical. The claimants have used this mythical history as Mampše’s descendants to sustain their quests for restitution. In constructing their foundational myth, the author explains that members of a nation – or a clan, for the purpose of this dissertation – will reorganise their tumultuous history into a narrative in which they have agency (Ibid). Notably, in the claimants’ historical account of Mampše’s conquests, they argue that Mampše gave permission to the Germans (they do not specify whom) to start harvesting timber on Goedgelegen. However, the claimants cannot provide any further information. My interest in this assertion is that the claimants do not elaborate on how this supposed agreement affected the supply of labour to the farm. This is another instance of inconsistency as I discuss below.

The Popela claimants view themselves as a family and also a community. They identify themselves as “*batho ba mpa tee*” (people of the same womb) or “*bana ba motho o tee*” (the children of one person). Consequently, the claimants regard one another as siblings, with a shared lineage as the descendants of Chief Popela Maake. The claimants use the term “*go pepa setshaba*” (literally, to give birth to a nation) to describe Popela Maake’s significance in the land claim. They assert that their shared parentage unifies them and provides them with a

shared identity as the Popela Maake clan. Furthermore, the claimants explain that it is their shared membership to the Maake clan which entitles them to restitution.

Claimants explain at length that they descend from a royal village as the descendants of Mampše. When they are asked to elaborate on Popela Maake's contribution to the clan's history, it becomes apparent that they cannot give any such detailed account. On this point, I must concede that the informants I interviewed were either not born during the time of Chief Popela or were too young to have remembered him. Similarly, the claimants cannot give any clarity on Petrus Maake as Popela's son and how the clan elected him to lead. It must be noted that very few of the claimants I interviewed worked on Boomplaats under labour tenancy prior to 1969. Perhaps it is because of this, that the claimants cannot explain how the restoration of Boomplaats will impact on the clan's selection of a Chief. The claimant group does not propose any candidate as the new Chief who might assist the clan in regaining its royal inheritance following restitution. Yet many claimants state that they wish to be restored to Boomplaats primarily so that they can regain their "*leruo*" (wealth derived from large numbers of livestock) as well as their "*bogoši*" (chieftainship). To these claimants, restitution is inter-linked with the return of their wealth and their royal inheritance.

### 5.3 The Narrative of Dispossession – "*Shared Loss and Betrayal*"

One of the most important ways in which the claimants legitimate their right to restitution is in *narratives of dispossession* – "*shared loss and betrayal.*" The figure of August Altenroxel is central to this narrative. And the claimants' accounts of his role are marked by deep inconsistencies and ambiguities. Some claimants regard Altenroxel as a fair man, who generously provided them with food rations and clothing whilst he owned Boomplaats. Moreover, this subset of claimants do not hold Altenroxel responsible for their dispossession. Paulina\* (wife of Mabule Isaac Maake, 69) states for example: "*We are just living like this because we are mixed up... No we were not chased.*"

Maria\* (wife of Ramothaba Phineas Maake, 70) maintains that Altenroxel was fond of the tenants, as shown in the following excerpt:

*Our white [Altenroxel] was surprised to say 'Where are you going because I have not fought with you? Now you are moving and leaving me behind. Who will I stay with? Because my father has passed on. And my mother has passed on. I wanted you who had worked with my grandparents...*

Maria's\* account illustrates that she does not find any correlation between Altenroxel's actions as a landlord and the tenants' departure from Boomplaats. Nonetheless, she makes a palpable reference to the quasi-kinship system which governed the social relations between labour tenants and landowners by inferring that Altenroxel shared some familial bond with the claimants, as documented by Van Onselen (1997: 202). It is worth noting that Maria\* and her husband Ramothaba Phineas Maake (an individual claimant who is now deceased, 76) were interviewed together. However Ramothaba later added: "*Life was difficult. Because you were forced to work ... If you did not go to work, you are now owing. Debt!*" The debts to which Ramothaba refers are the same food rations, old clothing, and meagre salary that other claimants cite as examples of Altenroxel's magnanimity. Ramothaba was at pains to explain that Maria's\* account is based on the more recent history under wage labour, whilst he was referring to "*before times*" (under labour tenancy). These inconsistencies are evident throughout the claimants' historical accounts of their experience of labour tenancy and later wage labour.

In part, the sentiments of Maria\* and Paulina\* toward Altenroxel (and possibly labour tenancy) might be understood in the context of rural paternalism. Under paternalism a landlord can exert his influence over the tenant family much like a father who exercises "...traditionally sanctioned authority over minors within his *family*" (Van Onselen 1997: 196). Using this analogy, the 'landlord father' commands the obedience of the 'tenant child'; the full extent of the landlords' authority under paternalism varied across different farms as van Onselen (1997) and other authors explain. And, whilst living on Boomplaats the claimants cite different instances of Altenroxel's authority (such as the rules on the farm), as I highlight further below.

Other claimants, such as Ramothaba and the children of the now-deceased individual claimants, regard Altenroxel as a duplicitous man who betrayed them and their mutual labour agreement. Within this narrative of shared betrayal, claimants view Altenroxel as a harsh landlord who imposed strict conditions on them, recounting many instances of his ill intent. Notably, claimants explain that Altenroxel denied them of their "*leruo*" (wealth) when he ordered them to dispose of their livestock, because this was also their inheritance from their forebears. These sentiments might also be understood through rural paternalism; Altenroxel is seen as failing in his duty (as a father) to protect the claimants as he deprived them of their livelihood.

Altenroxel supposedly maintained his paternalistic authority over the claimants by controlling various aspects of their lives on Boomplaats, so that they could not oppose his authority; many tenant families then opted to relocate to Ga-Sekgopo. Zachariah\* (son of Josias Leubela Maake, 52) for example, expresses: *“Because when a person carries themselves in a way you have to leave your own home.”* And the claimants also recall that Altenroxel denied them the right to an education – thus they were illiterate and unable to contest their wages or the amount of food rations they received. Likewise, the claimants depended on Altenroxel to record how many days they worked and any outstanding labour that they needed to provide to meet the requirements of their tenancy arrangement.

Edgar\* (son of Seakwane Wilson Malemela, 60) gives the most expressive illustration of paternalism when he likens Altenroxel’s actions in selling Boomplaats to infidelity: *“It is as if a man takes a second wife without consulting the first wife.”* In this analogy the claimants are the “first wife,” the new workers of Goedgelegen (now Westfalia) are the “second wife,” and Altenroxel is the “husband.” Edgar\* suggests that the “first wife” is discarded much like the Popela claimants, in favour of the younger “second wife” (who he describes as the current workers of Westfalia). Thus, Edgar\* likens the labour tenancy contract to marriage and the termination of such contract is seen as a betrayal of the “marriage vows”. Van Onselen (1997: 211) documents that labour tenants would have felt betrayed when this social and kinship-based arrangement was replaced by wage labour, which was much more focused on segregation.

