



Original article

Deconstructing a single-actor resource ownership model: A study of the proposed uranium mining in the karoo region of South Africa

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ABSTRACT

This study engages the discourse of ‘eminent domain’ – the power of the state to expropriate communally or individually owned properties for ‘public good’ – as it applies in the mineral extractive sector in resource-rich countries, such as South Africa. It is argued that the use of the ‘eminent domain’ principle in the acquisition of land and allocation of mining rights reinforces the notion of the ‘supreme state’. The entrenchment of this idea advances ‘the single metric model’ in which one stakeholder’s voice is heard at the expense of other stakeholders. This hierarchical framework privileges the state and the licensed mining companies and excludes resource-rich communities and other egalitarian structures. It is against this backdrop that this study makes a case for the deconstruction of a ‘single-actor resource ownership’ model in South Africa. Using data collected through qualitative instruments, the study concluded that the ‘single metric’ approach, in which the state enforces its agency over the other stakeholders, is rooted in its understanding of ‘rights and sovereignty’ over land and mineral resource ownership in South Africa. This strikes at the centre of a developing conflict among the stakeholders in the uranium-rich community. Therefore, the disaggregation of the current unconstructive policy space dominated by the hierarchic state to one which accommodates diverse views and voices of other stakeholders will create a multi-metric, pluralistic and democratic environment where the ‘public-use principle’ in essence does not exclude the public.

1. Introduction

As at 2015, South Africa was the third-largest producer of uranium in Africa and 11th largest in the world (World Nuclear Association, 2017). According to Dasnois (2012:7), South Africa has “4.6 percent of the world’s most accessible uranium, and possesses the second largest reserves of uranium ores in the world”. Nevertheless, the country contributes only 1 percent to the total global production of uranium ores because of its limited exploitation (Stanley, 1987). Essentially, the development of uranium exploration and exploitation in South Africa can be traced to 1945 when Field Marshall J.C. Smuts, who later became Prime Minister of South Africa, urged the South African mining industry

to explore the possibility of uranium mining in the country in order to actualise the implementation of Manhattan project¹ (Asuelime, 2013). This call yielded positive results with the discovery of low-grade uranium ores as a byproduct of gold in the Witwatersrand mines (Newby-Fraser, 1979:198). Consequently, South Africa commenced the exploitation of uranium from gold mines in the Witwatersrand area around Johannesburg in 1951 (Taverner, 1956).

In October 1952, the first uranium plant was established at the West Rand Consolidated Mine (Brynard et al., 1987). This was followed by the commissioning of additional four plants in 1953 (Brynard et al., 1987; Newby-Fraser, 1979). Fordt (1993:37) noted that “by 1952, the first resin ion-exchanged plant for uranium processing started up in South

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¹ The Manhattan project was meant to produce the first nuclear weapons during World War II. The project was spearheaded by the USA with the support of the United Kingdom and Canada.

Africa, and by 1959, there were 17 plants producing uranium in South Africa". These plants were fed by 26 mines. With this development, the production of uranium in South Africa increased remarkably until 1959 (David, 1990). In 1968, seven uranium mills were operating in South Africa, which was higher than the four in Canada and one in Australia. Only USA had a higher number – 16 – during this period (Merritt, 1971:576). As could be expected, the Chamber of Mines was involved in both production and marketing of uranium (Chamber of Mines of South Africa, 1990). In the mid-1960s, when the demand for uranium rose, the Chamber of Mines created its own marketing board, even though the ownership of uranium was strictly reserved to the state. However, in 1965, production declined globally due to the reduction in the need for armaments programmes (Sidel and Levy, 2007). This caused a massive decline in uranium production in South Africa (Taya, 2008). Nevertheless, the demand for uranium picked up again in the 1970s with the occurrence of the global oil crisis (Hakes, 2008).

As a result of this, South African uranium production rose to 6147 kt by 1980 (Fordt, 1993:38). The production of uranium ores was further boosted because the areas with the largest concentration of tailings such as Rand, Klerksdorp and Welkom became major producers of uranium (Camisani-Calzolari et al., 1985). In the 1960s and 1970s, Esso Minerals Company discovered a uranium deposit in the Karoo² region of South Africa (Bertolini et al., 1985). Thus, in the 1970s, the then Prime Minister announced before the Parliament that the country had recorded significant progress in the process of enriching the country's uranium (Asuelime, 2013). This announcement sparked about 10 years of clandestine research to enrich the country's uranium ores to fuel the future nuclear power reactors in the country (James, 1976; Janisch, 1986). According to Fordt (1993:38):

With South Africa's abundant uranium resources, the acceptance of this prediction indicated that, by marketing the uranium in its most sophisticated form, South Africa could double its foreign-exchange earnings from uranium sales.

However, owing to the international opposition against the apartheid regime's nuclear weapons programme and the 'Boycott and Divestment' movement of the 1980s, the development of large scale uranium mining was halted. Nevertheless, with the emergence of the new democratic state comes a renewed interest in the large scale exploration and exploitation of uranium deposits, especially in the Great Karoo. Thus, in May 2011, the then Minister of Energy promised that 22 percent of the new generating capacity would be nuclear and 14 percent would be coal-fired by 2030 (Martin and Fig, 2015:16); even though the government is currently building two new coal-fired stations. The government made its intention more explicit with the approval of a R586 million budget for the South African Nuclear Energy Corporation (NECSA) (Martin and Fig, 2015:16). This fund would enable the corporation to vigorously conduct studies on nuclear research and development and innovation with the view of realising the government objectives of nuclearisation of South Africa's energy sectors. In 2015 Tasman RSA, represented by Tasman Pacific Minerals Limited and Lukisa JV Company (Pty) Ltd, submitted applications for mining rights to commence the exploitation of uranium in the Great Karoo.

