

# THE CONFLUENCE OF THE STATE, LOCAL MUNICIPALITY AND TRADITIONAL AUTHORITY IN LAND GOVERNANCE:

The case of Engcobo,  
Eastern Cape Province, South Africa

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## LAND GOVERNANCE PROGRAMME

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# Introduction

Engcobo Local Municipality is situated in the western part of the former bantustan of Transkei and falls within Chris Hani District Municipality of the Eastern Cape Province. Eastern Cape Province has six district municipalities, two metros and 38 local municipalities covering towns and surrounding rural areas. Engcobo Local Municipality has a population of 155,513 in 20 wards spread over an area of 2,484 km<sup>2</sup>. It has 39 councillors and eight traditional leaders. Engcobo accounts for 19.6 percent of the total population of the district, according to information from the 2011 census. It was formed in 1995 when bantustans were reintegrated into South Africa. The villages of Engcobo became part of Engcobo Local Municipality and are dominated by people who identify as amaXhosa.

Engcobo is characterised by high levels of poverty, unemployment and illiteracy as well as infrastructure backlogs (roads, water, sanitation, electricity and housing). Other challenges identified are crime, and poor integration and cooperation between civil society, the private sector and the public sector. The population is overwhelmingly rural and most land is communally owned and although it is fertile, only a small portion is fully utilised.

This report examines land governance in Engcobo and shows how negotiation and compromise characterise the relationship between the municipality and traditional authorities. It reveals how local governance is shaped and reshaped by the complex entanglements of some organs of the state, party politics, private property owners, developers and influential private individuals.

This report is part of a three-year research project – the Land Governance project that reviews the performance of local government 20 years into its establishment, generates experiences and dynamics of land governance in local government and identifies and highlights innovations in land governance in municipalities. In so doing, it deepens our understanding of the relationship between local government and land governance in South Africa.

The Public Affairs Research Institute (PARI) carried out research in 2021.

## Report structure

This report is in five sections: the first section is a brief description of the methodology used. The second section provides background; it describes Engcobo and Engcobo Local Municipality, its history, people, tenure systems, and land access and availability. The third section begins by looking at the relationship between the municipality and the traditional leadership with regard to land ownership. The fourth section discusses the findings on attempts at land reform by the Department of Agriculture, Land Reform and Rural Development (DALRRD), the land shortage in Engcobo, and the challenges it poses; the fifth section is the conclusion and recommendations.

## Focus of the study

The report will demonstrate how diverse institutions – the municipality and the traditional leadership – intersect in land use management and how their relationship is informed by national legislation like the Spatial Planning and Land Use Management Act (Spluma) which extends land-use zoning to areas under traditional management where in the past no formal zoning was imposed.

It details the challenges of these dual land-use management systems and the measures taken to deal with them. Furthermore, it reveals the perceptions of both the municipal officials and the traditional leadership on land use management and the implications these have on development projects and the lived experiences of ordinary people in Engcobo.

This report forms part of the Public Affairs Research Institute's (PARI) Land Governance programme which focuses on land governance issues in South Africa and beyond.

## Abbreviations and acronyms

<b>CoGT</b>	Co-operative Governance and Traditional Affairs
<b>TLGFA</b>	Traditional Leadership and Governance Framework Act
<b>IDP</b>	Integrated Development Plan
<b>TLC</b>	Transitional Local Councils
<b>IEC</b>	Independent Electoral Committee
<b>MM</b>	Municipal Manager
<b>MDB</b>	Municipal Demarcation Board
<b>SPLUMA</b>	Spatial Planning and Land Use Management Act
<b>CSO</b>	Civil Society Organisation
<b>RLCC</b>	Regional Land Claims Commission
<b>DALRRD</b>	Department of Agriculture, Land Reform and Rural Development
<b>DRDLR</b>	Department of Rural Development and Land Reform
<b>ELM</b>	Engcobo Local Municipality
<b>ECSECC</b>	Eastern Cape Socio-economic Consultative Council
<b>PARI</b>	Public Affairs Research Institute
<b>SASSA</b>	South African Social Security Agency

## Research methodology

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### 1.1 Sampling and instruments

This qualitative study relied on data from interviews, observations and document reviews. Data was collected between August 2020 and July 2021. Primary data were collected through semi-structured, face-to-face interviews with respondents which were found to be more appropriate because they allowed flexibility and gave respondents time to speak freely about sensitive issues like land governance (Bernard, 2017).<sup>1</sup>

The study sample comprised three traditional leaders, three municipal officials and eight community members. Adjustments were made to deal with challenges posed by the Covid-19 lockdown. These included snowball purposive sampling: data were collected from people who were close at hand and easily accessible. The rationale was to select information-rich cases that would provide the greatest insight into the research questions. The primary data was triangulated (Denzin, 1978) with secondary sources and, where possible, with participation in meetings.<sup>2</sup>

Observation, another technique used to collect data, has the advantage of drawing the observer into the phenomenological complexity of the world where connections, correlations and causes can be witnessed when and how they unfold. The behaviour and actions of participants was noted during interviews. Observation was also used to identify people's activities, behaviours and actions, particularly during community meetings about land and demarcations disputes. Secondary data sources included official reports, municipal pamphlets and newspaper articles. Maps improved understanding of the official demarcations and village borders.

#### Summary of primary data

- Three traditional leaders.
- Informal conversations with the community and one councillor.
- One multi-stakeholder meeting between the chief, the community, land committee members, demarcation board representative and Engcobo municipal officials.
- Interviews with the Integrated Planning and Economic Development Office and the Municipal Manager.
- Ten ethnographic interviews with the community.
- Observations.

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1 Bernard, H. R. (2017) *Research methods in anthropology: Qualitative and quantitative approaches*. Lanham, MD: Rowman & Littlefield.

2 Denzin, N.K. (2017) *Sociological methods: A sourcebook*. Abingdon, Oxon: Routledge.

## 1.2 Reflections on fieldwork in a pandemic

The initial plan of immersive, in-person contact fieldwork became nearly impossible. The Covid-19 outbreak and the measures adopted in its wake delayed project inception; access to potential respondents was closed off. The pandemic amplified the risks for researchers and potential respondents. Such considerations underscore the salience of reflexivity.

We struggled with how to ensure the safety of our interlocuters as our health took precedence over institutional frameworks, career goals and deadlines. We also had important ethical questions like when it would be reasonably safe for us and our informants to commence in-person observations and interviews.

As the outbreak slowed and we transitioned into the 'new normal', we debated how to protect, respect and care for our participants, how to ensure that we protect the vulnerable without excluding them from important discussions, and how to conduct fieldwork while maintaining physical distance. Our previous plans had to be rethought and altered.

Some researchers considered virtual research, which was not an option for our respondents and our line of inquiry did not allow for armchair research. For qualitative studies, especially those more ethnographic in nature, fieldwork is important in that that it allows for immersive engagement with participants 'in their own setting' (Wood 2007, 123).<sup>3</sup> Mediated approaches like phone-call interviews were considered second best. Our participants were not able to meet with us virtually primarily because the field site is remote, with very limited network connection, and because our participants were unwilling to consider digital platforms.

We could not follow the pandemic trends of virtual field work, and had to find ways to work with the idea of 'being there' (Hannerz 2003, 202).<sup>4</sup> We visited the field almost a year later than we had planned, albeit briefly, because of lockdown regulations and the ethical concerns of protecting our participants from exposure to Covid-19 infection.

Despite the disruption of our fieldwork plans, we continue to wrestle with the 'new normal' and look forward to our participants warming to the virtual world. We still question whether virtual communication will prove to be a poor replacement for in-person interaction and hinder ethnographic bonding.

The pandemic required urgent reskilling from us as researchers. This experience changed how we prepare and conduct fieldwork because we had to expand our knowledge on methodological tools and learn new ways of negotiating entry, new ethical standards and methodological tools.

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3 Wood, E. (2007) 'Field research' in: C. Boix and S. Stokes (eds) *The Oxford Handbook of Comparative Politics*, pp. 123–46. Oxford: Oxford University Press.

4 Hannerz, U. (2003). Being there... and there... and there! Reflections on multi-site ethnography. *Ethnography* 4(2): 201-16.