Yet within this context of feudal relations, Altenroxel was sometimes accorded Chief-like status. For example, Isaak\* (son of William Maake, 63) argues that whilst they lived on Boomplaats the claimants were under Altenroxel’s authority: *“The Chief is the white man. There cannot be two Chiefs. There is a Headman [Petrus Maake] only.”* McClendon (2002: 52) highlights that under labour tenancy Chiefs’ authority lessened as tenants deferred to a landlord to allocate them land for grazing and cropping. Furthermore, the landlord regulated law on the farm and administered punishments. These responsibilities were previously the domain of Chiefs and Headmen; again, these are some of the key tenets of rural paternalism (Ibid).

Whilst most claimants maintain that Popela Maake was their Chief, to some extent the claimants also regarded Altenroxel as the authority on Boomplaats, and they adhered to the rules that he set for them when they lived on the farm. When faced with the loss of their

power claimants renegotiated their views on Altenroxel's authority; this was not an easy compromise but they had few choices. As I observed, the driving force behind this compromise on Altenroxel's legitimacy as the landlord, was to preserve their access to Boomplaats and their community identity. I will not dwell on this observation, other than to comment that the claimants' discourse of community identity is continually being (re)constructed at the individual, family, and clan level as I outline below.

The claimants feel that the Constitutional Court and the State have unjustly refused their claims for restitution of Boomplaats. This feeling of injustice has informed and sustained their demands for the restoration of the farm. Accordingly, I am reminded of the idiom used by Frans\* (son of William Maake, 74): "*Maruping go ya boe lelwa*" (a person must return to their foundations or roots)<sup>52</sup> which reiterates that for many claimants, returning to Boomplaats is closely intertwined with their community identity and spiritual health. The claimants add that they, and their parents were sapped of their physical strength by having worked on Boomplaats. Specifically, the claimants use the phrase "*ba re bolaile*" (literally they killed us – or more colloquially they destroyed us) to describe the effects of farm labour during labour tenancy, and later under wage labour. Accordingly, claimants feel that they should be restored to Boomplaats, as Christiaan\* (son of William Maake, 69) states: "*We worked for that soil.*" Furthermore, the claimants share that Altenroxel prohibited the tenant families from relocating to another farm or a White area so they were bound to Boomplaats indefinitely. Joseph\* (son of Abram Rapelo Maake, 49) states, for example: "*Meaning [you] must not ever leave the farm. Meaning in that way we were slaves, yes we were slaves.*"

These sentiments can be juxtaposed with the claimants' use of the term "*go ja*" (to eat) which describes the conditions on Boomplaats under labour tenancy, and their use of the term "*tlala*" (hunger) to describe life under wage labour. Food is a metaphor for the prosperity and abundance that they associate with the autonomy of labour tenancy, whereas claimants use the term "*go sokola*" (to struggle) to describe the impact that wage labour and later their relocation to Ga-Sekgopo had on their ability to sustain themselves. Within this narrative of Altenroxel as a "bad father" (or a harsh landlord), the claimants bemoan the fundamental unfairness of labour tenancy, yet they also found it tolerable (to some extent). As it appears, on the one hand, the claimants would have preferred that Altenroxel had remained the landowner on Boomplaats, and that he had never terminated labour tenancy. On the other hand, the claimants continually assert that theirs is a moral claim to Boomplaats, and that

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<sup>52</sup> It can also denote the place where the umbilical cord of a new-born infant is buried, after birth.

they should have been awarded restitution of the entire farm. This duality is part of the complexity in understanding that the claimants' discourse on Altenroxel is littered with contradictions. Thus, I concede that there are other issues to be considered such as the context of the dispossession; not all claimants were forcibly removed from Boomplaats – others chose to relocate to Ga-Sekgopo. And, it is also important to take into account that the claimants' views may also be those expressed by their parents who actually worked under labour tenancy for the Altenroxels.

I also learned that the notion of a unified community founded on the notions of “*shared loss and betrayal*” has other important consequences, for it powerfully shapes the sense of who is entitled to claim. Within the narrative of loss and betrayal there are clan members who are seen as disloyal to the Maake clan. These clan members are commonly referred to as the “*majela-thoko*” (those who eat alone) and are viewed with much disdain. Quite literally, those who eat alone do not share their food with the other members of the clan; food is the metaphor for wealth, abundance, and success as mentioned. This metaphor of “*majela-thoko*” correlates with the earlier notions of “*tlala*” (hunger) and “*go sokola*” (to struggle) which have been pivotal to how the claimants construct their shared identity.

Willem\* (son of Seakwane Wilson Malemela, 58) shares that any members of the clan who refuse to participate in the land claim can also be classified as “*majela-thoko*” as he states: “*They say they do not want to hear anything – now not wanting to hear anything is to not know where you lived [your roots].*” Thus, Willem's\* sentiments indicate that clan members who do not participate in restitution are ultimately disconnected from their origins and their ancestors. The claimants are also angry at the “*majela-thoko's*” apparent indifference in fighting for restitution; restitution is likened with waging war against the current landowners. This is evident as Willem\* continues: “*You find a person pushing themselves aside but they were born right there [Boomplaats], and their fathers are the ones that the Afrikaners would slap.*” Willem\* is angry toward the clan members who fail to defend their parents' dignity because much of the claimants' sense of entitlement to Boomplaats rests on the notion of the righteousness of their claim.

The claimants do not all share the same views on Altenroxel and his role in contributing to their dispossession, and I believe this can be explained in the context of rural paternalism. The narrative of “*shared loss and betrayal*” has contributed to the claimants' sense of injustice and they remain convinced that Boomplaats belongs to the Popela Maake clan.

Thus, the idea that they have a moral claim to the farm intersects with the idea that they have been denied what is their legitimate inheritance. This sense of legitimacy is inter-related with the narrative of “*shared lineage*”; yet within these narratives exist many ambiguities and inconsistencies.

