

# The Bafokeng Nation of South Africa: An example of direct community participation in mining ventures

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Kgosi Leruo Molotlegi, King of the Royal Bafokeng Nation

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## Introduction

It is a pleasure to have been invited to speak to you here today and to present the experience of the Royal Bafokeng Nation as an example of direct community participation in mining ventures.

Let me start by briefly telling you where we are today. We are a traditionally governed community of 150000 people living in 29 villages who own 1200 km<sup>2</sup> of land in the North West Province of South Africa. Under this land lies part of the world's largest platinum reserve, the Merensky Reef. Today, the Royal Bafokeng Nation has an asset value of USD 4 billion. We own 13.16% of Impala Platinum and we have a seat on its board. We are also majority shareholders and managers of our own platinum mining and refining company, Royal Bafokeng Platinum, which employs over 3000 people and whose CEO is Mofokeng. RBPlats is in the process of expanding to a new shaft and has reported 103% increase in earnings per share in the first half of this year, bucking the recent downward trend in the South African Platinum industry. Half of our financial investment portfolio is now diversified outside the mining sector, including in financial services, telecoms, property and transport.

All of our resources are held in a Trust on behalf of the Nation as a whole and our investments are managed through a wholly owned investment company, Royal Bafokeng Holdings, possibly the most successful community-owned investment company in the world. This means that no individual has decision-making power in how our collective resources are used, as we follow all the institutional, legal and auditing requirements for trusts and corporate management. Finally, and most importantly, the Royal Bafokeng Administration, which implements our social development programmes, employs around 400 people and has spent over USD 400 million on roads, utilities, schools, clinics and other public amenities in the last decade. Some indicators of the results are that 99% of all households on Bafokeng land have clean piped drinking water in their houses or yards and 96% have electricity. This is a significant achievement for a rural community living in scattered villages.

We have by no means achieved our goal of being an innovative traditional community, with a vibrant and diverse local economy, and a consistently well-educated and independently prosperous population. We know that this cannot be done by fiat or through money alone; that it takes generations of shifting mind-sets and hard work. We are committed to ensuring that our ownership of mineral resources enables us to walk this long and arduous journey rather

than distracting us. This commitment to community and this long term vision is what has led generations of our leaders to simultaneously fight to defend our ownership and control over our land and its mineral resources against repeated corporate and government challenges, AND to manage these resources in ways that minimise the 'resource curse' of fast personal enrichment, corruption and internal strife.

Let me tell you the story of how we came to be where we are today. It is a long story, so I will just give you the highlights. There are two key themes that run through our story. The first is about owning our land before the discovery of platinum and about using the law to stave off repeated attempts by successive governments from the 1800s to today to take away our rights over this land and its resources. The second is about making choices regarding the management of our resources that maximise the long-term value for the overall community, not short term personalised returns.

## **Preparing the Ground**

As with many African people in the age of colonialism, our history of land ownership is one of having to fight to regain and retain something which was already ours. In spite of this inherent injustice, our Bafokeng ancestors decided to use 'lawfare' rather than warfare to retain control over our land, meaning we learned to use the law of the day to our benefit, even if it was biased against us.

From the 1840s, the Afrikaner Voortrekkers claimed authority over our land as part of what they called the Transvaal. They divided up our land, and that of our neighbours, among themselves. We were allowed to 'return' to some of our own land only 'conditionally' on 'good behaviour' towards the whites, and in 1855 the Afrikaners passed a resolution forbidding Africans to buy or own land. In spite of this, my forefather Kgosi Mokgatle, who ruled from 1834-1891, understood the need to regain some form of legal security of tenure. Kgosi Mokgatle was in fact advised of this by Paul Kruger, a large-scale white landowner in the Phokeng region who was later famously to become President of the South African Republic.

Kgosi Mokgatle therefore arranged with white missionaries in the area to buy land on the Bafokeng's behalf, registering the farms in their names and holding them in trust for the community. To pay for these purchases, Kgosi Mokgatle organised regiments of young Bafokeng men to go work in the newly opened Kimberly diamond mines, 500 kilometres from Phokeng, requiring them to remit a portion of their earnings to the community's collective coffers. In doing this, Kgosi Mokgatle used a traditional form of social organisation, the youth regiments, to handle a particularly modern economic problem. This adaptation of customary values and institutions to tackle, and indeed excel at, contemporary challenges has characterised the Bafokeng from that time to the present day.

