



Source: GCRO (2021)

# Hybrid Land Administration in Rural Municipalities (South Africa)

Taki Sithagu

# Hybrid Land Administration

**Hybrid Land Administration**– the multiple ways in which state and non-state institutions co-exist, overlap, entangle and intertwine in the administration of land (Akaateba, 2018; Barry, 2020).

**Formal institutions** are those sanctioned and promulgated by the state. **Non-state institutions** are non-state organisations, such as traditional authorities (Goodfellow and Lindemann, 2013).

**Hybrid institutions**” interact through socially accepted unwritten rules, created, enforced, and communicated outside formal channels (Goodfellow and Lindemann, 2013).



Source: GCRO (2021)

# Hybridity in the African Context

Many African states have embedded state and non-state institutions or structures into each other, leading to various forms of co-productive practices at the interface between formal and informal institutions (Akaateba, et al., 2017).

## Examples of Case Studies:

- Tamale- Ghana: Chiefs contract surveyors and planners to subdivide communal land and produce local plans before land allocation (Akaateba, et al., 2017).
- In Enugu, Nigeria: Informal land brokers facilitate and require a 5-10% fee in the sale of customary land between chiefs and settlers (Ikejiofor, 2006).
- Land Subdividers: they buy customary land, subdivide it and resell it for a profit. The transaction process may follow the formal or informal route (ibid).
- Eastern Cape, South Africa: public officials officially bear witness to customary land allocations to legitimise the process.