#### 5.4 The Ambiguities and Inconsistencies

Du Toit (2000: 81) cautions that dispossessed communities often romanticize and idealize their own history, with an emphasis on their harmonious coexistence prior to dispossession. I cannot be certain that the Popela claimants have in fact romanticized their history, but I have observed several inconsistencies in how they (re)construct their community identity. With reference to the “*batho ba mpa tee*” narrative, the most glaring ambiguity is the claimants’ assertion that they are entitled to claim all six farms in Mooketsi. As part of the preparation of the land claim, each individual was required to show where they used to cultivate their crops or graze livestock on Boomplaats; consequently the claimants were compelled to reduce the size of the land under claim and concede that they only exercised rights in land over a portion of Boomplaats. As Fannie\* (son of Ramothaba Phineas Maake, 42) explains, it is on these grounds that the clan only referred the claim for Boomplaats to the office of the RLCC, and subsequently curtailed the portion of land under claim. In the following excerpt Fannie\* explains that this was part of the treachery of the LCC ruling:

*Now it defeated them [the claimants] that they could not then spread out so that they could take [claim] that entire place [Boomplaats]. And they [the LCC] put it in a specific way that it means ‘we live here, and it is only here that we will claim’.*

Abraham\* (son of Johannes Tholo Maake, 35) adds: “*The Afrikaners [Goedgelegen Tropical Fruit] used their intelligence to get that farm, they also ended up changing things saying they [the claimants] were workers and not residents.*” Linked to this inconsistency in the “*narrative of the dispossession*”, there are ambiguities in how the claimants interpret the Constitutional Court ruling. For many of the claimants, they do not identify themselves as labour tenants or farm workers, but rather as the rightful owners of Boomplaats. The claimants use the term “*hamba boya*” (to go and to return) to describe the wage labourers who used to commute to Boomplaats on a daily basis. Furthermore, the intimate nature of rural paternalism has also informed the claimants’ understanding of their rights in land as some claimants believe that they have a share in Boomplaats. Abraham\* (son of Johannes Tholo Maake, 35) explains for example:

*A worker is a person who arrives and works, when the time comes that they no longer want to work, they leave. Now a resident, is the one who goes to work where they work and comes back to live where they live.*

As I observe, the claimants ultimately refute the Court judgement in which they are awarded restitution as individuals and not as the Popela community. In order to appreciate how the claimants have reconciled that they have been unjustly awarded restitution as individuals, I refer to Paulina's\* (wife of Mabule Isaac Maake, 69) statements:

*We have nothing, it is only the papers in this manner. Papers in this manner. We cannot go to court and be interrogated [for] our land... We want to know where the Government has put us the people of Popela... If only it would end [and the claim be finalised] so we know that the Government has put us in this manner. Yes, so that we can be happy that we followed the path with papers.*

The next inconsistency in the claimants' narrative of "shared loss and betrayal" relates to how they reconcile that labour tenancy was the source of their misfortunes, yet it is evident that to some degree they found ways to work within the confines of the system. Specifically, I refer to Maria\* and Ramothaba Phineas Maake who do not share the same views on the conditions of labour tenancy on Boomplaats though they were married and both worked for the Altenroxels. To elaborate, Maria\* was injured by a tractor after which she stayed at her homestead and did not work on Boomplaats. And when Ramothaba took ill – though she does not indicate the exact year – she appealed to Altenroxel to be allowed to work in the farm house doing laundry and ironing. At first glance, Maria\* may genuinely believe that Altenroxel is a good man – or a "father-like figure" under rural paternalism. On closer inspection, she may be a masterful actress who conformed to the role of the wife of a labour tenant in order to secure her family's tenure on Boomplaats. This is speculation, particularly as I cannot know with any certainty how Maria\* would reconcile her views on Altenroxel when confronted with the knowledge that he testified against the claimants in the LCC.

Apart from Maria\* I note other instances in which the claimants have reconciled that they cannot escape their current reality (as people who have lost their cattle, homesteads, and more especially their dignity) so they must accept their station in life (as mere labour tenants as determined by the Court). Many claimants view Altenroxel with contempt, yet still expected him to safeguard their welfare after 1993 when the farm was sold to Goedgelegen. They argue that Altenroxel should have secured their tenure, by way of a title deed, as a token of

his appreciation for their years of long service and dedication to Boomplaats. Jacobus, \* (son of Petrus Maake, 59) states for example: “*They [the Altenroxels] were supposed to call us and say ‘we have been living with you for a long time, we are going to give you this farm as a bonus.’*” Thus, even after the termination of labour tenancy, some claimants have continued to regard Altenroxel as their paternalistic master, although they were employed as wage labourers.

Another instance in which the claimants’ community identity founded on “*shared loss and betrayal*” is shown to be vulnerable, is the notion of the “*majela-thoko*”. The “*majela-thoko*” also pose a threat to the claimants’ assertions that they are united in their quests for restoration to Boomplaats. Within the respective claimant families these tensions are more pronounced as the claimants are all related to one another, as mentioned. Thus, the claimants feel that the “*majela-thoko*” have betrayed the clan and the family, because they do not share the same values as the rest of the claimant group. The claimants relate that some “*majela-thoko*” have even returned to work on Boomplaats – as employees of Westfalia – following the lodgement of the claim. Claimants cite other instances where they believe that these “*majela-thoko*” have sabotaged the process of restitution by sharing the outcomes of clan meetings with the management of Westfalia. As I explained, I attempted to interview some of these “*majela-thoko*” but this proved to be difficult as I could not make contact with any of these clan members independently.

Even within this contradiction, there is inconsistency in the claimants’ feelings of shared betrayal toward the former residents of Boomplaats who work or have worked on the farm – not everyone is seen as “*majela-thoko*” For instance, Piet\* (brother to Ramothaba Phineas Maake, 61) asserts that he used to work on Boomplaats up until 2012. He explains that he relocated from Boomplaats to Ga-Sekgopo at some point after 1969 and used to commute daily to work as a wage labourer (first working for Goedgelegen Tropical Fruits and more recently for Westfalia Fruit). I observe that Piet\* is respected within the claimant group, which may be linked to his position within the clan as a brother to one of the individual claimants who were awarded restitution. Another claimant, Edgar\* (son of Seakwane Wilson Malemela, 60) argues that he and his children should be given first preference as employees on Westfalia. He adds that his family has been unfairly discriminated against by the management of Westfalia as they will not hire him. Edgar\* has provided several examples of

how the claimants' narrative of "*shared loss and betrayal*" is loaded with contradictions, as I discuss in more detail in the rest of the chapter.