From 1877, we were able to buy our own land without a white intermediary, but it was registered and held in trust in the name of the Native Affairs Commissioner of the government. In spite of the infamous 1913 Native Land Act, which prohibited Africans from buying or leasing

land from whites, the Bafokeng were able to continue acquiring land through various means. By the time platinum was discovered in the area in 1925, we were in a position to negotiate with prospecting companies for royalties.

## **Becoming a Mining Community**

The process of moving from being an agricultural to a mining community was not easy. Even as an increase in mining activity on our land brought in substantial income for the community, it reduced the arable land available to us for agriculture. We have had to live with substantial pollution of our soil, water and air. Mining has brought substantial labour migration into our area so that today one third of the people resident on our land is not Bafokeng. In addition to learning to hold our ground in relation to a discriminatory white government, we have had to learn how to deal with some of the world's most powerful corporations. Because of our actual and potential wealth, we have had to defend ourselves against the greed and corruption of the local black 'puppet' government of Bophuthatswana, put in place by the *Apartheid* state from the 1970s to 1994. Finally, even after the advent of democracy and majority rule in 1994, we have found ourselves vulnerable to actual and proposed policy changes about the ownership of mineral resources and the rights of local communities in relation to mining.

Two things continued to stand us in good stead throughout: the strength and coherence of our traditional governance structures and our use of the law, rather than violence or secret and politically expedient dealings, to defend our rights. We were not always successful, at least not immediately, in securing good terms from mining companies. The Bafokeng only received their first royalty from Impala in 1978 – 20 years after Impala started mining in the area! My father, Kgosi Lebone I, spent many years in exile due to conflict with the Bophuthatswana government, not least over mining rights. In the end, however, we were strong enough as a community to weather these conflictual times and emerge with our governance systems, our land, and our assets intact.

Let me use two legal cases to illustrate what I mean about the value of law and collective governance rather than individual decision-making. In the 1950s, so under the worst excesses of *Apartheid*, a company called Rustenburg Platinum Mines that had been mining on our land tried to use a clause in their lease contract, originally signed in 1926, to buy some of our land for far below its market value. The Bafokeng people, represented by Kgosi Manotshe and his council, contested the legality of the clause, which gave the mining company the option to buy the land at a price fixed in 1926. They argued that the Kgosi at the time, Kgosi Molotlegi, had not adequately consulted his council and his people before signing the original contract, which made the contract null and void. The Bafokeng were aided by the logic of the *Apartheid* state, which had set certain land aside for exclusive occupation by Africans, including Bafokeng land, therefore precluding white-owned companies such as Rustenburg Platinum from buying this land. In the end, the Bafokeng won the case.

The second example is our legal battle with Impala Platinum, the second largest platinum producer in the world, which ran from 1987 to 1999. In the process, we had to take on both Impala and the Bophuthatswana government, which claimed the right to represent Bafokeng interests while actually seeking only to enrich themselves. The case involved the Bafokeng's claim for fair royalties, which Impala and Bophuthatswana's ruler countered by contesting that the Bafokeng owned their land. Our leadership was challenged through the exile of our Kgosi, and the ban on community meetings hindered the exercise of our traditional collective decision-making processes. An acting Kgosi who was close to the Bophuthatswana ruler was appointed against the wishes of the majority of the Bafokeng council of elders (*lekgotla*). With the fall of Bophuthatswana and the *Apartheid* regime, the return of our Kgosi from exile, and the continuation of the legal pressure on Impala by the Bafokeng, we achieved a settlement in 1999 that was not only a victory for the Bafokeng but that generally changed the rules in the engagement between owners of land and mineral rights and the mining companies.

Through this settlement, we increased our royalty levels from under 16% to 22% of taxable income, received one million shares in Impala Platinum Holdings and a seat on the Impala board. As soon as the deal was concluded, the value of Impala shares doubled, showing that the settlement was mutually beneficial in the end. The shares and seat on the board moreover turned the Bafokeng from passive recipients of royalties to active participants in the enterprise of mining.

A second form of active engagement in the mining industry is through direct management of enterprise. In 2002 we entered into a joint venture with Anglo American Platinum to establish Bafokeng Rasimone Platinum Mine, a 67% Bafokeng-owned and since 2010 entirely Bafokeng-managed enterprise. In 2010, we also took the decision to list this company on the South African stock exchange, bringing its current revenue to USD 311 million.

