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The land belongs to us … or does it?

The journey of a young woman confronting her own issues surrounding cultural identity through her family's rural land claim, set against the backdrop of a highly contested South African political landscape on land reform.

By Tsholofelo Semenya

Student Number: 473214

A research report submitted in partial fulfilment of the requirements for the degree of the University of Witwatersrand's Master of Arts by Coursework and Research Report in Journalism and Media Studies

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Abstract

Conversations in South Africa around land reform and decolonisation have been widespread, contested and debated for many years. The importance of returning land to its rightful former owners has become an integral part of reclaiming our country's history and most importantly, framing its future. But what of the redistribution of land by traditional leaders who remain the custodians thereof in rural parts of South Africa? This research details the journey of a young woman and her family's quest to reclaim rural land which, is said to have rightfully belonged to them - a land claim which was ultimately abandoned by my family. Neither myself nor the family members involved in the land claim grew up or lived in the area. Trying to reclaim a part of my family's history and legacy was an emotional journey fraught with the struggles of reimagining my identity and understanding my family's history, legacy and culture. This report details how the Semenya family found a home in the small, rural Limpopo town of Moletjie centuries ago. This report also details the symbolic understanding of what land and culture mean to my family today. The journey of my family's abandoned land claim ties into present-day political narratives of land reform, the policies and custodians which inform its implementation and ultimately the reclaiming of black people's history through land. Additionally this report will explore the historical and contemporary significance of land to black people in South Africa, as a means towards their economic development and cultural understanding of self.

Declaration

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts by Coursework and Research Report in the Department of Journalism, at the University of the Witwatersrand, Johannesburg.

It has not been submitted before for any other degree or examination at any other university.

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Dedication and Acknowledgments

This journey is dedicated to those who came before me, and to those who will carry the Semenya name after me. May the legacy of the blood which runs through our veins be an everlasting one.

I would like to thank my research supervisor, Kevin Davie, for believing in this story when I saw none. Your dedication to my family's history and legacy are what saw this project to this point, thank you.

Thank you to the Moletjie Royal Council for the gift of your time and knowledge. Your archiving of the region will prove invaluable in the passing down of many families' history.

To my colleagues Nape Phaleng, Moloko Moloto and Johnny Khalo, thank you for helping this non-Pedi speaking girl navigate our language and culture.

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To my parents, thank you for teaching me, in your own special way, the value and rewards of hard work.

The legacy

In early 2014 on a Sunday afternoon, my father and uncles gathered the children of the Semenya family for a meeting to discuss what they had envisioned would be our family's legacy project. Due to my family's long-standing ties in the region, a Chief from the rural village of Moletjie in Limpopo had gifted our family a piece of land roughly 3x3km in size. It was the hope of the family elders that the children would use this gifted land to create some kind of legacy which would ultimately benefit the Semenya children for future generations.

My family came from a rural village in Limpopo called Moletjie just over 25km northeast of Polokwane. There is an area within Moletjie, called Ga-Semenya (loosely translated to Home of the Semenya's) which marks where our family comes from in the largely Pedi region of Limpopo.



Photo captured by: Tsholofelo Semenya (2014)

Having grown up and lived my entire life in Johannesburg it was the only place I knew of and understood to be my home. This is where I am rooted. To now find out that my family came

from this rural village in Limpopo, one I have never been to or even heard of, fascinated me and shifted my sense of identity in many ways.

I grew up as the last born daughter to a Pedi father, who is a senior counsel advocate, and a Swati mother, who is a retired chartered accountant, a highly accomplished and rare duo for their time. For as long as I remember, my parents never spoke African languages in our household. For no particular reason only English and Afrikaans were spoken; I assumed this was because of their tendency to speak those languages in their professional lives. Similarly, cultural practices or the significance of tradition and heritage were barely spoken of or emphasized. With my mother being a devout Christian and my father an atheist, both have little to no personal interest in cultural practices or traditions.

However as tradition goes, my siblings and I followed along patriarchal cultural lineage and grew up referring to ourselves as Pedi but knowing very little about our culture or the language. My only introduction to an African language was through our domestic worker who all but raised me until the age of 8, Aus' Pontsho, who was from Lesotho. She raised me from birth only speaking Southern Sotho (or Sesotho), which is how I learned the language, my extended family introduced me to Setswana and isiZulu. My interest in my Pedi roots only came to fruition in my early 20s.

Shortly after my 22nd birthday three male cousins and I embarked on a journey to Limpopo to visit this land of our forefathers, which would become the foundation of our family's legacy project. Having never been to Moletjie before our interest was piqued as to what we would find once we arrived. Would the land be arable? What would its monetary value be should we choose to sell? Would we be able to derive any economic benefit from whatever we chose to use the land for? Questions were asked but were left largely unanswered during the four-hour trip north. Personally, I began to question the significance of this land and how it tied our family to a history, a heritage and the BaPedi people, who we had all previously chosen not to identify with. This mysterious gifted land in the home of my forefathers offered me an opportunity to have a deeper sense of self and a chance to understand my family's history.

Upon our arrival in Moletjie, we met with our Ramogolo Philip (in Sepedi Ramogolo is used to refer to any uncle older than my father) who still lives in the area and was a part of the discussions around the family legacy project. Driving towards Ramogolo's home in Moletjie, the area sparked no memory and certainly was not what I had imagined. The rural town was dry, hot and sparsely populated in parts but densely so in others. After we were greeted by the long and arduous moos of his neighbour's cows, Ramogolo explained that before we settled in for the evening it was important that we first met with the local headsman (a man who acts as the right hand of the Chief) in the area to announce our visit and relay the intentions behind our trip and explain to him who we were and how we were connected to the area. Because we drove directly to our uncle's home, our earlier questions about the gifted land would remain unanswered until the morning when we would be taken to see our land.

As night began to fall, we took a drive to the bottle store to buy drinks for our meeting with the headsman and the family braai which would follow. It was pointed out that we should purchase a bottle of whisky for the headsman and the community leaders who would accompany him, as a token of thanks for receiving us in the area. Ramogolo explained that it was customary to be welcomed with such a token. After we gave our token to the headsman, we would introduce ourselves and explain how we were connected to the area. Following this discussion, the headsman would welcome us to Moletjie and give us his blessings for our stay and the journey we'd hoped to embark on. Ramogolo also let us know that the evening's engagement would be in Sepedi, which meant I would not understand most of the conversation. Conversations about the gifted land wouldn't be held during this trip, instead we would use this weekend to explore Moletjie and to learn more about our family's history and where we came from.

The headsman and his entourage arrived with other members of the Semenya family, who I had never met before. Ramogolo opened the floor speaking in Sepedi. He introduced each of us as children as well as the reasons behind our visit. The headsman, relatively young for what I had imagined would be an old greying man, smiled as Ramogolo spoke and took a meaningful and considered pause before welcoming us. The headsman, it was later explained to me, spoke of our family's connection to the area and our high standing in the region. The brief meet and greet was concluded and dinner followed with my cousins and I getting to know our family from Moletjie and Polokwane better.

The following day we ventured to see the gifted land which was on the side of the main road we'd driven down just the previous day. The land is opposite Ga-Semenya, a densely populated rural township. I'd imagined the moment many times in my head before. I'd imagined that seeing the land would stir within me: feelings of belonging, feelings of being rooted in something far bigger than myself, that finally being able to feel the ground beneath my feet would give birth to a sense of purpose inside me. It didn't. As we stood on the side of the main road and my uncle pointed out the roadside perimeter of the land and pointed far into what was veld and open bush to signal the sheer vastness of what we'd been gifted, I felt underwhelmed. I felt no sense of purpose, no sense of belonging and in no way did I feel rooted to anything. What I expected was not what I experienced. I guess the sight of the land and its vastness, instead of overwhelming me with a sense of belonging, overwhelmed me instead with the realisation of the magnitude of what this family project would require from all of us. This wouldn't be a pet-project or a side-gig for any of us as we'd imagined. This project would require our all. The moment I saw the land came the realisation that none of us quite knew what it was we had really signed up for.

Creating a legacy through land

"For a colonized people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity."

- *Frantz Fanon (1961)*

Conversations around land reform, redress and ownership in South Africa have always been and continue to be intertwined with emotional history; an emotional history which ties together themes of personal and cultural identity, economic development and social justice. The various apartheid-era laws which were enacted saw to it that black people in South Africa were stripped of their homes, their identity and their sense of ownership of land and country. With the dawn of democracy in 1994, ideas around the restitution of black people's dignity, legal rights, economic ability and ownership of property stood at the forefront of conversations pertaining to the reframing of South Africa's future. The drafting and contents of Section 25 of the Constitution would play an integral political, social and economic role in forming the landscape of South Africa's future.

