

JUST AND EQUITABLE COMPENSATION FOR EXPROPRIATION OF MOTLHOTLO CUSTOMARY LANDS

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Country: South Africa Principal Organisation: *Nkuzi*

ABSTRACT

Anglo American Platinum (Amplats), a platinum mining company, targeted the Motlhotlo community's land for the expansion of mining operations in Mokopane, South Africa. However, Amplats did not seek the community's free, prior and informed consent in the mining licence application process. Amplats bypassed their obligation to meaningfully engage with the Motlhotlo community by negotiating with the Department of Mineral Resources and traditional leaders only. Some families refused to accept the company's meagre compensation

offer, demanding more just and equitable compensation. As a result of the community's resistance efforts, Amplats renegotiated the resettlement deal. They relocated the remaining families to better settlement areas with modern three-bedroom houses, two communal farms for crop production and livestock production, schools and hospitals. Further, Amplats invested in small local businesses supplying the mine with water, and trained locals for more technical and stable jobs at the mine, thus securing local livelihoods.

ILC COMMITMENTS



EQUAL LAND RIGHTS FOR WOMEN



PROTECTED LAND RIGHTS DEFENDERS



EFFECTIVE ACTIONS AGAINST LAND GRABBING

INTERNATIONAL
LAND
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COMPETENCIES

AREAS

COMMUNITIES, INDIGENOUS & RELIGIOUS INSTITUTIONS AND RIGHTS

VOLUNTARY GUIDELINES AND OTHER INTERNATIONAL FRAMEWORKS

PROTECTION OF HUMAN RIGHTS

SKILLS

USE OF MEDIA AND COMMUNICATION

ADVOCACY AND CAMPAIGNING

LAND CONFLICT RESOLUTION

BACKGROUND

The Motlotlo rural community once comprised two villages of Ga-Puka and Ga-Sekhaelelo. In 1998, Anglo American Platinum (Amplats) negotiated with the Mapela Tribal Authority, under the leadership of Kgoshigadi Atalia Thabantsi Langa and government representatives for the relocation of the two communities to make way for the expansion of the Mogalakwena platinum mine (formerly Potgietersrus Platinum Mine). Amplats secured a mining license without the free, prior, informed consent (FPIC) of the Motlotlo community. Instead, the community was only informed of their relocation arrangements and expected to accept the offer that took little account of their socio-economic, physical and cultural wellbeing. Sixty-three of the one thousand and seven hundred Motlotlo families rejected the small compensation offered by Amplats in exchange for their relocation to Armoed and Rooibokfotein.

Their choice to remain on-site came at a cost: mining activities expanded onto community lands, coupled with intimidation by the government and mining

companies. With the world's largest open-pit platinum mine, covering an area of 137km² operating fully in their backyards, the communities faced intrusive mining activities. The invasive activities included blasting, causing damage to their homes and the environment, and an increasing mountain of rubble and rock piles several metres from their homes. Consequently, the community faced the risk of physical harm caused by falling rocks, loss of access to their farmlands and biodiversity as the rubble converged with farmlands. Further, nuisance caused by the deafening noise from roaring trucks, and the dust affected the villagers' health, as some face permanent damage to their ears, lungs and eyes. The mining activities also polluted water sources, harming the environment and plunging the living conditions of the communities to a sub-human level, as they lived without access to basic amenities of life such as safe drinking water and health services. The Motlotlo community were labelled as barbaric and anti-development, and endured physical harm, police brutality, and unjustified arrests.

THE CHALLENGE

The Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA) governs South African customary land tenure systems. Section 2(1) of the Act gives temporary protection to informal and customary land rights of vulnerable people while the country

awaits permanent communal land tenure legislation. IPILRA states that people cannot be deprived of their informal land rights without their consent, except through expropriation legislation or locally recognised customs.

However, the Department of Mineral Resources (DMR) and mining companies often bypass the consent provision by excluding the mining-affected communities and merely consulting traditional leaders in the application process for mineral rights. Relying on the authority of the Mineral and Petroleum Resources

Development Act 28 of 2002 (MPRDA) that grants the DMR the power to act as the custodian of mineral resources on behalf of all South Africans, the DMR erroneously awards licences even when the community engagement and consent requirements are unmet.