Evidently, the use of expropriative power by most modern states in land expropriation and mineral resource exploitation is regarded as constitutional, even though local communities may oppose this framework. This opposition hinges on the nature of acquisitions the state makes, which in most cases are forceful. The skewed power relationship

² More importantly, vast deposits of uranium are also found in the Karoo basin (Rowse & de Swart, 1976). For instance, in the 1960s and 1970s, Esso discovered uranium deposits in the Karoo, specifically in Ryst Kuil, close to Beaufort West. However, the most important deposit was found in the Beaufort Group in the south-western part of the Karoo Basin (Rossouw & de Villiers, 1953).

that emanates from this relationship entrenches the state as hegemony over the component parts. In different African countries, these power relations have resulted in overt conflicts. In South Africa, while existing mineral legislation frameworks entrench the expropriative power of the state, some levels of power are given to some traditional authorities to engage in mining deals with the mining companies in their communities, especially in tribal areas. Also, in some non-tribal communities, such as the Western Cape Province, land ownership rights are given to private individuals, which mean that individual landowners can negotiate with mining companies on the terms and conditions for the sale or release of their land for mining activities. In addition, it should be acknowledged that the Interim Protection of Informal Land Rights Act (1996) emphasizes communal land rights, and it has been successfully used to stop mining projects and protect land rights (Cousins, 1997). Based on this Act, communities with 'informal land rights' have inalienable power to have consensus about how their land should be used. This Act has been used to challenge the state's dominance over landownership and mineral resource exploitation in court (Greyling, 2021). Evidently, it has been used to stop some mining activities in some communities since it is based on community consensus³ (Healy, 2022). However, the South African state still claims ownership of mineral resources underground and on the surface, which implies a 'single-actor ownership model' (Issah et al., 2020). This, perhaps, explains why the government is unwilling to renew the Interim Protection of Informal Land Rights Act (1996).

This study contends that the 'single-actor ownership model' does not advance a sustainable relationship among the stakeholders. While the state insists on having the dominant role in the ownership and allocation of *usufruct*⁴ on land and minerals, local communities want to play more active roles in owning and determining how the resources in their communities are exploited (Abuya, 2016; Akpan, 2009; Umejesi, 2015). It is against this background that this study argues for the deconstruction of the 'single-actor ownership model' in mineral resource ownership and mineral resource exploitation.

In discourses around mining in different African countries, such as South Africa, various stakeholders often hold different views on policies and practices related to land ownership and governance in the mining sector (see Gqada, 2011; Mwanza, 2015). These stakeholders or vested interests, as identified by scholars and policy-makers, include the state, mining companies, local communities and advocacy groups (Abuya, 2016; Umejesi, 2015). The relationship among these stakeholders, often conflictive because of their diverse orientations, borders mainly on the questions of who controls the sovereign rights over land/environment where mining takes place or who makes policies that govern the process of land acquisition, allocation of mining rights, management of waste pollution, compensation from land acquisition and environmental degradation, among others (Akpan, 2009; Umejesi, 2015).

For the state, the above issues are tied to its sovereign rights as the supreme authority which 'Owns' every component part of the country – a claim that hinges on its notion of eminent domain (Veit and Larsen, 2013). Eminent domain is the power of the state to expropriate

³ The community members of Umgungundlovu in Xolobeni stopped the Transworld Energy and Mineral Resources (SA) Proprietary Limited (TEM) from mining in their community using the Interim Protection of Informal Rights to Land Act 31 of 1996. The Court ruled that the Minister lacks lawful authority to grant a mining right. Based on the Interim Protection of Informal Rights to Land Act, the Minister is obliged to obtain the full and informed consent of the Umgungundlovu community as the holder of rights in land before granting any mining right to TEM (Healy, 2022).

⁴ *Usufruct* is a limited real right found in civil law and mixed jurisdictions that unite the two property interests of *usus* and *fructus*. *Usus* (user) is the right to use or enjoy a property possessed; while *fructus* (which in the figurative sense means fruit) is the right to derive profit from a thing possessed. The holder of a usufruct is known as a *usufructuary*. The *usufructuary* has the right to use (*usus*) the property and enjoy its fruits (*fructus*) (Leviticus, 19:9-10, 23:22).

individually or communally owned property for public use with or without the payment of fair compensation (Stoebuck, 1972). In South Africa, however, the expropriative powers cannot be said to be absolute because some tribal communities are given the power to administer or engage in mining deals with mining corporations in their communities (see Mnwana, 2015). Yet, according to the Expropriation Act 63 of 1975, mineral and land ownership rights can be expropriated by the state provided that the requirement of ‘public use’ is met. Section 3(1–2) of the Mineral and Petroleum Resources Development Act of 2002 (MPRDA) gives sovereign rights to the state over mineral resources underground and on the surface in the public interest. Based on this legislation, the South African state claims the ownership of uranium in the Great Karoo. This signifies a single-actor resource ownership model, which this study intends to deconstruct.

