

# **Implications of incomplete restorative justice in South African land restitution: lessons from the Moletele case**

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## **Abstract**

Since 2005, South Africa's post-apartheid state has opted to impose inclusive business model arrangements between land claimant communities and private sector partners to ensure the "successful" resolution of claims involving prime agricultural land. This approach was deemed compatible to achieve both restorative justice imperatives and capacitation or entrepreneurial objectives. Using the settlement of the Moletele restitution case as reference, this paper argues that these types of arrangements tend to entrench the hegemony of the state's belief in the productivist, large-scale farming model as the most viable approach to rural restitution. These initiatives also calibrate the role of the state, private sector and restitution beneficiaries into configurations that fail to facilitate genuine levels of restorative justice or capacitation, thus fuelling the calls towards more retributive forms of land redistribution.

## **Keywords:**

Limpopo; Moletele; partnerships; restitution; restorative justice

## **Introduction**

Damning commentary about the perceived failure of progress in South African land reform has been acutely prevalent during the run-up to the 2019 elections (Hall and Cousins 2019; Aliber 2019). Frustrations over unmet demands for secure access to land in urban and rural areas thus featured prominently during public hearings convened by the South African parliamentary Constitutional Review Committee during 2018 (de Stage and Cousins 2019). Calls for the expropriation of land without compensation have gained significant traction over the last few years and, by the end of 2018, the South African government signalled its intention to pursue some variation of this policy (Hall 2018). Disagreements persist about the necessity and even desirability of redrafting section 25 of the South African constitution to align with this envisaged policy directive (Hall 2018; Vink and Kirsten 2019). Nonetheless, the search for viable options/models towards the implementation of this approach has commenced and the current constitutional review process creates a valuable juncture for cross-sectional conversations and reflection about the way forward for South African land reform.

As part of an exercise in reflection and foresight, it is important to start the discussion

acknowledging the usual suspects beleaguering progress in land reform to date: institutional challenges, budgetary constraints, overly technical business plans, capacity constraints, poor post-settlement support, elite capture and, of course, poor monitoring and evaluation (Cousins 2016). In this instance, it is also vital to reflect on the hegemony of narratives in land reform and the feasibility of continuing or deviating from these narratives in future policy directives. To have a real meaningful discussion, needs to be acknowledged that an expropriation without compensation approach would only ensure new avenues for the acquisition of, compensation for and access to land parcels (Aliber 2019). After acquiring the land, the persistence of flawed narratives about who should receive the land, what to do with the land and the desirability of specific land uses and users on the land could thus still result in undesirable outcomes. This paper proposes that increasingly salient calls towards retributive forms of redistribution and questions about the way forward for land reform should prompt us to critically engage with at least two of the most problematic narratives in land reform over the last 24 years: the narrative of the restorative potential of land restitution and that of large-scale commercial farming.

To engage with the challenging nature of these narratives I use the dynamics of inclusive business models in South African land reform as an entry point. I start the paper detailing the different structures and compositions of inclusive business models as evidenced in one specific land restitution case, the Moletele case. This provides a context-specific snapshot of how the dominant narratives identified above underlie these models (inclusive business model/joint venture) to resolving the claim. The paper then moves on to highlight ambiguities of outcomes reached in the Moletele case with a focus on the calibrated roles the state, the beneficiaries and the private sector played in these arrangements. The paper concludes with some thoughts about the extent to which we can talk about restorative justice in the case of land restitution claims such as the Moletele one.

From the analysis conducted in this paper, I argue that the reparative goal of restitution becomes particularly challenging in contexts where inclusive business models are used to resolve rural restitution claims. Despite being portrayed as a win-win-scenario, these arrangements calibrate the roles of the state, the beneficiaries and the business partners into a configuration that meets only the requirements of large-scale commercial farming interests, often to the detriment of other land uses and/or users, thus other mechanisms that could potentially lead to reparative justice. Using the outcomes of the Moletele land restitution claim I demonstrate the difficulties of achieving synergies between restorative justice and capacitation objectives in South African land reform.

### ***Restorative justice as a conceptual lens***

Daly (2001) warns that a precise definition of restorative justice is difficult but states that a general definition would refer to instances where those with a stake in a crime (typically a victim, an offender and each of their supporters) come together to discuss the offence and its impact, and decide what to do to “repair the harm” to the victim and perhaps also to a larger collective. The restorative justice imperative of South African land reform is encapsulated in the right to restitution as it is enshrined in section 25(7) of the 1996 constitution, which provides that “a person or community dispossessed of property after June 19, 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.”

Walker (2012, 813) asserts “land restitution is intended to right the wrongs of the past: to redress unjust dispossession and to heal.” Land restitution therefore aims to set right the injustices and violations associated with the process of land dispossession. Restitution promotes the principles of restoration and justice in confronting the difficulties of determining ownership, defining legitimate claimants and establishing evidence for claims (Fay and James 2009). Hall (2004, 813) agrees that restitution was conceived as a form of restorative justice but points out

“as the programme progressed, questions emerged about whether it was possible to ‘turn back the clock’ and re-establish scattered communities.” She warns that the current needs for development and improvement of the livelihoods of impoverished communities do not necessarily align with restitution imperatives, despite the strong political resonance of historical claims to land (Hall 2004). As a result, the land claims process has highlighted tensions between addressing historical claims and responding to current priorities (Beyers and Fay 2015).