OVERCOMING THE CHALLENGE

In overcoming the challenges faced by the Motlotlo community, Nkuzi formed partnerships with other non-governmental organisations such as ActionAid South Africa. In 1998, Nkuzi and partners supported the Ga-Pila Community throughout their relocation to Sterkwater by engaging with the affected communities regarding the expansion of mining activities onto their community lands. Nkuzi, Action Aid South Africa and partners supported the communities by bringing their expertise in property rights to support the communities to evaluate their lands and define adequate compensation for the communities.

With the support of Nkuzi as the local partner, ActionAid released its 2008 report entitled "Precious Metal - the impact of Anglo Platinum on poor communities in Limpopo, South Africa."

The report alleged that Anglo Platinum's Mogalakwena mine had:

- 1 Dispossessed thousands of low-income families in rural areas of their agricultural lands, which are their primary source of livelihoods.
- 2 The report alleged that not only were the communities offered little compensation and insufficient resources for an alternative living, but their traditional ways of living were also destroyed, increasing hunger and poverty.
- 3 The whole community lost access to clean drinking water resulting from the pollution of four water sources close to the mine, including two schools in the village of Ga-Molekana.
- 4 Relocated villagers based on agreements that do not incorporate the free, prior and informed consent of the affected communities.
- 5 Expanded mining activities into densely populated rural areas as a means of forcing communities to relocate.

MOVING TOWARDS PEOPLE-CENTRED LAND GOVERNANCE

Based on ActionAid's report, for the first time in South Africa, the South African Human Rights Commission (SAHRC) identified the linkages between human rights and business. Although the human rights of the Motlotlo community were not affected, the SAHRC deemed the relocation as adversely affecting the consent rights of mining-affected communities. For this reason, the SAHRC produced useful recommendations for meaningful engagement with mining-affected communities, identifying and mitigating the risk of human rights violations associated with the resettlement of communities for the expansion of mining activities.

The recommendations of the SAHRC regarding negotiations between mining companies and affected communities include the development of complaints mechanisms, improved community representation, effective communication with affected communities, conducting human rights impact assessments, developing clear criteria for FPIC, developing a resettlement action plan with the affected communities, and capacitating affected communities about their rights, including their land rights.

THE GOOD PRACTICE IN FIVE SIMPLE STEPS



4

1

EDUCATION ON HUMAN RIGHTS, CONSTITUTIONAL RIGHTS AND LEGISLATIVE PROTECTIONS

Nkuzi, as a national NGO, is trusted by community members because they have been working with grassroots to claim their land rights for over 20 years. Building on their prior work, Nkuzi recognises that community legal education is a continuous process; thus, they provide the communities with land rights education throughout the country.

These rights include: the statutory protection of customary land rights under the constitution and the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA); the communities' rights to give free, prior and informed consent in negotiations concerning their lands; the communities' right to refuse proposals that are incognisant of their socio-cultural and economic wellbeing; the obligation placed on mining companies to engage meaningfully with mining-affected communities concerning their relocation from their ancestral lands; the government's obligations to provide legal advice to needy members of society; and the government.



2

FORGING PARTNERSHIPS WITH OTHER ORGANISATIONS AND RESOURCE MOBILISATION

Nkuzi entered into a five-year partnership with ActionAid South Africa as the land rights implementing partner in Mokopane. The partnership was based on Nkuzi's profile as a trusted land-rights organisation and grassroots mobiliser, thus ensuring the necessary skills, expertise and knowledge of the local community. Nkuzi also made sure to engage with the media in order to publicise the case. This entailed using media platforms such as community and national radio stations to highlight the plight of the community.

3

INFORMATION DISSEMINATION

The financial aid provided by ActionAid enabled Nkuzi to support the Motlhotlo community to claim their land rights, including linking them up with other mining-affected communities for peer-to-peer exchanges. One such community is the Grahamstown Unemployed People's Forum from the Northern Cape, who were part of the Concerned People Against Asbestos community who brought a class action lawsuit against Cape PLC/Gencor in 1997. Cape PLC/Gencor is an asbestos mining company that was violating the environmental rights of the communities and the mineworkers by exposing them to asbestos and causing them to suffer from asbestos-related disease (ARD).