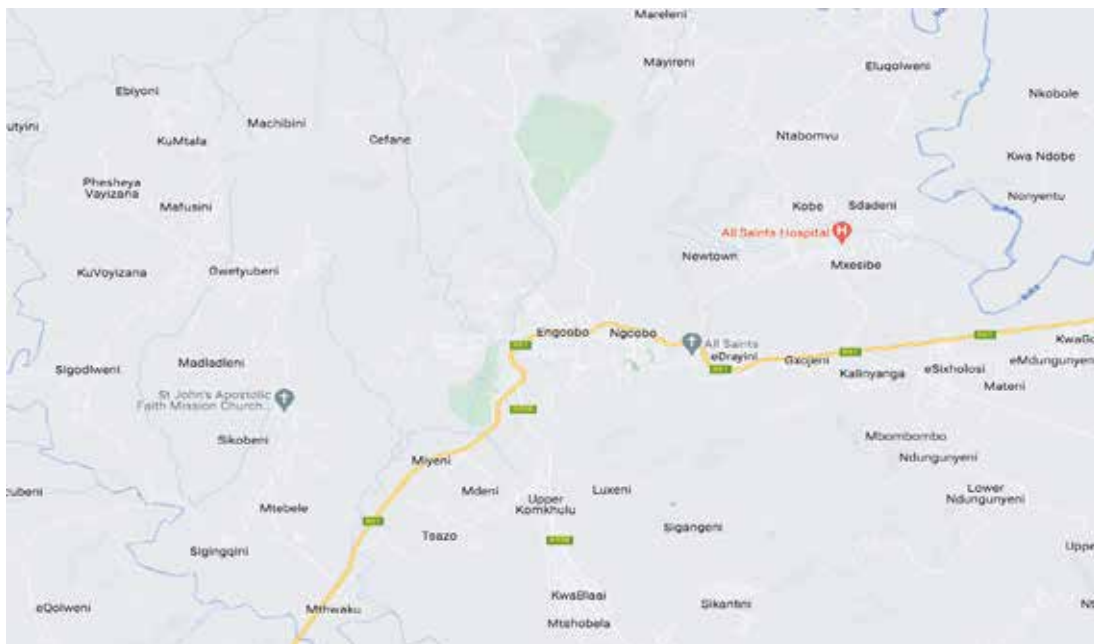
The field site was a challenge in and of itself. As researchers out of our homes we were vulnerable and sometimes could not insist on Covid protocols because of power dynamics between the researchers and some of the interlocutors. We had to endure and hope that our lives are protected; our only ammunition was to exit the field as early as we could.

### 1.3 Research questions and methodology

The overarching research question, ‘What are the dynamics of land governance in Engcobo, Eastern Cape?’ was divided into the following questions:

- What is the current state of land ownership and how and who governs it?
- What is the role of traditional leaders in land governance?
- How does the municipality work with traditional authorities in land use management?

### 1.4 Research sites



The research was conducted in Engcobo in Eastern Cape Province. The research predominately covered traditional lands of Sinqumeni under Chief Jezile, Quluqu / Mjanyana under Chief Mtirara, and Nkondlo under Chief Dalasile.

The sites were selected according to the following factors: representativity, geographical diversity and availability of participants in a constraining Covid-19 pandemic context. The results of this study are not meant to be nationally representative; the main aim of the research is to provide a snapshot of land governance dynamics, the involvement of traditional leaders, and municipal engagement with the question of land governance.

## 1.5 About Engcobo, Eastern Cape Province

Engcobo lies on the R61 between two towns, Komani, formally Queenstown and Mthatha is approximately 120 kilometres to the west and Mthatha is about 85 kilometres to the east. Engcobo Local Municipality (ELM) falls within the Chris Hani District Municipality of the Eastern Cape, and is one of six municipalities in the district. It is a category B municipality with an area of 2,484 km<sup>2</sup> (ECSECC, 2017).<sup>5</sup> It is situated in the western part of the former Bantustan of Transkei. Engcobo Local Municipality is predominantly rural and has a low population density with more than 300 villages scattered across the municipality. Engcobo town is relatively small, it is classified as a sub-district development node (i.e., it is among a group of towns deemed to be on a second level below Queenstown). It may also be described as a low-density urban environment (ECSECC, 2017).<sup>6</sup>

The following map shows the local municipalities that make up Chris Hani District Municipality:



Source: Wikimedia

<sup>5</sup> Eastern Cape Socioeconomic Consultative Council, 2017. *Engcobo Local Municipality Socio-Economic Review and Outlook, 2017*.

<sup>6</sup> Ibid.

### **1.5.1 Population**

Population is important when analysing land issues because it affects land allocation and its governance. Engcobo accounts for a total of 19 per cent of the total population of Chris Hani District Municipality and thus ranks as the most populous local municipality. The Eastern Cape Socio-Economic Consultative Council projected in the *Engcobo Local Municipality Socioeconomic Review and Outlook* that in 2021 the population would be approximately 166,000. In 2016, the number of 20- to 34-year-old females accounted for 11.9 per cent of the total female population; males in the same age group made up 10.8 per cent of the total male population. In 2021, at 10.3 per cent the male working age population does not exceed that of the female population working age population at 10.7 per cent, although both are at a lower level compared to 2016.

### **1.5.2 Understanding the context**

South Africa has a dual agricultural economy: a well-developed commercial farming sector dominated by white farmers, on the one hand, and a small-scale, low-yield subsistence sector in rural areas that is dominated by black farmers. This dualism evolved during the colonial and apartheid eras from biased state support in the form of agricultural subsidies for white farmers who owned large parcels of land. In contrast, small-scale black farmers occupied reserves and had limited access to land. The 1913 Land Act reduced land for Africans even further; as a result, black African people were left with only 13 per cent of the land. The act resulted in widespread dispossession of land from small-scale farmers who were relocated to overcrowded reserves; most resorted to migrant labour on the mines and in the commercial farming sector. In the 1960s, the apartheid regime implemented the separate development concept with more vigour which led to further shrinking of land access for smallholders that continued until the 1980s.

This legacy of uneven land distribution is seen and felt in Engcobo; land is also the cause of tension and discord among the villages. Agriculture is the focus of discussions of poverty alleviation in the area; land reform debates hinge on the view that land ownership is central to economic growth and poverty alleviation.

Although the correlation between lack of access to productive land, youth unemployment and poverty is not necessarily causal, land reform presents a unique opportunity for restructuring agricultural production and reversing the ills of the past.

## Land dynamics in Engcobo Local Municipality

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Engcobo is a good example of the failure of post-apartheid South Africa to integrate agricultural policies and land reform as a solution to the legacy of uneven distribution of land. The complex tenure arrangements in the former Transkei complicate implementation of such policies. There are massive tensions in the institutional bodies appointed to oversee and manage land use. The Engcobo Local Municipality owns less than one per cent of the land, most of which is under the custodianship of traditional authorities; efforts to reconcile the two bodies have thus far been futile. Engcobo has a high unemployment rate of 45.7 per cent with most of the employed occupying unskilled, low-paying jobs.

As a former homeland, settlement and land-use patterns are predominantly of the dispersed 'traditional' rural village settlement type, with subsistence farming practices (pastoral and dry land cultivation). Settlement patterns in Engcobo are largely rural sprawl encroaching on the small town of Engcobo. The overwhelming majority (95.07 per cent) of the population is resident on communal land (IDP 2020/2021). Most households in Engcobo Local Municipality are rural (80 per cent) (IDP 2020/2021) in low-density settlements with low levels of service surrounded by commonage used for grazing and subsistence farming; most of the arable land lies fallow. The northeast part of the municipality is mountainous and is characterised by sparsely populated villages and vast tracts of grazing land. Settlements are evenly distributed across the entire municipal area although there is a growing trend of rural-urban migration. Rural areas are characterised by a combination of planned and unplanned settlements (ECSECC, 2017). The department for planning and economic development has indicated that these patterns are not sustainable or effective for development and has given rise to settlements that range from low-density agrarian communities to relatively high-density urban settlements.