Du Plessis (2018) suggests that the current conversation about compensation without expropriation is not actually about compensation, and perhaps not even about land. She argues that calls for expropriation without compensation are much more about missed discussions on reparations, incomplete restorative justice and cohesion. Linked to these observations, Atuahene (2014) introduces the idea of incomplete restorative justice in the context of settling urban land claims. She argues that the use of cash as compensation has left beneficiaries with a sense of “incompleteness” as this form of compensation fails to restore the injustices of being dispossessed while the monetary compensation does little to improve the overall well-being of beneficiaries. Beyers and Fay (2015) detail the increasing tendencies of beneficiaries to use litigation as a form of expressing their discontent with legal entities established in terms of restitution. They view this discontent to result from the incompleteness of transitional justice, where legal entities are seen as proxies for discontent with a transitional state that fails to fully compensate beneficiaries for the injustices they had to endure (Beyers and Fay 2015). In the context of urban restitution, the sense of an incompleteness in terms of restorative justice is therefore already evident.

By suggesting the idea of an “incomplete restorative justice” in the context of South African land reform, one might thus assume that the instrument (the land restitution initiative) is effectively calibrated to deliver the stated aim and objectives of a complete restorative land restitution, which is problematic for some observers. Also, for du Toit (2013), any version of restorative justice in the South African land reform programme is doubtful. He refers to the burden of restorative justice concerns in land restitution as “reparative fantasies” and warns that a pre-occupation with these types of concerns detracts from the more urgent need to focus on present-day distributive justice concerns, which should be at the centre of land reform initiatives.

In the context of criminal law, Daly (2001) is equally sceptical about restorative justice interventions and introduces what she calls “mythical truths” about restorative justice. McCold (2000) distinguishes between practices deemed either fully, mostly or partly restorative whilst also highlighting the illusionary nature of this type of justice in a range of policy and legal contexts. Shearing (2001) encourages an interpretation of restorative justice where we need to develop and agree upon a composite of what this type of justice should look like exactly because of its illusionary nature. He likens a restorative justice composite to the type of composite provided by a building contractor to prospective homeowners. What the composite gives and what the building contractor offers is regarded as a vision of the possibility of the “perfect house.” For Shearing, whether the house can ever be built is less important than imagining its possibility and its perfection and striving towards the illusion, which will drive us towards better decision making. The conceptual lens I adopt for this analysis is, therefore, one that acknowledges that complete restorative justice will probably remain an illusion in the context of the socio-economic and capitalist driven South African landscape/reality. However, this fact should not detract us from actively engaging and deliberating about how land restitution could be structured/implemented to achieve a composite version of “complete” reparation for the injustices committed by past racially-based land dispossession in the country. The illusionary nature of restorative justice thus implies that all land reform-related outcomes would probably represent some version of an incomplete reparative project.

### ***Inclusive business models in South African land restitution***

The move towards promoting private sector involvement in land reform clearly reflects “dominant development thinking,” not only in Southern Africa but also globally (Brinkerhoff 2002). Private sector involvement in projects is thus increasingly seen as a way of meeting social justice requirements while at the same time maintaining productivity or profit levels (19).

In South Africa, the Department of Rural Development and Land Reform, under the leadership of Minister Dadiza, made the decision in 2004 to promote private sector involvement in land restitution projects. To this end strategic partnership models were introduced from 2005 to resolve land restitution projects involving high-value commercial farm land. Strategic partnerships thus became prominent in large restitution settlements of high-value land, particularly in Limpopo province where most claims are rural and involve high-value commercial farms (Lahiff 2008). The establishment of strategic partnerships in restitution signalled an important policy shift away from one allowing land access/occupation by claimants, towards one ensuring the maintenance of agricultural productivity on reclaimed land (Derman, Lahiff, and Sjaastad 2006). Successful claimant communities were required to establish communal property associations or trusts that would then enter into joint ventures with private entrepreneurs; these would invest working capital into an operating company that takes control of farm management decisions for ten years or more, with the option of renewal for a further period. Stipulations for extending the contracted period were not clearly defined by the Department of Rural Development and Land Reform and, in most instances, agreements have been extended based on the nature of the good faith relationships between beneficiary owners and agricultural partners.

Rather than promoting the direct return of land to claimants, the South African government opted for a joint venture model whereby farm management companies are entrusted with post-restitution responsibilities in terms of building skills, competencies and institutional capacity (Chamberlain and Anseeuw 2018). In terms of the partnership agreements, post-settlement support functions, which were previously linked to the state, were now explicitly assigned to newly recruited agribusiness partners. The business partners, in turn, seemed happy to accept this newly calibrated role if through it they could gain access to valuable government funding channelled through the restitution discretionary grant.

Some scholars have highlighted how joint partnerships provide land reform beneficiaries with access to land and capital, as well as the expertise of predominantly white commercial farmers and/or companies (Lahiff 2008). Benefits to the claimant communities also include rental for use of their land, a share of profits, preferential employment, training opportunities and the promise that they will receive profitable and functioning farms at the termination of the lease agreements (Lahiff, Davis, and Manenzhe 2012). The strategic partners, in turn, would benefit, through the payment of a management fee, from the profits of the company, and would hold exclusive or near exclusive control of the upstream and downstream activities, whose potential benefits may well exceed that of the operating company (Lahiff 2008).