Driving back home to Johannesburg that Sunday afternoon, it became clear to us all that the land would require a great deal from of us but somehow our individual feelings of being overwhelmed by the task ahead were drowned out by a collective excitement.

Following that fateful trip my cousins, siblings and I embarked on a mission to see how we could take back our land and use it to create the family legacy our elders had tasked us with. For months on end a property asset manager, a lawyer, two entrepreneurs, a business operations manager and a Wits politics and economics graduate (who all grew up in the cities of Gauteng) gathered at my uncle's company offices in Centurion and mapped the family's way forward. My cousins Boitumelos, Pelaelo, Tumelo and Edgar and my sister Mpho are all professionals who grew up in Johannesburg and Pretoria. Our upbringings were far-removed from the surroundings and way of life I had seen in Moletjie. Ramogolo Philip still lived in Moletjie so he often travelled between his home in the city and Moletjie. Rural life was a foreign concept to us. So there we sat, city-slickers who knew little about Moletjie, planning out the future of the rural town. A future we would be at the centre of creating. Ours would be a legacy project that would not only fulfil the wishes of our elders but would also provide our family with a business opportunity. Generational wealth creation – every black family's dream. My sister would describe our ambitions as ones: "… that would be forward-looking. Having come from a generation of parents in our family who only really considered the individual in their professional life pursuits, our generation had the opportunity to pursue and create a legacy as a collective, one with generational benefit. A legacy and benefit that would outlive us, unlike that of our parents."

Proposed project plans were heard, family company and trust organograms were structured and after a few months we finally settled on starting small and growing from that point. We had decided to pitch to our family elders that we would like to open a petrol station franchise in the area. Having travelled to Moletjie ourselves, we realised that the last petrol station you'll drive passed before reaching your destination is in Polokwane - over 25kms away. As city-dwellers, the idea of driving more than 5kms without passing a petrol station seemed absurd. Driving 25kms to reach a petrol station is a norm in rural areas, it is a reality people have lived with and planned for accordingly with no complaint. Nonetheless our middle-class shock and horror at this absurdity inspired the perfect low-maintenance investment idea. We would ask the elders to provide the start-up capital of just over R2 million, which we hoped to repay in just over two years. In our eyes, the plan was fail-proof. The profit returns on the petrol itself would be minimal, however the convenience store attached to the petrol station would be where the money was made. The only real places to shop for goods in the immediate area were spaza shops and small grocers. In due time, our humble petrol station beginnings would expand into a fully-fledged shopping complex that would be able to provide employment for the community and hope of economic development within the region.

Having formulated the necessary business plan we waited for the opportune moment. It presented itself when the family elders (grandparents, aunts and uncles) were gathered together for my sister's traditional wedding ceremony in December 2014. It was there that we presented to them what we had hoped would be a legacy they would be proud to fund. Our proposal was received with much enthusiasm from the elders and a promise was made to run through the project plans and begin the process of the land claim. That however, became the last we heard of the land or the legacy to be created.

An abandoned legacy

In the years following our presentation we questioned the elders on feedback regarding our proposal and how soon we'd be able to claim title to the land so we could begin with the project; silence was all we received. It was in late 2016 after much persistence and nagging on my part that my father revealed that the gifted land wasn't what it had been made out to be. The Chief had gifted us the ancestral land, which he was legally the custodian of, but had no interest in our receiving title over the land. The Chief had hoped that regardless of what plans we had for the land he would maintain custodianship over the land. He had hoped that he would be paid his dues in exchange for allowing us to use the land. A relationship that the elders were less than thrilled about and therefore decided to abandon the claim on our behalf.

With the legacy project now abandoned, questions rang in my head. Who is this mysterious Chief? Why reject the efforts of those who seek to empower the region? How is it that the Semenya's came to call Moletjie home? What ties does my family have to the region and why?

What part of my identity as a Semenya lies in the home of my forefathers? Questions I knew I wouldn't be satisfied without answers to.

The BaPedi and the historical relationship with and understanding of land

In September 2017, the family legacy project abandoned and the gifted land now rarely spoken of, I took a solo trip to Limpopo to visit Ramogolo Philip. Although that first trip three years prior left me feeling underwhelmed in my sense of belonging it also left me exceptionally curious. Not about the land but about the Semenya family.

I hadn't spoken much to Ramogolo since that first trip. However, when I decided that I would write this piece on my family's history and relationship with land, I knew that he was the first person I'd need to speak with to help me. He suggested I visit him once again and together we would set about on our own journey of discovery in finding the answers to questions around our family's history.

As I prepared to visit Ramogolo Philip in the weeks to come, I decided to pay my grandfather Caiphus (Rakgolo - my father's uncle) a visit. He was the oldest Semenya family member that I knew and had a relationship with, I wanted to hear from him what he knew about our family history. As we entered the lounge in his Morningside home he showed me pictures of him and my grandmother, Koko (grandmother) Letta, from their days as musicians living abroad in exile during apartheid. He showed me a portrait he'd kept of his late mother, whom whenever he spoke of a warm, longing smile crept across his face.

Rakgolo Caiphus detailed the history of Sotho, Tswana & Pedi people and his father's family (the Semenyas), which he learned about as a child from his mother. He spoke of how communities were historically run and the relationship between our people and land. He explained how in a community or region, families were given pieces of land (setsha) by the Chief (Kgoši in Sepedi) which tied them to the community. These pieces of land where people would build their homes and raise their families were not owned by them. The Chief was the custodian of the community's land but he did not own the land either. Chiefs historically were not what we've come to know them to be today. As much as they ruled over communities, they were simply community leaders or elders who just like others within the community had jobs and provided for their families. The distinguishing factor between them and 'normal' people was that they were the custodians of community land and livestock, they decided to whom land or livestock should be given. Should someone come into the community and ask the Chief for a piece of land to live on, they would be given the land in exchange for a small token, not as payment for the land but rather as a symbol tying them and their family to the community. Often this token was cattle or livestock, the number of which bore little significance. The token would

be placed in the community kraal and remained earmarked as such, a token, distinguishable so as not to be thought to belong to the Chief but to the community as a whole. If a community member and their family ever fell upon hard times and looked toward the Chief for assistance, they would be given cattle or livestock from the community kraal. Once that family was back on their feet, they would return to the kraal the cattle or livestock which they were initially given plus an additional one or two so that when the next community member fell on hard times, they would be provided for.

Rakgolo Caiphus explained that the gifting of land by Chiefs to community members came with the clear understanding that the land did not belong to that family, the philosophy behind this is that: 'you did not create the land, therefore how can you own it?' You can own all that you built on the land but you cannnot say that the land itself is owned by you. The land belonged to the community as a whole. That, according to Rakgolo Caiphus, was the understanding in communities of land and their relationship to it – that it belonged to us all, and is for all to use - that is its inherent value.

As he put it, "Ke lefatse la rona" (*The land belongs to us*).

The Semenya brothers who journeyed from Kenya

During my second trip to Moletjie, Ramogolo Philip insisted that I pay my uncle Moscow a visit as he would be the person to speak to should I wish to learn more about how the Semenya people came to call Moletjie home. I had never met uncle Moscow or heard his name before. When I asked Ramogolo who uncle Moscow was, he explained that he was a relative of ours within the Semenya family. I asked how we were related, to which he had no clear answer but ensured me that uncle Moscow was a descendent from one of the Semenya family tree's branches.

We drove into a busy shopping complex in the heart of the Polokwane CBD that Saturday afternoon. Ramogolo led me into a store with the name "Moscow Locksmith & Shoe Repairs" written above the door. Inside he introduced me to a man, short in stature and with a warm smile, named Moscow Semenya. Ramogolo explained that I was 'Ishmael's last born' and that I'd come to find out more about our people and how it is the Semenyas ended up in Moletjie. Ramogolo left shortly after the introduction. Uncle Moscow led me to the back of his store where his son sat behind a sewing machine putting together a bright yellow leather purse and his wife busied herself with the store's stocktaking. Amidst the buzz of the machines and customers coming in and out, uncle Moscow detailed to me who exactly the Semenyas were.