However Fannie\* offers a different argument in response to some clan members' refusal to participate in the land claim. He argues that some of the former residents of Boomplaats have been so adversely affected by farm labour that they cannot contemplate returning to the farm. In the following excerpt Fannie\* does not appear to view these former residents as "*majela-thoko*" – instead he appears to respect their decision not to participate in the claim:

*They say they no longer have an interest, they cannot return back to the farm because the Afrikaners had troubled them... a long time ago now those scars have not healed in them. So now they remember that if they return back to the farm, the struggle under which the Afrikaners had made them live, will continue.*

In the discourse of national culture, Hall (1992: 295) observes that in seeking to regain identity and dignity, what is often concealed is the "...struggle to mobilize the people to purify their ranks, to expel the 'others' who threaten their identity, and to gird their loins for a new march forwards." Let me add that the claimants' feelings of resentment and betrayal toward the "*majela-thoko*" relate directly to the fact that the claimants are members of an extended family. At a base level the "*majela-thoko*" are 'othered', and many claimants feel that the "*majela-thoko*" should not be entitled to rights in land on Boomplaats. As these claimants argue, the "*majela-thoko*" do not share in the suffering and the loss as experienced by other members of the claimant group. Moreover, this notion of "*majela-thoko*" challenges the notion of "*shared loss and betrayal*" that has unified the claimants in their quest for restoration of Boomplaats. The sentiments of Piet\*, Edgar\*, and Fannie\* leave me perplexed as to how the notions of "*majela-thoko*" are only applicable to some claimants. I consider whether the claimants have developed a social hierarchy through which some members of the claimant group are exempt from fulfilling certain obligations in order to belong to the clan.

I find that within the "*shared loss and betrayal*" discourse, the claimants' sense of community identity is continually being (re)constructed in order to accommodate the "*majela-thoko*" discourse. Broadly speaking, I do not think that the claimants have a unified or fixed notion of community, as I allude to in the "*batho ba mpa tee*" discourse. Rather, I would highlight that their community identity is very fragile and susceptible to rupture if it is subjected to interrogation. However, this does not imply that the claimants do not have any

basis on which to assert their rights in land. Nor does it denote that the claimants have an imagined sense of community identity. But their community identity is so vulnerable to external forces that the claimants themselves dare not interrogate it, lest it disintegrate.

## 5.5 The Gendered Lens

There are already two women who substituted their deceased husbands as individual claimants when this case was heard in the LCC. However, as I have observed, it is only the men in the clan that take resolutions on matters relating to land restitution. What is more, the women that I interviewed believe that they only have rights in land by virtue of marriage. For example, Paulina\* (wife of Mabule Isaac Maake, 69) explains: “*Meaning that that village [Boomplaats] is also mine because it belonged to the man who took me.*” Paulina\* adds that her rights in land are tied to her children’s rights because she bore them on Boomplaats: “*All of the soil of Popela is mine because it is my children’s.*” According to claimants such as Paulina\* women are afforded rights in land through patriarchy. Whitehead and Tsikata (2003: 9) explain that women’s access to land throughout Southern Africa is not uniform and for some women (such as these claimants) they hold rights in land through their husbands’ kin group under communal tenure. In addition, the authors caution that this is also how some women lose their rights in land, by marrying outside of their father’s clan (Ibid). I should flag that these authors are referring to communal tenure systems which differs significantly from labour tenancy, as previously articulated.

To this effect, the claimants argue that any woman who marries outside of the Popela clan forfeits any claim to Boomplaats as she is no longer a member of the clan. Claimants use the term “*ga bogadi*” (belonging to her husband’s family) to express this sentiment. Claimants elaborate that any woman who marries outside will lose all rights in land, as will her children, as they now belong to their father’s clan. This is an instance of marriage serving to extinguish a woman’s rights in land, as mentioned (Whitehead and Tsikata 2003: 9). Conversely, Abraham\* (son of Johannes Tholo Maake, 35) justifies that women who have married outside of the Popela clan should still be entitled to rights in Boomplaats by virtue of their shared parentage; this view is not shared by the other claimants.

Whitehead and Tsikata (2003: 25) highlight that under communal tenure women typically enjoyed greater rights in land when there was an abundance of land. However, the scarcity of land aggravated the systematic deprivation of women’s rights in land (Ibid). Furthermore, Claassens and Mnisi (2009: 492) note that women often enjoy rights in land through

“...reciprocal family and community relationships...” under communal tenure. Women’s claims to land are often founded on their socially recognised membership to a community (Claassens and Mnisi 2009: 514). For instance, Piet\* (brother to Ramothaba Phineas Maake, 61) articulates that a woman can only attain social recognition in relation to marriage, as he explains with the idiom: “*Mosadi ha a na sefane*” (a woman does not have a surname). This idiom means that a woman is without an identity; she will first assume her father’s identity, and upon marriage she assumes the identity of her husband and in-laws. Still, all claimants concede that the unwed women in the clan, as well as their children, should enjoy rights in land as they still belong to the Popela clan.

The Popela clan comprises several polygamous marriages. This is significant because practically, there are several households which can lay claim to Boomplaats. As mentioned, the Land Restitution and Reform Laws Amendment Act stipulates that when there is more than one direct descendant, with a legitimate right to land, then that right “shall be divided not according to the number of individuals but by lines of succession.”<sup>53</sup> Pienaar (2009) explains this to mean that “...the longest surviving direct descendants per line of succession of the deceased person may file a claim as co-claimants.” When a claim is finalised the right in land is transferred to the surviving descendants of this individual claimant, who will then be regarded as co-owners of that right (Ibid).

To clarify this, here is an illustration. Petrus Maake had four wives and he has 32 children in total. According to the abovementioned legislation, each of Petrus’ surviving wives as well as the children of his deceased wives are co-claimants. I should reiterate that the Constitutional Court awarded the individual claimants 800m<sup>2</sup> of the land on which their homesteads formerly lay, as well as land for grazing and ploughing to be held in common (estimated at 55 hectares). Some claimants recognise the practical limitations on restitution, as Christiaan\* (son of William Maake, 69) comments: “*We fill that farm as the children of only one man on our own without our family, of just one man; we are many – too many.*” Perhaps it is this recognition that has prompted the RLCC to enter into negotiations for the purchase of a larger portion of land than the 55 hectares initially discussed.

As indicated in the literature, labour tenancy contracts were only entered into with the homestead head, which implies that women are not recognised as labour tenants in their own

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<sup>53</sup> Land Restitution and Reform Laws Amendment Act 18 of 1999 Section 2 (4)

right. However, *In Re Mbhense v Brown and Another*<sup>54</sup> the LCC recognised Dano Agnes Mbhense as a labour tenant in accordance with the Land Reform (Labour Tenants) Act 3 of 1996.<sup>55</sup> In this instance, even on appeal the SCA<sup>56</sup> found that typically each member of a tenant household had “...agreed with the farm owner that he or she be afforded labour tenancy rights in return for his or her providing labour individually and not necessarily in equal measure.” It appears that women’s rights in land are safeguarded under the Land Reform (Labour Tenants) Act as the right to occupy and use the land under claim is for labour tenants and their family members (including their grandparents, parents, spouses, and dependents).