Researchers have also cautioned, however, that these ventures may just lead to new forms of exploitation, given differential access to resources, authorities and unequal power relations between the partners (Spierenburg et al. 2012). According to Derman and his colleagues (2006), the model raises many questions about the direction of the restitution programme, the realisation of benefits amongst claimants and the extent to which the original objectives of the South African land reform programme are being achieved. The model also raises questions about the capacity of the state to plan and implement complex commercial deals whilst providing the necessary support to claimants and their commercial partners.

The collapse of a number of these strategic partnership initiatives has resulted in a shift towards what some communities call “community private partnerships,” as in the case of Moletele, or “management contracts,” as in the case of Levubu in Limpopo province (Manenzhe and Lahiff 2007; Lahiff, Davis, and Manenzhe 2012). Community private partnerships differ fundamentally

from strategic partnerships because there is no need to establish an operating company and communities are not obliged to enter into shareholding agreements with their agribusiness partners. Instead, the partners pay a rental for the use of the land and commit to preferential employment of community members, skills development targets and some profit sharing.

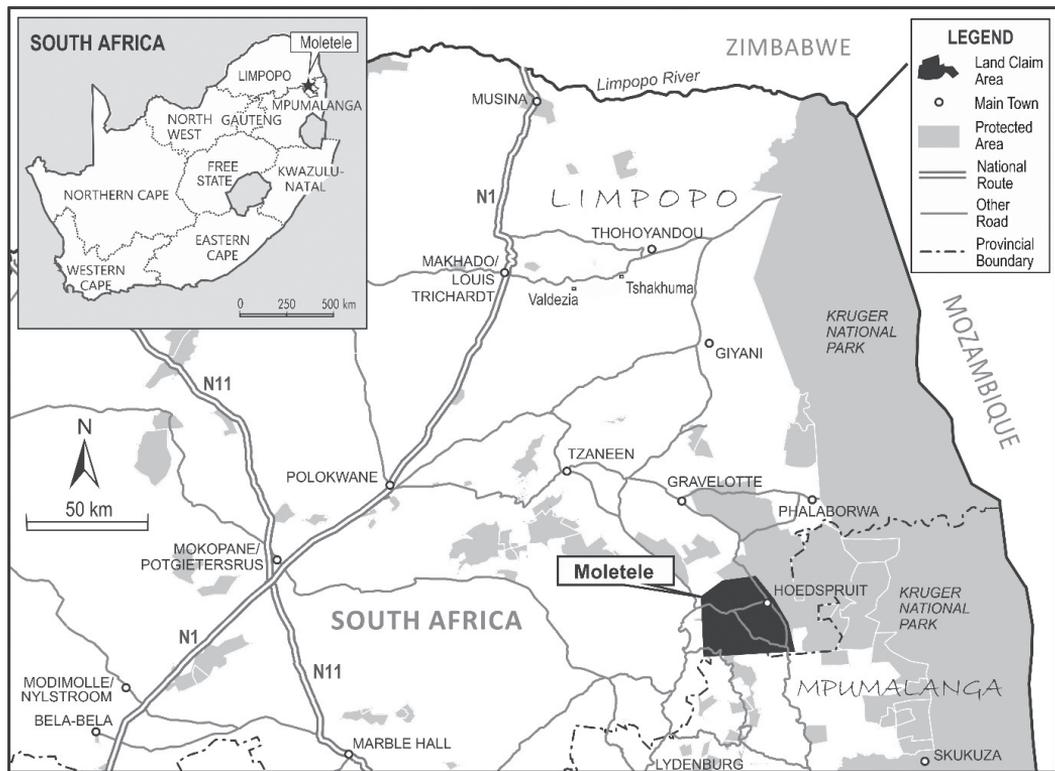
Greenberg (2009) used the Levubu case study to launch a thought-provoking critique of joint venture arrangements in the land reform context. Asking “in what way is this model a success?,” he argued that “not only are beneficiaries prohibited from returning to their land to live, but the commercial production which the [very] model was meant to protect is also under threat.” He concluded that former owners and their management companies continued to make profits whilst controlling information on income and expenditure. For Greenberg (2009), the conditions of the so-called beneficiaries remained much as they had been: evicted from their land, with meagre incomes from seasonal or temporary sources.

In a more recent study, Chamberlain and Anseeuw (2018) examined the outcomes of 14 different inclusive model arrangements in South Africa. They found that these arrangements seem viable on a project level, where productive capacities have been maintained, but they too question the extent of benefits transmitted back to beneficiaries who often ended up being left on the margins of decision-making and benefit capture. Moreover, given the continued commitment of the South African government to a notion of viability defined in terms of the large-scale commercial farming model (Aliber and Cousins 2013), partnership arrangements also need to be understood in the context of the value chains of the commodity to be produced on the newly restituted land. Partnerships are often seen as an appropriate vehicle for the insertion of rural/marginalised communities into existing value chains (UNDP 2010). Vermeulen and Cotula (2010), however, caution that the nature of the value chain has a significant bearing on the level of “success” experienced in terms of the partnership arrangements.

