Community management of mineral resources: the case of the Royal Bafokeng Nation

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Synopsis

This article uses the case of the Royal Bafokeng Nation to argue that royalties and dividends from mineral resources, if managed well, can provide direct benefits to the surrounding community even while the state collects its share of mining revenues through taxation. The key to this model is the effective management of the resource income flowing into community coffers. Where some of this income may fund urgent interventions in the community, a portion of the income can also be used to establish an intergenerational wealth fund to meet the needs of future generations. As a depleting resource, minerals like gold and platinum are not a sustainable source of income, and must be replaced over time by more regenerative income streams. These strategies and dynamics are manifest in the Royal Bafokeng Nation's status as both community and quasi-municipality, a labour hosting and a labour sending community, a mine operator and a mine owner. The Royal Bafokeng Nation also owns one of South Africa's largest community-based investment companies, which channels revenue derived from platinum deposits into a broad investment portfolio that in turn funds an aggressive social development program for 150,000 people living in twenty-nine rural villages.

Keywords

nationalization, mine-community relations.

Introduction

In the relationship between mining companies and communities, one common source of tension is the perception that the mining company is garnering disproportionate benefit from the mining of minerals underlying communal lands. Another tension arises from the fact that, for their part, communities often see their communal land, and any benefits they might derive from it, as belonging to them, and not to the state. Unsurprisingly, this tension is exacerbated when the community successfully derives benefit from mining operations. This essay argues that royalties and dividends, managed well, can provide direct benefits to the surrounding community even while the state collects its share of mining revenues through taxation. The key to this model is the effective management of the resource income flowing into community coffers. Where some of this income may fund urgent interventions in the community, a portion of the income can also be used to establish an intergenerational wealth fund to meet the needs of future generations. As a depleting resource, minerals like gold and platinum are not a sustainable source of income, and must be replaced over time by more regenerative income streams. These strategies and dynamics are manifest in the Royal Bafokeng Nation's status as both a community and a quasi-municipality, a labour-hosting and a labour- sending community, a mine operator and a mine owner. The Royal Bafokeng Nation (RBN) also owns one of South Africa's largest community-based investment companies, which channels revenue derived from platinum deposits into a broad investment portfolio that in turn funds an aggressive social development programme for 150 000 people living in 29 rural villages.

Historical background

The historical background to the Bafokeng case is important as it shows the results of a legacy of strong leadership for more than a century. This foresight and strength resulted in the acquisition of communal land over a long period of time and the use of this land for the broader benefit of the community. Covering an area of 1400 km^2 in South Africa's North West Province, the Bafokeng people date their arrival in the Rustenburg valley to around 1450 (Hall *et al.*, 2008; Huffman, 2007; Mbenga and Manson, 2010).

While the community forms an integral part of the state's system of provinces, districts, and municipalities, the RBN is also governed by a *kgosi* (king), a hereditary role (usually filled by the eldest son of the previous

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kgosi). Christianized since the mid-19th century, and having long-abandoned polygamy, the Bafokeng community has seen few serious succession disputes over the past five or six generations, with a direct father-son line leading back over the past 15 *dikgosi* (cf. Comaroff, 1978). The present leader of the Bafokeng is Kgosi Leruo Molotlegi, who assumed the role of *kgosi* after his brother, Kgosi Lebone II, died in 2000.

The Bafokeng have owned their land by title since the late 19th century. They were thus able to maintain their geographic integrity despite incursions by waves of white settlers, the first and second South African wars, apartheid-era laws, an oppressive Bantustan regime (Bophuthatswana under Lucas Mangope), and corporate raids on their mineral resources.

The founder of the modern Bafokeng Nation, Kgosi Mokgatle (1834–1891), the present *kgosi*'s great-great-great-grandfather, acquired his status not because he was the first Bafokeng *kgosi* (he wasn't), but because he focused his 57-year reign on securing the community's legal hold on its land. Kgosi Mokgatle realized that it was not enough for the Bafokeng to own their land in the traditional sense. In the face of increasing incursions by Afrikaner farmers starting in the 1840s, Mokgatle decided that the community must begin to buy the title deeds to their land if they were to avoid total dispossession (Coertze, 1988). To raise the cash to purchase select tracts of land, Mokgatle sent regiments of Bafokeng men to surrounding farms and the newly discovered diamond fields Kimberley in the late 1860s and 1870s. A portion of the wages earned by these men was placed in a land acquisition fund (Bergh, 2005). With the help of a German missionary (Christoph Penzhorn from the Hermannsburg Missionary Society—German Lutherans), who agreed to buy the land in his name (thereby skirting the laws that prevented blacks from owning land), Kgosi Mokgatle began a historic process of acquiring the ancestral lands of the Bafokeng.