42

DKS PLUS 112

43

# Hybridity in the African Context

42

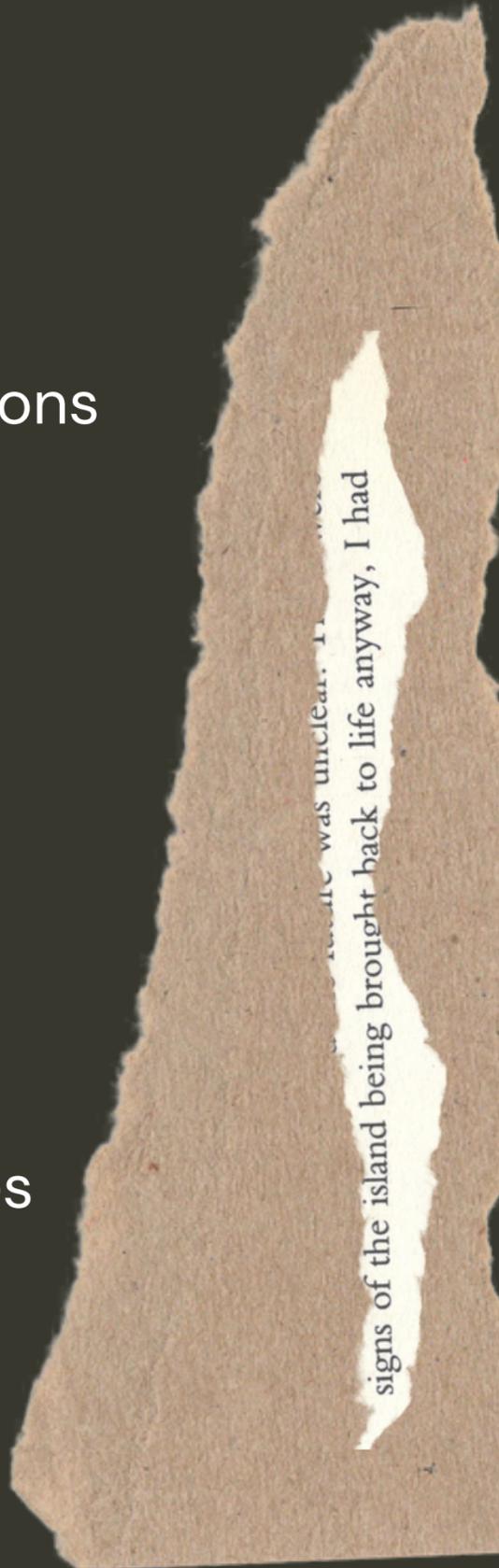
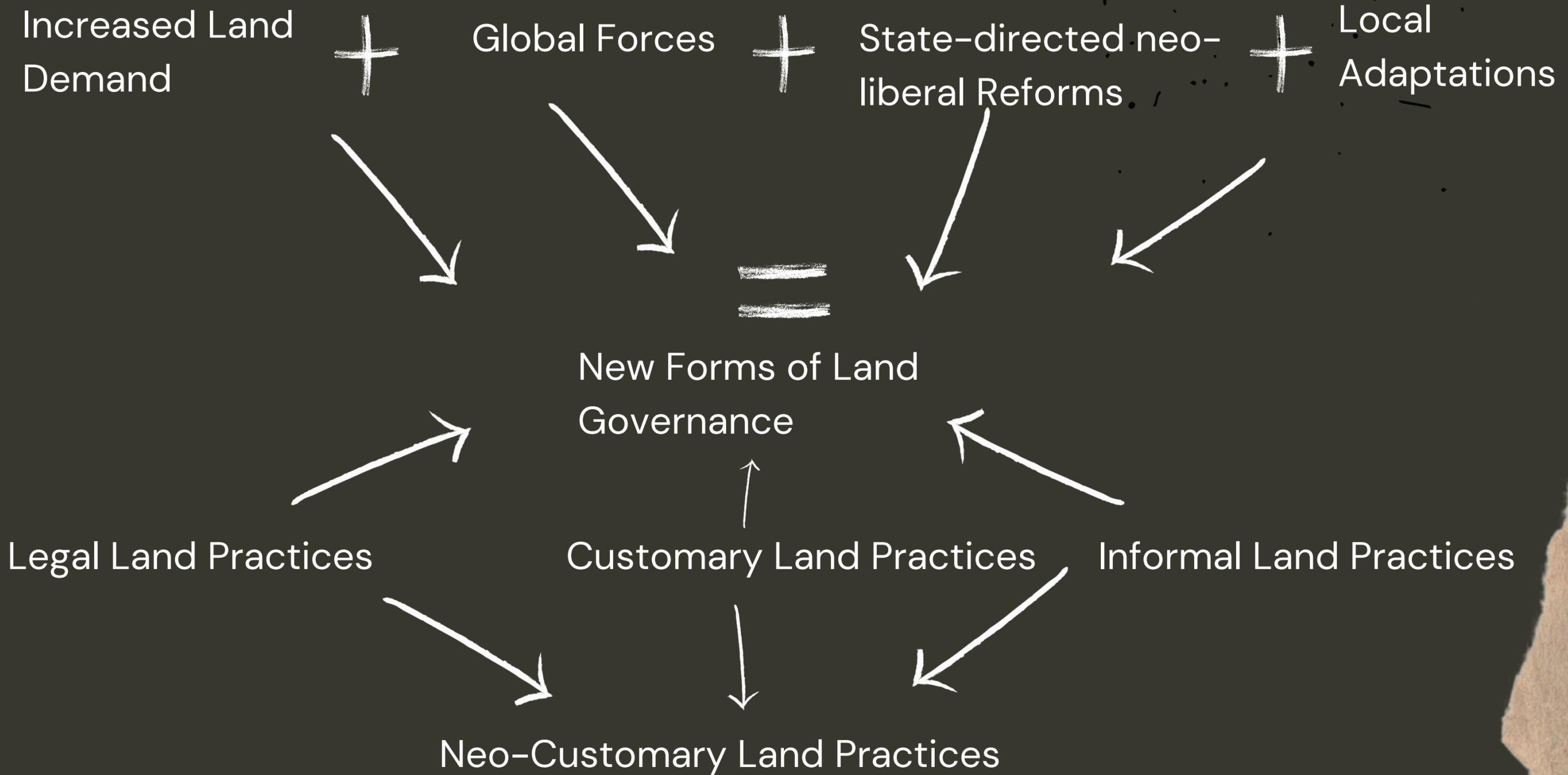
DKS PLUS 112

"As a result, various forms of functional interfaces, intricate relationships, and state-society relations have evolved in land delivery" (Akaateba, et al., 2017:216).

"...the everyday interactions and practices of hybrid governance... resulting in governance outcomes across various contexts remain under-researched" (ibid: 216).

43

# Hybrid Land System



# Role Players in the Hybrid Land Administration System

## Local Government- officials +state professionals

- Are bound to deviate from prescribed state bureaucracies.
- They include numerous habits, rituals and tricks of the trade to do the work of the state.
- Confronted with the 'paradox of customary law'. Zenker and Hoehne (2018).
- They move between legal/illegal or formal/informal practices in order to do the work of the state.