This single-actor resource ownership as evident in the above legislative frameworks has generated controversies in landownership and mineral resource exploitation in South Africa. Numerous studies have shown how the exercise of single-actor resource ownership model has caused conflicts in resource-rich communities in South Africa. For instance, the study of S. Mnwana (2014) demonstrated how inadequate participation in mineral resource exploitation caused tensions in platinum-endowed communities. Also, the study of April (2017) revealed how mineral resource governance generated conflicts in a selected mining communities in Limpopo Province of South Africa. In addition, Mngomezulu (2015) reported single-actor resource ownership model has guided resource governance and its consequences in South Africa. Similar studies were also reported in other contexts (Cole and Broadhurst, 2021, 2022). Thus, this study could contribute to the development of a more democratized framework that would encourage co-production of knowledge in mineral resource governance. Also, while a number of studies have been conducted on mineral resource governance in South Africa (Hamann et al., 2005; Issah and Umejese, 2018, 2019; Leonard, 2017), these studies were not specific on mineral resource governance. To fill this gap in the literature, this study is imperative. The main research questions guiding this study are as follows:

- i. What are the arguments and justifications of the government on landownership and mineral resource control in South Africa?
- ii. What are the narratives of the landowners/farmer on landownership and mineral resource control in South Africa?
- iii. What framework should be adopted to achieve co-production of knowledge in landownership and mineral resource control in South Africa?

2. Literature review

This study is drawn on the concept of eminent domain, which refers to as the power of the government to take private property especially land in public interest. Importantly, this power may only be exercised provided that just compensation is given to the property owners (Mao and Qiao, 2021). A ‘just compensation’ is determined by an appraisal of the fair market value of the property. Several studies have revealed that eminent domain has been used by the government to take over privately owned land for mineral resource exploitation to further economic developments (Klass, 2020; Wagner, 2023). The taking is justified on the ground of economic benefits such as generation of employment opportunities. Importantly, the exercise of eminent domain is likened to ‘Single-Actor Resource Ownership Model’, where the state takes absolute control over landownership and mining projects (Issah et al., 2020).

However, the application of eminent domain has been largely critiqued. For instance, several studies argued that it disregards private landownership rights (Issah et al., 2020; Pemberton, 2023). Based on the existing studies, the application of eminent domain by the state could be described as a utter violation of private/individual rights particularly in a liberal/democratic state, where human rights are upheld (Christensen,

2024; Robinson, 2023). Also, the ‘public use’ doctrine as the pre-condition for the exercise of eminent domain has been critiqued as well. Scholars have intensely debated on what constitutes ‘public use/interest’, and whether it is justifiable for the ‘few’ to sacrifice their rights for the ‘many’ (Mao and Qiao, 2021; Weisbrod et al., 2023). They queried why should the minority pays the price or sacrifice for the majority. They asked whether it is just or legal to sacrifice the minority for the majority (Weisbrod et al., 2023). In addition, scholars have critiqued the ‘just compensation’ as part of the pre-condition for the exercise of power of eminent domain (Garnett, 2020; Mackey, 2023). The doctrine states that just compensation must be paid to the property owners before taking, and it is determined using fair market price principle. There are some fundamental issues with the use of fair market price in the determination of ‘just compensation (Epstein, 2020; Lee, 2021). Critics pointed that fair market price does not factor in psychological and cultural costs to the property owners (Longoria, 2023; Mackey, 2023). Owners may have some emotional, cultural and psychological attachments to their property.

The eminent domain is entrenched in South Africa as evident in the m Expropriation Act 63 of 1975 and Mineral and Petroleum Resources Development Act of 2002 (MPRDA). According to the Expropriation Act 63 of 1975, mineral and land ownership rights can be expropriated by the state provided that the requirement of ‘public use’ is met. Also, Section 3(1–2) of the Mineral and Petroleum Resources Development Act of 2002 (MPRDA) gives sovereign rights to the state over mineral resources underground and on the surface in the public interest. Based on this legislation, the South African state claims the ownership of uranium in the Great Karoo. Also, Section 25(2) of the 1996 Constitution states that “property may be expropriated only in terms of law of general application”. Extending this provision, Section 25(2) (a) (b), in combination, stipulate that such expropriation shall be for public purpose or in public interest subject to the payment of ‘just and equitable’ compensation to the property’s owners. In defining public purpose or public interest, Section 25(4) (a) stipulates that “public interest includes the nation’s commitment to land reforms and to reforms to bring about equitable access to all South Africa’s natural resources”. In terms of this Section, acquisition of privately or communally owned land by the state for mineral resource exploitation is legally justifiable (van der Walt, 2011:14).

However, there are limitations to the application of eminent domain in South African context. For instance, the Promulgation of the Traditional Leadership and Governance Framework Act (TLGFA) No. 41 of 2003 appeared to have conflicted with the expropriative power of the South African state. In tribal communities of South Africa, this legislation empowers the traditional authorities to oversee the administration of mineral resource exploitation on their communal lands. According to S. Mnwana (2014:22), “with the state’s support, chiefs [in some tribal communities] have assumed custodianship of mineral-led development and mining deals”. In addition, the promulgation of the Interim Protection of Informal Land Rights Act (1996) limits the dominance of the state in landownership and mineral resource exploitation (Cousins, 1997). Using this Act, some tribal communities have successfully used it to protect their communal land rights and prevent or stop mineral exploitation in their communities (Greyling, 2021). Based on this Act, communities with ‘informal land rights’ have inalienable power to have consensus about how their land should be used (Tlale, 2020).

Despite the limitations, South African government still exercises eminent domain in landownership and mineral resource exploitation in some regions/areas in South Africa. This fits a Single-Actor Resource Ownership Model’, where the state takes absolute control over landownership and mining projects. The study posits that the use of a Single-Actor Resource Ownership Model negates democratic ideals, which the country rests upon. In other words, it violates private rights especially landownership. This study thus calls for the adoption of deliberative systems approach, which emphasises the engagements of other stakeholders in making decisions on landownership and mining projects.