This history of land acquisition by the Bafokeng highlights two things. First, the Bafokeng established themselves as a private, corporate landowner as early as the late 19th century. Bergh (2005, p. 115) points out that by the beginning of the 20th century, almost 20 per cent of the land owned by blacks in the Transvaal was owned by the Bafokeng. Second, although there was subsequent contestation over who rightfully owned Bafokeng land, the public and well-documented process by which the Bafokeng legally obtained their land put them in a strong position to assert their status as a private landowner for generations to come.

Platinum was discovered on Bafokeng territory in 1925 (Mbenga and Manson, 2010). As owners of the land, the Bafokeng began leasing parts of their territory to various companies, including Gencor, now known as Impala Platinum, the world's second-largest platinum mining company. As early as 1953, the Secretary of Mines wrote that '*It would appear that the ownership of* ***both the surface and mineral rights*** *in respect of the land in question vests in the said Bafokeng Tribe and the land therefore ranks as private land for the purposes of the mineral laws*' (Royal Bafokeng Administration, 2003, emphasis added). The Bafokeng, in other words, were able to control their land and its resources as a private landowner under the prevailing Roman-Dutch code.

The President of Bophuthatswana (the Tswana 'homeland' recognized by Pretoria in 1977), Lucas Mangope, saw the Bafokeng as his rivals and enemies, and presumed to negotiate mining contracts directly with Impala Platinum on behalf of the Bafokeng. This set in motion a protracted fight between the Bafokeng and the Bophuthatswana regime on the one hand, and the Bafokeng and Impala Platinum on the other. The case against Impala, which hinged crucially on the issue of ownership of the land, and the process by which any of it could be leased to an outside entity, was settled out of court in favor of the Bafokeng in 1999, nine years after it was initiated. This case was a landmark decision against a major mining company in South Africa, and earned the Bafokeng the nickname 'The Tribe of Lawyers'.

In 1994, the homeland system went the way of apartheid, and the ANC-led government became the next in the long line of regimes to threaten Bafokeng control of their land and its resources. The new government's Minerals and Petroleum Resources Development Act (No. 28 of 2002) was an attempt to undo the country's long-standing legal principle that vested mineral rights in the landowner. The Act, which came into force on 1 May 2004, seeks to expand opportunities for historically disadvantaged South Africans (HDSAs) to enter the minerals industry by implementing new mining rights. It also reiterates the South African Freedom Charter of 1950 in its preamble, stating 'South Africa's mineral and petroleum resources belong to the nation and that the State is the custodian thereof' (South Africa, 2002).

Because the Bafokeng were already using royalties from mining to uplift the surrounding community, the Bafokeng's lawyers argued successfully that their revenues should be exempt from nationalization for a period of five years, at which point the exemption could be reviewed. Another challenge came in the form of the Communal Land Rights Act of 2004, which sought to shift control of communally administered land from Tribal Councils to government-controlled Land Rights Boards (South Africa, 2004). To the extent that the Act replaces traditional authorities and the customary laws and structures they use to administer land with more centralized and party-affiliated structures under the control of the central government, the Bafokeng opposed this legislation from the start. The Act was declared unconstitutional in mid-2010 (Cook, 2004), and the administration of privately-owned, communally-administered land in the Bafokeng territory has been largely unaffected.