### 2.1 Land Reform in the Eastern Cape

*South Africa's land reform is in flux – and, arguably, in crisis (Hall & Kepe 2017, 1).<sup>7</sup>*

Generally speaking, all aspects of land reform have direct relevance for the people of the Eastern Cape. According to the Department of Rural Development and Land Reform Report (2020),<sup>8</sup> a total of 17,638 restitution claims have been lodged by people in urban and rural areas, in the former homelands; areas include Engcobo and substantial tracts of land in some white areas. There is widespread demand for redistribution for residential settlements, agricultural projects and municipal lands.

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7 Hall, R. and T. Kepe (2017) Elite capture and state neglect: new evidence on South Africa's land reform. *Review of African Political Economy* 44(151): 122-30.

8 Department of Rural Development and Land Reform Report (2021). Annual Report 2020-2021.

Land administration systems in the former Ciskei and Transkei have collapsed; uncertainty and confusion around the status of land rights and ongoing evictions from commercial farms signal a pressing need for tenure reforms across all land types.

Two state institutions have been created to manage land reform in the Eastern Cape: the Eastern Cape Regional Land Claims Commission (RLCC), which is responsible for the restitution programme, and the provincial office of Department of Agriculture, Land Reform and Rural Development (DALRRD) which is responsible for all aspects of land reform. According to Lahiff (2003), these organisations have been innovative and dynamic in their implementation of land reform.<sup>9</sup> He claimed the RLCC had partnered with local NGOs to fill major policy gaps around the settlement of the betterment claims. The RLCC also set up the country's first Settlement Support and Development Planning Unit to provide coordinated, long-term support to restitution beneficiaries.

Despite the earlier achievements of these institutions, however, land reform in the Eastern Cape has many challenges, notably, limited budgets (cf. the Department of Rural Development and Land Reform 2014, 2015),<sup>10</sup> cumbersome internal procedures, lack of policy implementation in key areas, lack of skilled personnel, lack of cooperation between and within the different spheres of government (the national, provincial, and local) (cf. Akinola & Jili 2021)<sup>11</sup> and constraints imposed by the national land reform policy itself (Cliffe 2000; Hall & Kepe 2017).<sup>12-13</sup> Cliffe, and Hall and Kepe argue that land redistribution was not merely constrained by the constitutional settlement and the protection of private property or by the World Bank's market-oriented land reform formulas, rather, it was 'constricted by old-fashioned "modernist"' (and often implicitly colonial) 'orthodoxies still current in South Africa' (Cliffe 2000, 273).<sup>14</sup> Years later, even after several policy shifts, what exists is a far cry from the vision of land reform restructuring the rural areas and ensuring secure land rights.

A number of other governmental and non-governmental institutions are involved to varying degrees in land reform in the Eastern Cape. National government departments include the Department of Water and Sanitation, the Department of Public Works and Infrastructure, and the Department of Tourism. Provincial departments with a direct role in land reform are the provincial office of the Department of Agriculture, Land Reform and Rural Development, which is tasked with monitoring, directing and managing implementation of the department's

9 Lahiff, E. and I. Scoones (2003) 'The Politics of Land Reform in Southern Africa' (Vol. 5). Research Paper 19. Institute of Development Studies.

10 Republic of South Africa. 2015. Department of Rural Development and Land Reform, Annual Report 2014/2015. Government Printing Works, Pretoria.

11 Akinola, A. O., I. Kaseeram and N.N. Jili (2021) 'Expropriation and the Discontent of Land Reform in South Africa: An Introduction' in *The New Political Economy of Land Reform in South Africa*, (pp. 1-9). Palgrave Macmillan: Cham.

12 Cliffe, L. (2000) 'Land Reform in South Africa'. *Review of African Political Economy* 27(84): 273-86.

13 Hall, R. and T. Kepe (2017) 'Elite capture and state neglect: new evidence on South Africa's land reform'. *Review of African Political Economy* 44(151): 122-30.

14 Cliffe, L. (2000). 'Land Reform in South Africa'. *Review of African Political Economy* 27(84): 273-86.

mandate and services at a provincial and district level, the Department of Provincial Treasury, *Eastern Cape Department of Economic Development*, Environmental Affairs and *Tourism*, which is mandated to ensure sustainable economic development to improve local economic participation and secure the provincial conservation status, among other objectives.

At local government level, engagement with land reform is largely at the level of the district municipalities. In the case of Engcobo, Chris Hani District Municipality is responsible for making provisions for land reform projects, and planning of resettlement areas to include housing, clinics, schools and other services.

The most prominent NGO in the land sector in the Eastern Cape is the Border Rural Committee (BRC), an affiliate of the National Land Committee based in East London. BRC focuses on the areas that border East London, specifically villages in the Amatole District Municipality, and advocates for proper implementation of land reform policies and enhanced resource flows into the former homelands, and deals with project management in pro-poor development projects. Other NGO active in the land sector in Eastern Cape Province is the Eastern Cape Agricultural Research Project (Ecarp), based in Grahamstown. This NGO mainly focuses on farm workers, farm dwellers and small-scale farmers. It assists the municipal areas around Grahamstown including Albany district and Calusa and the surrounding areas to access land for grazing and agricultural purposes under the redistribution programme.

A recurring concern raised by different representatives – local village leaders, traditional leaders, and municipal officials – was the absence of active NGOs in Engcobo; in areas with no NGO presence the benefits delivered by the land reform programme to the residents and Engcobo and the former Transkei in general were very limited. Closely related to this was the failure or inadequacy of government institutions – national, provincial and local – tasked with the project of land reform. Frustration was also expressed at the inability of traditional authorities and community-based structures to inform government institutions on what the local communities need, programmes and policies relevant to local communities, and on what takes precedence. Interviews with BRC highlighted the institutional and resource constraints and the discord between traditional leadership and government institutions like municipalities and other organs of the state.

## 2.2 The tenure systems in Engcobo

Two dominant tenure systems run parallel to each other in Engcobo – the freehold, identified through a registered mortgage and issuance of a formal title deed to the landowner, and communal, often in rural village settlements, where land is collectively owned by an extended family, clan or community of ancestrally related people, with control or administration vested in a traditional leader or their appointee who may give out portions of land to the community or non-community members.

Although freehold ownership is common in urban and peri-urban areas and the communal tenure system is dominant in the rural settlement areas, there are some cases of freehold tenures in communal lands. In Engcobo, communal land is under the control and authority of traditional leaders and the local municipal authority controls the formalised freehold urban tenure systems, a system inherited from the colonial government.

Freehold ownership patterns are common in urban and peri-urban areas of Engcobo and nearby Clarkebury (which is also in Chris Hani District Municipality). Communal land in Engcobo falls under the authority of traditional leaders while the local municipal authority has more control over formalised freehold urban tenure systems. According to Engcobo Local Municipality's municipal manager (MM), the coexistence of these tenure systems often creates confusion and difficulties in implementing uniform planning regulations and by-laws to govern land use management and development. The municipality's IDP 2017–2022 focuses on building strong relationships with traditional authorities and mechanisms to implement effective joint planning and land-use administration.

The municipal manager further emphasised that because communal lands are under the control of traditional leadership and the relationship between the municipality and the traditional leaders is uneasy, rural areas often lag behind urban centres as far as economic development is concerned. Moreover, in the past, these areas were sidelined by governments; services were delivered to areas that had networks and reticulated service distribution systems in place (refuse collection, electricity connections and waterborne sanitation, etc.), which has led to massive rural–urban inequality.

The municipal manager's report (2017)<sup>15</sup> indicates that the municipality prioritised rural development as a priority for 2017–2022 with emphasis on the following:

- Planning for improved household access to basic services.
- Leveraging the district municipality on rural service infrastructure installation.
- Facilitation and mobilisation of resources to achieve integrated delivery of

<sup>15</sup> <https://municipalities.co.za/resources/1021/engcobo-local-municipality>.

government services via one-stop service centres to rural areas.

- Coordination of poverty alleviation interventions and livelihood support.
- Integration of settlements to mainstream economic participation and contribution, with a focus on agriculture, farming, cultural tourism, and agro-processing initiatives.
- Improved access to community involvement in decision-making through war rooms and other tools.