And whilst the Restitution Act recognises women’s rights in land, the practical implications for the women in the Popela clan as the claimants’ wives indicates that the legislation does not necessarily protect women’s rights in land when they are located under labour tenancy. As the spouses of the originally dispossessed individuals, the women in the clan should be able to exercise their rights independent of their children or in-laws however their claim to Boomplaats as former labour tenants was not explicitly articulated throughout the court proceedings. In seeking restitution of Boomplaats as individual claimants, the Popela clan made concessions on women’s rights in land and adapted their customs for the purposes of the claim. The claimant group had very little choice in this regard – the claimants’ legal counsel was undoubtedly familiar with the requirements of the Restitution Act and the lines of succession which allowed the longest-surviving descendants of the claimants to become co-claimants.

Whitehead and Tsikata (2003: 27) note that “the language of chieftaincy and tradition may mask many different kinds of economic and political processes.” However, in the context of these claimants, it seems that tradition has been made subordinate to the statutory requirements for restitution. As it would appear, the claimants have been confronted by the limitations of their views on women’s rights in land and have made the necessary concessions for the wives of the individual claimants. As the claimants await restitution, I wait with interest to see how these claimant households will confront the limitations of restitution, if the State awards them individual title deeds.

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<sup>54</sup> *Mbhense v Brown and another* (LCC 33/05) [2006] ZALCC 8

<sup>55</sup> The Land Reform (Labour Tenants) Act defines a labour tenant as a person whose parent or grandparent currently lives or used to live on the land under claim in exchange for providing their labour. This Act came into force on 02 June 1995.

<sup>56</sup> *Brown v Mbhense and Another* 2008 (5) SA 489 (SCA) para 28

## 5.6 Discussion

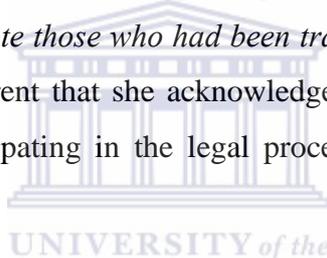
On the surface of their community identity the claimants present themselves as individuals who have been awarded restitution. However, upon closer inspection, beneath that layer of identity, the claimants maintain that they are a community that has been systematically dispossessed of their rights in land. This sense of community is rooted firstly in a narrative about shared origins and the history of the tribe as “*batho ba mpa tee*”. At the same time, their (re)construction of their community identity is also premised on a sense of “*shared loss and betrayal*”. Within this narrative Altenroxel’s role as the landowner comes to the surface. Within the claimants’ accounts of the dispossession, there are deep-seated feelings of regret with respect to the termination of labour tenancy. On occasion, it seems as if the claimants long for the return of their grazing and cropping rights at any expense. As I have noted above, the claimants found themselves at the mercy of the Altenroxel family and, no doubt they found ways to endure the strict conditions of labour tenancy. This is one way to understand the choices that the claimants have made in how they locate Altenroxel in their sense of loss and betrayal.

I also consider the claimants’ notion of “*shared loss and betrayal*” as it relates to the “*majela-thoko*” who have “betrayed” the clan. The “*majela-thoko*” are also the children of the individual claimants, which entitles them to restitution by virtue of their shared parentage. Thus, the claimants’ (re)construction of their community identity must acknowledge that, practically speaking, there is no way to deprive the “*majela-thoko*” of their rights in land. Restitution by lines of succession could even mean that some “*majela-thoko*” have their rights in land recognised and enforced by the RLCC, although the clan would rather deny them any claims to Boomplaats because they are perceived having betrayed the family. What is certain is that the clan will have to decide on how to resolve these conflicting notions of belonging and the entitlements to restitution when the claim is finalised.

With respect to the narrative of their shared parentage and lineage as “*batho ba mpa tee*”, the claimants make interesting choices in how they reframe their history. The clan asserts their rights to claim Boomplaats by virtue of their royal lineage as descendants of Mampše. And yet their historical account offers very little information on Popela Maake as the founder of the community. This is another ambiguity in their narrative of “*batho ba mpa tee*”. Therefore, it seems that the claimants have possibly conflated Popela and Mampše’s role in the history of the clan in order to sustain the legitimacy of their claim. Perhaps this is

because restitution sustains the claimants' hopes of regaining their lost identity as "*batho ba mpa tee*", which also allows the Popela community to continue to exist even after the dispossession of Boomplaats.

With respect to women's rights in land, Kaufman (1959: 12) asserts that when the concept of community is viewed as a social group, members at the periphery of the community might not share the same social concerns as members at the core of the group. This may be one way to explain how the women in the clan accept that they are entitled to restitution as the descendants of the individual claimants, but they also subscribe to patriarchy and cannot actively assert their rights in land lest they face social isolation. Within this claimant group, the sense of belonging (to the community and the clan) as noted in the "*batho ba mpa tee*" narrative is also tied to the legitimacy of seeking restitution. For instance, Rebecca\* (wife of Mokwati David Maake, 64) explains that she believes that the State (and the claimants' legal counsel) only acknowledged those wives who participated in the various court proceedings: "*Yes. It is because they only wrote those who had been travelling for the case.*" If I re-read Rebecca's\* statement, it is apparent that she acknowledges that some members of the clan have been excluded from participating in the legal process of restitution but this has not diminished their rights in land.



Though the claimants' views on their community identity are characterized by conflicting notions of "*shared loss and betrayal*" and "*shared lineage and parentage*" this does not mean that their sense of community is false as I have documented. Their subjective sense of belonging to a community is not nullified simply because their notions are full of contradictions and ambiguities. These divergent views are equally pronounced in the claimants' views on gender, in their attitudes toward Altenroxel and similarly in how the claimants' understand the Constitutional Court ruling.

In order to understand how the claimants can reconcile so many conflicting notions of community identity, I turn to Afzal (2008: 4) who notes that "...a person who is a member of different communities has multiple roles, and therefore, multiple identities." Thus, the claimants' sense of community identity is not uniform and is continually undergoing (re)construction, but this does not mean it is spurious. On the contrary, this is most likely a core facet of all community identity. Community identity does not stay fixed throughout history – it is continually being reinvented and (re)constructed by each new experience. The only time this "*shifting*" notion of community becomes problematic is when the State

imposes its “*fixed*” notions of community onto a claimant group. The claimants have been unwavering in their demand for restitution and, even after the Constitutional Court ruling, they maintain that theirs is a moral claim to the farm. Within this context, as I will now outline, they have devised the means to retain their community identity which has sustained their hopes for restoration for 20 years, since they first organised themselves into the Popela committee to file for restitution.



