

Bafokeng Land Buyers' Association

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24 October 2012

Committee Secretary
Select Committee on Petitions
Parliament of South Africa
Cape Town, 0001
Tel.: 021 403 3822

By Email to: tmadima@parliament.gov.za
ncmagazi@parliament.gov.za

Cc: gdixon@parliament.gov.za

Attention: Tenda Madima,

PETITION: HUMAN RIGHTS ATROCITIES LEVELLED AGAINST THE POOR, RURAL, MINE-HOSTING COMMUNITIES OF BAFOKENG, RUSTENBURG, NORTH WEST PROVINCE

Please find herein our petition to have the Parliament of South Africa investigate human rights atrocities taking place in the poverty stricken Bafokeng communities, Rustenburg, North West Province.

The petition is a follow up to the one submitted in 2008, a copy of which is hereto attached.

We are optimistic that Parliament will respond positively to our petition, with the hope of strengthening our constitutional democracy.

Sincerely,



Othusitse Rapoo (Mr.)
Secretary: Bafokeng Land Buyers' Association
073 443 5699
othusitserapoo@yahoo.co.uk



PETITION

PARLIAMENT OF SOUTH AFRICA

HUMAN RIGHTS ATROCITIES LEVELLED AGAINST THE POOR, RURAL, MINE-HOSTING COMMUNITIES OF BAFOKENG, RUSTENBURG, NORTH WEST PROVINCE

1. Introduction

The Bafokeng Land Buyers' Association, an association of individuals and communities forming the Bafokeng 'tribe', was invited to make a presentation to the NCOP on the 21st September 2012 about the draconian Traditional Courts Bill [B1-2012].

Following our presentation and that of Mmuthi Pilane of Bakgatla ba Kautlwale from Motlhabe Village, Pilanesberg, the NCOP advised the two presenters to petition Parliament on the issues they raised.

We hereby wish to invite the Parliament of South Africa to note the concerns raised by the two representatives on behalf of the poor, marginalized, suppressed, rural, mine-hosting communities of both the Bafokeng 'tribe', Rustenburg, and that of Bakgatla ba Kautlwale. This petition, however generic, will speak largely on behalf of the Bafokeng communities.

The petition is a further follow-up on the one submitted to Parliament in mid 2008, a copy of which is attached hereto. It is worth noting here that Parliament did not respond to the petition.

2. Background

Following our Constitutional democracy in 1994, Parliament passed numerous laws for the restoration of rights on land. A number of Chapter 9 institutions were also established to entrench the values enshrined in our Constitution.

The mine-hosting communities of the Bafokeng 'tribe' asserts that 18 years into 'freedom', we are yet to enjoy the fruits of the democratic Constitutional dispensation we bitterly fought and sacrificed for. The civil liberties and protections are instead enjoyed by and extended to a few previously advantaged individuals and communities, including the multinational mining companies. We assert that we instead continue to be subjected to oppressive colonial-apartheid

institutions represented by the State departments, the Bafokeng traditional authority, and the multinational companies operating in our area.

We wish to highlight here that a number of non-Bafokeng communities, who through the historical racially discriminatory laws were forced to subscribe to the Bafokeng chieftaincy, have since 1906 tried to assert their self determination. They have more recently in 1996 lodged their claims for the restoration of their (various) rights on land. Their efforts in claiming a number of their fundamental rights, have always been frustrated in a number of ways, including through the expensive, inaccessible, South African judicial system. Both the North West Provincial and National Parliaments have themselves been complicit, and ignorant to petitions submitted to them by the communities.

3. Lonmin's Marikana Massacre and the covert military operations

There is enough prima facie evidence in support of the claims lodged by the Bafokeng Communities on a number of violations against their fundamental rights which warrants State intervention. A number of supportive academic studies presented to Government have been conducted in the area. It is well known that the Lonmin's Marikana Massacre is only a symptom of a larger problem experienced by mine hosting communities in South Africa. Bafokeng communities themselves, warned in its 2008 petition about covert military operations operating on the platinum mining belt. The erstwhile 'Executive Outcomes' company, the infamous Cato Manor Police death squad, the local police stations at Rustenburg and Phokeng, the Potchefstroom-based Public Order Police unit, the Bafokeng Security company, the mine security companies, are all representatives of the said covert operations, which manifested in the tragic Lonmin's Marikana Massacre. The communities in the platinum belt, including the Bafokeng Communities, have for more than five years, been subjected to brutal actions by such security forces, that they feared for their lives when trying to assert their fundamental rights.