### 2.3 The role of the municipality in land and property management

Engcobo municipality is hanging by a thread in terms of assets under its control. The municipal manager highlighted that, in terms of the Municipal Finance Management Act, the municipality is obliged to manage the assets under its control and clearly stipulates that that senior management should take all reasonable steps to ensure that municipal assets are managed effectively to enable generation of revenue and service delivery.

However, Engcobo municipality is handicapped when it comes to immovable assets like land. Projects like establishing a wood manufacturing industry, for example, are almost impossible because of the unavailability of land. As such, such projects are handled by the district municipality, which has more resources at its disposal.

Projects in the pipeline include:

- Developing new irrigation schemes.
- Maximising production at existing schemes.
- Providing a market and agro-industrial at Engcobo.
- Conserving bushman paintings and developing a bushman painting trail.
- Developing the waterfalls for tourist visits (parking area, ablution facilities etc.)
- Developing dams for fishing and accommodation.
- A tourism centre within Hero's Park.
- Tourism facilities and conference centre at Xuka.
- Cultural village (horse and hiking trails, waterfalls, and bushmen paintings).
- Dairy production at Xuka.
- Beef production at Xuka and other areas.
- Dipping tanks and stock dams.
- A beef auction and production facility at Engcobo

(Source: IDP 2017)



According to the Municipal Manager, these projects are still in the pipeline all these projects will only be possible when the SPLUMA bylaw is fully implemented. The local municipality is formulating an Integrated Land Use Management System that will ensure that all anticipated projects are viable by the time SPLUMA is in place.

Current plans include an appropriate land-use management system to deal with formal land development procedures in the urban areas in terms of currently applicable town-planning schemes and ensuring implementation of procedures in terms of the Environmental Conservation Act (IDP 2020 – 21).<sup>16</sup>

## 2.4 Spatial planning issues

The 2020 IDP report highlights issues that affect spatial planning. Prevailing levels of poverty and social need mean much of the developmental process must be directed at improving services and facilities in the poorer settlements (where most of the population resides). However, high unemployment and very low income levels in the municipality influence the affordability and type of development needed. The issue of sustainability emerged as an important consideration in the planning of these projects and their procedures. The major concern was whether they would affect the financial and environmental sustainability of the area.

Complex tenure arrangements in Engcobo are another sore point in the municipality's mandate to plan and implement development projects, investment, and appropriate planning. The primary focus, therefore, has been to institute a programme of local planning to establish proper institutions to oversee and manage land-use decisions. Moreover, fragmentation of the current settlement patterns mirrors the differences in levels of infrastructure provision, land-tenure arrangements and socioeconomic welfare (IDP 2020/2021, 95).<sup>17</sup> The municipality has vowed to prioritise strategies that will overcome these issues.

According to the municipality, the complex tenure arrangement in Engcobo hinders development, investment, planning, and establishment of institutional systems to oversee and manage land-use decisions. Engcobo's urban and peri-urban areas have grown as people move closer to town. According to the director for integrated planning, the municipality is 'handicapped' in that it is struggling to do the work it is mandated to not only because of the difficulties in acquiring land, but also because the municipality does not have the financial resources to provide better services.

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<sup>16</sup> Engcobo Local Municipality, 2021. Integrated Development Plan 2021-2022.

<sup>17</sup> Engcobo Local Municipality, 2021. Integrated Development Plan 2021-2022.

## Municipal and traditional leadership relations

Traditional leadership and politics have intersected at many intervals throughout South African history (Oomen 1998, 87).<sup>18</sup> This research focuses on the legitimacy of traditional leadership and its interactions with various local authorities at local government level, highlighting its precarious existence in democratic South Africa.

For the purposes of this report, we have adopted the definition in Ntsebeza (2003, 177)<sup>19</sup> of a traditional authority; as such it refers to the supreme or paramount chiefs who have jurisdiction over many villages and excludes the headmen and *izinduma* who work under the paramount chief. Of Engcobo's eight traditional authorities, two were interviewed for this research.

### **Section 81 of the Municipal Structures Act**

Section 81 of the Municipal Structures Act 117 of 1998 provides the basis for expanding the constitutional recognition of the traditional leaders in South Africa and Section 81 of the Municipal Structures Act No. 32 of 2000 prescribes that traditional leaders can participate in municipal councils, albeit with limited decision-making powers. The support initiative on participation of senior traditional leaders in the Engcobo Municipal council is informed by Section 8(2) of the Municipal Structures Act of 2000, which relates to identification of amakhosi according to Schedule 6. The legislature also adopted the Municipal Structures Regulations No.19 of 2013, which details participation imperatives as follows:

*Traditional Leaders to participate in the proceedings of Council meetings through making proposals and asking questions.*

As shall be explained in the following section, this has been a bitter pill to swallow for traditional leaders. Although they accept that progress has been made towards their inclusion in structures of power, they felt excluded from decision-making given that most services take place in the areas governed by traditional leaders.

Chief Jezile said their inclusion helps to unite the nation and create peace and informs traditional leaders about how decisions are made within the municipality and how council resolutions are taken.

18 Oomen, B. (1999) 'Group rights in post-apartheid South Africa: The case of the traditional leaders'. *The Journal of Legal Pluralism and Unofficial Law* 31(44): 73-103.

19 Ntsebeza, L. (2003) 'Traditional authorities, local government and land rights'. *Grassroots Governance*: 173-226.

### 3.1 The role of the traditional leaders in community development

Discussions on the role and relevance of traditional leaders in community development by the municipality centred partly on economic development, leaving out the more obvious social and cultural development aspects. Municipal officials highlighted the need for traditional leaders to ensure that communities initiate their own economic development, especially with regard to communal vegetable gardens and poultry-farming projects. Traditional leaders felt that this responsibility fell beyond their mandate and communities should come together to initiate projects.

Traditional leaders stated that their main role is to apportion communal land for settlement, grazing and growing crops to those who qualify and includes offering land to the municipality for development projects, and addressing service delivery issues. Although they understood that without land service, delivery is limited their relevance is defined by providing land to 'their' people; according to them, without this function they are irrelevant, even though they are acknowledged in the constitution. Chief Mtirara stated:

*The traditional leader is an official of all the initiated projects or committees on his land. Other people can only act as representatives to provide a report to the traditional leader on what is happening in his village. Even if you are contracted to do work, the contractor must be introduced to the royal house along with all the details that the chief may want, including the duration of the contract, things like that.*

### 3.2 Tensions between traditional leadership and the municipality in Engcobo

Complex tenure systems in Engcobo require that the municipality and traditional authorities work together for effective planning and land-allocation and -use administration. For this predominantly traditional space, the transitional local councils (TLC) introduced in 1995 as a local governance system presented challenges for the administration of Engcobo. When TLCs became local municipalities in 2000, Engcobo Local Municipality was demarcated within a traditional authority. There has always been contestation of power between traditional authority and local municipality, the two types of governance in rural areas, and national legislation to govern and mediate them has only served to heighten tension.

According to Chief Jezile, '... there is really no good rapport between chiefs and the municipality', as the municipality and traditional leadership had different expectations. This report demonstrates through case studies how the two institutions clashed, especially over acquisition and use of land, a situation aggravated by the imbalance of power between the two institutions where the power struggle spills

into and disrupts the municipality's efforts at the socioeconomic development of Engcobo.

Tension in the relationship between traditional authorities and municipal officials arose from land use and planning consultations, particularly when the municipality invoked the Spatial Land Use Management Act, 2013 (SPLUMA) to convince traditional leaders of its executive powers.

SPLUMA, which was enacted in 2015 to deal with discrepancies arising from the plurality of tenure systems, is still a sticking point. One of its purposes is to create a 'uniform ... system of spatial planning and land use management ... throughout the Republic' (South Africa, 2013; Preamble).<sup>20</sup> SPLUMA thus tasks government with preparing spatial development frameworks and land-use management schemes. Section 24 of SPLUMA requires municipalities to adopt a single land-use scheme for the entire municipal area and explicitly includes areas under traditional authorities. According to SPLUMA, decision-making on development and land use is the responsibility of the municipality, comprising experts in planning (in the case of Engcobo, the Integrated Planning and Economic Development Office holds that position) and municipal officials; members of the traditional council are excluded (Sections 36 and 38) and, regulations to the act (*Spatial Planning and Land use Management Regulations*, 2015) exclude traditional leaders from making land-development or land-use-management decisions (South Africa, 2015; section 19). As a result, traditional leaders in Engcobo believed SPLUMA was designed to alter their powers over land, which is fundamental to their role as traditional authorities.