### **The Moletele restitution case**

The Moletele community is a large group of mainly Sepedi-speaking people originating from the South African lowveld. The community has claimed a vast area of land from which it was removed between the 1920s and the 1970s. According to the validation report issued by the Land Claims Commission (South Africa 2013), the Moletele people were dispossessed of their rights in land in terms of the racially discriminatory law and practices of the Native Land Act (Act 27 of 1913) that allowed white people the right to own the land on which the Moletele already had customary rights. There is proof that the Moletele people were evicted from farms in the Hoedspruit area of the lowveld in terms of the provisions of the Native Trust Land Act (Act 18 of 1936), whilst others were removed from farms in terms of the Group Areas Act of 1950. Finally, the construction of the Blyde River dam was used to remove people from what is currently known as the Swadini/Mariepskop area.

Even before 1994, leaders of the community made various efforts to regain their land, culminating in the lodgement of numerous claims under the Restitution of Land Rights Act between 1995 and 1998. In 2003 these claims were eventually merged into the single Moletele Community Land Claim. The claim involved rural land predominantly situated around the small town of Hoedspruit, which is the centre of a large subtropical fruit economy that is supplied with irrigation water from the Blyde River (see Figure 1). Land that is not under cultivation is generally used for game farming, cattle ranching, hunting and wildlife tourism. The Commission on Restitution of Land Rights accepted the validity of the claim in 2004 and from 2007 a total of 7 652 ha of prime agricultural land was restored to 1 615 households involving 11 367 beneficiaries organised under the Moletele Communal Property Association (MCPA). Claims were initially lodged on 28 farms, with 14 more added as part of the investigation process that followed, to a total of 78 791 hectares. To date, merely 10% of the land (7 652 hectares) has actually been returned to the community. The land transferred back to the Moletele between 2007 and 2018 has been grouped into four



**Figure 1:** Overview of the study area. Map by Ingrid Booyesen, 2011.

blocks, and the total cost of land acquisition thus far is estimated at R 225 million (*Hoedspruit Herald*, August 3, 2018). To enable the claimant communities to operate on the newly acquired farms, the government has made a number of grants available. In the case of the Moletele land, the government committed to pay R 35.2 million as a development assistance grant, R 4.8 million as the restitution development grant and R 2.3 million in the form of a settlement planning grant.<sup>1</sup>

### Methodology

The research methods used for this study included field observations in the Moletele community, from 2009 up until 2016, and a document analysis of the MCPA's financial statements, annual reports and contractual partnership agreements. The research process also involved open-ended semi-structured interviews with a wide range of key informants, which included the relevant strategic partners (or their designated representatives) and members from local businesses, agricultural associations and government entities.<sup>2</sup>

For the research, 150 closed-ended livelihood surveys were conducted with conveniently sampled Moletele members to gain insights into livelihood-related dynamics in the area. Of particular importance for my discussion in this paper is the analysis of 80 semi-structured and open-ended interviews I conducted with a range of Moletele community members at their homesteads, purposively selected on the basis of demographic characteristics. The open-ended questionnaires were designed to gain an understanding of respondents' expectations and awareness of the Moletele claim. During the interview process I engaged with respondents about the types of benefits they anticipated with the settling of the claim (trying to gauge their expectations about the nature of reparation they anticipated) compared to what they eventually received (their level of contentment, ambivalence, disillusionment or disappointment). The idea with the questionnaire

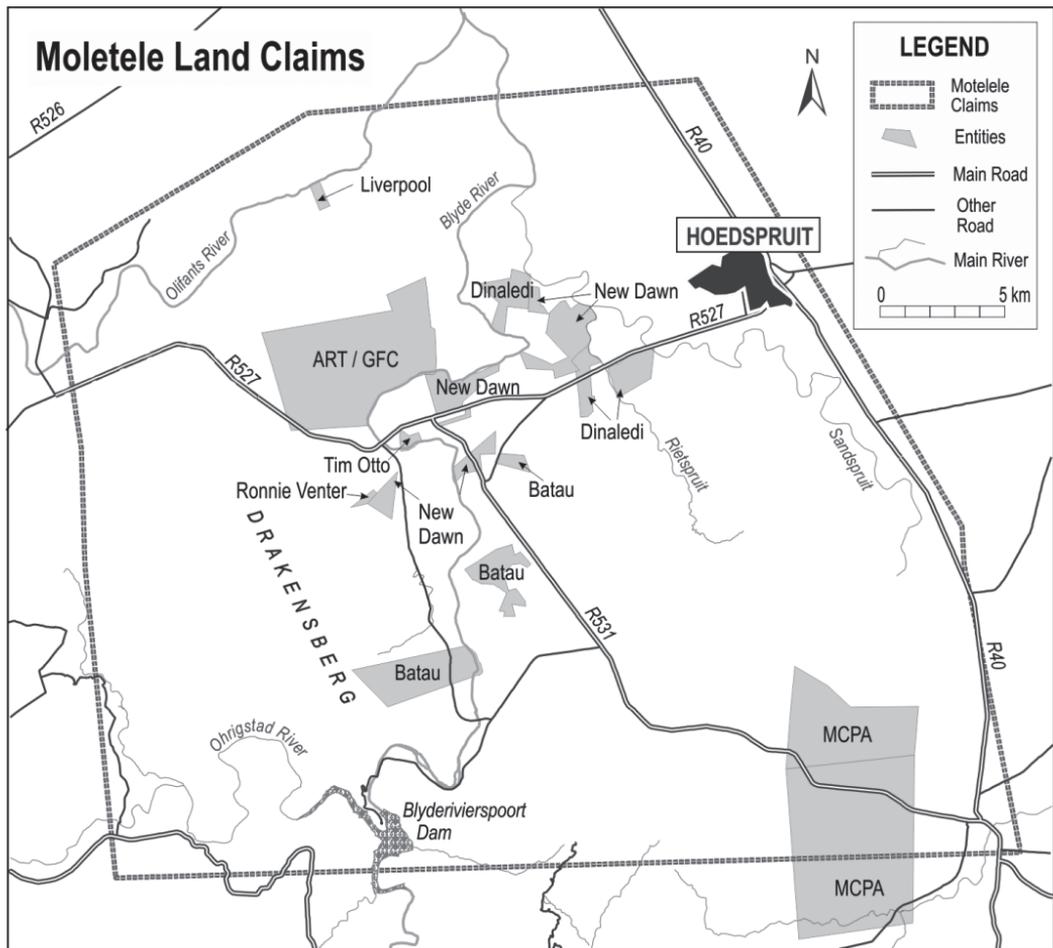
was also to gauge the level of respondents' willingness to move back to the restituted land and their general aspirations about farming.