The Semenya people, originally of Kenyan Masai descent, left Kenya sometime in the 1800s and embarked on a migration towards Malawi where we were referred to as the Bakalanga people.

The Bakalanga people are a group of Southern African people who occupy areas in Zimbabwe, Mozambique, Botswana and Northern parts of South Africa. Our stay in Malawi was short lived and we continued to migrate further south and settled in Zimbabwe where we became known as the 'Siminyas'.

Four Semenya brothers: Ramashibana, Lekgalwa, Montsho and Modikana, continued to travel south where they settled at the split of the Moeketsi River and became known as Bafareng. Shortly thereafter, they continued to journey and then came to an area known as 'Ga-Ngwetsana le Moriti', now known as Moletjie. However, their settling in Moletjie was not a simple one.

Upon arrival on the outskirts of Ga-Ngwetsana le Moriti, the four brothers went to a junior Ga-Ngwetsana clan in the region nearest to where they'd settled and asked that their arrival in the region be reported to the Chief. Along with their request they handed over some cattle to the headsman to present to the Chief as a token of their request. The Ga-Ngwetsana headsman agreed to present their request to the Chief. Months followed with the Semenya brothers living on the outskirts of the region having heard nothing from the junior chieftaincy. Adamant on their decision to stay in the region, they again approached the Ga-Ngwetsana clan and asked how their request had been received by the Chief to which no answer was given. It became clear that their request had not been relayed to the Chief at all. As incentive to deliver the message, the brothers offered more cattle to the Ga-Ngwetsana clan in the hopes that this time their request would be relayed timeously. It was not. Having realised that the Ga-Ngwetsana clan had no real intent to relay their request to the Chief, it became clear to the brothers that they would have to find another way of gaining an audience with the Chief to have their request for land heard.

The brothers decided that the only way they would gain the Chief's attention would be to steal cattle from the Ga-Ngwetsana chieftaincy. The brothers knew that the chieftaincy would have to report the theft to the Chief, thus alerting him of the brothers' arrival to the region. The brothers stole the cattle and the Ga-Ngwetsana clan hurriedly reported the theft to the Chief. Having learnt of the theft, the Chief summoned the brothers before him demanding to know who they were and why they stole the cattle. The Chief asked of the Ga-Ngwetsana clan how long the brothers had been residing in the region to which he was told three years. Angered, the Chief demanded to know why their arrival hadn't been reported to him for three years and accused the Ga-Ngwetsana clan of being co-conspirators to the cattle theft. As punishment, the Chief fined the Ga-Ngwetsana clan two cows (one heifer and one bull) and demoted them from their chieftaincy. The Semenya brothers were also fined one black heifer and one black bull and instructed to throw a molato (known as a ceremony) to symbolize their new chieftaincy in the region they had been occupying, now known as Ga-Semenya.

The story of the Semenya brothers who came from Kenya, was a fairly well-known and shared tale in my family. However, the details of that journey and how it became that Moletjie was our home were new to me.

I left uncle Moscow's store with a wealth of knowledge and history swirling around in my mind. In the car ride back to Moletjie with Ramogolo Philip he commented that "he [uncle Moscow] has a wealth of knowledge and history on the family and who we are, doesn't he?" "Yes, he does. It's fascinating," I responded.

Land and the BaPedi people in the 1800s

The allocation of land under the Pedi paramountcy in the 1800s was decided upon by the paramount and his junior chiefs in their respective chiefdoms. Chiefs allocated land to their constituents which were set in time and space in agricultural and pastoral production. Unmarried men were prevented from owning cattle or land and thus were dependent upon their chiefs and villages to pay their lobola when they married and only then were allocated pieces of land upon which to start their families. New groups entering the region approached the paramount with gifts of women and cattle and were, in exchange, granted land upon which to settle. The gifting of women to the paramount was seen as a way of strengthening one's ties to the paramountcy. The exchange of women with the paramountcy was in no way one sided. The paramount delegated and designated rank and legitimacy through dispensing wives to subordinate chiefs. These women were mainly sisters and daughters of the paramount, they became principal wives of the chiefs to whom they were married and thus potentially mothers to the successors to the chiefship.

To say that the Dutch settlers, during the Great Trek in the 1840s, stole the land from the Pedi paramountcy under Sekwati's rule would be a fallacy. The establishment of Trekker communities in the Eastern Transvaal, under A.H. Potgieter in 1845, was one of mutual agreement between the Trekkers and Sekwati. However, the agreement happened under misunderstood terms according to historian Peter Delius in "The Land Belongs to Us". The settlement of Trekker communities was a mutually beneficial one, as detailed by Delius in his writings. Until the 1870s the eastern Transvaal Pedi paramountcy had been a symbol of a continued African resistance to British colonial rule. For some time the Pedi paramountcy had been capable of withstanding continued threat of conflict and overthrow by other African and British groupings. Their acceptance of settler Trekker communities into the region benefitted the polity as it was hoped that their presence would ward off attacks from other groupings in the region. This arrangement benefitted the Trekkers because the eastern Transvaal region was an attractive one with an abundance of game based and because of its proximity to lucrative trade ports such as Delgoa Bay.

The misunderstanding of terms, which laid the foundation for conflict between the two parties, stemmed from the fact that according to Sekwati the land he had given to the Trekker communities was similar to that which he had given any other grouping, it was theirs to use but his paramountcy still had overall ownership and rule over the land. Whereas according to

Potgieter the land they had settled on was theirs to own. Although this misunderstanding set the stage for conflict, it was Potgieter's demand for labour and tribute from both the Africans and the Trekkers who lived on the land that really fuelled the conflict between the two parties. The straw which broke the camel's back in the relationship was Potgieter's continued demand for labour and Sekwati's refusal to hand over child slaves to the Boers. Potgieter had also, at the time of heightened tensions, taken Sekwati hostage in a show of power to ensure obedience of those in Sekwati's polity to Potgieter's rule. Numerous attacks against the Pedi paramountcy in the early 1850s by the Boers failed and in 1853 a mutual agreement to co-exist in clearly defined territories was made.

"The most important item of cultural baggage that the Trekkers brought with them to the Transvaal was a legal system which enshrined private ownership of land." – Peter Delius

Not only did the Trekkers introduce the idea of private land ownership but they also held the idea that all citizens should own land in title deed, this inevitably created a market for land within the region. The land which the Trekker community believed needed to be owned in title by all citizens did not only relate to land within their demarcated territory but soon land-grabbed and bartering began to include that which belonged to independent African polities. "The late government when it took possession of the land and found it occupied by natives made no provision in land for their location but granted the land away in farms over the heads of the natives living on it" Delius describes in his book. Denying Africans ultimate ownership of their land and grabbing land which Africans had already settled on proved to be a great supply of future labour for those whom their land was given to by the state. It became common policy that African families who 'settled' on Boer owned land were expected to, in exchange for tenure, give free labour to the land 'owners' and later on pay taxes/tribute as well.

The shift in understanding and move towards seeing land as an economic commodity (as opposed to that which ties you to a region, a people and a history) that came with settler rule, would forever change the way which African people engage and understand land. As South Africa moved towards democracy in the 1990s, the significance of land to black and white people would emerge against a backdrop of differing opinions, intentions and understandings. It seemed to me that to understand land and the ways in which black people engage and understand it today, I had to understand how the laws which govern that relationship today were drafted.

Land and a post-democratic law

Property

Section 25

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application—

(a) for a public purpose or in the public interest; and

(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—

(a) the current use of the property;

(b) the history of the acquisition and use of the property;

(c) the market value of the property;

(d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

(e) the purpose of the expropriation.

(4) For the purposes of this section—

(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and

(b) property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6).

- Chapter 2, Bill of Rights.

In October 2018 my research hit a snag. I had spent an entire year trying to arrange a meeting with Ramogolo Dikgang Moseneke, whose life and diary made it almost impossible to find an opening or a moment to sit down and chat. As such, I was still none the wiser around the drafting of the Constitution, specifically Section 25. I needed to understand the considerations made when addressing democratic justice around land in a post-Colonial South Africa. Having retired from his role as Deputy Chief-Justice of the Constitutional Court, Ramogolo Dikgang's mind provided the place into which I could dig and find all my answers.

Trapped under what seemed like a dark cloud of confusion with no clear way out or direction and deadlines looming, I decided on a rainy Wednesday afternoon to take a trip to my father's offices in the Johannesburg CBD. His chambers are right next to the South Gauteng High Court, a constant reminder of the institution upon which he has anchored his life, identity and legacy – the law.