## Traditional Authorities- Local Headmen

- In a state of "syncretism" (Ntsebeza, 2005).
- They move interchangeably between modernity and tradition in the quest to stay relevant.
- They move between customary, formal and informal practices.

## Informal Agents

- They are the middleman/land brokers.
- They facilitate the negotiations between the chiefs and the potential settler.
- They are knowledgeable of the legal and customary system. They are in the niche of informality.

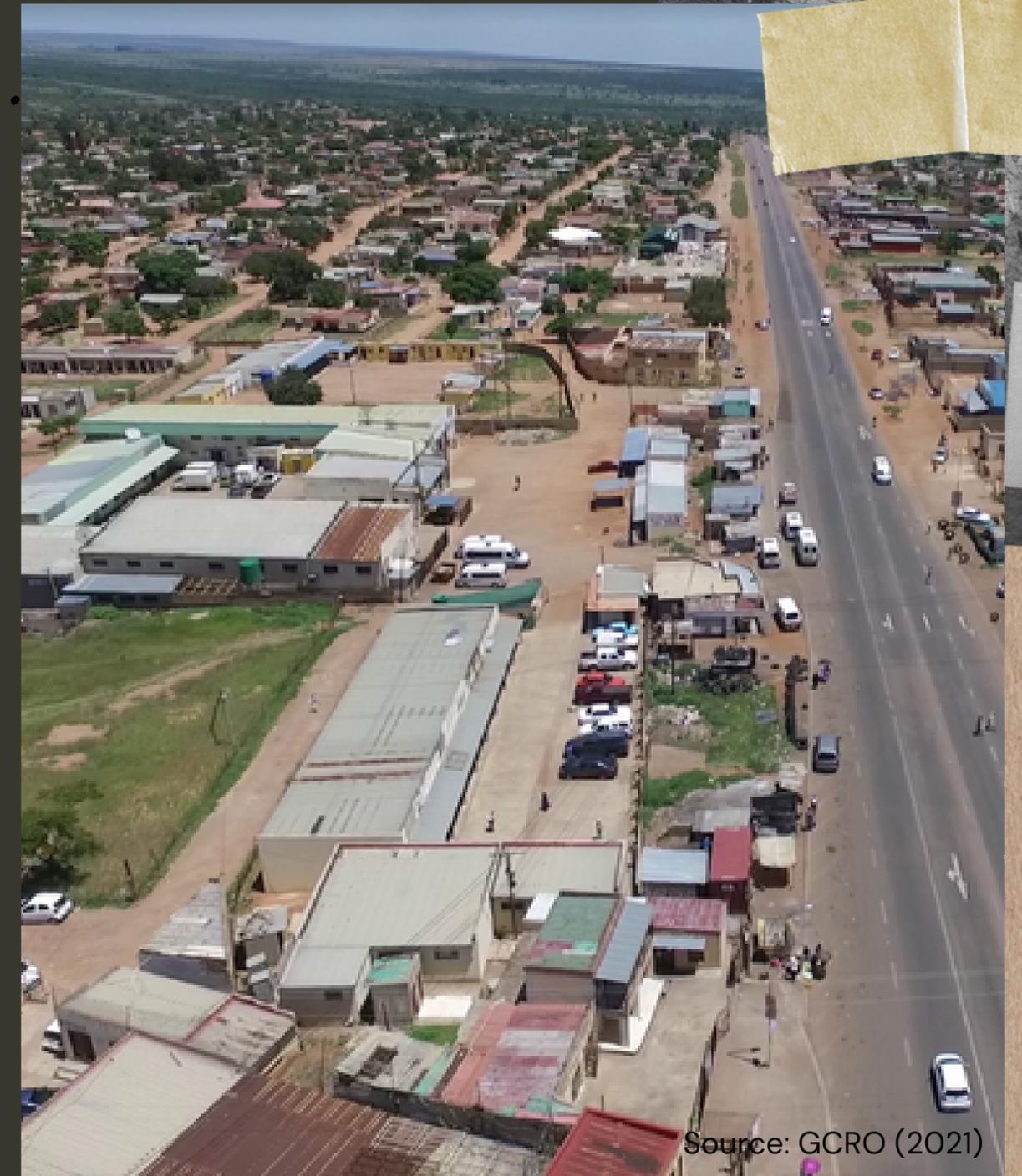
# Hybrid Land Administration in Rural Municipalities of South Africa

**Rural Municipalities**– part of the "wall-to-wall system of local government.

Even those areas that were under the jurisdiction of traditional leaders during apartheid were now under local municipalities.