4. Historical research on land purchases and settlements should be a public duty

There is a rich painful history of land purchases that took place in the Rustenburg area from the mid 19th century. There is general fear that a State sanctioned investigation on this history would create a state of chaos in Rustenburg similar to the one experienced in 1922 when the Bafokeng chief, with State support, expelled a number of vulnerable households out of the Bafokeng area for causing 'instability'. There is fear that assisting the poor Bafokeng communities to assert their historical cultural rights would usher in new claims to independent chieftaincies, community-owned mining rights, etc. This fear has led to a new coalition by the authorities (State and traditional) and private corporate (mining

companies) to suppress any 'dissent' by all means necessary. It is this coalition that has made it impossible for the communities to assert their democratic constitutional rights. As an example, the communities, in trying to assert their rights through the judiciary, cannot afford to pay for exorbitant, prohibitive, legal fees and research studies on land purchases.

It was a national duty for colonial-apartheid governments to divide State land into farmholds. It should remain a national duty today, to have information on the said land division available and accessible. That insurmountable duty should not be passed to private individuals and poor communities, who in this regard did not bring such hardship onto themselves.

Important public information on land purchases around Rustenburg and elsewhere in South Africa forms part of our national heritage held by other States in European countries. The unfortunate poverty stricken communities find it difficult to understand why their democratic Government cannot make it its business to intervene and obtain such important public information held in foreign countries. In this regard, a caring Government had already set precedence by establishing the Nhlapho Commission in assisting poor communities exert their customary rights. This duty was not left to individuals and communities in establishing their rights.

5. Denial of right to demonstration and harassment by the judiciary

Frustrated by such intransigence, and in want of help, the communities would want to publicize their plight and to vent their frustrations through public demonstrations. Still their right to demonstration is unlawfully denied by their influenced Rustenburg Local Municipality. In the end communities are shot at, detained (for weeks without trial) and charged with illegal gathering and public violence. After much suffering and harassment, in detention, they are released without being found guilty of any wrongdoing.

The communities wishes to pose the following questions to Parliament: (i) why does the State protect such injustices meted against the most vulnerable communities in our democratic country? (ii) Why should communities be burdened with searching for information related to historical land purchases and settlements, a task which should be a public duty? (iii) Why is the blatant maladministration and abuse of traditional authority in the Bafokeng left unabated? (iv) Is the Bafokeng currently enjoying National Key Point status as it did under colonial rule in the 19th century?

6. Conclusion

The above scenario gives a synopsis of the painful difficulty that the poor rural communities face in asserting their democratic rights in Rustenburg. The communities have gone through all legal channels, and to all State authorities and Chapter 9 institutions to seek help, to no avail.

It is well known that the Bafokeng 'tribe', like many others, is a colonial construct, which continues to suppress dissent by its communities against illegitimate traditional authority, maladministration and corrupt governance. It (Bafokeng) does so in cohort with other State organs and the mining companies, in particular, Anglo Platinum and Implats.

Clearly the mountain of challenges faced by the poor Bafokeng communities in particular cannot be resolved without the help of National Parliament.