*... they can come to your area and say can you come together and plan land use management of your area, but we did not want that to be done without the involvement of the traditional leaders or the traditional council.*

*Chief Jezile*

As long as the traditional leadership resists SPLUMA, the municipality remains vulnerable – without land and directionless as far as land management is concerned. The director of Integrated Planning and Economic Development in the municipality expressed his frustration over this. He said the municipality lacks bargaining power because it owns less than one per cent of land in Engcobo and is thus at the mercy of the traditional authorities.

The director for Integrated Regional Planning said that overall, if they were not fighting over land, the relationship between traditional leaders and the municipalities was good. Municipal officials play an advisory role on issues ranging from circumcision to environmental impact assessments. They clash over land use and management insofar as who has authority over whom.

<sup>20</sup> Republic of South Africa, 2013. *Spatial Planning and Land Use Management Act, 16 of 2013 (SPLUMA)*. Preamble.

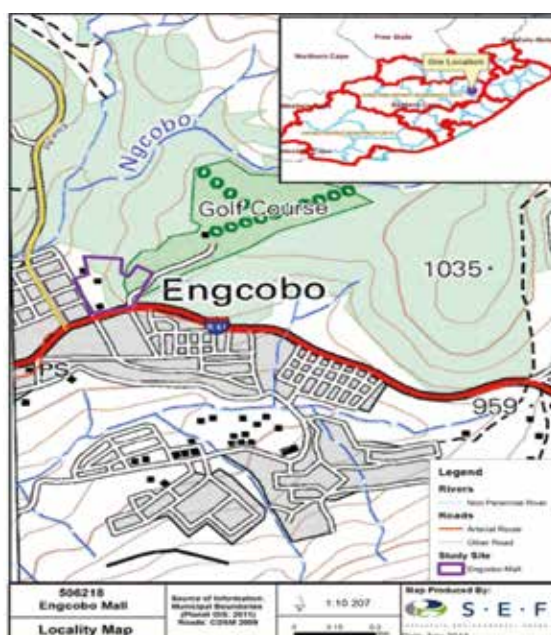
However, it is interesting that inasmuch as SPLUMA has proved to be a grave point of friction, it is also empowering for both sides. The municipality uses it to exert authority over land and the traditional leadership draws power from its shortcomings, which results in an impasse in communication, which disrupts development projects. The Director of Integrated Planning and Economic Development expressed that because the traditional and the municipal systems tend to operate independently, it becomes difficult for the municipality to provide services where land allocation by traditional leaders or its lease occurs without the knowledge of the municipality.

### 3.2.1 Case Study: Construction of a mall

In 2011, the municipality issued a call for proposals for the construction of a mall. The municipality considered this a great opportunity for the people of Engcobo who would have greater access to goods and services which would save time and travel costs. They would no longer have to travel to Mthatha, about a 100 kilometres away, to do their shopping.

A subsidiary company of the Billion Group beat other competitors in an open tender issued by ELM in 2012. The proposed development included a mall and associated infrastructure and facilities like SASSA offices and a taxi rank, amenities that the people of Engcobo are in dire need of. The municipality was to provide land, power/electricity, water and waste management for the project.

The proposed retail mall development (see figure below) is located on the verge of Engcobo town to the north, on Portion 0 of Erf1 and Portion 0 of Erf136 of Engcobo, Eastern Cape under the jurisdiction of Engcobo Local Municipality. Masonwabe Township is situated opposite the site on the opposite side of the R61, which links the town with Mthatha.



Mande Ndema, group executive of the property development giant, Billion Group, told Dispatch Live in March 2015 that the proposed centre would be a 20,000m<sup>2</sup> state-of-the-art shopping mall and that

*... subsequent to the awarding of the tender, we worked on legal agreements which have since been finalised and signed for lease of the land. We have further been undertaking rigorous studies on engineering services, traffic impact, environmental studies, geotechnical studies with resultant applications having been already submitted to the local council of the department of environmental affairs.*

Ndema said the company was waiting for the processes to be finalised so that work could begin.<sup>21</sup>

Under the impression that they owned the land, the municipality engaged investors and other stakeholders to start building a mall. The land was cleared, heavy construction machinery was brought to the site and construction started. Meanwhile, surrounding communities were confused and angry that the municipality had not consulted them. The municipality claimed that there was no reason to engage them because the land belonged to the municipality and claimed it had a title deed dated 1913 for some land just outside Engcobo town adjacent to All Saints and Chibini. The traditional leader of the area (name not supplied) consulted with the other seven traditional leaders of Engcobo and they felt the municipality's actions were similar to land invasions and a gross disregard of the powers of traditional authorities. The traditional leader of the area had no knowledge of the title deed, nor did she acknowledge the possibility of its existence. Historically, the land belonged the All Saints and Machibini people and there are no records that it was ever sold.

A dispute over the land ensued; the traditional leader and the affected community took the matter to court in 2014. The first verdict from the courts was that the communities involved and the municipalities must engage in dialogue and attempt to reach to an understanding. When that did not work out the matter went to court again; the second verdict stated that in spite of the municipality's title deed, the evidence brought by the chief and the traditional council shows that the land originally belonged to the chief and community and that there was no evidence of the land being sold. The matter went back to court; the case was still in June 2021. The municipality could not divulge how it had acquired the land.

Conversations with the municipality highlighted that they believe that the traditional councils and the courts were unfair as the land remains idle and Engcobo is in dire need of development. The municipality regretted that it had not consulted with the communities before embarking on the project. The municipality believed

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<sup>21</sup> Dispatch Live, 14 March 2015.

that the matter has been resolved: 'According to our title deed it belongs to us but the people of Olisensi<sup>22</sup> (the community there) lodged a complaint but actually we engaged with them, discussed with them and we agreed to an understanding that we can have a mall there.'

However, conversations with traditional leaders emphasised the 'grave mistake' the municipality had made by not consulting with them. The mayor and the municipality were accused of condescending and patronising behaviour, and using SPLUMA to force the chief to give in to their demands. Interestingly, the affected communities and the chief did not withdraw the case; as far as they are concerned they agreed that the place has *potential for development*, not that they *want* the development on their land.

In this case information about land is decentralised; only the municipality has the records of the 1 per cent of the land it owns in Engcobo. The land under the authority of traditional leadership is unaccounted for in official terms. One traditional leader said the records were with DALRRD; others say the land is passed down through generations and knowledge of who administers which land is public but unofficial.

There are similar issues in other areas, for example, where the municipality has earmarked a place for low-cost housing projects and the communities and their traditional authorities have resisted.

The municipality awaits the court's go ahead. The last application was done in 2014 and the impasse continues.

### **3.2.2 Common perspectives on the mall saga**

What has emerged from the mall saga is that there is a power struggle in which both sides are set on winning, and a deep-seated lack of trust.

*The municipality does not have land, but they always want to override the authority of traditional leaders, because it is not that people do not want those malls, they do, but the lack of consultation hinders the development of such projects. It then becomes the issue of who is going to benefit from this.*

*Interview, Chief Jezile, 3 June 2021*

Similar conversations with another traditional leader revealed skepticism. The community wanted some form of dividend or compensation for their land but the municipality and investors were not forthcoming. Instead, they approached the chief and offered her two million rand for her signature; she refused the offer and reported the matter to the traditional council. This further strained relations between the municipality and the traditional council; bribery claims have become

22 The area of All saints is affectionately known as Olisensi.

a reference point in conversations about the relationship between the municipality and the traditional leaders. According to the traditional authorities, the relationship between the traditional leaders and the municipality have continued to sour as far as land management is concerned. However, the municipality believes that:

*... there are no tensions because there was an agreement that was signed I think it was in 2014/15 between Olisensi (All Saints) community through their leaders and the municipality agreed that the development should continue they even established All Saints Development Trust, where it was said the dividends from the construction of the mall, when it is running they would go to that trust. In the meantime the court hasn't settled the dispute ... What is good is that both parties agreed that for the interest of peace let's agree that this place has the potential for development, because in other places you will find a community that will say we have put a dispute with regards to this land we do not want any development until the court decides, the law does allow private settlement so whatever the court judgment would be we have both agreed that the development should continue.*

*Interview, Director of Integrated Planning and Economic Development, 4 June 2021*

With the scarcity of land in Engcobo, traditional communities are preoccupied about the availability of land for settlement purposes; big projects like the mall will use up most of their land and future generations will suffer. They would prefer that a piece of land somewhere else is identified for the developments rather than land within their jurisdictions.