The Spatial Planning and Land Use Management Act (SPLUMA) of 2013 confirms (rural and urban) municipalities as the executive decision makers in matters related to land use planning and management.

Rural municipalities are embedded within the formal/legal land framework even though they exist within the customary system.



Source: GCRO (2021)

# Multiple land systems in Rural Municipalities

Rural municipalities operate within the following land systems:

1. Land legal framework – (recognised by the Constitution and laws)

+

2. Customary system– (equally recognised by the Constitution but not institutionally and administratively supported by rural municipalities)

+

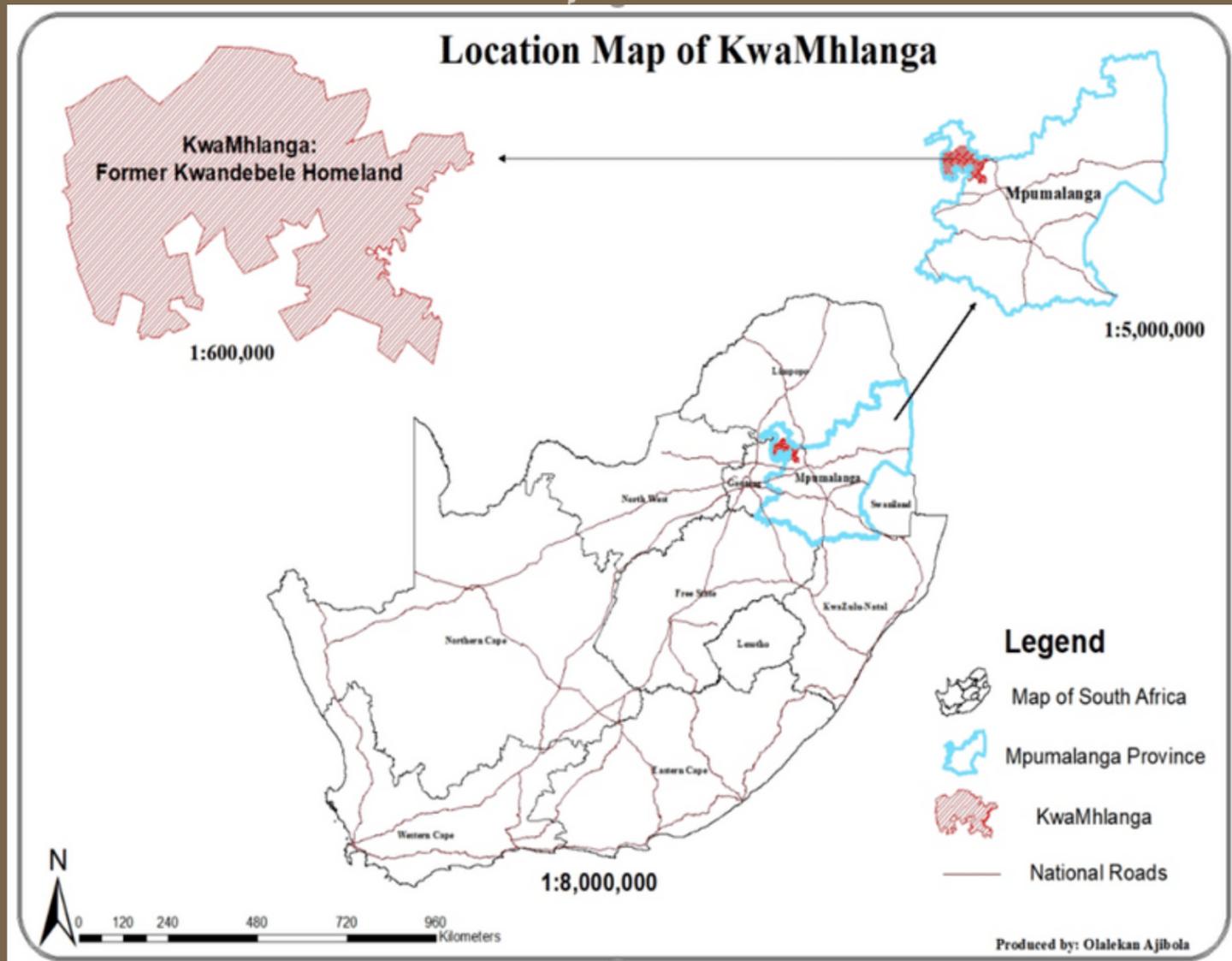
3. Informal land practices (regarded as "illegal"/"extra-legal")– Neo-Customary

=

**Implications**= No longer a "dual" land system but a multi-layered, complex and diverse system confronted by a mix of constitutional law, customary law, statutory law "enforcement systems" (Cousins and Hornby, 2006) and informal systems.