One provision of the Communal Land Rights Act was very much aligned to Bafokeng strategy, and despite the law having been repealed, the Bafokeng Administration continues to pursue this cause. According to the Act, communally held land is to be transferred into the name of the community that occupies it, effectively repealing the practice of registering communal land in the name of the government. The Minister's trusteeship over land is an artifact of racist and segregationist policies, and is therefore anachronistic in contemporary South Africa. In the case of the Bafokeng, 'the government officials in the Native Commissioner's office, the Secretary for Native Affairs, the Minister of Native Affairs and the Bafokeng all regarded the Bafokeng as the owner of the land', and, further,'there is no recorded instance where the government of the Republic of South Africa sought to deal with Bafokeng land contrary to the wishes of the Bafokeng' (Royal Bafokeng Administration, undated). The Bafokeng therefore maintain that the change in legal ownership from the state (the Minister's trusteeship) to the community was common logic given the democratization of the country and the right of displaced South Africans to restitution of lands removed from them after 1913*. The Bafokeng Administration has therefore applied to have ministerial consent removed from the administration of Bafokeng land. Some Bafokeng individuals have opposed the application, suggesting a preference for government oversight of the administration of the land (Bafokeng Land Buyers' Association, 2010). The outcome of the application is pending at the date of writing.

What is clear is that the history of Bafokeng land ownership and the worldwide platinum boom of 1996-2008 is a very powerful combination.

The Bafokeng asset base

Under the leadership of Kgosi Leruo, the Bafokeng Nation (through its Council and Kgotha-kgothe) established Royal Bafokeng Resources (2002) to manage the community's mining interests (platinum and chrome), and Royal Bafokeng Finance (2004) to development a non-mining investment portfolio. In 2006, the two companies were combined to form Royal Bafokeng Holdings (Pty) Limited (RBH), which manages the Community's overall investment strategy and portfolio. RBH is mandated by the community (through their representatives in the Bafokeng Supreme Council) to invest the communal purse for maximum return and sustainability. In its first few years, RBH has been staggeringly successful. In 2005 the community's asset base was worth R8.8 billion; two years later, the value was R33.5 billion (approx. US$4.15 billion). Most of this growth can be attributed to the decade-long 'platinum boom' which saw the price of platinum rise from $421 per ounce in 1996 to over $2000 per ounce in 2008. Although the global economic recession that began in mid-2008 took a toll on platinum (an important component in the manufacture of catalytic converters in cars), the RBH portfolio nevertheless outperformed most major stock indexes, and earned the community a 30 per cent return on investment in its first three years.

Although RBH owns stock in approximately twenty companies at the time of writing, the vast majority of its dividends come from Impala Platinum. The other portion comes from smaller dividend streams and interest on cash holdings. This cash is both an asset and a liability. While dividends are not taxed in South Africa, interest earned on cash in the bank is. Given its levels of cash under management, RBH would have faced a 40 per cent tax on its interest income (or approximately R220 million of the R550 million it earned in 2008) if it were not deemed a *universitas persona*, a not-for-profit organization that operates in the interest of, and benefit to, the community.

The South African Revenue Service (SARS), under the direction of the South African Treasury, has long sought to redefine the RBN as a corporation, rather than a *universitas persona*, on the grounds that it is a for-profit undertaking. The Bafokeng Nation's response is that the developmental arms of the Nation, principally the Royal Bafokeng Administration and Royal Bafokeng Institute, effectively reduce the burden on the state to provide basic services and infrastructure to the Bafokeng people, and since the state doesn't tax itself, it must not tax the RBN.

It is in this context that a philosophical debate is taking place between the Bafokeng and the National Treasury and SARS to persuade the regulator to change the VAT legislation to accommodate communities that fund and carry out services that are otherwise the obligation of government.

This debate is one of the reasons why RBH converted its royalty agreement with Impala Platinum into shares in 2007. If challenged by the state again, the Bafokeng lawyers and accountants say they will argue that the living standards of community members will decrease if the royalties are expropriated by the state, constituting a breach of the Constitution's expression of the 'real rights' of individuals living under the protection of the state. In this negotiation over taxes, the RBN explicitly positions itself as a community, and a not-for-profit enterprise assisting the state with its responsibilities, whereas the state would earn more tax revenue if it could convincingly argue that the RBN is a private company.

Royal Bafokeng Holdings and black empowerment

In the current investment environment in South Africa, the RBN's status as a community investor, and in particular a 'Black' community investor, is again highly salient. BEE—Black Economic Empowerment—refers to a set of regulations in South Africa that determines how companies operating in specific sectors (mining, telecommunications, construction, etc.) must transform their shareholder base and governance structures to include more 'previously disadvantaged' (understood to include black,'Coloured', and Indian) people (Historically Disadvantaged South Africans – HDSAs). State-awarded tenders are open only to those companies that comply with their sector's 'transformation charters' by selling shares to black investors or broad-based investment groups (such as RBH) and appointing black managers and directors.