I also encountered two distinct groupings of people (representing between 120 and 150 Moletele members) who denied the legitimacy of the MCPA. These two Moletele sub-groupings conducted separate meetings twice a month to articulate their visions and expectations about the settlement of the remainder of the land claim. With only 10% of the actual land under claim having been transferred back to the Moletele community to date, these groupings conducted meetings to discuss their aspirations about the types of activities/restitutionary measures they envisaged for the remaining parcels of land, which have been successfully claimed and validated but not yet transferred back to them. They formed a crucial part of this research process as they articulated a clear position of opposition towards the MCPA. Selecting their own leadership structure, they negotiated on their own behalf with the Department of Rural Development and Land Reform. Between 2011 and 2014, I conducted four focus group interviews with members from both these groupings.

I framed my research design as an exploratory study with an ethnographic, case study-based approach. After making written submissions and attending introductory meetings with representatives from the local council authority, the traditional leadership authority and the MCPA, I was granted permission by all three institutions to proceed with conducting interviews in the area. Before commencing with each interview, respondents were asked for their consent and assured of their anonymity, and the voluntary nature of their participation in the research was explained. The Moletele traditional leadership authority also suggested individuals in the area to act as translators during the interview process. As with all research endeavours, some challenges emerged during my research encounters. Despite spending prolonged periods in the area, my positionality as an outsider remained undeniable and it is very possible that a great deal of the internal dynamics within the community remained hidden from me. The challenging nature of trying to gauge perspectives about the claim, while my very presence in the area ignited speculation and probably inflated interest amongst the respondents, also represents a potential bias I need to acknowledge in this paper. I tried to minimise biases and other methodological challenges by triangulating my research approach, but ultimately my findings still represent an abstracted and incomplete version of the reality I encountered.

### ***Overview of partnership initiatives on Moletele land***

In accordance with the policy shift in 2005, the stated commitment towards maintaining the agricultural integrity of restituted land resulted in the introduction of joint ventures between communities who lodged a successful claim and established commercial farmers or agribusiness partners (DLA 2008). In terms of the joint venture/inclusive business model arrangements, the community would own the land and the strategic partner would contribute skills and capital towards ensuring continued production on the land. The original vision to set up joint ventures on Moletele land came from the Department of Rural Development and Land Reform that had concerns about the scale of the proposed land transfer and the ability of the community to cope with continued commercial production on the newly transferred land (DLA 2008). The department thus considered shared equity with a partner with experience in commercial fruit farming as a pre-requisite for ensuring the successful operation of the newly acquired farms (Lahiff, Davis, and Manenzhe 2012). After a tender and screening process three groups of local farm owners (or former owners) emerged as strategic partners for the MCPA. At the end of the negotiation processes in 2007, shareholding and lease agreements, as well as management contracts, were signed between the MCPA and strategic partners to form three proprietary companies: New Dawn Farming Enterprise; Dinaledi Farming Enterprise; and Batau Farming Enterprise. With the exception of Scotia farm, which was to be occupied and managed by the MCPA, the land parcels transferred between 2007 and 2008 were grouped into blocks to be managed by the three operating companies (see Figure 2).



**Figure 2:** The consolidated farming units of the Moletele partnerships. Map by Ingrid Booysen, 2011.

Three important issues should be noted at this juncture. First, the Batau partnership collapsed soon after inception. In 2009 the community then signed a community private partnership (CPP) agreement with a different agribusiness partner, to manage the land parcels initially allocated to the Batau strategic partners. Second, in 2010 a CPP agreement was signed for the Richmond farm, which had been transferred to the community in 2009. Thus, two strategic partnerships and two CPP agreements remain on the Moletele land. Third, the strategic partners on Moletele land since 2007 have remained the same, but since 2010 the agribusiness partners involved in the CPPs with the Moletele have been replaced several times.