## CHAPTER 6 – CONCLUSION

### 6.1 Introduction

The notions of community and rights in land are central to determining the eligibility of claimants in land restitution. Accordingly, the Popela land claim demonstrates that claimants may become innovative in how they articulate their rights in land for the purposes of land restitution. Moreover, the Popela case study highlights that the notion of community needs to be understood within the historical context under which a claimant or claimant group was dispossessed of their rights in land.

This dissertation has revealed that there are many assumptions that have been made with regard to the construct of community and more significantly, community identity. As I have already indicated, the claimants' discourse has been highly contested with several overlapping counter-narratives. This chapter seeks to articulate the key features of this (re)constructed community identity and for this purpose I will present the key findings from the research, as well as some of my experiences as the researcher. As I have observed, Hall's (1992) five elements in constructing national identity have not been prominent in the Popela case study, and neither has Jannecke's (2005) adapted framework. Thus, I must adopt a less prescriptive approach to how I articulate the claimants' (re)constructions of their community identity.

### 6.2 Key Findings on (Re)constructed Community identity

The key discourses of community identity as "*shared loss and betrayal*" and "*shared lineage and parentage*" indicate to me that there are many contradictions and ambiguities in how the claimants have learned to reconcile certain limitations in how they understand their rights in land. Furthermore, this discord in how the claimants present their community identity is closely aligned to the variations in the Altenroxels' role in the claimants' recollections of the clan's dispossession.

I have alluded to the importance of understanding how rural paternalism has been practised by landlords to keep their tenants in a perpetual state of submission. As mentioned, the Gassel family and then the Altenroxel family have been the landlords for close to 80 years on Boomplaats. By virtue of the quasi-kinship system on which paternalism functioned (Van Onselen 1997: 202), the claimants (but more likely their parents) came to regard each

respective landlord as more than merely a “master.” This is evident throughout the various interviews that I conducted.

Similarly, the landlord learned to regard the tenants as more than just a workforce by offering food rations, clothing, and a salary to the members of the tenant homestead. The claimants’ historical account outlines how they used to have free reign over a portion of Boomplaats; this has further informed their claims for restitution. Even if the respective landowners on Boomplaats have recognised the claimants’ rights in land, this has not translated into the claimants’ rights being protected; if anything this recognition may have contributed to Altenroxel’s use of excessive domination (by depriving the claimants of a right to education or the right to relocate to a different farm). This does not imply that their tenancy on Boomplaats was guaranteed by mutual arrangement.

It is useful to draw on James Scott’s (1985) work on the power relations between the dominant and subordinate classes in society and how they relate to one another to better articulate my thoughts. Looking at the dominant class, Scott (1985: 24) notes that they exercise their social power by controlling the public platforms and public discourses which are allowed to take place in a given society. Accordingly, the subordinate class learns to temper their disapproval of the dominant class in order to avoid reprisals and punishment; this maintains the social order. Scott (1985: 25) adds that for the disempowered (subordinate class) the act of being subservient may cost time and even their dignity, as they practice public deference toward the dominant class.

The motivation behind this act of subservience is survival; some subordinate classes can also secure material benefits by complying with the expected social etiquette of that society (Ibid). Van Onselen (1990: 116) first alluded to this act of subservience in the relations between black sharecroppers and tenants and white landlords in the south-western Transvaal. Now his notion of “*cultural chameleons*” is vividly reflected in the rural paternalism entrenched in the Popela claimants’ recollections of the Altenroxels.

The claimants appear to have accepted August Altenroxel’s authority, though they do not admit it. Their historical account indicates that they obeyed all the rules he set for them on Boomplaats. Some claimants such as Isaak\* (son of William Maake, 63) go as far as to accord him Chief-like status. Isaak\* is not the only claimant who concedes that the clan lived under Altenroxel’s authority prior to 1969 and even thereafter. Farm occupants on white-owned land have been subjected to varying degrees of rural paternalism, the effects of which I

have already outlined in the review of the literature. Many rural communities were coerced into adhering to the requirements of living on these farms, as is the case with the Popela claimants. And, given Scott's (1985) writing on power, it seems that Isaak's\* views "betray" the claimants' narrative of "*shared loss and betrayal*".

Within this narrative arises the resentment toward the "*majela-thoko*" – they too have "betrayed" the community identity founded on "*shared loss and betrayal*". The claimants are angry at the "*majela-thoko*" for betraying the clan's forebears and, more immediately, the claimants' parents. The notion of the clan's unity becomes vulnerable to attack and interrogation by outsiders or even the Constitutional Court, when claimants cannot show that they hold the same views on their rights in land. Moreover, the claimants have to confront the limitations in the way they perceive themselves as members of the Popela clan. There is no conceivable way to limit the "*majela-thoko*" rights in land by virtue of lines of succession, as explained by Pienaar (2009). The claimants are thus compelled to concede on their preference to see Boomplaats restored only to those claimants who intend to start livestock farming again; yet the Court did not stipulate how the land should be used following restitution.

The claimants' perceived unity which accompanies their desire to return to Boomplaats, articulated in the "*batho ba mpa tee*" narrative, is inconsistent when closely scrutinized. What is evident is that the claimants have been dispossessed of more than just the physical land. The claimants repeatedly state that they lost their "*bogoši*" (chieftainship) and royal lineage when they lost their indigenous title to Boomplaats. Following this loss of identity as the descendants of Mampše, the clan then adapted to the circumstances on Boomplaats by providing their labour to the respective landlords, in exchange for grazing and cropping rights. All the while, the claimants maintain that their forebears are still the rightful owners of the land but they do not account for how Chief Popela Maake allowed the Altenroxels to dictate to the clan the terms of their tenancy on their own land. Nor do the claimants offer any alternative narrative on Petrus Maake's position in the clan as the son of Popela Maake.

Scott (1990: 10) offers a possible explanation, that when the subordinate class must continually conform to the expectations of social etiquette, then it is possible that "... eventually... their faces have grown to fit that mask [of subservience]." Alternatively, these may be instances of "false compliance" which is one of the weapons of the weak. When faced with few alternatives the subordinate class learns to adapt to their circumstances and finds

inventive avenues to display their defiance (Scott 1985: 29-34). Furthermore, Scott (1990: 3) explains that in instances where the subordinate class is subjected to excessive domination, members of this class adopt an overtly subservient demeanour – which is almost stereotyped. “In other words, the more menacing the power, the thicker the mask” (Ibid). I contend that the contradictions within the claimants’ discourse, as it relates to their history as descendants of Mampše, has driven them to publicly reject their lineage and to openly appear to accept that they have always been labour tenants. The current landowner (Westfalia Fruit) and the State (through the RLCC) both exert force on the claimants as they await finalisation of the claim: the claimants have believed that they dare not openly criticize the State lest they face further delays in the finalisation of their claim.