7. Recommendations

It is for this reason and others that the optimistic Bafokeng communities persist in petitioning our august National Parliament:

1. To note this petition;
2. To incorporate our submission (attached hereto) at the NCOP public hearings on the Traditional Courts Bill [B1-2012]
3. To incorporate herein the recommendations carried in the attached 2008 petition;
4. At free will and as public duty, to commission a national inquiry on historical land purchases and traditional leadership disputes;
5. To investigate unlawful brutal policing and security structures around the Bafokeng in particular, and the platinum belt in general;
6. To note the ANC's 2007/2 resolutions on (illegitimate) traditional leadership;
7. To acknowledge that Traditional Leadership and Governance Framework Act is fraught with disputes related to (legitimate) traditional authority; and that since the Act regulates living customary law, it should as such from time to time be amended to respond to such new customs and authorities;
8. To withdraw the untimely, wasteful, misinformed, and misplaced Traditional Courts Bill;
9. To lift the silent moratorium in declaring and recognizing new (legitimate) traditional communities;
10. To promote equality in traditional communities, by amongst others, establishing and empowering (Equality) Courts in traditional areas;
11. To investigate suppression by the Rustenburg Local Municipality, of communities' fundamental right to demonstration;

12. To enforce and monitor the (Rustenburg based) mining companies' compliance to their Social Labour Plans;
 13. To develop legislative protective measures for (Bafokeng) mine-hosting communities;
 14. To commission independent organizations and experts to facilitate 12 and 13 above;
 15. To order a task team in establishing assertions and the scope of work in this petition.
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DATE : 11 April 2008

TO : The Parliament of the Republic of South Africa

**ENTRENCHMENT OF LAND OWNERSHIP RIGHTS AND SELF
DETERMINATION FOR CERTAIN COMMUNITIES WITHIN THE
BAFOKENG 'TRIBE'**

And the

PRESERVATION OF MINING RIGHTS FOR THE SAID COMMUNITIES

A. Introduction

Around seven communities forming the Bafokeng 'Tribe' near the town of Rustenburg in the North West Province, have a legitimate claim that they have bought the farms that forms the geographic bulk of what is referred to today as the Bafokeng Tribal Lands.

The said communities bought land individually and subscribed to the so-called Bafokeng clan which later, as it grew bigger, got referred to as a Tribe.

Some of the said communities are of different totem to the Kwena (crocodile) of the Bafokeng clan.

The said communities asserts that their rights have systematically been eroded and as a result, important decisions affecting their lands taken without due regard. Some of the decisions took having devastating impacts on their livelihoods.

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The said communities wishes to reclaim their land rights on their farms and to further exploit the economic rights, with particular reference to the mining rights, which would naturally flow from the land rights.

Based on the above brief summary, it is of urgent importance that the pending conversion of old order mining rights to new order mining rights reserved for the multinational mining companies operating in the claimed farms, be brought to an abrupt halt and preference be afforded to the land claimants.

The said communities wishes to work in collaboration with all progressive forces and formations that embraces land rights justice for communities; and that further espouses to the true ideals of broad based economic emancipation, particularly for these previously disadvantaged mine hosting communities.

B. Historical Background

"More than half of Kruger's land transactions were in connection with farms in the vicinity of the Bafokeng settlement. A few other officials and business and professional people in the Rustenburg District, however, were also very active in land speculation.

The encroachment of white settlers from the late 1830s onwards on land utilized by African communities left the Bafokeng without any land of their own by the 1850s and 1860s. In addition, no legal provision was made for Africans to re-obtain land and have it registered in their own names. In this regard it was the duty of the field-cornets in the Transvaal to demarcate locations for African communities to live on.

In the process the Bafokeng became vulnerable to attempts by the Transvaal government to make their labor more readily available to the white settlers, even at the expense of their survival as a community. In the 1858 guidelines to field-cornets it was stipulated, for example, that those Africans who did not fall

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under a kgosi were compelled to report to a field-cornet to make their labor available. This is an extract from "WE MUST NEVER FORGET WHERE WE COME FROM": THE BAFOKENG AND THEIR LAND IN THE 19TH CENTURY TRANSVAAL by J.S. Bergh, University of Pretoria, Pg 8.

C. The 'TRIBE' – Exposition of the Myth

The reported case of *M. Petlele and Others vs. The Minister of Native Affairs and A. Mokhatle and Others*, 27 April 1908, Pretoria, Transvaal, bears reference.

The plaintiff in the case (Petlele) claims that the registration of the title deed on their farm in June, 1907 in the names of chief August Mokgatle and his tribe should be rectified in the title deed and that it should instead have been registered in trust for himself and his section of the Bafokeng tribe.