Deliberative systems approach is discussed and justified is discussed below.

Deliberative systems approach is developed by Berg and Lidskog (2018). This approach is fundamental to deconstructing the hierarchical hegemony of the state in mineral resource ownership and exploitation. The state and resource-rich communities often engage in 'discursive struggles' (Berg and Lidskog, 2018:1–20) over the question of who owns and controls mineral resources. These 'discursive struggles' could lead to deadlock in mineral resource exploitation. Thus, in addressing these discursive struggles among the key stakeholders in mineral resource exploitation, deliberative mechanisms need to be facilitated. Based on Berg and Lidskog's position, through deliberative engagements among key stakeholders, the goal of democratisation of mineral resource ownership and exploitation would be achieved.

In line with this argument, Dryzek (2006) suggested that policy-makers should adopt a deliberative approach in mineral resource ownership and exploitation in order to make mineral resource control more pluralistic and effective. The author noted that the inclusion and involvement of resource-rich local communities (the concerned communities) is essential for enhanced deliberation among stakeholders. This is what Berg and Lidskog (2018) referred to as 'discursive democratisation'. Through discursive democratisation, deliberation among stakeholders becomes more open, reflexive and free of power differentials (Dryzek, 2006). One of the ways of achieving discursive democracy is through "discursive representation" (Berg and Lidskog, 2018). This implies that each discourse (that is, the discourse of the state and the local communities) should be adequately represented in mineral resource discourse. By discursive representation, the hierarchical and hegemonic discourse of the state would be contested by other stakeholders representing different discourses or problem-solution frames (see also Wynne, 2003).

3. Methods

3.1. Description of the study community

The study community is Beaufort West, which is regarded as the administrative, political and economic heart of the central Karoo, South Africa. The town was founded in 1818 on the farm Hooyvlakte. It is located at longitude 32°21'S and latitude 22°35'E. It is approximately 460 km north-east of Cape Town. The town was originally created to serve railway and road transportation, connecting coastal areas and northern parts of South Africa. It was also meant, although to a lesser degree, for rural agriculture. Arguably, the main historical reason for the establishment of this settlement was to provide a service for the railway system in order to ensure easy transportation of diamonds from Kimberley. This is quite evident in the employment demographics of the inhabitants of this town. For instance, between the 1970s and 1980s, about 90 % of the economically active inhabitants of this area were employed in either railway or road transportation. However, rail transportation has declined and its contribution to the economy of this town has significantly reduced. Yet road transportation makes the town economically significant because the town is between Cape Town and Johannesburg, so huge revenues accrue through road transportation to the Municipal government. Expectedly, the town has characteristics of modern towns such as shopping malls, magistrate's court, internet cafes, hotels, medical facilities, and restaurants, among other facilities and amenities (Integrated Development Plan (IDP) 2016).

3.2. Study design

In this study, a qualitative research design was adopted. A qualitative research strategy was considered appropriate for this study because it enabled the researcher to understand the narratives and perspectives of the members of the communities on mineral resource ownership and exploitation. The study population consisted of all the concerned

members (particularly landowners and farm owners) in the Beaufort West community as well as anonymous government officials. With regard to sampling technique, this study adopted two non-probability sampling techniques because the study was purely qualitative, and there was no sampling frame from which sample size could be quantitatively determined. The two sampling techniques were the purposive sampling technique and the snowballing sampling technique, and these two techniques were triangulated. The purposive sampling technique is a type of non-probability sampling technique in which a researcher deliberately selects participants that he or she considers to have 'knowledge content' of the research questions.

In this method, the researcher set out questions and found participants who were affected and knowledgeable about the issue under investigation to answer the questions. This sampling technique was used to identify the key participants for this study. Also, the snowballing sampling technique relies on the 'social networks of identified participants' to gain access to other participants. It is most appropriate where there is no sampling frame or where such a frame is difficult to establish (Anheier and Katz, 2004). This technique was used to select the visualised and identified participants for this study. Thus the identification of one participant led the researcher to another participant and so on. This technique was used to select the participants for this study. A total of thirty landowners and farmers, and farm owners, 5 anonymous government officials and 3 anonymous officials of the prospecting company were selected through this sampling technique.

The researcher interviewed thirty selected thirty landowners and farmers, and farm owners in Beaufort West. At first, the researcher located the administrator of the Karoo Farmers' Cooperative. The researcher requested an appointment for an interview session with him. The administrator honoured the researcher's request, and the interview lasted more than two hours. In the course of the interview, the administrator expressed personal views on landownership and mineral resource exploitation in the Karoo. As the representative of the farmers in the region, the administrator also gave the researcher insights into the positions of most of the farmers in the region. Indeed, the administrator shared the written comments received from the farmers with the researcher. From the written comments the researcher got about sixteen (16) narratives from different farmers on landownership and mineral resource exploitation in the region. These were used to boost the empirical relevance of this study. Interestingly, the administrator allowed the researcher to tape-record the discussion with the researcher and gave permission for his name to be mentioned. However, as requested by the researcher's university's research ethics, the administrator's identity remains anonymous. Through this person, the researcher was able to get access to other landowners, farm owners and farmers.

In the analysis of the narratives obtained through the interview technique, a thematic analytical technique was adopted. For the interviews conducted in Afrikaans (the commonest language in the Karoo), the researcher's research assistant (who was an indigene of Beaufort West) translated and transcribed into English, while for the interviews conducted in English, the researcher did the transcription himself. The responses were recorded, cross-checked for credibility and reliability and afterwards transcribed and stored in word document. On ethical consideration, the participants demonstrated their willingness to participate and share their views and experiences regarding the problem under study. The participant willingly consented to be involved in the exercise. This implies that mutual trust was successfully established. Moreover, the participation of the participants in this study was made voluntarily, and they were told that they were at liberty to leave at any point in time without any form of punishment. Importantly, an ethical clearance certificate was obtained from FREC and UREC.