### 3.3 Observers, advisers or insiders: the relevance and role of traditional leadership in the municipal council

A general concern among traditional leaders is that they felt side-lined by the municipality; although they are part of the municipal council they do not have voting powers and are not involved in any form of decision making. They only play an 'advisory role' (Chief Mtirara). Section 81 of the Local Government: Municipal Structures Act, 1998, provides for participation of traditional leaders in the proceedings of the municipal council. In 2011, the then Department of Rural Development and Land Reform (DRDLR) facilitated selection and election of traditional leaders as participants in municipal council, to give effect to Section 81 of the Structures Act. Currently, Engcobo Local Municipality has six traditional leaders in its municipal council. The role of traditional leadership in the municipal council includes but is not limited to the following:

- Influence municipalities to develop initiation development programmes to the communities and provide resources for those initiatives.
- Facilitate the filling of vacancies at the Municipal Councils as well as oversight sessions to determine the level of effectiveness of the municipality in provision of services.
- Influence municipalities to embrace and promote heritage, language, customs and tradition.
- Support the municipalities in the identification of community needs.
- Facilitate the involvement of traditional communities in the development and reviewal of IDPs.

(Portfolio Committee on Co-operative Governance and Traditional Affairs (CoGTA) Presented by the Eastern Cape House of Traditional Affairs 26 – 27 November 2019).

Chief Jezile explained that currently six of eight traditional leaders participate in municipal meetings. However, this inclusion does not seem to quell tensions as they do not occupy permanent positions and expressed that they are 'more like observers'.

Chief Jezile criticised the inconsistencies of the municipality in terms of consultations with traditional leaders especially with regard to important issues like land use and management. He also said the municipality does not fund projects that need to be funded by the municipality, like agricultural projects. He also complained about the lack of office space for traditional leaders participating in the municipal councils and indicated that provisions of offices would enable them to operate effectively and efficiently.

The municipality indicated that there are inconsistencies in the attendance of some traditional leaders in council meetings. The municipal manager said some traditional leaders do not providing regular feedback or report to their respective constituencies.

### 3.3.1 Case study: 'You are vandalising us'

There have been persistent and grievous tensions over boundary demarcations in Engcobo since 2019. Tensions emanate from the distinction between government and political demarcations, and the community's 'original tribal villages'. The community believe certain villages were 'shredded' by the Municipal Demarcation Board (MDB) working with the municipalities and councillors.

The case described here concerns the boundaries of Ward 19, and which villages constitute Ward 20. Below is a list of the villages that make up the aforementioned areas.

#### Ward 19 – 20 (Engcobo LM: Ward and Village Delineation)

##### WARD 19

Bula	Mhlahlane
Bumbane	Mhlahlane
Daligqili	Mkonkotha
Gqaga	Mncwasi
Jalisa	Ndlunkulu
KoMkhulu	Ngaphezulu
Kuchibi	Ngwemnyama
Kungubo	Nogqala
Lixeni	Sidindi
Lwandlana	Smit
Madwaleni	Xhakonxa
Mboleni	Zangcethe
Mdeni	Zuburha

##### WARD 20

Caba	KuMncayi	Nkanga
Dadeni	kwaMngqondo	Nqancule
Didwayo	Lixeni	Ntsuba
Elabafazi	Ludadeni	Sidikidikini
eLixeni	Makhalane	Sigangeni
Eluxeni	Masunguzane	Sigubudwini
eMachibini	Matyeni	Sinqumeni
Ematyeni	Mdeni	Sitishini
Ezinkonxa	Mmangweni	Sitshini
Gxojeni	Ndlunkulu	Taleni
Kubeki	Ndungwane	Tywabatywaba
KuHlaba	Ngqayi	

Source: IDP 2017/2020

The community and village committee tasked with handling this matter began engaging with the municipality on 15 July 2019 about a dispute over a boundary that the community believed was the result of collusion between the municipality and the MDB. A series of heated meetings ensued.

According to the community, the land committee and the traditional leader of the villages concerned, the municipality had colluded with the MDB to have some villages divided and some merged to allow for the formation of wards. The community claimed that they were not consulted and had no knowledge of the criteria used to form these wards. When they asked for information, the municipality and the MDB started 'throwing spears at each other' with the municipality claiming that demarcation is not their mandate and that the community must engage with the MDB.

The MDB, which is based in Pretoria, released a statement saying it works with the municipality because the municipality knows the places and the people. The community were not convinced. They started their own investigation and pinned down certain councillors (not named) as the major players and concluded that the boundaries had been manipulated so that certain political parties could win more

votes. This infuriated the community; the people (councillors) they thought were their neighbours and friends were in fact the major culprits in their vandalism.

According to the village committee handling the demarcation issue, efforts to engage with the municipality and have the MDB explain itself was a difficult process. The municipality was accused by the land committee members and the community of bullying communities because it has money, and operates within ANC politics. The community complained of lies, corruption, missing files, corrupt dealings, councillors that were the puppets of the municipality, and toxic power struggles between the municipality and their leaders.

It appears that the boundary issues not only intensified the tensions between the municipality and traditional authorities but also widened the gap between the community and the municipality.

### **3.3.2 Intergovernmental relations**

The community, traditional leaders and land committees regard the municipality as an extension of the government that ‘vandalises people’ during one of the meetings with the demarcation board and the municipal officials, the chief of the area said:

*You move us from here because we do not have power ... why do organisations from Pretoria and Gauteng come to control us? You people come here, play with words and numbers that do not make sense. We are sick and tired of the government.*

The community see the municipality as an extension of a failed government; a government that, instead of providing more land as promised, is chopping what they have into pieces. They claimed the demarcations had disrupted their lives; for example, their schools were moved from Ward 19 to Ward 20. The chief lamented that the municipality cannot approve the ‘chopping and changing of traditional villages’, he said

*We were vandalised. We are breathing, normal human beings and you vandalise us like this. We are a family. Why are you vandalising us? We beg you, please leave us alone. You cannot draw a line between us whenever you feel like it.*

This came after an official from the demarcation board presented a map and argued that they do not thumb suck boundaries they “have lines on the map” that show where villages start and end. To that the community responded that they have never seen the lines, the lines are abstractly drawn in the minds of the demarcation board. The community and the chiefs suggested that they would rather draw the maps and present them to the municipality rather than have the municipality and other stakeholders draw the maps for political reasons and bully them to accepting the maps and the restructuring of their lives.

### **3.3.3 Voting stations or tribal villages?**

To quell the anger of the community, the MDB said the demarcations were for voting purposes. The community said they felt like their villages were vandalised to convert them to voting stations. The chairwoman of the committee then said:

*Your government does not respect us. Are we voting stations or tribal villages? We have our own demarcations if you want us to vote then use our own demarcations.*

The MDB works closely with Independent Electoral Committee (IEC) to demarcate wards. It imposes demarcations on people and in some instances, creates new villages that do not fall within the traditional boundaries, which causes confusion. It is a flawed system according to the community and operates within a corrupt and confusing system. It widens the gap between the municipality and the traditional authorities.

The municipality responded to the above allegations by emphasising that they had made progress towards ensuring good governance, and were encouraging public participation. They confirmed they were more responsive to local conditions and community needs and were eager to ensure accountable governance to change the socioeconomic conditions in Engcobo.

The Department of Integrated Planning and Economic Development said it has implemented several programmes to enable it to listen to what people on the ground want and respond accordingly. They have processes and systems in place for engagement and communication with communities as well as systems to ensure accountability, efficiency and effectiveness.

With regard to land issues, however, it seems the municipality has a long way to go to gain the trust of the people.