Judge Smith records the three testimonies by the parties to the land sale transaction thus: "Abraham says that he heard from Van Rensburg's natives that Van Rensburg wished to dispose of the farm. He says that, after that all men of the section of the tribe were called together, and the purchase was agreed upon. Frans says that he was present when Rampete purchased the farm, and that the transaction took place at Rampete's kraal to which van Rensburg came. Van Staden says that he purchased the farm from Van Rensburg for himself and Rampete". (Due the laws of that time, natives were not allowed to buy and hold land in their title and had to make arrangements with whites for the purchase of farms).

Judge Smith concluded after dismissing the claim that, " On this evidence and considering it as whole, it seems to me to be clear that the farm was purchased by Van Staden at the request of Rampete, either in partnership with Rampete, or on the understanding that he should subsequently obtain an interest in it. It is clear

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that the cattle were mainly contributed by Rampete and his people, ..." He goes further to give a bizarre opinion that, "I feel no doubt at all that according to native law it is not possible for a section of a tribe to hold property as apart from the tribe, and remain an integral part of the tribe."

This case is currently under legal review.

D. Assertion

During the then regimes that governed the Transvaal, Africans were forced at the time to subscribe to a certain *Kgosi* to avoid slave conditions that they would otherwise be subjected to under the *field cornets*. In the above reported case, the people of Thekwana and Photsaneng were forced to choose to subscribe to either the Bakwena ba Mogopa tribe or to the Bafokeng tribe under *Kgosi Mokhatle*.

The Land Restitution Act provides for restitution of land rights where communities were dispossessed after 1913. Various communities and clans that constitute the Bafokeng and bought land for themselves were dispossessed of their farm lands by a legislative system that forced them to subscribe to a chief and have their lands registered under that chief.

Ironically, the Land Restitution Act has excluded and dismissed restoration of land rights for many communities in South Africa under the same conditions as those in the Bafokeng area. Recourse is however made possible under the land tenure provisions of the Act.

It is legend and documented that within the tribe itself, the said sections are not necessarily of the same clan and totem as that of the Bafokeng clan of *Kgosi Molotlegi* and that they only subscribed to him to facilitate the purchase of farms.

Close to fifty percent of the world platinum is mined in the farms bought by the said communities.

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The mining companies have been colluding with the tribal authority to suppress and oppress the emergence of 'uncooperative elements' with a subsequent prolonged legitimization of an undemocratic subservient traditional system, ensuring the safeguarding of mineral extraction in favour of the mining companies.

E. Recent Developments

Around 1996 the above mentioned communities formed the Bafokeng Farms Owners' Association to lodge claim to their lands through the Land Restitution Act. The Association was disbanded two years later through the clandestine intervention of the Tribal Authority.

In August of 2005, the Bafokeng released an agenda item in its Council meeting that it intended to apply to the Minister of Land affairs to have the Bafokeng farms transferred from the custody of the Minister into the Bafokeng Development Trust.

The motion was raised at various *makgotla* in the Bafokeng tribe for approval. At the same time the Bafokeng Development Trust deed was presented to *makgotla* for legitimization.

The above mentioned communities wrote letters to the chief of the Bafokeng disapproving of both proposals. (The Trust deed document and the transfer of land to the Bafokeng Development Trust)

The said factions, with the concurrence of members of the clan of the Bafokeng chief, vehemently and vigorously opposed the two motions to the effect that Kgosi conceded to 'make further and proper consultations with the farm owners' (the factions).

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In the process Impala Platinum Mine, a subsidiary of Implats, has been promised new order mining rights.

Letters by some communities opposing such conversion of mining rights were served to the DME North West as early as 2005.

It is clearer of late that Tribal Authorities have become 'BEE departments' of mining companies, ensuring the passage of new order mining rights.

The multinational mining companies are further establishing covert security companies such as the ones found in the Bafokeng and other areas around Limpopo (the platinum belt) to 'deal' clandestinely with these defenseless, poor, rural mining communities to ensure safe passage of mineral extraction for these multinationals.