4. Results

The contending discourses on the proposed uranium mining in the

Great Karoo border on the questions of who owns or controls sovereign rights over the land/environment and the mineral resources, and who makes the policies that govern the process of land acquisition and allocation of mining rights in the region. While the state claims ownership of mineral resources in the Great Karoo in the public interest, some farm owners and landowners in Beaufort West argued that land is privately owned. While some farm owners and landowners noted that they bought their lands, others stated that they inherited their lands from their families. These farm owners and landowners do not accept that the state has the inalienable rights to explore and exploit natural resources on their lands. For the purpose of clarity, the results are presented based on the research questions guiding this study. These are as follows:

4.1. Theme 1: government's position on the use of single-resource ownership framework

South African government seemed to argue for and justify the use of single-resource ownership. From the official documents, mineral and petroleum resources belong to all South Africans and the state is the custodian of it. Also, the majority of the government officials interviewed posited that government should have major control over petrol and mineral resources so that it can be easily explored and exploited for developmental purpose. One anonymous government official noted that "government needs to have control over petrol and mineral resources in the country for the purpose of using the resources in the interest of the public" (Participant 2). It could be deduced from the above position that through mineral resource exploitation government would be able to get enough revenue to provide basic amenities such as healthcare services, good road networks and other developmental programmes. In addition, the exploitation of mineral resources would aim social investment programmes given the current socio-economic conditions of most South Africa.

Another anonymous government official stressed that "if government lacks control over its petroleum and mineral resources, some individuals and/or groups may truncate government's efforts in bringing sustainable development to the country ... Government may be arm-twisted or given unfavourable conditions in resource exploration and exploitation" (Participant 5). It could be gleaned from the above that without government exercising its power of mineral resource control, private/group interest may affect the achievement of public interest. To avoid a situation of 'holding back' due to interests of certain individuals and groups, government needs to exercise greater levels of control. In respect to uranium mining in the Karoo region, government posited that the mining is in the public interest considering the shortfalls in energy supply in South Africa. The energy supply affects significant number of households in the country. Uranium mining is fundamental to address the shortfalls, and the mining could not take place if government does not have power to direct the exploration and exploitation.

However, there are arguments against the state discourse of 'public interest' as some scholars argued that the institution of the state has been hijacked by large mining corporations through corrupt government officials. Thus, the state is serving 'corporate interest' rather than 'public interest' in mineral exploitation. In the course of serving corporate interest, collective interest is sacrificed. State institutions have become instruments of the large corporations to gain and advance their corporate interests (Spicer, 2016). Olver (2016) noted that mineral resource governance in South Africa based political patronage to serve interest of 'big men' and large corporations. To enable large mining corporations they are working with, they engage traditional chiefs of the oil-rich communities to formalize clandestine and murky mining deals to the detriment of public interests (Mnwana, 2014). Importantly, landowners/farmers in the communities where uranium mining is to take place are arguing that the exploitation of the resource is not in their best interests. Their arguments are presented and analysed in theme 2.

4.2. Theme 2: farmers/landowners' position on the government's exercise of single-resource ownership framework

Landowners/farmers in the proposed communities in the Karoo region vehemently opposed why government should unilaterally 'based on public interest' principle, order the exploitation of the resource in the region. They hinged their argument on the Section 25(1) which emphasises property rights of individuals. According to this Section, "no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property". This clause provides legal protection against arbitrary interference on individually owned land either by the state or other third parties. However, this is contradicted by Section 25(2) (a), which states that "property may be expropriated only in terms of law of general application for public purpose or in the public interest"⁵. Nevertheless, some farm owners and landowners still rely on the clause in the Constitution that emphasises 'property rights'. While relying on the 'property clause' in the 1996 Constitution of the Republic of South Africa, a farm owner noted that:

This land is mine [...] Government cannot dictate to me how to use my land. I can use my land for anything I want. If any natural resource is found on or in my farmland, it belongs to me; not the government [...] Government is just deceiving people with the idea of public interests. Who is the public? I'm asking you, my friend. Is it not those in the positions of power? They are the one taking all the benefits and advantages meant for us. The proposed mining here is for them, not for the people as they claimed (Participant 7).

Another farm owner corroborated this when he stated:

Nobody should come and exploit uranium here. This farmland belongs to me, not the state. I bought it with my hard earned money, and I'm not ready to sell it. It is very important to me. Government should not tamper with what belongs to me [...] If government grants mining licence to the mining company, I will defend my land with the last drop of my blood. This is because granting of licence to a third party on my farmland when I'm still alive, is not in my interest. It will be grossly unethical because this farmland, apart from the fact that I'm the legitimate owner, it gives me my daily bread (Participant 8).

Another farm owner emphasised that:

Government and the mining company should stay away from my farmland. I used my own sweats to buy it, and I'm not ready to let it go. My farmland is my life. My whole existence is attached to it [...] I own everything on this land (both underground and those that grow on it). Government and the mining company should go elsewhere; my farmland is not available! It is not for sales (Participant 9).

A 59-year-old farm owner stressed that:

Government and the mining company should leave our land alone. They should allow us to decide how we will mine our uranium if we consider it necessary. They cannot tell us when and how to mine our uranium. They cannot dictate for us, or tell us how our land should be used. It is our land! Government and its mining company should handsoff. Please, allow us to decide for ourselves (Participant 11).