## SECTION FOUR

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# Attempts at land reform: Efforts by the Department of Agriculture, Land Reform and Rural Development (DALRRD)

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All three pillars of land reform – restitution, land redistribution and tenure reform – are relevant in Engcobo. With current land shortages, Chief Jezile and Chief Mtirara explained that the restitution programme was a welcome initiative that restored people's hope. They said the the Department of Agriculture, Land Reform and Rural Development (DALRRD) had attempted land restitution in the past; communities and individuals were asked to make submissions to claim back land they had been dispossessed of through acts like the 1913 Land Act. The initiative never came to fruition.

*The department people play with our minds, they came here, we all got excited that we will get back our land, it is fenced now, it belongs to a white man, and he is not doing much in that land ... It is not a small piece of land; it is very huge. I don't know how many hectares ... You see I am in charge of 4 000 households, these households are growing, children are born, they marry, these children need land and they come to me and the traditional council for land, we do not have more land to give. What do I do, what do I tell them? My Sizwe must be bigger than this, now.*

*Interview, Inkosi Jezile, 3 June 2021*

Chief Mtirara shared the same sentiments as Inkosi Jezile over the failure of the restitution programme. In his opinion, the restitution programme failed because the government and department failed to implement their programmes. Chief Mtirara added

*...the resettlement scheme was a tool used by the government to control although it was spiced as a mechanism to enhance development and to try and rearrange settlements in rural areas where you'll have camps for pastures, an area for agricultural land, residential lands, and where they would be able to provide services in an organised way. That's how they tried to spice it so that communities would accept it. So they would go to already established communities and move them to other areas*

*Inkosi Mtirara*

Mtirara added that the scheme only caused anguish and confusion in Engcobo because of a lack of understanding of what it stood for and 'failed dismally' (Mtirara).

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## 4.1 The role of the state in land redistribution

The responsibility of the state in the redistribution of land in Engcobo and elsewhere in South Africa cannot be overstated. In Engcobo, the state is expected to ensure that land is available and accessible, especially through the restitution programme. The presence of DALRRD was only when fences were erected to separate farming land from grazing land, and when there were unfulfilled promises of restitution. As the local government representative municipality has the responsibility to conduct a land needs analysis in its municipal jurisdiction, acquire land (which it is failing to do) and distribute it to the landless.

The pillar that has been implemented most widely is land redistribution in that it is done through traditional leadership because the land is communally owned. The system of traditional authority and communal tenure is central to land governance because traditional authorities allocate land to those who do not have land. Government has supported the power of *Inkosi* as primary custodians of the land in post-apartheid South Africa because they work with the municipality to govern land access and ownership. Traditional leadership plays a strategic role in land reform in line with the Traditional Leadership and Governance Framework Act (TLGFA) of 2003, which defines traditional leadership as 'the customary institutions or structures, or customary systems or procedures of governance, recognised, utilised or practiced by traditional communities'.

Although the resilience of traditional leadership has been widely criticised as a remnant of the legacy of colonialism and apartheid (Hendricks, Ntsebeza and Helliker 2013), government's support of chiefs as custodians of land cannot be discounted. The interviews with *Inkosi* and the municipality confirmed that traditional authorities have overriding powers in land governance and are the focal point in accessing the land.

*As Inkosi we are the custodians of the land. The land belongs to the community, so if you are failing give the land back to the community. We are the keepers of the land. People always think that we own the land, they say that we say we own the land. We do not own the land, that is why we cannot sell the land. We keep it for the people.*

*Interview, Inkosi Mtirara, 1 June 2021*

## 4.2 The challenge of unavailability of land for traditional leaders

The challenge however, is that land for settlement has almost been exhausted. The Chiefs highlighted that the major challenge that they face pertains to the availability of land to allocate to people. This has brought other crucial challenges for them:

*Nowadays though people just come and tell you it's their family's land and they give it away as a household stand and even selling it, but land is not supposed to be sold, they'll sell it for maybe R20 000 for community land and they do not consult with anyone.*

*Interview, Inkosi Jezile, 3 June 2021*

## 4.3 Illegal occupation

Illegal occupation of land is rampant in Engcobo as a result of land shortages. The traditional authorities are responsible for allocating land to the community and their children as they grow and require their own pieces of land. Traditional authorities are unable to offer land to the growing population, and the community have started settling on land earmarked for grazing and other purposes. This issue was expressed by different traditional authorities in the various parts of Engcobo and mentioned by the community themselves in the meetings. The chiefs expressed defeat because of the discord between the traditional courts and systems and the formal institutions.

Chief Jezile said because people were unable to get land from the traditional leaders, they resorted to going to the 'the department' (DALRRD) and when they returned they claimed to have been allocated some land without any proof of those claims. The chief felt that if the government had succeeded in the restitution programme, people would have the land and invasions would have been avoided: 'The government is failing us because it is doing nothing about the issue' (Jezile). Responding to these illegal occupations and the questions of his authority as a chief to evict them, Chief Jezile responded:

*With the human rights these days it's difficult and if they have built infrastructure they can take you to court and win. Sometimes they are given by the headman or the sub headman, because the thing is with some sub headmen is that they drink so they'll go drink and after they are drunk they go and do these allocations. So the person that you can sue as a senior traditional leader is the headman sub headman. And that needs money and where do you get money for lawyers? We just watch them do what they want, they have human rights isn't it?*

*Interview, Inkosi Jezile, 3 June 2021*

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#### 4.4 Reasons for land invasions in Engcobo

In Engcobo, both the general public and the municipality believe to some extent that rural areas have land available for settlement purposes. People in general believe that chiefs have the ultimate authority over land allocations, that land is readily available to those who are subject to a particular traditional authority, and can be easily accessed through inheritance of small tracts of land previously owned by their parents. It is thought that land invasion is an urban problem.

Writing on the sociopolitical invasions in Bredell, in Kempton Park, Gauteng, Olufemi (2004) argued that illegal land invasions occur mainly in urban areas and townships:

*Land invasion is one of the alternative tactics that the poor, powerless and homeless people adopt to access land on which to build their shelter. Land invasion by the homeless people is a consequence of desperation for space to put up a shelter.*

In the White Paper on Land Policy, published in 2004 the Department of Land Affairs made the following statement with regards to land invasion in South Africa:

*Landlessness and land invasions are a stark reality in South Africa. Delays in the release of land and slow delivery of housing programmes have exacerbated the problem, as have unrealistic expectations and a lack of information, particularly with the time it takes to transfer land. This has led to urban land invasions and subsequent evictions by local and provincial authorities and ongoing legal disputes. Some community groups who have been involved in planning land and housing developments on identified land have found their development brought to a halt by land invaders.*

Land invasions have begun to emerge in rural areas where a number of dynamics play out. The research pinpointed other reasons apart from the obvious ones of population increase and unavailability of land for this phenomenon that included disrespect and disregard for traditional laws, systems and processes due to the current human rights discourse, corruption and a bureaucratic system of land acquisition. Such drivers reportedly contribute significantly to the mushrooming of dwellings on grazing land and farmlands as people seek places to dwell.



#### 4.4.1 The bureaucratic process of acquiring communal land

Acquiring land in Engcobo is a complex process, meticulously explained here by Chief Jezile.

*Land is not sold; we have a land committee that works with the chief. This committee manages the distribution of land or housing stands. On that board there is someone called a sub-headman who will tell the committee that there is someone looking for a piece of land.*

*They'll go and look at the area first. The committee will look into a few factors like whether the area is a wetland, any graves on sight, any other issues or controversies regarding the piece of land.*

*Then they go to the capital with the list of people who want land so then it's taken to Land Affairs who will be the one to come and do the demarcations.*

*After distribution the people are then given what is called permission to occupy. Then they are given numbers. Then as the chief I'll then give them to the people.*

It is important to note that the municipality has no role here. The players in this are the land committee appointed by the chief and the community to specifically work on land-related issues under the leadership of the chief, the DALRRD for demarcations and the chief.

The process can be summarised as follows:

Chief Jezile highlighted that if proper channels are followed in land acquisition the chief is not directly involved in the identification of land and other land allocation processes. He claims that this may be one of the reasons for the informal dwellings that are sprouting up in rural areas: 'Corruption has become rampant even here in the rural areas, it is no longer taboo.'