Finally, we have learned to not only use the existing law in our favour, but to influence law-making processes. Our advocacy in the areas of taxation, mineral extraction, traditional leadership, and land reform has been the decisive factor in the drafting and implementation of several pieces of legislation by South Africa's democratic government which have changed the game for all residents of South Africa. As an example, the Bafokeng had been working with the new government since 1994 to help formulate policies that take into account our longstanding ownership of our land and its minerals, and our efforts to use the proceeds from those minerals to invest in the lives of our people. These efforts, however, were threatened when the government proposed new legislation in 1998 aimed at removing mineral rights in South Africa from private ownership, on the principle that "the mineral resources are part of national patrimony which have to be developed for the benefit of all South Africans." The implication for the Bafokeng community was that all the work of establishing ownership of our land, and consolidating the benefits of our natural resources to our people, stood to evaporate before our eyes, yet again. We entered into aggressive negotiations with the government over the provisions of the Mineral Rights Bill, and finally reached a compromise solution whereby, in her own words, the Minister "may direct that royalties continue to be paid to those who currently receive them, especially in cases where such royalties are used for promotion of rural economic

development so the Bafokeng and other communities who are involved in development are catered for.”<sup>1</sup>

## **Economic Diversification**

This brings me to the 2000s, when we continued to learn new and better ways of managing our mining-related resources. At this point, it became very clear to us that we needed not only to maximise the current value from our mining rights, but that we needed to consider a post-mining future and reduce our dependence on this single source of revenue. Since the time of Kgosi Mokgatle, when we bought back our land, the overall aim was not short-term financial gain, but the long term survival and sustainability of our Nation as a whole. With this aim in mind, economic diversification became our most important goal in the 21<sup>st</sup> century.

There were several ways in which we became smarter regarding our balance sheet. In 2004 we established the Royal Bafokeng Nation Development Trust as the vehicle through which all our resources would be managed. The professional investment company Royal Bafokeng Holdings (RBH) was established in 2006, as a wholly owned subsidiary of the trust, to invest, diversify and thereby grow our financial assets. Clear, transparent and recognised legal entities create a predictable regulatory environment. This in turn enables clearly structured relations with external partners such as investors, investees and government. Within this institutional framework, we converted the rest of our royalty rights from Impala into shares in 2007, resulting in RBN owning a 13.4% equity stake in Implats. Through this transaction, the value of RBN’s equity investment in Impala increased from R1.2 billion in 2006 to R17.4 billion in 2007 - – a fourteen-fold increase in value.

Since that time, RBH has diversified its investment portfolio from an over 90% exposure to mining to today having just over 50% of non-mining assets, significantly in financial services, telecommunications, property, transport and manufacturing. An example is the acquisition in 2011/2012 of a 15% stake in investment companies RMB Holdings and RMB Investments. The value of this financial diversification has been shown in the past year as the volatility of the platinum sector has significantly affected our income.

Economic diversification is not only about finance. Finance is an important enabler, but the end goal is always the welfare of the people, meaning an economically and socially strong community. Our focus has therefore been to use our financial resources in two ways: firstly, to use the RBN Development Trust and the RBH investments as an inter-generational fund that will continue to generate income for our community after the depletion of platinum in our land, and second to finance current developmental expenditures in infrastructure, education, health, security, sports and the governance systems to manage it all. As noted above, we have spent over USD 400 million over the past decade on social expenditures, with an average of USD 80

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<sup>1</sup> Speech by Minister Phumzile Mlambo-Ngcuka: “Minerals and Petroleum Resources Development Bill,” 25 June 2002.

million, or 2.5% of net asset value, per year passing through the administration for the past 5 years.

While the quality-of-life effects of infrastructure investments in water and electricity provision, roads, clinics and school classrooms are easiest to measure, our greatest priority as a Nation is in fact the 'soft' investments in the quality of education, the generation of an enabling environment for entrepreneurs and transparent and accountable governance systems to frame it all. The overall aim is to use mining revenue to kick-start the human capital development necessary to underpin a community that is not dependent on mining but can generate its own innovative and diverse local sources of income, such as through technological invention and manufacturing. This also means developing a mindset that continues to value the collective but that has moved beyond the expectation of subsidies and hand-outs. Our measure of social development success should not be an increase in our social spending year on year, but rather a reduction in the need to spend on basic social services due to the rising levels of employment and self-sufficiency of our citizens.