I always knew my father was a lawyer, but it was only in my late teens/early 20s that I came to understand what my father's relationship and history with the law was. A friend of mine who was studying law at the time, had made a remark about her admiration of my father and his accomplishments including his writing of the country's Constitution, something which until that moment I had never known. It might sound strange that I would have not known something that significant about my father but to me it wasn't strange. Our accomplishments weren't things we spoke of or wore boldly on our sleeves for all to see.

It should've seemed obvious to me when struggling with questions around the Constitution, its drafting and relationship with land to speak to my dad, but it wasn't. So much so, that even whilst driving into the basement parking of his building, I still wasn't sure if he was the right person to speak to. As I sat at the boardroom table, which was littered with legal briefs, bookshelves along the walls stacked with law reports up to the ceiling, my father and I spoke about this and that before getting to the point. I found it to be an awkward experience and I wasn't sure of how to navigate the conversation or what it really was I wanted to ask him. Unsure of where to start I asked my father what he and his fellow drafters of the Constitution considered in respect of Section 25; what it was they had hoped to achieve? A seemingly obvious starting-point. "When we were doing the Constitution there were Constitutional principles in the 1993 Constitution which the final Constitution had to comply with … Constitutional principles that ought not to be transgressed, [Section] 25 then had a formula" he answered. The principles he spoke of related to private property rights.

In explaining Section 25 my father said, "You can't be deprived of property except in terms of a law of general application … which means you can't then just say to somebody 'I'm going to

take your property,' you will have to do it in terms of a law of expropriation, that specifies that expropriation can only happen in terms of a,b,c,d … so that it is not a Tsholo-specific conduct. It must be a conduct informed by a law of general application … a law that applies to all."
That the law which would govern land redistribution, restitution or reform needed to be one which would apply to all people in the country (law of general application), not specific groupings, as was the case with the Group Areas Act of 1950.

"The second thing we said, was that property may be expropriated only in terms of law general application, which will only be for public purposes or in the public interest i.e. the Gautrain, subject to compensation, it then says the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by the Court. If amount, terms of payment, are not agreed to between the parties then the Court must terminate."

Which to me sounded much like the largely failed "willing buyer, willing seller" principle. A principle which Justice Albie Sachs denied as a necessary condition for meaningful land reform when he said of Section 25 that "… it contains no willing seller, willing buyer principle, the application of which could make expropriation unaffordable." Which was further confirmed by Ramogolo Dikgang in his representations to the High Level Panel in 2017 where he stated that that "… everyone, whose property is expropriated, must be for a purpose the Constitution authorises and against payment of equitable compensation. The willingness of the buyer and/or the seller may facilitate a smooth transaction, but does not seem to be a constitutional requirement." The willing buyer, willing seller approach to land reform in South Africa is a largely rejected approach, due to a lack of clarity in law as to what 'just and equitable' compensation really means. The principle runs the risk of placing the state in a position oftentimes of being at the whim and mercy of the seller and the market in its efforts and interests to restore land to its previous owners. What price is too high to justify in the pursuit of restorative justice? A question which came to the fore in the highly controversial Mala Mala game reserve settlement which saw the state pay out more than R1.1 billion, the most expensive land reform claim in the country's history, which re-emphasized the need to scrap the principle as a whole.

With slight hesitation or seeming resistance my father responded with, "Well it doesn't end up there, and that's where people keep making the debate live, but I know it amounts to willing seller, willing buyer … the amount of which and the time and manner of payment must be just and equitable, you can debate what that means. However, just and equitable says [in the Constitution] reflecting an equitable balance between the public interest and the interest of those affected having regard to all relevant circumstances including the current use of property … the history of the acquisition and use of the property … the market value of the property … the extent of direct state investment and subsidy in the acquisition, and beneficial capital improvements of the property … the purpose of the expropriation … for the purpose of this section, public interest includes the nation's commitment to land reform, and reforms to bring about equitable access to all South Africa's natural resources … Property is not limited to land."

I asked him if redistribution, restitution and reform were the grounding principles of the land reform project, of Section 25 in its intent, or was that just the policy of a party.

He responded with, “That’s the party policy… the 3 principles are that land … reallocation, a fourth ‘R’ may be as a function of redistribution, may be as a function of restitution, may be a function of redress. It may take those 3 ‘R’s’ which in themselves don’t mean the same thing.”

I asked why Section 25 was an important inclusion in the formation of the Constitution.

He stated, “Because the white people who were owners of property at the time feared that people would come and grab their land as well. That’s why property security must have been one of the Constitutional principles in the 1993 Constitution.”

I asked if the inclusion of Section 25 wasn’t a black thing, wanted by black people.

He said, “Nah, it was never about blacks, it was more about those who had their property, not wanting it taken away from them. The other principle was that we [black people] are going to try and have some access to land and the state can do it if it is in public interest. So my sense is that the first principle was to assure or secure property rights that existed at the time.”

This was an idea which seemed illogical to me. If the intention of land owners at the time [white people] was to secure their property rights, then why would they make sure that there was a section included in the Constitution which clearly allows for the redistribution of that very property?

“Because there was an acknowledgement that there were land dispossessions and some correction or redress as you use the word, had to happen,” he responded.

Essentially, if land restitution/reform/redistribution were going to take place, it would be according to terms which were agreeable to those who actually owned the land - white people. Those who acquired said land through the brutal dispossession of black people.

I asked if those [white] people perhaps naively believe that it wouldn’t necessarily be their land which would ultimately be redistributed.

“Amongst others, it would have been state land” he responds, in the middle of my spoken thought.

I said to him that I thought it seemed arrogant to assume that it [land redistribution] would be done to other people. Here’s the thing, if you have 87% of the land and you create a clause to secure your ownership of that land, where do you think that the land to be redistributed is going to come from? It makes no sense that in trying to protect my 87% land ownership from the threat of being grabbed, I would then create a clause which allowed for the very possibility of it being taken, I queried.

"Let me put it this way, the arguments or concepts that 87% of land was in white hands is a political statement, not necessarily and entirely correct. That 13% was in the possession of blacks is also not correct … The 13% was like Bophutatshwana, Venda - the Bantustans, and in the Bantustans you never had the right of title to your own property as well, so it is just in broad language 13 and 87 percent. In the 87% there were huge tracks of land that were state land."

White state land? I offer as a clarification.

"Yeah it was white but not as in individual owned, it was also state-owned but because the state was white, it was white-owned." He responded.

I asked if there are statistics on how much of that 87% was privately white-owned land.

He told me that "Yeah and there's debate there. That's why AfriForum's main contention of the time is that one, you [the government] haven't done a land-audit to know who owns what, secondly, you, the state have a lot of property which you are not using to address all these social needs you mention, and you're jumping on the [political] bandwagon to come for our farmers. You're targeting productive land when you're supposed to be equitable in that respect. The land issue is a complex issue."

Land as a political tool in modern-day South Africa

The announcement of land expropriation without compensation as party policy at the ANC's national elective conference in 2017 saw the re-emergence of the land reform debate on both political and social levels. For over a decade the willing-buyer-willing-seller approach towards land reform had yielded poor results in the quest to return stolen land to its rightful owners in the hopes of representative economic development. Questions around the feasibility of such an approach to land reform resurfaced with many doubting the governing party's ability to implement such policy without undermining food security and agricultural production as well as the economy. Although land expropriation is catered for in the country's Constitution, doing so without compensation would require an amending of the Constitution which would need a two-thirds majority vote in Parliament. A majority the ANC did not have but their support of such an amendment backed by the smaller opposition parties would see such a motion passed.