Large corporations in South Africa have thus, since 2005, been seeking 'empowerment partners' to meet their targets. Many of these partners have been members of the small black elite who were already well connected politically, and were able to amass huge personal fortunes through these new laws. Vocal critics of the policies have thus pushed through reforms to the original laws, in an effort to pioneer more broadly based empowerment practices (Hamann, 2004; Rajak, 2009).

In contrast to these few wealthy individuals, RBH is a black-owned investor whose vision is to become the world's leading community-based investment company. RBH regards this vision as 'social capitalism' – using the mechanisms of

*The Natives Land Act, 1913 (subsequently renamed Bantu Land Act, 1913 and Black Land Act, 1913; Act No. 27 of 1913) was an act of the Parliament of South Africa aimed at regulating the acquisition of land by 'natives', i.e. black people. The Act formed an important part of the system of Apartheid and is of importance for both legal and historic reasons. The Act was the first major piece of segregation legislation passed by the Union Parliament, and remained a cornerstone of Apartheid until the 1990s when it was replaced by the current policy of land restitution. The act decreed that only certain areas of the country could be owned by 'natives'. These areas totalled only 7 per cent of the entire land mass of the Union. The Act created a system of land tenure that deprived the majority of South Africa's inhabitants of the right to own land, which had major socio-economic repercussions.

the free market to benefit the collective. There is a further perception among the Bafokeng that corporate South Africa is, by and large, very conservative, and prefers traditional investors to broad-based investment groups like RBH. Individual investors can be wined and dined and invited for a round of golf to discuss corporate strategies. Group investors are seen as unpredictable and harder to influence. Nevertheless, RBH can credibly vie for major investment deals in the telecommunications, financial services, and energy sectors, including a 2011 transaction that involved RBH purchasing a 15 per cent share in the financial services giant Rand Merchant Bank Holdings for approximately R8 billion.

There is a downside to the success of RBH, a perception that the RBN is 'over-empowered'. In other words, RBH is being lumped together with individuals who have become extremely wealthy by becoming empowerment partners to previously white-owned South African companies. The difference is that RBH is not run on behalf of a small group of individual investors, but rather under the guidance of 150 000 shareholders. This is what is meant by 'broad-based' investment, the assumption being that all 150 000 people benefit from the dividends from these investments.

This is a persistent theme in policy debates within and around the RBN. To date, the benefits of being 'the richest tribe in Africa' have been communal and focused on service delivery rather than manifesting in the form of individual financial benefit.

Over 95 per cent of Bafokeng houses are electrified and all the formal residential stands receive reticulated water. Schools and clinics are better than the government norm, and there are more paved roads and community halls, and many other direct benefits such as hot lunches, sports programmes, and libraries in schools, where there would otherwise be none. At *kgotha-kgothe* (the semi-annual meeting of the community, often called the Bafokeng AGM) and other public gatherings, people's sense of frustration at not having more direct access to the communal purse is evident. From the perspective of the more communally-minded, the *kgosi* is responsible for the well-being of the nation, and the nation is suffering; something must be done. This idea resonates with the political economies of pre-capitalist societies where the chief/leader was expected to maintain a surplus of grain and herds of cattle, in the event of a shortage among the people. Through patron/client relations, and networks of sub-chiefs (*dikgosana*), the surplus could (and should) be distributed as necessary to prevent starvation in years of poor rainfall or disease. In the current context, the implication is clear: it is unacceptable to many that the RBN's investment portfolio is valued in the billions of dollars, whereas unemployment is very high and 45 per cent of households earn less than R3000 per month (Royal Bafokeng Administration, 2012).