In line with the above narrative, a middle-aged farm owner opined that:

I don't know what the government wants to gain here. I'm not saying the state should not exploit uranium, but government should

⁵ Section 25 of the South African Constitution strives to balance, albeit unsuccessfully, the interest of property owners and the interests of the society as a whole.

acknowledge the fact that the land belong to the people of the Great Karoo. We should be allowed to own our land and resources bestowed on us by nature [...] (Participant 10).

A crop farmer in the area stated that:

I have not heard anything about the proposed mining operations, but if any officials come to me, I will never allow them to take over my land. I was born here, and I'm going to die here. My farm is very important to me. Money cannot buy this farm. Besides, if they take over this farm, what do they want me to eat to sustain myself? (Participant 13).

Despite the above narratives of some landowners and farm owners in Beaufort West, the prospecting company managed to get some portions of land for the proposed mining project in the region. When the researcher asked some farm owners and landowners how the prospecting mining company managed to acquire the hectares of land it had already acquired for the proposed project, one farm owner stated:

The officials of the company approached some farmers, including me. They told us that uranium mine could enable us to address our cash strapped agro-businesses – this is true because our income is dwindling, and climatic conditions are no longer favourable. They told us that we would earn some income from the mine. They even told us that in gold, diamond and platinum-rich communities, many local farmers [who allowed the mining companies to use their farmlands for mines] got rich. So, some of us [farmers] were convinced, and they eventually sold their farmlands to them (Participant 14).

Another farm owner interviewed in Beaufort West said:

My friend, some farmers willingly sold their lands to them. But I can't blame them! Some farmers were easily convinced by the officials of the prospecting company because we are struggling with drought here. They felt that it makes economic sense to sell their lands to the prospecting mining company since farm income is reducing. Due to significant changes in climatic conditions, some farmers are running at a loss. Some farmlands are just lying fallow. So, if they sell their lands to the prospecting mining company, we should not blame them, I think! (Participant 17).

A landowner in Beaufort West said:

Don't mind those landowners! They want to get rich quickly. Just because the officials of the prospecting mining company told them that the local farmers in gold, diamond and platinum-rich communities got rich, they sold their lands. They forgot that uranium mining is different from gold, diamond and platinum. I pity them! (Participant 18).

A resident of Beaufort West said:

Don't let us deceive ourselves. If the government wants or supports something, it will surely get it. Why disturbing and wasting our time? If the government supports the mine, it will get. So, if I sell my land, I don't think you should blame me. If I don't sell it now, government may take it from me. Then, who loses and who gains? Please don't blame me! After all, it is my land! (Participant 19).

While commenting on the way the prospecting mining company acquired land from some farm owners and landowners in the area, a representative of farmers' cooperatives in Beaufort West said:

Most lands and farmlands are privately owned. So, the prospecting company negotiated on an individual basis with the private landowners. This form of land acquisition is very easy because some private landowners just own lands here; they reside in Cape Town and Johannesburg. Most of them are businessmen or politicians. They do not actually use the land for farming. So, they can easily sell their lands to anybody if the prices are considered appreciative.

Even, some that use their land for commercial farming sold it to the company at higher prices. After the selling, they used part of the money to acquire another land in other location, and used the remaining part to boost their livestock (Participant 6).

From these comments on land ownership in the Karoo, it is discernible that most land is not communally owned unlike some areas in South Africa, such as the tribal communities of Limpopo and North West Provinces. To corroborate this, a Councillor of the Municipality stated that "land is a private thing; the municipality is not concerned about it" (Email correspondence, 17th November 2016). In summary, while some farm owners and landowners argued (relying on the property clause in the constitution) that they own their land and can utilise it anyhow they choose, the state emphasised (relying on the expropriation clause in the constitution) that individually or communally owned land can be acquired in the public interest. In disregard of this expropriation clause in the constitution, some landowners and farm owners in Beaufort West stress that their lands belong to them, they are individually-owned. However, based on the narratives of some participants, some landowners and farm owners willingly sold their lands to the prospecting company. When the researcher dug into why they sold their lands to the prospecting company, the researcher found that some farm owners or landowners could not resist offers from the prospecting mining company because of the low rainfall and poor soils, while others sold their lands for fear of expropriation by the state.

4.3. Theme 3: co-production of knowledge in landownership and mineral resource control

Another flank of the community's perspectives on the proposed uranium borders on the question of consultation. The existing legal frameworks in South Africa emphasise the imperativeness of consultation in the mineral extraction process. Specifically, according to Section 5(4) of the MPRDA, "no person may [...] commence with any work incidental thereto on any area without [...] notifying and consulting with the landowner or lawful occupier of the land in question"⁶. Consequently, the prospecting mining company claimed that all the major stakeholders in the region were adequately consulted. One official of the prospecting mining company argued that: "no one was left behind. Farmers were told all the likely socio-environmental consequences of the proposed mining as well as the mitigating measures the company has put in place". This was done based on the principle of 'good faith' (Participant 40).

A representative of farmers' cooperatives in Beaufort West testified that the company actually carried out public consultation exercises. He noted that: "they negotiated with us. They are so open to us. They interact with us regularly. If I need something, they came here to relate with us. This is different from other areas, where the company would just come and impose on the farmers and the members of the community" (Participant 25). His point implies that the prospecting mining company consulted those farmers and landowners who would be affected by the proposed project.