For each of the strategic partnership agreements an operating company was established with the MCPA and the relevant strategic partners as the shareholders. The operating company then entered into a lease agreement with the MCPA, which was determined at an agreed market-related rental cost. The signed stipulations specified that the MCPA would act on behalf of the claimant community in forming part of the operating companies with the strategic partner. In terms of these arrangements, the allocation of shares varied, but the claimant community in all instances was the majority shareholder. As part of the strategic partnership contract agreement, skills were to be transferred to the MCPA and farm workers. It was also agreed that the shareholder proportions of the companies would depend on the equity contributions of each of the shareholders, thus what

could be considered a conventional partnership where risks, investment and dividends would be allocated in terms of each partner's share in the company.

Stipulated in all of the Moletele shareholders' agreements is the fact that dividends declared by the operating company would be paid to the shareholders proportional to their shareholding contributions. Claimant communities should also receive rental payments for the use of their land from the operating company. The shareholders' agreements of the remaining strategic partnerships indicate that the rent for the land is set at 1.25% of the land purchase price (transfer value of the land) and is supposed to be paid on an annual, quarterly and even monthly basis. The claimants and the strategic partners thus own the operating companies jointly, but the day-to-day operations and management of each company vests in the hands of the strategic partner. For this responsibility, the strategic partner then charges the operating company administrative fees. In terms of the strategic partner shareholders' agreements, this fee plus the salaries of key managers provided by the strategic partner should not exceed 8% of the turnover of these operating companies.

In April 2009, the Richmond farm, as a full portion, was transferred to the Moletele community. At the time of transfer, the 2 434 ha farm was valued at R 63 million. On June 22, 2010, a lease agreement was signed with Global Citrus Frontier, based on a business model negotiated along the line of a CPP.<sup>3</sup> This was a conscious decision against the shareholder agreements previously entered into. The then chairperson of the MCPA, interviewed in June 2011, explained that the MCPA, on behalf of the community,

decided to sign a community private partnership agreement due to the general unhappiness amongst community about the lack of benefits transmitted back to them and the limited decision-making afforded to them in terms of strategic partnership arrangements. ...

The new CPP model shifts the focus to signing an agreement with a private partner with the ability to farm profitably, provide for the development of the farms, and train prospective MCPA members in farming whilst no additional funding is required from the restitution community [similar to a management contract].

### **Reflecting on the outcomes of the Moletele partnerships**

Currently, there are two strategic partnership initiatives still operative on Moletele land: New Dawn (a partnership with Strategic Farm Management) and Dinaledi (with the Boyes Group). In addition, there are also two CPPs in effect, on the Richmond farm and on the former Batau farm. The strategic partnerships were conceptualised as conventional partnerships where joint ventures were established between the MCPA and different strategic partners in the form of operating companies. It was anticipated that the state, on behalf of the Moletele as the majority shareholder, would make the largest investment in the company in the form of restitution discretionary grants. This payment was supposed to be matched by contributions from the respective strategic partners into the accounts of the operating companies. Problems emerged when the envisaged grant payments from the state failed to materialise due to budgetary constraints, whilst contributions from the strategic partner to ensure production activities on the land continued (Davis 2014). The MCPA as majority shareholder was thus unable to match the contributions of its business partner with devastating impacts on the envisaged benefit streams to the community. Moreover, land rentals that were supposed to be paid by the operating company into the MCPA account have been intermittent and partial.<sup>4</sup> Since 2015 land rental incomes from the strategic partners have been more regular.<sup>5</sup> The management fees that were supposed to be paid to strategic partners are also slowly starting to materialise. Some dividend payments have been made to Moletele members but, due to confusion with updated beneficiary lists and the sheer size of the community, a general sense of unhappiness still persist about the "meagre amounts" that have been declared and paid out to households. The annual reports of the MCPA for 2014 and 2016 make reference to a once-off payment of R 1 400 per household for the 2012–2016 period.

The envisaged benefits in terms of employment opportunities for Moletele people turned out to be overestimated. As in the case of the broader citrus industry, an informalisation or casualisation of labour (Barrientos 2000) is also evident in the export-oriented citrus production activities taking place on Moletele land. The lack of far-reaching formal employment opportunities, in tandem with the long distances that community members would need to commute if they were employed on these farms, has invariably limited the number and types of employment opportunities available to Moletele members. According to the strategic partners interviewed between 2011 and 2016, all these facts have translated into a scenario where less than 30% of the employees are from the Moletele community (see Table 1).

The flow of benefits from the strategic partnerships to claimants has been limited to date, causing a great deal of unhappiness amongst Moletele members.<sup>6</sup> During an interview, one strategic partner also acknowledged that “the community might not have benefitted to the extent originally envisaged with these arrangements.”<sup>7</sup> In his view, benefits transmitted back to the community have been limited because restitution communities are being inserted into agricultural value chains as producers, the most profit-constrained node within the value chain. The strategic partners also blame the model for imposing such a high level of dependence on state funding whilst most of the risks of the farming activities on the land are being carried by them, the strategic partners. Based on my analysis of these models, findings to date thus suggest that the design of the strategic partnership model ultimately culminated in an overreliance on external (state) funding, which has created a degree of vulnerability for both the strategic partners and the community. The design of the model also seemingly casts the strategic partners and communities into adversarial roles where each entity apparently needs to compete for access to state resources.