True to what lobbyist group AfriForum have asserted in their critiques of land expropriation without compensation, is that the national party may indeed be jumping on a political bandwagon. A month prior to the ANC's 2017 elective conference where expropriation without compensation had been announced, the 'Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change' had been released and tabled in Parliament. The panel, headed by Former President Kgalema Motlhante, had been tasked with reviewing key legislature and assessing its effectiveness in implementation and relevance to

today's societal needs. Chief amongst the legislations reviewed was Section 25 and the land reform project in South Africa. The report, in simple terms, found Section 25 wanting in its clarity in language, implementation and success (which was very little). When speaking on the idea of 'just and equitable' redistribution of land the report found that "the difficulty all stakeholders face – claimants, landowners and the state – is the absence of clear guidelines to determine 'just and equitable' compensation in any particular case." It is interesting to note that very little has been spoken of by the party or government about the High Level Panel report, its findings and/or recommendations, yet it was a report commissioned by the government itself. So why commission a report, which chief amongst others, looked at the effectiveness of Section 25 and land reform in South Africa, only to dismiss its findings and recommendations without even so much as a debate of its merits; then a few weeks later announce a decision to proceed with amending the Constitution anyway? Seemingly, the High Level Panel report and the commissioning thereof was an effort by the government and party to come across as having done the necessary work to justify a decision it had already made. Or perhaps the unexpected announcement at the 2017 elective conference was the ANC's way of acceding to political pressure brought about by its former members, in the form of the EFF; a pressure which they could no longer ignore and a narrative they now wanted to seem in control of. With declining support for the party at the polls the ANC, it seems adopted a policy decision that would appease public discontent and hopefully 'buy' themselves enough voters to maintain their control of the political ship in South Africa. As the High Level Panel report says in its assessment of the land reform project "the public hearings confirmed that serious problems exist, and people are angry." The fact that the party still remains unsure of how such a policy decision will be meted out is testament to the fact that it was a decision made without full consideration of its implementation or consequences but one they still deem necessary to have made.

Opposition party leader Julius Malema took to Parliament in February of 2018 to vote on such a motion to have the Constitution amended to allow for land expropriation without compensation. The motion received overwhelming majority multi-party support, what many viewed as a meek possibility became an ever-clear reality. As political parties, big and small, voted in unison for the passing of Malema's land expropriation without compensation motion their unprecedented support of one another followed.

On 15 November 2018, the recommendation to allow for the Constitution to be amended by the Joint Constitutional Review Committee in Parliament, tasked with seeking out the opinions of South Africans on the decision to amend or not to amend, adopted the recommendation with 12 members voting for its adoption, and four against. Albeit the majority of representations made by traditional authorities to the Committee were opposed to the idea of expropriation without compensation.

The idea of land expropriation without compensation described by my father was seemingly the understanding of the amendment and its policy implications by the ruling ANC party. However the understanding of land expropriation without compensation by opposition party, the EFF,

would be one whose implications saw the state effectively becoming a landlord. The EFF in its policy outlook would put in place a land-use policy where citizens (or companies alike) who wanted land would need to apply to the state for a licence to use a specific piece of land, detailing their intended use of the said land. Based on the merits of individual cases, land would be granted to a citizen for a maximum of 25 years, with the permission of its use being subject to review at the end of the licence period. In the event that the land was no longer being used for the purposes initially applied for, the state would have the right to revoke land permits should it decide to. The state would also, at its discretion, be allowed to reallocate land for 'public purposes'.

The danger of the multi-party decision in support for land expropriation without compensation is that there lacks substantial clarity on how the amendment will play itself out given the contradicting policy frameworks of the parties involved. Should the Constitution be amended to allow for land expropriation without compensation in South Africa? It seems that the realities of such a law would be party dependent. A matter of who runs the state opens it up to inconsistency. This leaves financial systems, the country's economy and food security vulnerable to the whims of the changing hands of political power as well as the uncertainty it would create for land reform claimants who have in many ways tied the restitution of their dignity to their ability to reclaim and own land.

Ancestral land and Section 25

I asked my father why ancestral land was not a consideration in the formation of Section 25; understanding what the section sought to include, I was now curious as to what it so obviously excludes.

"Ancestral land is a misnomer, because in the main there was for example a Ga-Semenya which was a subject of the Homelands where the traditional Chiefs were said to be holding property in trust for and on behalf of the community. That was traditional land. The Ingonyama Trust was a way of trying to appease the Zulu monarch. They have actual title [to the land]. They're the only royal family with actual title," my father responded.

Why appease the Zulus? I asked.

"Because we wanted their votes," he matter-of-factly responds, laughing a little.

"What does land reform mean? Is sufficient redress to return to what was pre-colonially, pre-apartheid? Or is sufficient redress the creation of a now equitable new norm? And if so, equitable by what standard?" I asked.

"That's still an open debate, as [Advocate Tembeka] Ngcukaitobi says that people in Mshenguville don't want restitution, in fact they don't even want land" he answered.

“Do they want money?” I interjected.

“They want the money but they want houses, which is not land. So that also muddies the waters” he clarified.

“What becomes the measure of just and equitable? What becomes the measure of adequate reform or adequate redress? How do you measure these things?” I implored.

He responded seemingly deflated by what I perceive to be a lack of thorough foresight of what was intended and what has ultimately come as a result, “I don’t think anybody has come up with an answer to that question. And that’s why we used the words just and equitable because it’s sufficiently specific to say it will be fact-specific. What is just in ‘A’ may not necessarily apply in ‘B’.”

The legalese of which is further confirmed to be unclear. “The meaning of Section 25(5) [the provision for equitable access to land] has not in the past 20 years been interpreted judicially; in other words, while other provisions, such as the right to restitution and to secure tenure, have been extensively challenged and adjudicated in the courts, what constitutes adequate measures to ‘enable citizens to gain access to land on an equitable basis’ has not. There is no existing jurisprudence related to this right” the High Level Panel report admits.

I asked, “How did you not foresee the level of patronage that would emerge as a result of traditional land being under the custodianship of local Chiefs?”

“It [the 1913 Land Act system of Chiefs holding land in custodianship on behalf of communities] was founded on patronage. That’s why the Chiefs [granted custodianship] were sometimes not even the proper rightful Chiefs” he replied.

“But how do you not see a continued level of patronage existing even in your ancestral land policies of the 1996 Constitution?” I asked.

“We had a major battle with Chapter 12 of the Constitution which dealt with traditional leadership. You must remember government ordinarily has three tiers – national, provincial and local – there is competition between traditional and local. They’re fighting for the same space. Local government in terms of the municipal boundaries is supposed to cater from municipal border to border. It [Chapter 12] reads very awkward if you understand the power-sharing in a Constitutional Democracy because it would read ‘the institution, status and role of traditional leadership according to customary law are recognised,’ and then they put the rider ‘subject to the Constitution’” he continued to explain.

I asked, “Which supersedes which?”

“The Constitution comes first. So you’re actually not giving them anything” he responded.

I followed that by asking my father what became more important to black people in his thinking, property or land.

“In my thinking, it is geography specific. Urban people don’t want land, they want property. Even rural people already have land so they want someone to build them property. They’re not concerned whether or not the land they have is theirs in title or not” he stated.

This assertion is contradicted by the High Level Panel report which asserts that “… there is a high level demand for land in urban areas, for purposes of human settlement that land reform does not address at present.” Which goes to show that the nitty-gritty intricacies of land reform in South Africa are complex and the sometimes contradictory needs of people are often not considered. A homogeny of needs for black people is assumed when it comes to land, when that is rarely the case.

“Do you think rural people would want land in title if they understood its value in terms of standing as surety [when engaging formal financial systems]” I asked my father.

“Yes, definitely. That’s why economies such as Lesotho are struggling because they don’t have title-rights and they cannot mortgage their properties, it’s just like a Ga-Semenya over there.” He responded. “You need to look at land as a commercial asset, as opposed to a social asset,” my dad emphasized.

“…across Africa, colonial power captured and distorted pre-colonial modes of rule for its own purposes and that most postcolonial governments have sustained this in their own interests in the name of tradition. The result, [Mahmood] Mamdani argued [in his book, ‘Citizen and Subject’], is that rural people have remained subjects of undemocratic modes of authority while citizenship and democratic modes of authority have only been attainable in urban settings.”

- *Dr. Richard Pithouse (2015)*

“Is land expropriation without compensation as it’s understood politically, at odds with a capitalist financial system?” I asked.

“No. Properly understood it would mean that Ga-Semenya must be divided among the Semenyas in a way that the Semenyas own their plot. Semenya, Ishmael, owns Plot 13. But that’s why the Chiefs are fighting, they don’t want that to happen, because if say Semenya, Philip, owns Plot 13 in Ga-Semenya he can mortgage Plot 13 with the banks and if he owes the bank R10 000 for that plot he’s not going to listen to Kgoši so and so [on what he should or should not do]” he explained.

Essentially, the economic and financial freedom and autonomy gained through owning land in title would result in the Chief’s authority over their region weakening significantly, rendering traditional leadership useless if it’s a leadership without control of those it rules over.