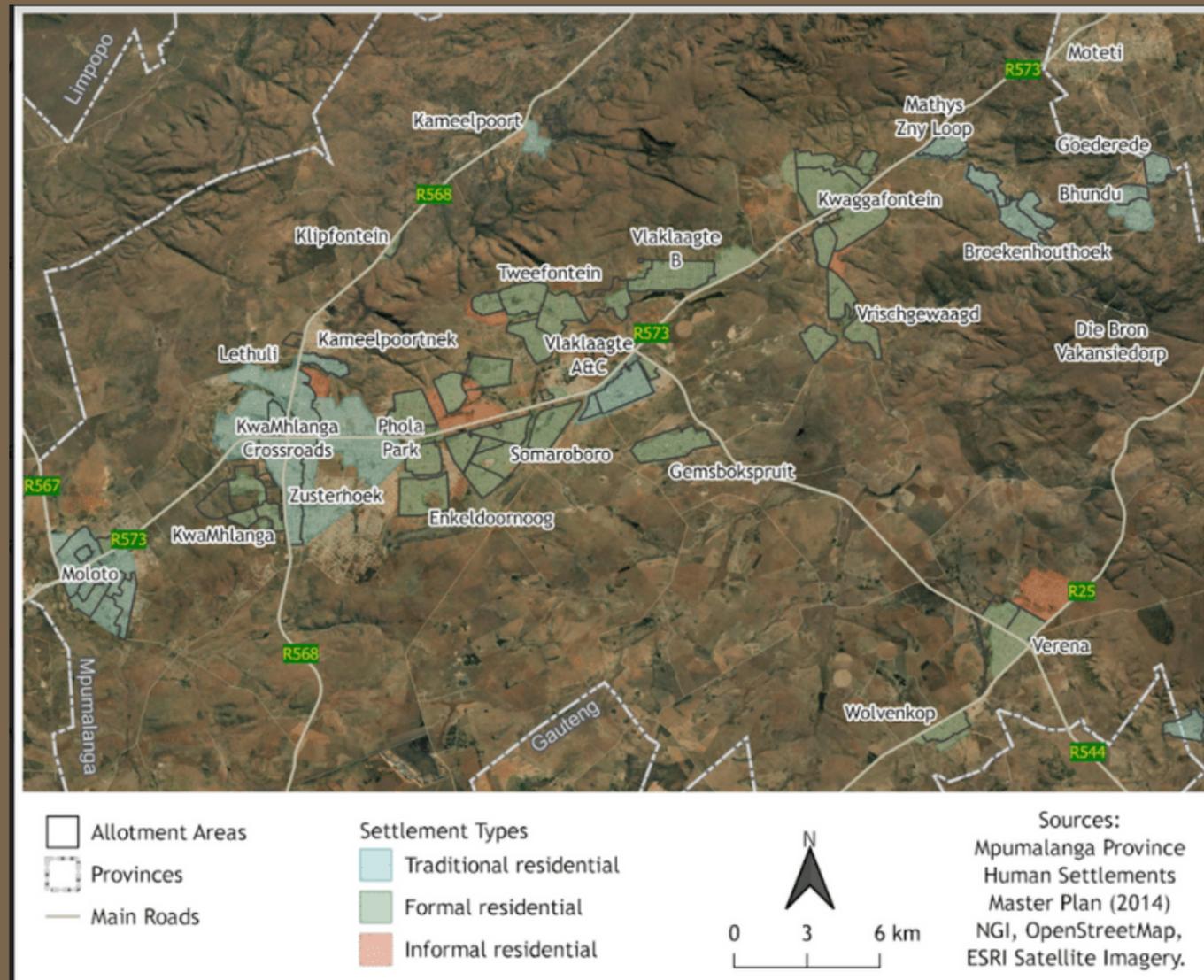
signs of the island being brought back to life anyway, I had