However, some participants argued that there was no adequate

⁶ "Subject to this Act [MPRDA], any holder of a prospecting right, a mining right, exploration right or production right may (a) enter the land to which such right relates together with his or her employees [...] and may bring onto that land any plant, machinery or equipment...which may be required for the purposes of prospecting, mining, exploration or production..." – MPRDA s 5(3). "We are successful when...the communities in which we operate value our relationships" – Lonmin CEO Ben Magara. "We respect the communities within which we operate; we care for the socio-economic well-being of the communities within which we operate" – Impala Platinum. "Our social licence to operate is a key pillar of the Ivanplats strategy, so we recognise that the ongoing support of the neighbouring communities is essential to the success of our project" Ivanhoe Mining.

consultation. According to one participant, “very few people were aware and participated in the public consultation exercises that they said they did. I don’t even know where” (Participant 28). Similarly, another participant noted that:

Environmental Impact Assessment (EIA) was finalised without public debates and with little public consultation. Expectedly, when they released it for us to see, it favoured the company. It was SAFCEI that opened our eyes to most of the realities about the proposed mining project (Participant 29).

Another participant stressed that:

I know most of what I know about the proposed mining project through the lectures and publications of SAFCEI. It was SAFCEI that told us about the environmental impacts of the proposed mining project. They also told us how the proposed will affect our livestock. The officials of the company never open to us. They hide a lot to us. Thanks to SAFCEI! (Participant 32).

In addition, one participant noted that “I know about the proposed mining project through SAFCEI, and I think it is not proper. We deserve to be consulted because the proposed project would affect us most, not those mining or government officials. We live here, this is where we live. No individuals should be excluded” (Participant 21). Another participant added “it is my right to be consulted because this is my land [...]” (Participant 24) Even those farmers that said they attended consultation exercises said that it was a mockery of consultative process. One farmer said: “Those meetings I attended were poorly organised. The discussions were predetermined. The representatives of the prospecting mining company dominated the whole discussions. We only have voice through the activities of SAFCEI” (Participant 30). Some farmers complained about language barriers. One participant stressed that “I couldn’t contribute much to the discussions because of the language. I am Afrikaans, my expressions in English is not good. It is a big challenge for me” (Participant 27). Similarly, a 45-year-old farmer noted that the “majority of the people here are Afrikaans, but most of the discussions were done in English. How do you expect us to understand and make necessary contributions?” (Participant 35).

From the above narratives on consultations, while some participants noted that the prospecting company duly consulted them, some participants argued that the consultation exercises organised by the company or its representatives made a mockery of the consultative process, as it was devoid of democratic ideals.

5. Discussion of the key findings

The study noted that while the land is privately owned (mostly by white commercial farmers) in Beaufort West, the South African state exerts its sovereign rights over mineral resources such as uranium. This revealed a ‘single-actor resource ownership model’. This agrees with the principle of ‘eminent domain’ (see Merrill, 1986; Phillipps and Sillah, 2009; Umejesi, 2012). As noted by Umejesi (2012), the use of the eminent domain principle in the acquisition of land and allocation of mining rights in South Africa, and especially in the proposed uranium mining project, reinforces the idea of the ‘supreme state’. According to Hegel, “the state is the general substance, whereof individuals are but accidents” (cited in Chodorov, 1959:19. The statist, Mussolini, had also noted, “everything for the state; nothing outside the state” (cited in Nock, 1935:4).

Also, some scholars argued that the application of expropriative power by the state is imperative in order to curb hold-out which may hinder the state from performing its statutorily functions (see Merrill, 1986). While justifying why the state must use ‘eminent domain’ in land acquisition for development purposes, Merrill (1986:74) argued that without an exercise of ‘eminent domain’ by the states, each landowner would have the power to ‘hold-out’. The researcher deduced that if the South African state fails to use its power of eminent domain in the

proposed mining project in the region, some landowners or farm owners may refuse to sell or release their land for the project, and this may cause a delay in the commencement of the project (see Stoebeck, 1972).

However, some scholars criticised the use of expropriative powers by the state (Serkin, 2014). In the formerly colonised countries, such as South Africa, where the emergent colonial state confronts elements of indigenous and private rights to properties, such as land and mineral resources, the idea of a supreme state with the power to condemn properties anywhere becomes highly controversial. As argued by Gregory (2006), the use of expropriative powers by the state to acquire property of individuals is inherently unjust because it hinders individual liberty and property rights. Serkin (2014) noted that such an exercise is an infringement of the property rights of individuals and communities. Rawls (1972) asserted that every government should invest more in the protection of individual rights, as it is from the notion of individual rights that social justice finds expression.

From the findings, the researcher deduced that consultation exercises were used by the South African government and the prospecting company as a political tool to co-opt and placate the concerned and interested parties and individuals and to prevent criticism of unilateral decisions that had already been made on the proposed mining project. This is another reflection of the ‘hard systems decision-making model’, which alienates other important actors. This type of model is an inherently political process with deeply embedded power structures and does not guarantee a level playing field for other stakeholders⁷ in environmental governance. Most consultation exercises that some participants said they attended were described as lacking substance, and as a smokescreen to create illusions of a democratic process. In most resource-rich communities in South Africa, consultation exercises often fail to promote community empowerment as they are often marred by power inequities and lack of institutional will to share decision-making powers with concerned and interested parties in the community during the consultation processes.