I left my father's office that afternoon clear in my understanding of Section 25 of the Constitution. However, I was in many ways unsure of whether those responsible for its drafting knew the full extent of how it would be used in the framing of the country's future - socially, politically and economically. I also wasn't sure of whether anyone at the time of its drafting could have been sure of the intended, or otherwise, consequences of such a crucial piece of legislature.

What I came to know for sure was that certain clauses and subsections of the Constitution had rendered traditional leaders and Chiefs useless, their decision-making and power was one still highly respected in their communities. Their continued ability to decide who should be given land afforded them a power which amidst great confusion, needed to be interrogated if the restoration of black people's dignity through land remained the aim of reform in South Africa.

The meeting with Kgoši Kgabo Moloto III

It's the night before my long awaited meeting *le Kgoši* (with the Chief). I'm nervous, I have no real idea of what will become of the meeting or how I will be received – the outsider. I returned to Moletjie to stay with Ramogolo Philip who arranged the meeting and would accompany me in the morning.

Before supper, Ramogolo sat with me and explained what was to be expected. "Tomorrow we will leave at 10am to meet le Kgoši. You've brought something to cover your head with right?" he asks the question matter-of-factly but I can tell from the look on his face that he's just realised that this was an important note he'd forgotten to pass on to me before my departure from Johannesburg. Luckily that morning as I packed my bags, not knowing what to expect, I prepared for everything – including what I thought might be appropriate and respectful attire when meeting a Chief – cover your hair, shoulders and knees, and don't even think about wearing pants. The same kind of attire I would wear when going to the funerals of people who I consider extremely traditional and rooted in culture, the same should suffice I reasoned with myself. "Yes Ramogolo, I did," I responded.

"We will leave and go *ha Moshate* (to the Chief's). When we arrive you will sit with the Chief's right-hand man and maybe the Chief himself will meet and address you. I will introduce you to them, and then you will explain to them why you're here and what information it is you need ... They will be able to give you all the information you require dating back to Chief's way before this one." Ramogolo explained. I sat, taking it all in wondering when the right moment to voice my hesitations and concerns was – how do I address the Chief, let alone have a conversation with him, when we all know I don't know a word of Sepedi? I explain to Ramogolo that "I hope my lack of Sepedi won't fail me tomorrow," I say with an anxious giggle. He reassured me that I

shouldn't be too worried, the Chief and his right-hand are learned men and that they know English as well, so I should be fine. Should be.

Dressed with what felt like every inch of my body covered the next day, Ramogolo Philip and I travelled a short distance *ha Moshate* and arrived to what was the Moletjie Royal Council offices. There we were met by the Chief's right-hand man, as greetings were exchanged and a brief synopsis of our intended meeting was explained by Ramogolo Philip.

As we awaited our meeting, Ramogolo explained to me the purposes of the Council offices. Community members in the area who have a domestic issue they need resolved, would approach their local headsman with the matter. The headsman would then have to report the matter to Bakgoma (Chief's Council) and they to Kgoši, bringing before them the family involved. The matter would then be decided upon and resolved *ka molao wa Kgoši*," (according to the Chief's law and directive) Ramogolo explained. This process according to culture was how matters in the community would be resolved before and often in place of the involvement of the courts or formal law.

Shortly after, we were led into a boardroom by the Chief's right-hand man. Hanging on the wall of the room was a large framed picture of Kgoši Kgabo Moloto III, similar to how in government offices the pictures of the President and the respective Minister are displayed, with Kgoši's significantly larger-than-others armchair empty at the head of the boardroom table. We were introduced to the Chief's nephew, Mpho Letladi Moloto, a tall young man who was studying Anthropology at the University of Pretoria, a man who some refer to as the family's Encyclopaedia. The Chief's right-hand thought that for the purposes of our meeting, it would be useful for him to sit in on the meeting. He was currently completing his Master's degree researching the greater region of Moletjie, archiving the history of the royal family and the arrival and histories of the various families who hold chieftaincy in the region.

Ramogolo Philip again explained the purpose of my visit and handed over to me to explain what specifically I had hoped to gain from this meeting with the Council, which I did in the best mix of Sesotho, Setswana and English I could muster in the moment. The Chief's right-hand explained that the Council had documented the information I was looking for, however he would need to consult on whether the information could be shared openly with me and in what form (orally, or via email). It was decided by those who he consulted that I should write my questions down and that Bakgoma would consult Kgoši on the way forward and get back to us.

Upon preparing to leave, Letladi and I waited in the open courtyard discussing our research, when a maroon Mercedes CLS drove in through the gate. Letladi explained that had Kgoši decided to park in the courtyard area, everyone would be expected to salute as sign of respect. Kgoši however decided to park around the back of the offices. Ramogolo Philip and the Chief's right-hand decided that it would only be proper that we greet Kgoši Moloto before our departure and bring to his attention my visit and intentions.

As we waited, seated outside Kgoši's office, his assistant busied herself finalising the paperwork for a woman who had just been given a piece of land in the area. We walked into Kgoši Moloto's office, a man wearing a dark green mid-sleeve suit and black v-neck top, of medium height and build and a warm smile sat behind a large desk. Through the behaviours of those around him, one could tell he was greatly respected – all protocol was observed. Letladi introduced me to Kgoši and detailed the reasons for my visit, while Ramogolo and I sat in silence listening to what at this point felt like a well-rehearsed and scripted narrative being told once more. Kgoši sat in his chair, behind his desk and listened intently and responded to say that what Letladi and his right-hand man had instructed as a way forward was the best decision. The four men then broke into conversation around the importance of my research into my family's history. Ramogolo remarked how as an elder within our family it had been his hope that it would be the men of the family who would show interest in our family history and roots, and not myself as a woman, who will likely go on to marry, take on a different surname and leave the Semenya family, along with its history. Ramogolo clearly alluding to the fact that the men of the family will continue the Semenya family bloodline, and I will go on to create a bloodline under the surname of my husband one day. Laughingly Kgoši Moloto responded that "when those who come after her enquire of the history of the Semenya family, they will be told to go speak to Ma Vilakazi (an example of my new surname after marriage), and they will find with her the knowledge of the family." Kgoši Moloto responded to Ramogolo, before turning to me with parting words that "It doesn't matter that you'll be of the Vilakazi family then. You're a Semenya by blood, not by name, so either way the knowledge will live on through you."

What I had hoped to feel when I visited the gifted land four years prior – a sense of belonging, an understanding of self, rooted in my identity and tied to a community – I felt in that moment as Kgoši Moloto said those words to me. I felt at home.

History and its differing accounts

Having received the information I had required from the Royal Council a few weeks after that meeting, it became clear to me that not all history was recounted and recorded the same way. The Royal Council places the arrival of the Semenya family to the region at a time when Ramanyoba Moloto was Kgoši in the region. The arrival of the Semenya family to Moletjie came at a time of great unrest in the region, with the Moloto Chief having previously conquered the Kalanga Tribe who called Moletjie home. It was at that time that the Kalanga Tribe (Bakgalaka) sought help from the Bahlaloga nation to push out Kgoši Ramanyoba, which they successfully did. He fled to Zambia for 6 years, leaving Bakgalaka to rule themselves. Upon Kgoši Ramanyoba's return to the region with a larger and stronger army, he found that the Bakgalaka nation now ruled over their former allies, the Bahlaloga. Ramanyoba went on to defeat the Bakgalaka nation and killed off many of their men, leaving only the women for him to enjoy. It was his intention to reduce the strength and power of the Bakgalaka, hence the killing of their

men, and from the women he later went on to marry he would also gain their powers of witchcraft. The Royal Council today recognises that there still are members of the Bakgalaka nation who live in Zimbabwe, and that the great Semenya clan of Masai descent can be found in Zimbabwe as well as Kenya and are regarded as a part of the Bahlaloga tribe (who they had previously conquered) and follow their ways.

Reflections

When one thinks of land reform in South Africa, it is often thought of as the reclaiming of one's history and identity through a land previously stolen by white settlers. However, through my family's journey with the gifted land, the reclaiming of our history and identity came through my reconnection to a long forgotten home. Though the land claim was abandoned, my own personal sense of identity and appreciation for my culture and heritage was gained.

I never set about this journey trying to challenge myself or change my way of thinking but ultimately I did. In my first trip to Moletjie, as an outsider looking in, I felt as though my cousins, siblings and I had the obvious solutions to bettering life in Moletjie for all who live in the region. Solutions which in hindsight were naïve and carried with them an air of arrogance that we knew better before even caring to ask whether what we wanted was in line with the wants of those our solutions would be imposed upon. However, through the following trips that I took, I began to realise that although foreign and seemingly simple to us as city-slickers, life and land distribution in Moletjie was and is according to how most people who live there would want it to be. They didn't need our 'saving'.