F. Conclusion

The tactics applied by the illicit benefactors and beneficiaries of mining in indigenous lands is legend.

Most of the legal representatives and 'specialists', whose expertise would necessarily be of help to the poor communities, are preemptively approached by the illicit benefactors and beneficiaries. These experts, deployed by the illicit mining benefactors, would pretend to work with communities, sucking all the communities' hard earned and meager financial resources, delaying and frustrating efforts, and in the end leaving the communities dry with shattered hopes and weakened community trust.

The employment of paramilitary security companies in the caliber of the infamous 'Executive Outcomes' security company to perpetuate (corporate) violence in these mineral rich communities is well known. These agents and operatives are used to destabilise, maim and silence communities and its leaders.

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The said communities have gone at length, communicating their frustrations and plight to various authorities in government and tribal structures, all without help. Complicity with the mining companies, by certain authorities in government and tribal structures, at the expense of these communities is common.

The said communities have expressed the recognition and importance of working with all progressive structures with vested interest in ensuring that mining in their area is of benefit to all.

It is unfathomable that, in a Constitutional State such as ours, renowned for its Bill of Rights, indigenous communities' land, human, economic and environmental rights are still not respected and recognized.

G. Appeal

On the basis of the above, the undersigned communities are left with no other option but to approach the Parliament of the Republic of South Africa for intervention, that:

1. This petition be noted.
2. Support be given to verify the assertions by the said communities.
3. Should the assertions be correct, the claimed farm lands be duly transferred.
4. A moratorium on the awarding of mining rights in the under mentioned farm lands be passed.
5. The affected mining communities as asserted by 2 and 3 above be provided a preferred status in the awarding of mining rights.
6. Government exercise its right to withdraw/withhold/cancel mining rights to those mining companies that have not met the deadlines and requirements for conversion to the new order mining rights.

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7. The impact that mining security companies have in mining communities and on national security be fully investigated.

Signed at Rustenburg on this day the 11th April 2008:

No.	Name and Surname	Farm Name	Contact No.	Physical & or Postal Address	Signature
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4.	CORNELIUS S K... K...	KLIFF FOUNTAIN	073 283 7708	P.O. Box 115 BLESKOP 0292	[Signature]
5.	LESA A NARR	TURFFONTAIN	012540987	Box 198 CHANENG	[Signature]
6.	MARCH MOTENE	STYLDRIFF 3000	082680800	P.O. Box 4161 RUSTENBURG	[Signature]
7.	Nella Rakgolong	Boschkoppie 104 JG Portion 2	072612437	P.O. BOX 665 BALEMA 0236	[Signature]
8.	SIANANG MOTENE	VOGELSTRAAT 173 JP PORTION 275 RUIGHOCK 169 JP/PORTION 3	0825394989	BOX 4052 RUSTENBURG 1221 THE THE SECT. LURA	[Signature]
9.	PHISTUS MEKGWE	DOORN SPRUIT TURFFONTAIN VALKOP KLEIN BODANS SPRUIT	0720840040	2072 SESAME STREET GRIELHOUTPARK, RUSTENBURG	[Signature]
10.	NORA MBELENG	VOGEL STRAAT 173 JP RUIGHOCK 169 JP	0834910862	19A HEDERIA ROAD GRIELHOUT PARK DT.4	[Signature]
11.	Mavis Zwana	Rietfontein 453 JP 53	073 8426629	P.O. Box 445 Photsaneng Village 0311	[Signature]
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16.	CALEB IMAKABE DIBETSO	KLIFF FOUNTAIN	0832743747	3315 UNIT 3 TLHABANE	[Signature]
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19.	Michael Roboye	173 JP PIN VOGELSTRAAT MEK	0734740 243		[Signature]

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20.	MONTY Russel. Huma	TURKOTTEIN 19750	0835174915	PO-BOJCS PROGRAMER/NG	CPA
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Received by Mabe Louisa L. (MP) on

11/04/08 at Rustenburg Traffic Dept
in North West.

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