In response to the poor performance of the strategic partnership arrangements, the Moletele community then rather decided to enter into CPP agreements. A CPP arrangement is in effect a management contract between the community and an agribusiness partner who is able to shoulder all the risks and investments required for production and export on the land, thus nullifying the community’s reliance on funding from the state. Since these partners do not own the land, they cannot use it as collateral to source additional funding, which implied that the new partners recruited for these arrangements were increasingly larger agribusiness entities with the necessary collateral to partner up with a rural community.

Where the strategic partnership configuration required significant state investment as proxy for the community’s contribution into the partnership arrangement, the CPP arrangement reduces the dependence of the restitution community on state funds. The interest of the state to break the reliance of strategic partnership initiatives’ on state funding by providing the restitution

**Table 1:** Summary of production and employment outcomes on Moletele land. Source: MCPA Annual General Meeting Report for 2014.

Joint Venture Company	Total ha managed	Current ha under production	Production	Employment created
New Dawn Farming Enterprise	1019 ha	405 ha	Citrus, mango, guava, and paw-paw	123 permanent and 390 seasonal
Dinaledi Farming Enterprise	686 ha	355 ha	Lemons, grapefruit, and Valencia oranges	887 permanent and 350 seasonal
Batau Farming Enterprise	855 ha	157 ha	Mango, citrus, litchi and vegetables	72 (permanent and seasonal)
Richmond Estate	2434 ha	590 ha	Grapefruit, Valencia and mango	135 permanent and 440 seasonal

communities with better resourced partners thus clearly converged with agribusinesses looking for opportunities to expand, consolidate and integrate their production activities on prime commercial land that happens to be owned by restitution communities. The ability of agribusinesses to “hop” in and benefit from the most productive parcels of land in the country without the remotest concern for reinvesting in the capacities of the rural community that owns the land thus allows some version of the dualism in the inherited agrarian structure to persist.

### **Expectations articulated**

The analysis of the 80 semi-structured and open-ended interviews with Moletele community members revealed the following key trends about the nature of expectations and disillusionment with the outcomes of the claim. Of the men over 60, the majority (20 of 25, or 80%) indicated that they would have preferred to move back on to their land. Two felt the need to “reconnect with their ancestors and their heritage” and complained that the partnership model did not make provision for this concern. From the younger female respondents, more than 50% (15 of 25) queried why small scale farming production was not allowed, whilst the majority of women older than 60 (20 of 25, or 80%) considered the lack of financial compensation as problematic. The 5 young males aged between 25 and 29 predominantly raised concerns about the lack of options available for them to become involved in commercial farming without a strategic partner. They felt that the partnership failed to recognise their desires to engage with commercial farming outside of partnership agreements. From the interviews conducted it is clear that many Moletele members imagined other forms of land use as part of reparative justice rather than the current large-scale commercial farming practices, leaving them mostly disillusioned.

All of the older male respondents interviewed maintained that there should be enough land for both commercial and community-managed farming activities. For example, 20 of these respondents highlighted the need for more land to engage specifically in cattle farming. They did not view commercial farming production and community-organised cattle farming activities as mutually exclusive. A 70-year-old Buffelshoek resident stated:

Cattle farming is a common practice in our community. Members can engage profitably in cattle farming without the help of a commercial partner. Why should all the Moletele land be used for commercial farming? We will always need a commercial partner. ... But cattle farming we can do on our own and we can be profitable on our own.

Indeed, to these older men the initiative at the Moletele-owned Scotia farm, on to which some Moletele beneficiaries were allowed to move their cattle, was proof of this sentiment. They all insisted, however, that the procedure for members to gain access to the land on Scotia for cattle grazing should be “opened up” as not everyone knew about it. Indeed, many seemed inclined to believe that only Moletele members with close linkages to the *kgoshi* [chief] could gain access to this land. One of the leaders of the dissident groups shared a similar perspective:

Right at the start of this process, we were very clear about what we wanted to see on the land. We told them, we want to move back on to the land. Even while production is happening! Now we just hear about some people who have been allowed to move their cattle on to Scotia farm. We hear about some who have received payments. But us, the rightful beneficiaries of the land, are not receiving anything, whilst those so-called partners and community members with linkages and connections are benefitting.<sup>8</sup>

### **Discussion**

A wealth of literature is available documenting the implications of the hegemony of large-scale commercial farming narratives in the South African land restitution context (see Fay and James 2009; Hall 2012; Walker 2012; Aliber and Cousins 2013; Beyers and Fay 2015; Ramutsindela, Davis, and Sinthumule 2016; Hall and Kepe 2017). Moreover, Walker (2005), Hall (2012) and du Toit (2013) express explicit concern about the burden imposed on the land restitution programme by seeing it as a reparative or restorative project. The inclusive business models espoused to

resolve rural restitution claims adopted both of these narratives. Outcomes of the Moletele partnerships to date highlight the problematic implications of adopting these narratives.

Just as in the cases examined by Chamberlain and Ansneeuw (2018), production on Moletele land is continuing, but there is increasing tension between the strategic partners and the MCPA regarding the flow of benefits and the long-term prospects of continuing the partnership. In circumstances where inclusive business models were imposed on communities to ensure the successful resolution of restitution cases, the state has invested considerable funds towards purchasing the land on behalf of the restitution community and promised even more funding as the communities' contribution in the partnership. The design of the partnership thus resulted in a considerable dependence of the community on the state to sustain the initiative, translating into the substantial role of the state. As in the case of the Levubu partnerships (Manenzhe and Lahiff 2007), when the different divisions of the state failed to reach an agreement about the need for additional funds, private/agribusiness partners were expected to "partner up" with communities and fulfil post-settlement support functions that were initially the function of the state (Lahiff, Davis, and Manenzhe 2012). Ultimately, the agricultural integrity of production on Moletele land has been kept intact and in some instances has even expanded (Davis 2014), thus serving the interests of large-scale commercial agriculture.