I turn to the question of gender, as it relates to the finalisation of the claim. To reiterate, if the claimants are awarded individual title deeds, these will most likely be registered to the individual claimants’ oldest living descendants (typically their respective surviving wives). The complexity of this case study is due to the fact that all of the nine individual claimants were married under polygamy. Because of this, questions on the lines of succession become more palpable in (re)constructing community identity. Many of the claimants that I interviewed explain that women are subordinate to men in the clan, with respect to issues of land use and land allocation. And, the women in the clan defer to their husbands and, when these men are deceased, the women defer to their husbands’ kin group. Because of this, the claimants continually make concessions on their community identity (by recognising women’s rights in land as co-claimants) for the purposes of the claim.

The claimants do not contest that the oldest living descendant in each line of succession becomes a co-claimant. However restitution may ignite family tensions and sow *more* divisions amongst the clan because of the lines of succession. This is speculative although I recall that some claimants’ wives explained that there were already tensions in the respective homesteads prior to 1993. Consequently, in some tenant families, wives began to depart for Ga-Sekgopo with their children (leaving their husbands to live on Boomplaats with their other wives) because of these disputes long before the claim was lodged.

### **6.3 The Balance of Power**

To date, there has been insufficient research conducted on the social and historical construction of community identity. Yet, located within this community identity are key

discourses which shape the process of land restitution. It is important to start reflecting on the implementation of land restitution as the Department of Rural Development and Land Reform has extended the cut-off date for lodgement of new restitution claims to 2019. I was drawn to this case study precisely because my observations indicate that labour tenancy cannot be neatly bundled into the Restitution Act, nor can labour tenants always find redress under the Land Reform (Labour Tenants) Act, due to the cut-off date for eligible claimants. My review of court judgements on restitution for former labour tenants' has revealed that the restoration of their rights in land is not usually dealt with under the Restitution of Land Rights Act.<sup>57</sup> The issue at hand is how the court system develops its narrative on community identity, and from what I observed amongst the Popela clan, restoring labour tenants' rights in land has also meant interrogating these rights, as opposed to interrogating the legislation. Horn (1998: 9) highlights the need to take into account that the right in land is "*de jure*" (concerning law), whilst an identity in land is "*de facto*" (concerning fact) in cases of restitution.

The State (through the respective court proceedings) has played a prominent role in (re)constructing the Popela claimants' community identity. Fay and James (2009: 2) have previously articulated that the legal framework through which restitution is awarded sees many third-party actors (typically NGOs) acting as mediators on behalf of the claimant group. In this case study, Nkuzi has until recently provided the claimants with legal counsel. It is intriguing that the claimants have now decided to oppose the Restitution of Land Rights Amendment Act; though I should add that their case has since been taken over by the LRC and has become part of a much larger civil suit. And yet, the claimants have outwardly celebrated the initial Constitutional Court judgment of 2007 as a victory; thus emerges another ambiguity in the claimants' (re)construction of their community identity. Fay and James (2009: 2) caution that when claimants grow too reliant on NGOs, this only serves to reinforce the notion that claimants do not have the agency to assert their own rights in land. Furthermore, an unintended consequence of this new way of interacting means that the State and claimants continue to view one another as adversaries (Ibid).

I have observed that claimants have only been able to reject the legitimacy of the ruling outside of the courtroom (barring this pending LAMOSASA case application), and this is where Scott's (1990) writing on the *hidden and public transcripts* of the subordinate and dominant

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<sup>57</sup> Many labour tenants have successfully submitted claims under the Land Reform (Labour Tenants) Act 3 of 1996.

classes becomes relevant. Scott (1990: 2) explains that the subordinate class appears subservient in order to carefully manage the impression that they project onto the public arena, as they are continually scrutinized by the dominant class. This becomes the *public transcript*. By only observing the *public transcript*, which is viewed from the perspective of the dominant group, "... [we could] conclude that subordinate groups endorse the terms of their subordination and are willing, even enthusiastic, partners in that subordination" (Scott 1990: 4). However, this *public transcript* exists alongside a *hidden transcript* which is drawn from the gestures, practices, and contradictory behaviours of the subordinate class, hidden from view of the dominant class (Ibid). Scott (1990: 5) cautions that the *public transcript* cannot be discounted as disingenuous or subterfuge and similarly the *hidden transcript* cannot be put on a pedestal as the only authentic discourse.

#### 6.4 Considerations

Whilst the primary research question focuses on how the claimants have framed their reality and community identity, rather than on the issues of legitimacy and entitlement, the data reveals many discrepancies. Only after reading van Onselen's (1990; 1997) writing on rural paternalism on farms which operated under labour tenancy, do I understand how some of the participants can express such conflicting emotions toward the former landlord, August Altenroxel. It must be emphasized that, according to my research, the notions of betrayal and loss could be attributed to the Altenroxel family or even the Gassel family. It is also worth remembering that the research was conducted more than 45 years after the dispossession, and all but one of the individual claimants who were dispossessed in 1969 are deceased.

Because of this time lapse, I was deprived of the opportunity to interview many of the claimants who lived under labour tenancy, and later under wage labour. I cannot discount the interviews that I conducted with the descendants of the individual claimants; however this dissertation is much more a reflection of how these descendants have (re)constructed *their* community identity. It appears that these descendants' discourse on their community identity has been (re)constructed over the years specifically for the purposes of restitution. As noted earlier, the notion of conforming to what is an acceptable identity for a claimant group has been used in various instances (such as Popela, Ndebele-Ndzundza, and Mashpee) to assert and to diminish a community's rights in land.

Taking part in this process was emotionally taxing for me and, though I kept a field journal, after three phases of data collection I was overwhelmed by my role in the theatre of (re)constructing community identity. Similarly, the claimants became fatigued by the seemingly endless process of relaying the accounts of labour tenancy on Boomplaats. Ramothaba Phineas Maake (now deceased, 76) stated:

*We have all of these things. Yes, many have come and asked us these questions and we have explained to them. They way this farm was started, the way it was given birth to, how it moved...*

I did not have the opportunity to discuss this point any further, as Ramothaba was sickly at the time of the interview. But I was left with more questions about the extent to which the claimants have aligned their community identity to Mampše, even though by all accounts Popela Maake was their Chief on Boomplaats. Hall (1992: 295) explains that a nation or group's foundational myth is responsible for "converting disarray into 'community'." So I resolved that the claimants may have been motivated to bolster Mampše's prominence in their community identity because they have been advised (possibly by a third-party mediator) that this is how a community's claims for restitution can be made legitimate. This is not something that I have been able to discuss with the claimants since this is precisely the myth that has given the Popela clan its identity as a community for several generations.