How does the *kgosi* and his administration respond to these allegations? By espousing 'PLAN 35' the overarching vision of the RBN, which strives to create an 'enabling environment' (read: education, good security, availability of jobs) so that members of the Bafokeng community can prosper as individuals in anticipation of a post-platinum economy. Dependency on a paternalistic regime, in other words, is no longer part of the plan. Achieving such a goal is a long-term process, however, with few successful models or precedents in Africa. The internal discourses of communalism, paternalism, and kinship-based favoritism are on a collision course with a newer rhetoric of individual empowerment, entrepreneurship, and meritocracy. And of course the criteria for membership in the Nation itself become more and more salient as the benefits of membership become more pronounced. As Comaroff and Comaroff (2009) argue, 'inclusion and exclusion' is a key dimension to ethnically-defined enterprises. But the direction of this trend is not a foregone conclusion in the Bafokeng Nation. While Comaroff and Comaroff argue (correctly, in my view) that 'the more that ethnically defined populations move toward the model of the profit seeking corporation, the more their terms of membership tend to become an object of concern, regulation, and contestation' (2009, p. 65), it does not automatically follow that the Bafokeng powers-that-be will privilege 'biology and birthright, genetics and consanguinity, over social and cultural criteria of belonging'. A recent case suggests another possibility. As the Royal Bafokeng Institute brings a higher level of academic opportunity and extracurricular options to the 45 schools on Bafokeng land, the benefits accrue not only to the ethnic Bafokeng children enrolled in these schools, but also to the non-Bafokeng (who outnumber Bafokeng in some schools). When Bafokeng families whose children attend schools outside the Bafokeng territory (mostly middle-class families who can afford the higher fees at the former 'model C' schools) recently threatened to disrupt programmes unless their children were included, the response from the Bafokeng administration was: 'the educational programmes are for those who entrust their children to our schools; if you enroll your children elsewhere, tough luck'. While this may appear anomalous within the specific 'formula' for ethnic incorporation laid out by Comaroff and Comaroff, their broader point bears out: 'not all ethnically defined populations are caught up in it [the dialectic between the corporate and the cultural] to the same degree ... not everyone need be equally embraced by the process. Or even embraced at all' (2009, p. 116). It may be that the Bafokeng middle class, having achieved their own self-sufficiency earlier than most, will be left on the sidelines while services are targeted at those in the greatest need, irrespective of ethnic membership.

The RBN's 2011 budget for social and community-based spending was R800 million (approximately US$100 million). Of this, 26 per cent was allocated to education, 16 per cent to public and community utilities, 9 per cent to health and social development services, 6 per cent to public safety, and 9 per cent went towards to the development of commercial and community-level sports (Royal Bafokeng Administration, 2012). Aside from loans for university students, and school lunches, very little of the budget is targeted at the individual or household level. If the benefits are collective, how is the impact on individuals measured? What, specifically, constitutes evidence of 'service delivery' and equitable distribution of communal resources? Is it the annual budget and spending priorities of the Nation? Is it anecdotal feedback from the community members, as they represent themselves to *kgotha-kgothe*, and increasingly to the media? Increasingly, it will be longitudinal and ethnographic studies that examine changes in household circumstances over time. A socioeconomic household survey is conducted every five years to determine whether spending, savings, and expenditure on health and education increase. Will programmes that fund environmental management, loans for university education, education reform at the primary and secondary level, and installation of waterborne sewage help alleviate poverty in the short-term? Maybe not. The Bafokeng agencies must successfully address food security, primary health care, and accelerated job creation in order to bridge the gap between the 'traditional' expectations of the community and the longer-term strategic aspirations of the administration.