Insofar as the reparative outcomes from the perspective of the intended beneficiaries is concerned, the evaluation of the project's success is a bit more challenging. In alignment with Greenberg's (2009) observations on the Levubu restitution case, findings from the Moletele case also raise questions about the transformative potential of this model. Results from my analysis of the Moletele study suggest that the reparative outcomes of the partnership is questionable. For the majority of the Moletele, conditions since the transfer of the land have remained predominantly the same. The analysis of 150 livelihood-based questionnaires revealed a community in which the majority of the households were still dependent on urban remittances and social grants as their main income sources (Davis 2014). For the most part, Moletele members also uttered a sense of disillusionment with the slow progress in settling the claim and many of them felt that benefits from the partnership initiatives had not really been transmitted back to them. This finding thus resonates with Daly's (2001) concern about the mythical nature of restorative justice outcomes, which is assumed to result in major changes in the lives of those impacted by the injustice. By implication, the incompleteness of land restitution as a restorative justice attempt finds expression in the high level of disillusionment expressed by the Moletele with the settling of the claim and in the fact that conditions on the land and for the beneficiaries has remained the same despite the transfer of the land back to its original owners.

Outcomes in a partnership approach to restitution is therefore ambiguous. On the one hand, in alignment with restorative justice imperatives framed purely in terms of ownership dynamics, large tracts of land can be transferred back to the rightful owners of the land (restitution communities). On the other hand, the lack of financial support and structural constraints imposed by the partnership approach can result in very little monetary benefits being transmitted back to communities, whilst the latter were also unable to move on to the restituted land for small-scale productive purposes. Accepting the fact that probably all restitution outcomes would resemble some form of an incomplete restorative justice, the inclusive business model approach, however, represents a distinct form of incomplete restorative justice because communities are not allowed to do three things: (1) move on to the land; (2) use or subdivide unused or "open" land for other small-scale productive purposes; and (3) take full effective control of productive activities on their land. In these contexts, the mythical (Daly 2001), fantastical (du Toit 2013) and incomplete nature of restorative justice in the context of rural restitution in South Africa becomes particularly evident.

## Conclusion

Findings from the study, as captured from the vantage points of the different actors involved in this process, reveal outcomes of a state almost at odds with itself. The state anticipated that communities would become self-sufficient, functioning entrepreneurs that would be able to negotiate with agribusiness partners on equal footing. Yet, the very same state also allowed communal land-holding institutions (established to facilitate these arrangements) to be tied to a structural configuration where they were left with very little expertise or autonomy. Impoverished community structures were expected to function and compete in a highly financialised agricultural environment with very little support from state institutions, who simply assumed that agribusiness partners would adopt a patriarchal role of support. To exacerbate an already troubling partnership structure, money initially promised by the state to facilitate capacitation of communal land holding institutions failed to materialise and agribusiness partners were expected to carry even more of the risks and responsibilities assumed within these partnership structures.

Findings from the analyses to date thus raise questions about the potential for these types of partnership arrangements to achieve acceptable levels of restorative justice imperatives. Moreover, the entrepreneurial/capacitation potential of these types of arrangements seems equally questionable within the current productivist, market-orientated and liberalised South African landscape. For me, findings from the study also suggest an incomplete restorative justice frame: land ownership has been transferred to the nominal owners of the land, but the actual benefits from the land are being captured by other circuits of capital, leaving restitution communities with tremendous discontent and a sense of an incomplete restoration.

Despite the high expectations generated by the partnership approach, inclusive business models can, thus, leave a distinct sense of incomplete restoration amongst beneficiaries. These feelings could fuel retributive forms of land occupation by the very beneficiaries the state might assume they have already dealt with. A careful revisit of the dominant narratives and outcomes of these cases and models is therefore urgently required to guide the way forward for South African land restitution.

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## Notes

1. MCPA Annual General Meeting Report for 2014. (All MCPA documentation, including the annual reports referenced here, is held at the MCPA office, Scotia Farm, Hoedspruit). At the time of writing, the development assistance grant of R 35.2 million had not been paid.
2. The interviewees included a representative from the Citrus Growers Association in Hoedspruit; representatives from the Business Trust's Maruleng and Bushbuckridge Economic Development Initiative (MABEDI, from 2014 the Vumelana Trust) who were tasked with capacity building functions tailored towards the needs of the new landowning community; and state officials from the Provincial Department of Rural Development and Land Reform, the Limpopo Provincial Department of Agriculture, and the Limpopo Regional Land Claims Commissions office.
3. MCPA Annual General Meeting Report for 2010.
4. Interview with MABEDI representatives; MCPA annual general meeting reports for 2014 and 2016.
5. Interview with new MCPA chairperson, May 2015.
6. MCPA annual general meeting reports for 2014 and 2016.
7. Interview with a strategic farm management director, July 2012.
8. Interview with leader of one of the dissident groups, November 6, 2011, Buffelshoek.

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