6. Recommendations and conclusion

6.1. Recommendations

Based on the above findings, the study recommends that the whole idea of eminent domain (expropriative power of the state) has to be revisited because it promotes hierarchical hegemony, which reinforces the ‘arrogant’ state’s posture and top-down framework in policy making. In other words, the principle of eminent domain is undemocratic as it emphasises a

‘single-actor ownership’ model, reminiscent of the pre-1994 era (pre-democracy). It was used during the colonial and apartheid era to dispossess lands and resources (gold, diamonds and platinum, among others) belonging to indigenous communities in South Africa. The model of expropriation, as used in colonial and apartheid South Africa, excluded or alienated other actors in the mining and land ownership policy discourse. Thus, post-apartheid South Africa should adopt a new model of ownership and control that would be based on equality and pluralism which are the most critical ingredients of a true democratic society. This implies the adoption of a ‘pluralistic model’ of resource ownership in post-apartheid South Africa.

Also, the study recommends the adoption of a policy of inclusiveness in mining dealings in resource-rich local communities in South Africa. This is necessitated by recurring communities’ resistance against mining

⁷ Some participants argued that most of the consultation exercises were done in a cursory manner just to satisfy the checklist of the mining company. They only created the illusion of a democratic process. The government and the prospecting mining company often use ‘divide and conquer’ techniques during the exercise to pit the community’s members against each other in order to weaken their collective resistance to the mine.

operations in resource-rich local communities in South Africa. For instance, the New Mining Charter, which was published in June 2017, has been challenged by some community-based advocacy groups. Activists argued that communities are excluded from the policy discourse on mining and mineral development. Specifically, the New Mining Charter states that eight percent of the company's shares would be held in a community's trust to be managed by the new Mining Transformation and Development Agency (MTDA). However, the MTDA would be accountable to the Minister, not the community. No explanation of how it would be run or how the Minister would be held accountable is included in the New Charter. Also, the Protection of Informal Land Rights Act should be renewed every year since it promotes community consensus in mineral resource governance. The South African government should make sure that it is actually based on community consensus so that it truly represents community voice in mineral resource management in South Africa. This is critical for achieving 'inclusivity' in mineral resource governance in contemporary South Africa.

6.2. Conclusion

In conclusion, the position of this study on the mineral resource ownership and control question between the state and resource-rich communities sits deeply in the unequal power relations between them. The principle of eminent domain as currently used in the various mineral and mining-related laws empowers the state to expropriate land as though communities do not matter. The hegemonic hierarchical state authority on land and mineral resource ownership stifles deliberations based on equality and pluralism among stakeholders. This state of affairs, this study found, has to be changed. It is against this background that this study suggested a 'soft systems model' based on democratisation as an appropriate policy option in mining and environmental governance (Berg and Lidskog, 2018; Umejesi and Thompson, 2015). Based on a 'soft systems policy model', each discourse would be incorporated in policy-making in order to weaken the dominance of the potentially hegemonic state. Brokering of a compromise is a *sine qua non* in a 'multiple-actor setting', and compromise can be effectively achieved in policy discourse through the adoption of a pluralistic problem-solving model based on 'soft systems' approach.⁸

This is in line with the 'deliberative systems approach' based on deliberative democracy suggested by Berg and Lidskog (2018) who argued that the EIA and SIA of the mining company often exclude the experiences and knowledge systems of the affected parties. They therefore suggested the inclusion of the affected parties or other marginalised stakeholders in the production of EIA and SIA as well as in the negotiation of socio-environmental standards.

This is what they called 'deliberative democracy' and 'democratised science'. According to them, deliberative democracy implies giving 'voices' to all stakeholders in policy discourses, while democratisation of science implies inclusion of all stakeholders in knowledge production (for instance in the production of EIA or SIA). It is argued that while democratisation of knowledge produces a better policy because knowledge informs policy, deliberative democracy gives necessary stability for the knowledge produced.

7. Limitations of the study

It is understandable that errors/mistakes are unavoidable in social research. And personal biases or sentiments cannot be totally prevented in qualitative studies. Sometimes, in the process of immersing himself in the research context, the researcher got carried away. In addition, in the process of interacting with the participants, the researcher got emotional with their narratives. Even, during the analysis stage, the researcher's

personal biases and sentiments crept in. However, the researcher tried everything he could to keep these highlighted biases as low and manageable as possible in this study. The researcher could say that he was largely guided by the principles and ethics of qualitative studies, and this allowed him to maintain, to a large extent, a neutral stance throughout the study. The major limitation of this study is the specificity of the findings. Qualitative findings are context-specific, thus it is difficult to generalise the findings and results to wider populations and other contexts. So transferability of findings across contexts may be difficult and impracticable.

7.1. Practical implications of the study and its significance for future studies

This study has a number of policy relevance. For instance, the conclusion and recommendations of this study could facilitate co-production of knowledge on mineral resource governance in South Africa. The co-production would ensure that views, values and interests of all stakeholders are integrated in mineral resource governance. Also, the study would assist in addressing the controversy in the Section 3(1) of the MPRDA, which emphasizes the power of the state to own and control mineral resources. This needs to be addressed as some corrupt government officials have been abusing it to corporatize the state's mineral wealth. They have been using to advance selfish and corporate interest rather than using it in public interest. The study argues for inclusivity in mineral resource governance in South Africa, and this can be achieved by giving individuals, groups and oil-rich communities and other critical stakeholders some levels of agency in mineral resource governance. Aside mineral resource governance, government may also adopt dynamic, 'deliberative systems approach' and 'argumentative systems' of policy discourse and framing in other areas of governance such as local infrastructural or developmental projects. In policy formulation and implementation, government should always rely on multiple voices as one voice only provides a partial solution to the policy issue. Future studies could look at how the model being suggested could be applied to other areas of governance, such as developmental projects, in South Africa and beyond.

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⁸ Soft systems framework is a type of framework that allows the inclusion of all stakeholders or actors.

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