As a young woman having travelled this road, I now understand the significance of culture and the role it plays in the framing of one's identity. When I refer to myself as a Pedi woman, I now know what that means. I now understand that my identity and connection to the BaPedi people, does not lie in my name but in the culture of my people. A culture which is rich in its customs, in its understanding of the role of the individual and the community and in its history.

I previously held the view that the Chief's decision to maintain custodianship over the gifted land was one which served cultural and political patronage ideals. However, in gaining an understanding of the history of land amongst the BaPedi people and its significance towards a common sense and understanding of community, my perspective has changed significantly. Perhaps what we as city-slickers perceive to be a level of patronage, is actually a return to cultural and traditional norms we were simply not raised knowing and as a result had no appreciation for. I realise and appreciate now that the Chief, through the gifted land, sought to reconnect my family to our identity and forgotten home.

Would we now go back and re-engage in conversations around the gifted land and its use? Probably not. As much as I've come to appreciate the connection between land, community and

identity, I still don't believe that the current approach to land distribution by Kgoši Moloto III is one that would ultimately realise the intentions of the land reform project as a whole in South Africa, should it be applied in the redistribution of traditional land, nor do I believe that to be his intention anyhow. Unlike us, his intention isn't to try and 'save the world' but simply to take care of his community the best way he knows how and in line with what they would want.

The idea of land reform in South Africa as initially envisaged is one that requires a variety of solutions. That of Kgoši Moloto III's may be one solution, but it cannot be thought of as a silver-bullet solution to the social, political and economic realities which persist due to the failure of land reform at the hands of those entrusted with its implementation over the past 25 years.

The Land Belongs to Us … Or Does It?

The journey of a young woman confronting her own issues surrounding cultural identity through her family's rural land claim, against the backdrop of a highly contested South African political landscape on land reform.

Rationale:

In early 2014, my family were gifted a 3x3km piece of land in a rural Limpopo town called Moletjie. This gifted land was gifted to us by Kgoši Kgabo Moloto III in honour of my family's historical ties to the region.

I was raised having never heard of Moletjie or of Kgoši Moloto III. So who was he and why did he want us to have this land? I would only many years later learn who Kgoši Moloto III was but in the following months my siblings, cousins and I would journey to Moletjie to see our prized gift.

It was the hopes of the elders in our family that we would use this gift bestowed upon us to create a legacy for our family. It would be up to us to decide what that legacy would be and to carry it out.

Like my cousins, I was raised in the city in the suburbs of Johannesburg. My upbringing had no real appreciation for culture, heritage and even less so for rural life. To be entrusted with a legacy project which meant a great deal to our family elders was a daunting task, more so because it was a legacy attached to a place we knew very little of nor had we previously cared for.

After having travelled to Moletjie and gaining a glimpse of what life in the rural town was like, the Semenya grandchildren formulated a business proposition that we thought would serve all stakeholders – my family, Kgoši Moloto III and the community of Moletjie at large. Upon our presentation of the business idea to the elders in the family we were met with praise and appreciation for our efforts and were given an understanding that the elders would go on to lay claim to the land and receive it in title. However after that presentation, little was ever spoken about the land, the legacy project and what would become of our business idea.

The legacy project had been abandoned on our behalf by the family elders, due to the realisation that Kgoši Moloto III had no intention of our family receiving title of the land but rather that we had been given permission to use the land as we saw fit, following his pre-approval of course. Conditions which the elders were understandably uncomfortable with. Conditions which to me

seemed very much self-serving in the interest of Kgoši Moloto III and with a disregard for the benefit that our business could bring to the community of Moletjie.

My interest in the land and Kgoši Moloto III did not end with the project being abandoned. Questions around the history of my family, what our supposed ties to the region were, and why it was we weren't given the land in title remained.

The idea of land reform in South Africa today is in many ways thought of as the reclaiming of white-owned land back to its historical owners. Until recently, very little has been spoken about in public discourse around the redistribution of land currently under the custodianship of traditional leaders. The levels of patronage which many traditional leaders have when it comes to who owns the land and under what terms is rife in rural parts of South Africa.

Over a period of four years, I travelled back to Moletjie in search of answers to those questions, and with the intention of understanding what I believed to be that very same sense of patronage in relation to the land gifted to us by Kgoši Moloto III. What I hadn't realised was that in my journey of discovery I would open my eyes to a culture, a heritage and a people I previously knew very little about but who contributed in changing my perspective on the ideas of identity, land reform and the importance of knowing one's family history.

My family's unrealised land claim in Moletjie has unearthed conversations and changed perspectives on culture, politics, land, history and identity. Conversations which form an integral part of the decolonisation and land reform project in South Africa today.

Through this research, I will retell my family's journey with the gifted land but also delve into the history of the Basotho people, our relationship with land, our understanding of culture and its connection to community as well as how culture and heritage play pivotal roles in the framing of one's identity.

Research Interest:

- **What is the historical and present-day significance of land to black people in South Africa as a means towards economic development and an ownership of one's story?** This will be achieved through a detailing of my family's unrealised land claim in rural Limpopo and the issues unearthed through the claim around cultural identity as well as the historical distribution and ownership of land amongst the Basotho people.
- **What ties my identity to Moletjie and the BaPedi people?** This will be achieved through conversations with senior members of my family regarding the history of the Semenya family and our understanding of the BaPedi culture. Conversations with the Moletjie Royal Council and Kgoši Kgabo Moloto III will also detail the Semenya family's point of arrival in the region.

Research Themes:

- Land Reform and land policy formulation in a post-democratic South Africa
- BaPedi Migration
- The history of the Semenya family in Moletjie, Limpopo

Methodology:

Desktop research:

Unpacking land reform policies, both present and past, will undoubtedly form a great part of my research. This element will aid in allowing me to understand the relevant laws and policies, why they exist and most importantly how they aim to resolve the land reform crisis in South Africa. An understanding on this level of the policies and laws will allow me to translate them to the case of Moletjie and see how these policies and laws have either succeeded or failed in their intention to redistribute land in South Africa to its rightful former owners.

There exists some literature on the origins, migration and 'downfall' of the BaPedi nation. Much of what is available has some conflicting information so a part of my desktop and field research will be a process of comparing and contrasting research in an effort to find the common thread in the narrative.

Field Work:

I intend on taking a number of trips to Moletjie in the coming months. It is my hope that through these trips I will be able to get a feel for the land, its people, their stories and in turn my own. During these trips I hope to conduct a large part of my research in the interviews I will have with community members and leaders. Part of the importance of this trip will be also to tackle my own sense of belonging or lack thereof with the area. Through my interactions with family members and community leaders in Moletjie, I will be able to garner a sense of the history of the Semenya family in the region and our present-day ties.

Interviews:

- Family Members
- The Chief and Royal Council in Moletjie
- Small business owners and community members

Voices:

The intention is to write my research in the first person style, as the strength of the story is in its personal nature. It will be a documented timeline and narrative of mine and my family's land claim journey, life story and history. Other than my own voice, there will be secondary accounts from the experts and researchers who have done work in the fields of land reform, ancestral land policies and their paramountcy in rural regions throughout South Africa, and the BaPedi migration. The voices of my family members, the Chief in Moletjie, as well as community member within the region will also be included.

Research Approach:

The journey that our family's land claim process has taken me on has brought to the fore questions of cultural patronage, land, history and identity. A curiosity about my culture, the country's land reform policies - their evolving and often conflicting nature - has led me on a journey of self-discovery and debate around the emotional and historical significance of land to black people and the indelible ties it continues to hold to one's sense of identity.

In a deeply personal account of my own issues with identity and family history, at a micro level, I will detail the history of the BaPedi clan and their paramountcy in the Eastern Transvaal area. The emergence of private land ownership within the region between the BaPedi and theTrekkers will show a significant difference in the understandings of the two communities regarding land and their relationship with it. As a part of this narrative, this research will detail the journey of the four Masai Semenya brothers who left Kenya centuries ago to find themselves a part of the BaPedi nation and how the area just northeast of Polokwane came to be known as Ga-Semenya.