To implement our work in education and local economic development, we established two independent not-for-profit companies called the Royal Bafokeng Institute (RBI) and Royal Bafokeng Economic Development (RBED), respectively. RBI provides support for all stages of education, from early childhood development through the augmentation of public primary and secondary schooling, from vocational training centres to university scholarships. We do not see education as being merely about technical knowledge and acquiring certifiable skills. If education is to be a means towards a happy fulfilling life for an individual, and a cohesive and prosperous community, it must be about shaping a whole human being, including a person's moral balance, positive sense of self-worth and active engagement with society. We are therefore integrating leadership training, including processes of self-reflection and internal development, in all our high schools and eventually all levels of schooling. One of our flagship programmes in education is the Royal Bafokeng Lebone II College, which seeks to provide a model of educational 'excellence' to all the public schools on Bafokeng land. The College acts as a 'teaching hospital': a private school with the highest international standards of education that has the mandate to be the exact opposite of exclusive. 60% of learners are bursaried Bafokeng children chosen purely on merit, and the remaining 40% are paying learners from everywhere. The Lebone classrooms are all purpose built to enable teachers from our other schools to regularly observe classes as part of their continuous professional development, and Lebone regularly hosts educational activities for all learners and community members.

The RBED, in turn, provides a wide range of support services to our local SMMEs, including training and assistance to negotiate value chain linkages with local mines, including those in which we have a financial stake as well as others.

## **Governance**

Finally, our governance institutions underpin the entire system through which the community owns, controls and participates in mining-generated opportunities. We are a traditionally governed community, with a hereditary king and 72 hereditary ward headmen, called dikgosana. We also, however, have elected structures, including Bafokeng Councillors representing the five regions of our Nation, as well as professional administrative structures like the Royal Bafokeng Administration, RBI, RBED and the RBH. The highest decision-making structure remains the general meeting of Bafokeng citizens called Kgothakgothe, held twice a year, at which all major decisions concerning land and the Nation's strategic assets must be agreed to by resolution. There have been many occasions in the past where recommendations put forward by the Administration, the Supreme Council of dikgosana and councillors and even the King have been rejected by the general meeting.

The Royal Bafokeng Nation's governance and administrative systems are characterised by the same values: transparency and accountability. As I mentioned, our resources are controlled by a Trust rather than any individual, and the Trust's board includes both hereditary and elected representatives of our community. The accounts of the Trust, the Administration and all governance bodies, including the King's office, are audited annually, with a full financial report scrutinised by the Kgothakgothe meeting every year. The administration has a publically accessible online project and programme management system – to be viewed at [www.rbnoperationsroom.com](http://www.rbnoperationsroom.com) – through which any member of our Nation, and indeed any member of the global public, can trace progress on every single development project undertaken by the administration, from a horticulture project for the blind or a new road to the establishment of an online archive of Bafokeng historical documents. All employees of the administration, up to executives, have performance agreements tied to this transparent project management system and overall achievement of targets set out in a formal scorecard.

All of these institutions are driven by long-term planning processes, informed by careful empirical research. Our current planning framework is called Plan 35, with a horizon to 2035. In addition to the core focus on education and local economic development, PLAN 35 includes a Masterplan for the built environment of the entire Platinum Belt in the Rustenburg area as a means of enabling an integrated and economically diversified region.

## **Conclusion**

We still have much to learn as a community, but I think we also have much to share with others seeking to build a strong community in the context of natural resource revenues. When people look at our achievements, they often say that we happened to be lucky that our land held platinum reserves. This is true, but it is also true that natural resources can hamper as well as facilitate community development if they lead to corruption and conflict. The real asset of our Nation is our people, and the platinum can only ever be a tool for the development of this core asset. The real lesson from our experience is the institutions of governance we have developed

– these are what have enabled our survival as a people and what have made the ownership of natural resources a boon rather than a curse.

Various African governments have expressed a strong interest in this story of ours. In 2007, President Joseph Kabila of the DRC visited us in Phokeng, with a follow up by his former minister of mines Martin K Labilo in 2011. On two occasions, Zimbabwean ministers have come to Phokeng to discuss our model.

There is an irony in this high level interest. Our story is one of having had to defend ourselves from existential threat by every successive government in South Africa – from the Boer Republic through Apartheid and the Bophuthatswana homeland to the democratically elected ANC. Other independent governments across Africa have similarly sought to sideline traditional communities and their governance structures, especially those in mineral-rich areas. I am thinking of the Ashanti of Ghana and the Lozi of Zambia as examples. Often these governments succeeded, leaving the traditional communities mere shells of what they once were and what they could have become if allowed to adapt to the modern era. But now African governments seek out and wish to learn from and emulate our experience as a traditional community. We hope that our lessons about community governance will be heard. We hope that traditional governance mechanisms can be seen as appropriate and indeed excellent forums for managing modern economic and social challenges, and that such community structures should be protected and enabled rather than undermined in the quest for sustainable community participation in and benefit from mining resources.

I thank you.