## **6.5 Conclusion**

I began the fieldwork with the assumption that the Popela claimants would not know how to organise themselves because of inter- and intra-familial conflicts. Whilst I observed this to be true, to a lesser extent, I found that they were well-organised with a common purpose – to have the farm restored to the clan. However, I soon discovered this was a fragile veneer which had been used to coat the fragmented pieces of their community identity for the purpose of the settlement of the land claim.

I began trying to articulate the claimants' community identity through the framework developed by Jannecke (2005: 62). However, the data that I obtained from the field site indicated that I should focus on the different discourses that the claimants expressed on the basis of their community identity. I soon discovered the many inconsistencies and ambiguities in the claimants' discourse. Rather than upholding Jannecke (2005) or Hall (1992) as the blueprint for (re)constructed community identity, I have resolved to allow the claimants' discourse to guide my research.

The clan's notion of community identity is already under excessive pressure mainly because their "*shared loss and betrayal*" has not united them, as they believe. What now confronts the claimants is the notion of betrayal from within and from outside the clan. I believe this notion will continue to drive the claimants to (re)construct their community identity. Reading through the transcripts I am struck by the perceived unity amongst the clan as "*batho ba mpa tee*". However, it is more evident that the claimants have worked very hard to conceal and remove any threats to their notions of a unified community identity.

I refer to Scott (1990) in order to understand how the claimants' community identity has become so difficult to define and to articulate. I consider Scott's (1990) work on how the *public transcript* is framed to reflect the notions of social etiquette prescribed by the dominant class. It seems plausible that the claimants have adopted the requisite "mask" to shield their *hidden transcript* from public view.

The clan do not all share the same views on August Altenroxel, the rights in land for "*majelathoko*" or women's position in the claim. And I would propose that the clan has adopted a similar approach in how they dealt with the Constitutional Court ruling on restitution. The claimants celebrated the Court ruling however they do not accept the terms of restitution. Some of the claimants withhold their acceptance of the judgement for many reasons; partly because the Court has elevated women to the same status as men and also because the Court has denied the claimants their communal rights in land. It appears that the claimants have been working to keep this disapproval hidden from full view of outsiders because it threatens their claims for restitution. The claimants' vulnerability renders them unable to contest any of the narratives imposed on them by outsiders for the following reason: when the subordinate group "steps out of character" they face real risks to their safety and integrity (Scott 1990: 11). The claimants explained that they risked having the State (through the office of the RLCC) defer the finalisation of their claim, should they publicly reject the Court ruling, and they have already invested 20 years in the pursuit of restitution.

It is important to also note that I only met the claimants in 2013, several years after the claim was first submitted. Accordingly, the claimants have had several years to negotiate how they portray themselves; on one extreme as the descendants of the much-revered Chief Popela (but more likely Mampše) and on the other, as helpless victims of dispossession by the Altenroxels. I can, however, argue that the ambiguities and inconsistencies in the claimants' discourse

appear to be intimately linked to their vulnerable and fragile position within the legal and policy framework of land restitution.

Bradford (1987: 45) describes labour tenancy as a “rural sub-culture” because labour tenants lived and worked together in kin groups. Amongst these claimants, this kin group has become the source of the community’s dispossession. However, I need not replicate the fallacy that the claimants are entirely helpless in the process of (re)constructing their identity. Afzal (2008: 4) writes that knowledge, community, and identity all interact and continue to shape an individual’s reality. Furthermore, within these concepts, an individual will develop a hierarchy through which meaning and value are assigned and prioritized (Ibid). Throughout this research process, I was continually reminded that a discourse is primarily concerned with domination and subjugation which are informed by the words and actions of key actors. On concluding the research, I am made aware that in some instances I have been overly simplistic in understanding how community identity is (re)constructed under land restitution.

I believe that just as Scott (1985) has observed the peasant class and their weapons of the weak, the Popela clan has survived on Boomplaats since the 1800s by learning to adapt to each new landowner. I do not believe that the claimants have been complicit in their dispossession; but that rather, they learned to become the “*cultural chameleons*” that van Onselen (1990: 116) first described. Accordingly, the claimants have continually (re)constructed their community identity because of changing demands that have been put on them, first as tenants on white-owned land who subsequently suffered dispossession, and then more recently as land claimants. Throughout this process, the Popela clan has gradually (re)constructed their community identity in full view of public scrutiny from the time that the farm was first registered in 1889 until the present day as they await restitution. Even through this dissertation, I must concede, the claimant group has not been afforded the opportunity to navigate the ambiguities of community identity and clan dynamics in private – and perhaps this is part of the tragedy of the Popela land claim.

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**APPENDIX I: Claimant Family Tree**



Key:-

**Bold:** One of the 9 individual claimants who filed for restitution in the LCC in 2005

\*: A Son / Nephew of Popela Maake

*Italics: Wife*

(d.): Deceased

°: William Maake married his cousin (Mamoribula Maake née Malemela) and his sister-in-law (Mme Malahlela née Malemela). The Malahlela clan are the nephews and the grandchildren of Popela Maake.



## **APPENDIX II: Interview Questions**

Can you share with me who you are, and how you are involved in this land claim?

Could you describe the process behind this land claim?

How did you come to move from this farm?

What happened when you were moved from this farm?

What did you used to do on the farm? And, what did your family used to do on the farm?

Could you tell me what livestock or crops you used to farm there?

What changed after you moved to the village?

What is a typical gathering of members of this land claim?

If there are meetings, what will usually happen at these meetings?

Please describe a specific meeting to me?

What happens during the meetings?

What would you call the people who let others know what is happening on the farm?

If you were to speak about other people involved with the farm, what would you call them?

Are there different types of claimants in this land claim?

If somebody is talking about being a part of this farm, what words would they use?

If somebody asked who should be counted in the land claim and who should not be counted in the land claim, how would you explain this to an outsider?

What are some of the words you would use to describe or explain this land claim?

What would you say about being part of this land claim? How does it make you feel?

How would you describe being a part of this land claim?

I'm interested in learning how members of this land claim see one another? Is there any difference between you?

What words would members of the Department of Land Reform use to explain the people who are living on the farm?

Is “*ho berekela boroko*” (working for a place to sleep) a term you would hear at the meetings?

How would people who live and work on the farm say it?

How would you refer to people living on the farm or those who are also asking for land?

I am interested in the difference among who attends the meetings and who does not?

Questions for claimants living on Boomplaats:

Can you show me around this piece of land?

Who runs the farm?

Are you free to still graze livestock, and cultivate crops now?

Can you explain to me how you used to live on the farm before 1969?

What is different about life on the farm, now that you are waiting for the land?

What do you believe will change after you are given the land again?