The Lebone II project is a good example of the ongoing debate between equitable distribution of the community's wealth and sustainable planning for the longer term goal of poverty alleviation through human development. Lebone II, College of the Royal Bafokeng, is an independent school founded by the late Kgosi Lebone II in 1999. Initially intended as a selective private school for future leaders of the RBN, the vision of the school has been transformed under Kgosi Leruo into a competitive independent school *cum* teacher-training facility at the center of the Bafokeng strategy for education reform. Designed to meet global standards of educational excellence, the total enrollment at Lebone II is capped at 800 (kindergarten – Grade 12), and the planned mix of students is 70 per cent Bafokeng students and 30 per cent non-Bafokeng (including white, Indian, non-Bafokeng black, and international students). The curriculum prepares students for the South African national exams, and will ultimately enable students to study for the International Baccalaureate (IB), which positions them to apply to universities anywhere in the world. The school's new campus reflects the principles of 'green' building, total integration with the local landscape and climate, and the school's role as a 'teaching hospital' for 45 schools in the Bafokeng region. The fee structure features a 'means and needs' assessment of what families can afford to pay, and all applicants take an entrance exam to determine academic ability. For many Bafokeng, this unique and important institution is nothing more than an elitist institution designed to educate a few Bafokeng at the highest standards, leaving the rest to suffer the limited economic opportunities that inevitably accompany a diploma from the inferior state schools. The idea of Lebone II as a training centre for 45 primary and secondary schools, whose teachers and principals have never been exposed to high standards of content knowledge, pedagogy, teacher-parent interaction, extra-mural activities, etc., is lost on many who are desperate for a pathway out of poverty. The rewards seem to be accruing to too few, and to the rest too slowly. But even with third-party funding, Lebone II is an expensive project, and it will be at least ten years before the families of the students enrolled there will reap the economic benefits of the resources being invested. Many in the community feel that this is an unacceptable use of the resources that their forebears worked so hard to secure a century and a half ago. This pervasive sense of entitlement to a piece of the Bafokeng cake is one of the most difficult challenges for the current Bafokeng policy-makers, including this anthropologist.

Conclusion

I have tried to show, through a discussion of the Bafokeng nation's status as landowner, its control over some of the world's largest platinum deposits, and its resulting status as a major investor in South Africa, that the community's long-term success depends on its ability to both attend to the needs of the present as well as the longer-term needs of future generations of Bafokeng in a post-platinum era. As a recognized traditional authority, the community is able to maintain patriarchal and hereditary forms of governance that exist alongside, but in many ways supersede, the state's political mechanisms. As a *universitas persona*, the nation also enjoys tax-exempt status, enabling it to marshal its resources for the benefit of the immediate community, rather than allowing its dividends to be dissipated by the national treasury and its highly bureaucratic spending programmes.

On the other hand, the Nation has embarked on an aggressive corporatization process in order to capitalize on its platinum interests and ensure the financial viability of the Bafokeng community in the post-platinum era (generally estimated to be 50 years from the present). Corporate structures, strict financial controls, and near-obsessive adherence to corporate governance laws are some of the initiatives introduced by Kgosi Leruo in his first ten years as leader of the community. These shifts are designed to position the community to meet the challenges of the future, even as they ensure that current programmes and interventions are as effective and transparent as possible.

The bottom line, as it were, for the Royal Bafokeng Nation, rests on a paradox. In order to successfully maximize the benefits of being a platinum producer, the Bafokeng have adopted conventional corporate strategies and outlooks. As a community committed to perpetuating non-democratic forms of governance, the Bafokeng Nation has also clung to its status as a chieftainship, communal land administrator, and patriarchal society. The financial advantage in this is that the community, to date, has retained a tax-exempt status. Bafokeng Inc., in fact, relies crucially on the simultaneous pursuit of tradition and modernity, the communal and the private, the local context and the global marketplace. And beyond the immediate (albeit ambitious) goals to achieve basic development and economic sustainability for the Bafokeng people, there are those who see the potential for the Bafokeng Nation to develop a policy/governance model with 'contemporary relevance for the continent' (Dugger, 2010). The World Economic Forum and other global groupings track the Bafokeng approach to 'responsible mining' with interest. With its relatively small area and population, impressive resources, and professional competencies, the Bafokeng Nation aspires to more than providing for people's basic needs. Environmental management, mass enrollment of girls in sports, early childhood education, and focused attention on leadership and citizenship are only some of the localized answers to deeply entrenched problems that might yield far-reaching solutions.

As long as the legal and political context in South Africa allows for a situation where a local community can play a lead role in managing the distribution and investment of its mineral dividends, then the Bafokeng model will stand as an important counter-example to approaches that favor maximum state participation in the distribution of mineral wealth.

Acknowledgements

This essay was originally presented at the 'Corporate Lives' workshop sponsored by the Wenner-Gren Foundation and held at the School for Advanced Research in September 2008.

An earlier version of the piece was published in Current Anthropology (Cook, 2011) and benefited from several critical readings by John Comaroff. The current version owes much to Michael Solomon's critical eye and pen. As ever, the mistakes and shortcomings of the article are mine alone.

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