A conversation with Mxolisi a recently married young local man who was also occupying land illegally pointed to the bureaucratic challenges in accessing land through tribal authority:

*You can take up to eight months to a year when things are normal to get a response after having submitted all the documents and when you go after a year to follow up, you will be told stories, you don't even know which one is faster, is going directly to the department better than to the chief? The chief will tell you to go to someone else. how are you expected to behave? It is our land too.*

*Conversation, Mxolisi, 3 June 2021.*

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The frustrations with the process were quite evident and the Covid-19 pandemic has aggravated the situation. Before his marriage, Mxolisi approached the chief for a piece of land and was told that there is no available land for settlement. Mxolisi saw available land but it was not for residential purposes. Because he needed a place of his own, he identified unused land and erected a structure. 'It was a desperate move,' he said.

Mxolisi said there will be more land invasions because people are desperate and unfortunately the available land is quickly being taken up: 'You can't reserve land for farming and grazing when people do not have places to stay.'

The Engcobo municipality noted with concern that people who settle without following the proper procedures will not get the services from Eskom and other services because they are not appropriately located. The municipality also pointed out that land invasions pose major environmental and planning problems.

### 4.4.2 Corruption

The chief stressed that these people are 'abemi abangaziwayo' – unknowns. They claim to be amaXhosa and that they are settling in land that belonged to their forefathers which authenticates Olufemi's assertion. The lengthy and bureaucratic process of obtaining land, the unavailability of land, the fear of losing out on acquiring land and the sense of entitlement by the community with claims of belonging to those communal spaces has prompted a scourge of corruption and fraud that has perpetuated land invasions.

*You just see people starting to develop or build houses on pieces of land and if you are to ask who gave it to them they'll tell you by the sub headman or the capital DALRRD and they do not even have certificates for occupation. In some houses they do not have electricity because they are unknown but houses are there.*

*Interview, Inkosi Jezile, 3 June 2021*

The chief said traditional leaders have tried to deal with these invasions but are overpowered because when these invaders go to the courts they always win the cases: 'Once they erect a house or something, there is nothing you can do to them. We only watch and do nothing because we lose at court.' He said the traditional authorities are disempowered in their roles as the custodians of the land as the allocation falls into unscrupulous hands. The DALRRD deals with these individuals privately. 'If you go there, there are no records of these people, but even then, the courts say they have rights.' This 'come what may' notion prevails in these community structures where people would rather brace not having formal ownership of land and access to municipal services. Therefore poverty will continue to be exacerbated into further generations. (Interview, the director for Integrated Planning, 4 June 2021).

#### 4.4.3 Historical land issues

While some individuals have no land for residential settlement, others who own large parcels of land claim that their parents or grandparents were given the land by a white farmer or by the colonial Pretoria government. These individuals do not comply with traditional authority or municipality as far as land governance is concerned; they have title deeds in a context where land is communally owned. As such, they have unrequited powers as to how they use their land.

#### 4.4.4 Private transactions

In some cases, a land owner leases land to a smallholder farmer and withdraws the lease without warning when the land is developed and thriving. The owner then continues with the project and the defrauded tenant loses out on any benefit they might have gained from the deal.

The traditional authorities and the municipality are aware of this problem but because the transactions are usually private or the land is privately owned these cases are difficult to resolve. Chief Zwelenkosi Dalasile of the AmaQwathi nation noted with concern that the dual governance system works against the traditional authorities and in favour of those who break the laws. Explaining a recent case of fraud,

*[...] but now that we have got a new government there are still strings with the old government. That makes it impossible for us to have a say in many things, for example, in the land issues you can put a judgement on a person, but that person can have a chance with the lawyers. Then that raises the question of whether the decision we make as inkosi matters? Whether the decision we take will also reflect badly on us or reflect badly to the community[...]. We are making the right decision but now that there is a law in South Africa, we need to follow the Constitution and yes one has the right to appeal. But now when they appeal to the lawyers, they have come to Nqeleni to hear the case and bring it to the experts so that they analyse the case. So, if we give him a sentence, he will go to the lawyers again and appeal.*

*Interview, Chief Dalasile, 01 December 2020*

The chief said such people were vulnerable to land invasions; the traditional authorities will not be able to assist them and the Pretoria government or white farmers that gave them the land no longer exist. The municipality reiterated that they do not have control of this situation but the danger is that ‘... those who are without land, or some sort of income, find it extremely difficult to compete and secure land rights in such circumstances’.

**SECTION FOUR**

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**4.5 Opinions on land ownership and tenure reform**

When addressing the question of whether title deeds might be a better way to secure land tenure the traditional leaders and the community said they preferred the permission to occupy certificates issued by their chiefs, records of which are kept by the traditional leaders. Title deeds were regarded a western concept that did not make sense in the context of the communal areas of Engcobo; a foreign entity that would disrupt their traditional relationship to land.

The traditional leaders said the government has tried since 1994 to initiate talks on 'ensuring proper tenure' and they have vehemently resisted because it may go against traditional values. The chief said that there was no advanced (digital) way of keeping these records. They are kept by the chief and copies are given to the recipients.

The traditional leaders said it that if the land was given monetary value people might use it as surety to acquire loans and other credit. If title deeds were issued people would be evicted from their land and in the long run traditional land would be owned by banks and other creditors. Furthermore, title deeds do not guarantee that future generations will have access to land as it can either be sold or given away at will.

Chief Mtirara said the title deeds are also disadvantageous to women and other vulnerable members of the society because they would jeopardise women's access to land. He explained that if land was easy to sell or use as collateral for credit, women might lose the land they stand to inherit from their husbands because it might be sold or taken by creditors.

**4.5.1 On invaders and their views**

The land invaders said they would prefer to have title deeds because of their vulnerable status. They argued that title deeds would prove ownership and prevent them from being evicted from the land they have occupied. They did not identify with the sense of community and 'Xhosaness' that came with being able to legally acquire land in Engcobo.

## SECTION FIVE

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# CONCLUSION AND RECOMMENDATIONS

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Land use management in Engcobo is subject to two different processes: land allocation by traditional authorities in areas under traditional councils and formal land-use control in urban areas managed by the Engcobo Local Municipality. This is contrary to the requirements of SPLUMA, which is a uniform spatial planning and land-use management system for the entire country. However, the respondents in this study agreed that SPLUMA has in actual fact disrupted relations between the two systems of governance in Engcobo.

### 5.1 Recommendations

A differentiated system that acknowledges traditional culture, rural livelihoods and traditional authority (Barry and Porter 2012, 182)<sup>23</sup> requires agreement between the major role players and clarity on the roles, decision-making powers and responsibilities of the traditional authorities and the local municipality.

#### 5.1.1 Municipality

Planning and decision-making should include engagement of the traditional council and the community.

Municipal officials should be held responsible for informing other parties of proposals and applications to avoid conflict and to enable the municipality to provide basic services and social facilities.

Transparency in traditional and municipal processes will prevent distrust. Any proposals should be run past the traditional leaders so that they are informed about development plans in their respective jurisdictions.

Communities must be involved in spatial planning; spatial planning and land-use management should be guided by mutually agreed principles, forming the basis of a development framework for the area.

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<sup>23</sup> Barry, J. and L. Porter (2012) 'Indigenous recognition in state-based planning systems: Understanding textual mediation in the contact zone'. *Planning Theory* 11(2): 170-87.

### **5.1.2 Government**

A review of legislation on the roles of the municipal council and the traditional leaders will clarify their roles and avoid conflict.

Training of the traditional leadership will equip them with legislative knowledge to ease the breakdown between the government and traditional authorities. Additionally, DALRRD staff should be trained on the roles of traditional leadership in land governance.

### **5.1.3 Traditional leadership**

Traditional leadership at Engcobo plays a central role in land governance. As such, management and administration of land must be done in a manner that ensures that proper record keeping is maintained to avoid court battles.

Traditional leaders must establish a coordinated working partnership with the municipality.

There is also a need for an established line of authority in terms of land allocation and coordination, especially as it pertains to the role of the DALRRD in land allocation.

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