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The Motlhotlo community learned how the Grahamstown community had accepted jobs and money as part of their expropriation packages, but were only given casual jobs, which are often temporary and short-term in nature. They also learned about some of the undisclosed potential environmental effects caused by mining, such as water contamination, which two schools later experienced.

LINKING LAND OWNERSHIP AND CONTROL PATTERNS TO INEQUALITY

Amplats' mining operations not only transformed the physical landscape of Mokopane but also changed the social, economic and political landscapes. Nkuzi and partners revealed that the reality of inequality in South Africa goes beyond race and class and impacts community land governance. For instance, local communities are not consulted for their FPIC despite guarantees of this right in the IPILRA and the MPRDA. Instead, the companies tend to negotiate with traditional leaders, who do not have a development mandate under the integrated development plans (IDPs). Further, in patriarchal communities, women's voices are downtrodden, placing them in a worse-off condition.

5

PARALEGAL, PSYCHO-SOCIAL AND LEGAL SUPPORT

As the MRRC continued to demand fair and equitable compensation for their lands, they were arrested by the police services and harassed by mine security. Nkuzi gave paralegal support to the arrested community members, organised legal representation and bail applications and referred victims of police brutality for psycho-social support. Among the affected people was a seven months pregnant woman. Some community members suffered permanent scarring resulting from the abuse and violence meted by police and mine security guards. As the aggression towards the community continued escalating, Nkuzi referred the matter to Richard Spoor Attorneys for strategic human rights litigation.

As part of a renegotiated resettlement package, Amplats relocated the remaining families to better settlement areas with modern three-bedroom houses, two communal farms for crop production and livestock production, schools and hospitals. Further, Amplats invested in small local businesses supplying the mine with water, and trained locals for more technical and stable jobs at the mine, thus securing local livelihoods.

5



KEY FACTORS OF SUCCESS FOR REPLICABILITY AND ADAPTABILITY PURPOSES

The Motlhotlo community's resistance is a story of hope for mining-affected communities in Mokopane and South Africa. The experience of the Motlhotlo community demonstrates the importance of the following:

- 1 **democratic and inclusive land governance:** top-down approaches to land governance disempower the poor. The disempowerment can be exacerbated by the influence that dominant groups such as mining companies have over administrative processes. As such, achieving pro-poor land governance requires democratic procedures governing land ownership, control and use,
- 2 **a unified voice of the people:** the voice of the people can be coaxed from the people in different ways, including through well-organised community engagement led by civil society groups and NGOs trusted by the people. The communities are inspired to demand meaningful engagement in land-based development investments that affect their land rights and to demand development based on natural resources, and
- 3 **storytelling as a community mobilisation tool:** The Motlhotlo community's story is now used as a success story in advocacy work, especially when mobilising communities and women through community engagement tools.

FIND OUT MORE

<https://sekhukhetimes.co.za/2020/01/25/>

[communitys-long-struggle-against-anglo-pays-off-at-last/](#)

<https://www.123helpme.com/essay/Mtlhotlo-Resettlement-Essay-416897>

<https://platinumbelt.osf.org.za/listing/motlhotlo-village/>

LESSONS LEARNED

- 1 **Compensation must be just and equitable.** Cash handouts and employment should not be seen as the only forms of compensation. Cash runs out, and employment can be temporary. As such, the constitutionally mandated compensation standard goes beyond the market value of the land and requires just and equitable compensation. Further, the land acquisition process should be fair, transparent and inclusive, and protect the interests of the community that might not be explicitly protected by law.
- 2 **Women should benefit from relocation.** In light of women's minority status in some traditional communities and gender-biased land ownership patterns, specific strategies and procedures should be devised to ensure that women can benefit from the relocation process.
- 3 **Communities need guidance in determining generational compensation packages.** Without the requisite knowledge and guidance, communities may accept unfavourable compensatory offers, instead of negotiating more favourable compensation packages.
- 4 **Resistance comes at a high cost,** which may include torture, loss of lives and dignity
- 5 **All agreements should be written** in a language understood by community members.

<https://www.miningweekly.com/article/>

[sahrc-finding-highlights-issues-of-community-relocation-to-make-way-for-mining-2009-01-16](#)

<https://southafrica.angloamerican.com/about-us/history/our-centenary-hub/stories/>

[mining-a-family-affair/](#)



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