# The Case of KwaMhlanga- South Africa



- KwaMhlanga is a former homeland of KwaNdebele in the Mpumalanga Province, some 73km away from its main urban core, The City of Tshwane in Gauteng.
- Subjected to ethnic partitioning during Apartheid. It was meant for the Ndebele Ethnic Group, but due to the relative small size of the Ndebele, there was a mixture of non-Ndebeles such as the Pedi, meaning- "Cosmopolitan" homeland, meaning- mix of cultural values socially and in relation to land, thus- "invented" space of customary land practices.
- Today, it remains "cosmopolitan" and relatively diverse compared to other "traditional" former homelands.
- Traditional authorities allow occupation of diverse groups

# The Case of KwaMhlanga- South Africa



Source: GCRO (2021)

- Its proximity and distance from the urban center of Tshwane allows for it to interact with the city while still holding onto its ruralness.
- Majority of the land is owned by the National Government- Department of Rural Development. Most of this land is "held in trust" by the various traditional authorities- customary land. Customary land allocation does not neatly fit into the customary land practices because of commoditization= neo-customary practices
- The rest of the land is regarded as "informal" settlements. They are not approved by the municipality (seen as invaders), but they are allocated by traditional authorities with the help of informal agents and word of mouth.
- Small portion is held by private individuals, most are commercial farmers.

# The Case of KwaMhlanga- Hybrid Land Administration

- The Municipality of KwaMhlanga (Thembisile Hani Local Municipality) is a small rural municipality with single personal units (only one town planner).
- The municipality is mandated to use SPLUMA. Section 24 of the Act “requires municipalities to adopt a single land use scheme for the entire municipal area.
- The Municipal Land Use Scheme (LUMS) is ineffective, redundant, unenforceable because traditional Authorities are the main drivers in the land allocation process.



Source: <https://cogta.mpg.gov.za/IDP/Nkangala2012-13/Thembisile12-13.pdf>

# The Case of KwaMhlanga- Hybrid Land Administration

- Rural migrants trying to move close to the city and urban migrants that cannot afford the city are some of the reasons there is a demand of land in KwaMhlanga.
- Traditional Authorities are central to the land allocation and occupation process.
- They have gradually commoditized customary land rights over the past decades. Occupation was at one point not attached to money, now it costs R5000 or more.
- They are responsible for the spatial layout of settlements, thus questioning the role of the municipality.
- Their "might" in the land allocation process has made the municipality initiate a Memorandum of Understanding (MOU) to negotiate the land administration process.

# The Case of KwaMhlanga- Hybrid Land Administration

- Some traditional authorities work hand to hand with "informal" agents.
- These are individuals that "market" the land through word of mouth. They may be dedicated individuals or random individuals who are opportunists (at the right place, at the right time).
- They facilitate the process for a fee that is paid by the "seller and the buyer".
- "Buyer" trusts the process because it is quick and gives direct access to the local headmen.
- All three individuals agree on the price, plot and location. Informal agent bears witness to this process and "buyer" shows commitment to occupation by fencing the land or erecting a shack, etc. A sign of investment is key to securing the land.

# Concluding Remarks

- Hybridity in land administration has been in existence for a long time, but it is an area that is under-researched.
- It is rich and layered and can contribute relevant empirical research in the context of co-production theory (Akaateba, et al., 2017).
- Unorthodox arrangements between state and non-state institutions are taken for granted but can work for the public good, and support weak state institutions (ibid).

CONCLUSION

# References

Akaateba, M.A. (2018). Urban planning practice under neo-customary land tenure: the interface between government agencies and traditional authorities in peri-urban Ghana. Unpublished PhD dissertation. Technischen Universität Berlin, Berlin.

Barry, M. (2019). Hybrid land tenure administration in Dunoon, South Africa. *Land Use Policy*, 90: 1-11

GCRO. (2021). Landscapes of peripheral and displaced urbanis. Unpublished Research Report.

Goodfellow, T & Lindemann, S. (2013). The clash of institutions: traditional authority, conflict and the failure of 'hybridity' in Buganda. *Commonwealth & Comparative Politics* , 51:1, 3-26, DOI: 10.1080/14662043.2013.752175.

Ikejiofor, C.U. (2006). Integrative strategies or functional interface? Emerging trends in land administration in contemporary Enugu, Nigeria. *IDPR*, 28(2): 137-158

# My Contact Information

- Taki Sithagu
- Email:  
Taki.Sithagu@wits.ac.za
- Tel: +27 11 717 7224

