

LAND REFORM

Hopes rise upcoming publication will recognise rural sensitivities in commercial developments

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The discord between communities, traditional government authorities and large corporations is most evident in ongoing legal and political land disputes – particularly in the former homelands.

These conflicts over land tenure coincide with increased commercial economic activity in these areas, especially in coal and platinum mining. Recent court rulings and reports from land rights civil society organisations explain how some state authorities and corporations overlook legislated prescripts when initiating commercial land development projects in rural areas.

The marked undermining, lack of meaningful consultation and running roughshod over deeply-rooted community interests, beliefs and dignity violates the constitutional rights of rural citizens and compromises household livelihoods in several ways. Patronage networks between state officials, traditional leaders and large corporations are the centre of these land disputes.

But there is hope that upcoming and much anticipated Mapungubwe Institute for Strategic Reflection's (MISTRA) publication, which focuses on land contestations and multiple meanings of land in economic developments. The Special Investigation Unit looked into allegations of corruption and elite patronage within the Department of Agriculture, Rural Development and Land Reform and its final report remains outstanding. It is hoped that government and the corporation will begin to recognise the value in different approaches to land tenure, restitution, equitable redress and land development.

These recommendations will likely posit an alternative land policy paradigm, which does not reduce South Africa's land debate to market productivity or commercial agriculture.

Rather, the authors will discuss land within a broader context, accommodating its intersection with citizenship, identity formation, democratisation and social cohesion.

The publication also draws lessons from state and society relations in land reform using country case studies in Africa, South America and the Middle East. This evidence illuminates the importance of maintaining state autonomy and inclusive regulatory practices in land governance. Land conflicts are exacerbated when governments cannot maintain a degree of autonomy from elite commercial and political interest groups.

A case in point that illuminates some of the recommendations contained in the upcoming publication, was an urgent court interdict application which was heard on 17 December 2020 before the Pretoria High Court.

This case involves a long-standing battle between the Madimatle community, the Manaiwa family (whose family has ancestral graves on the disputed land), the Traditional Healers Organisation and nearby landowners.

The case was spearheaded by a holder of the Order of the Baobab in Silver, Mme Grace Masuku, a conservationist and a royal descendant of the Bakgatla Ba Kgafela people against the mining and commercial interests of companies wishing to mine iron ore on the contested land, being current and former landowners and mining right holders Motjoli Resources (Pty) Ltd, Motjoli Iron Ore (Pty) Ltd and Aquila Steel S A (Pty) Ltd.

Aquila is an Australian held and owned mining company to prospect illegally on contested land in 2011, without following environmental prescripts. Aquila subsequently sold the land and ceded its mining right to a BEE company, Motjoli.

The contested piece of land is situated in the Limpopo province about 30 kms from Thabazimbi. It is made up of a three-peak mountain range, known as 'Madimatle' mountain (meaning 'beautiful blood') and the 'Gatkop' cave. This land was a battlefield of various wars fought in the 18th century between the Afrikaners and Tswana people. It is also highly regarded as sacred land by not only the people of Madimatle but other people who travel to the land from Southern Africa seeking refuge, healing and who also undertake traditional initiation practices.

Mme Masuku and the interested parties, assisted by Werksmans Attorneys, launched review proceedings in 2019 against the Minister of Mineral Resources and the Motjoli entities; seeking an order from the court to review and set aside the unlawful grant and transfer of the mining rights by the Department of Minerals Resources, on the basis that the mining rights were unlawfully granted in the first place, and the grant was not followed by due public participation, and environmental laws were flouted. This review application has not yet been heard and is currently under case management in the Pretoria High Court.

Meanwhile, the South African Heritage Resources Agency (SAHRA), which is tasked to protect, safeguard and grade the nation's heritage site, determined on 14 October 2020, the land should be considered a provincial heritage site by the Limpopo Heritage Resources Agency. Upon investigation, it found the cave and the mountain have unique attributes that make them culturally and spiritually significant land which ought to be protected. The process to grade the site is underway.

Notwithstanding the main review court is to determine the legality of Motjoli's mining right and SAHRA has determined the sacred nature of the contested land, the Motjoli entities elected to descend on the mountain proceeding to commence with box-cutting and bulk sampling activities in the latter part of November 2020, determined to undertake mining activities.

On 17 December 2020, the High Court ordered the Motjoli entities to immediately stop any of the mining activities pending the finalisation of the main review application and remarked about the lack of public participation and community engagement that preceded the grant of the mining right.

The MISTRA publication has recommended the state begins to take seriously the interests and rights of rural communities prior to the undertaking of commercial activities and for the communities themselves to exercise their autonomy in protecting their heritage, dignity, cultural and religious practices which are often intertwined with land rights and occupation.

This dovetails with the overarching theme of the multiple and layered meanings of land.



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