All of this will provide the background to one of the main topics of my research which will discuss the ways in which South African land reform policies were structured and have been meted out. A critical analysis of such policy and its present-day realities becomes integral in the understanding of the highly contested political policy debate on land reform and the restoration of black people's dignity through land.

Potential Challenges and Ethical Considerations:

The biggest challenge I had was that of language. The Chief, Royal Council of Moletjie as well as elder members of my family were most comfortable, accurate and open when relaying their stories in Sepedi. Given that I don't speak the language and barely understand it when spoken, I relied on a number of translators who are familiar with the region and who were interested in my research to assist in the translation of documents and interviews. Former and current colleagues of mine who are from the region as well as other parts of Limpopo offered their assistance in this regard.

Another potential risk was that of what the truth behind my family's land claim would reveal for those involved. My worry was that the Chief, and certain family members, would prefer that certain information be kept out of public knowledge with regards to the nature of the custodianship or use of the land and their potential vested interests regarding ownership and development on that ancestral land. My worry was that this would lead to some not being as forthcoming in helping to solve the conundrum of why my family were unable to secure title to the land. However, all interviewees were forthcoming and did not shy away from questions asked or topics raised.

A seemingly obvious problem that I did not believe I would face with my research was one linked to the very personal family nature of my topic. I discussed however my research interests with my immediate family as well as the elders of my family concerned in the story who gave me their blessing to proceed with my research.

All participants in my research prior to discussions and interviews were made fully aware of the nature of my research and the extent of it.

Literature Review:

Land Reform:

- **Land, Dignity & Democracy: South Africa's Constitution Does Allow for Expropriation (2015)** – in this piece Politics lecturer Richard Pithouse unpacks the public discussion held with keynote speaker former Deputy Chief Justice Dikgang Moseneke on the issues of land reform and its importance in a modern day South Africa. In the mentioned discussion Moseneke clears up the misconception that the 'willing buyer, willing seller' phrase "nor the logic behind it, appear in the Constitution" (Pithouse, 2015). Pithouse analyses how the use of the phrase in line with policy have in many ways deflected the responsibility of land reform away from the ruling party and left the blame for failed significant land reform at the doorstep of a faceless being. Pithouse argues that "when the land question is folded into active attempts to affirm and extend the reach of traditional authority, it is equally easy to argue that a demand for justice is being misused to shore up a shift towards undemocratic modes of power" (Pithouse, 2015). This argument speaks to how instruments of democracy have often been seen to be manipulated for the sake of maintaining rule over a people, as opposed to being rightly used to liberate and grant people their rightful sense of autonomy through land ownership.
- **Restoring Land and Livelihoods (2014)** – this piece by civil society writer and researcher Glenn Ashton attempts to map out where exactly it is the land reform process in South Africa went so wrong. Ashton asserts that "many of the initial attempts to

reform land ownership failed mainly because beneficiaries were not suitably supported after land transfer. Consequently, land fell into disrepair or was sold, prompting cynical responses about the inevitable failure of land reform" (Ashton, 2014). Ashton suggests that the only solution to restoring Section 25 rights to South Africans is to reshape the land process through broadly participative national discussions that will allow for all voices concerned to be heard, considered, and catered for, not just those of the law and policy makers. A CODESA type discussion around land reform is what Ashton believes is necessary to rethink and restructure the land reform process in South Africa.

- **Making Sense of the EFF's Land Policy (2015)** – With the current heat and contestation around the land reform issue in South Africa being fuelled in many ways by minority opposition party the Economic Freedom Fighters, freelance researcher Stephen Greenberg attempts to unpack and make sense of the seemingly radical expropriation of land without compensation policies of the EFF. It is important to understand the EFF's policies, in order to understand the potential alternative to land reform in the country. The controversial nationalisation of all land without compensation proposed by the EFF leaves much to be desired by many stakeholders but equally understands the current land reform frustrations felt by many who have been left on the sidelines of transformation.
- **Report of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change (2017)** – the report compiled by a panel led by Former President, Kgalema Motlhante, was tasked with reviewing key legislature and assessing its effectiveness in implementation and relevance today to societal needs. Chief amongst the legislation reviewed was Section 25 and the land reform project in South Africa. The report, in simple terms, found Section 25 wanting in its clarity in language, implementation and relevance to the needs of South Africans with respect to land reform today. When speaking on the idea of 'just and equitable' redistribution of land the report found that "the difficulty all stakeholders face – claimants, landowners and the state – is the absence of clear guidelines to determine 'just and equitable' compensation in any particular case."

Insider-Outsider Theories:

- **Watching the English: The Hidden Rules of English Behaviour (2005)** – this book by Kate Fox details Fox's discovery of the unspoken rules of English behaviour, a community she is very much a part of. Fox unpacks the anthropological research method known as 'participant observation' which requires one to participate in the life and culture of a certain people and gain an insider's perspective, whilst simultaneously observing the said group from an outsiders perspective. The participant observer method Fox details will aid in allowing me to conduct my fieldwork in Moletjie from an insider's point of view whilst still maintaining 'bird's eye view' objectivity. The importance of being part participant and part observer in my fieldwork will hold me in good stead when

it comes to relaying the truth of the matter regarding Moletjie, our family land claim and the nature of South African land reform.

- **Native Nostalgia (2010)** – in this book author Jacob Dlamini embarks on his own journey of remembrance with regards to his place of childhood – Katlehong. What becomes interesting in the accounts of his own history is that Dlamini realises that journeys of nostalgia have very little to do with the recounting of the past but rather are about the present and what it is we hope the past will reveal about our current day narrative. The book is helpful in that it gives one a perspective on current day issues (our land claim) by dredging up the past (BaPedi migration, the history of the Semenya's and land policies) and how it is as a result then that the present has come to be the way it is. In unpacking the differences which exist in seemingly homogenous groups (black people), Dlamini also realises that the differences in class, gender and language impact greatly on how black people themselves begin to relate with one another. I find this helpful in that it opens one's eyes up to the realities that being a city girl claiming rural land she's never before cared for, will reveal in how I perceive myself in terms of my identity in relation to Moletjie and its people, and their own perceptions in turn of me and my family laying claim to the gifted land.
- **Nostalgia and its Discontents (2007)** – in this research piece by Svetlana Boym, Boym attempts to unpack the true genesis and meaning of the term nostalgia. "The word 'nostalgia' comes from two Greek roots, *nostos* meaning 'return home' and *algia* 'longing'. "I would define it as a longing for a home that no longer exists or has never existed" (Boym, 2005, pp.1). Boym speaks of a reflective and restorative type of nostalgia, with the former simply cherishing "shattered fragments of memory" (Boym, 2005, pp.9), and the latter being the reconstructing of "emblems and rituals of home and homeland in an attempt to conquer and spatialise time" (Boym, 2005, pp.9). In searching for my family's own home, our place and sense of belonging, and our history, unpacking the roots of nostalgia and how it affects one's present day need for longing is important in understanding why this research matters to me in the first place – an understanding which is critical to the essence and truth of how and why our story is being told.

BaPedi Migration:

- **The Land Belongs to Us (1984)** – this book by Peter Delius details the Pedi polity, the Boers and the British in the Nineteenth-century Transvaal. "The Land Belongs to Us thus examines the changing nature and distribution of power within the Pedi polity and explores internal economic, political and ideological struggles. The narrative, however, also seeks to show how the development of the polity was shaped by processes of conflict

and change at work beyond its borders – most importantly by struggles within Boer society..." (Delius, 1984, pp. 7)

- **Sekhukhune: Greatest of the Pedi Kings (2014)** – this book, which is a part of the SA Heritage Publishers' series 'Our Story', "tells the earliest recorded stories of the ancestors of all South Africans" (SA Heritage Publishers, 2014), and details the origins of the BaPedi nation as well as the events and battles fought from 1650 to 1882 which make up a great part of the BaPedi history. It also summarizes in part the battles which led to the fall of the once great BaPedi polity.
- **Chiefs in South Africa: Law, Power & Culture in the Post-Apartheid Era (2005)** – this book speaks to the rise of traditional leadership in a post-Apartheid South Africa "not only in national politics but also in the villages of rural South Africa" (Oomen, 2005). Through the use of the Pedi king Sekhukhune, Oomen considers the wider questions of "What was the relation between the formal legal and political recognition of chieftaincy and its local resurgence? How the local, national and global are interlinked in the creation of custom? Why did the liberal ANC allow chiefs to retain power over land, local government and custom? What does this teach us about politics in a present-day Africa?" (Oomen, 2005).

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