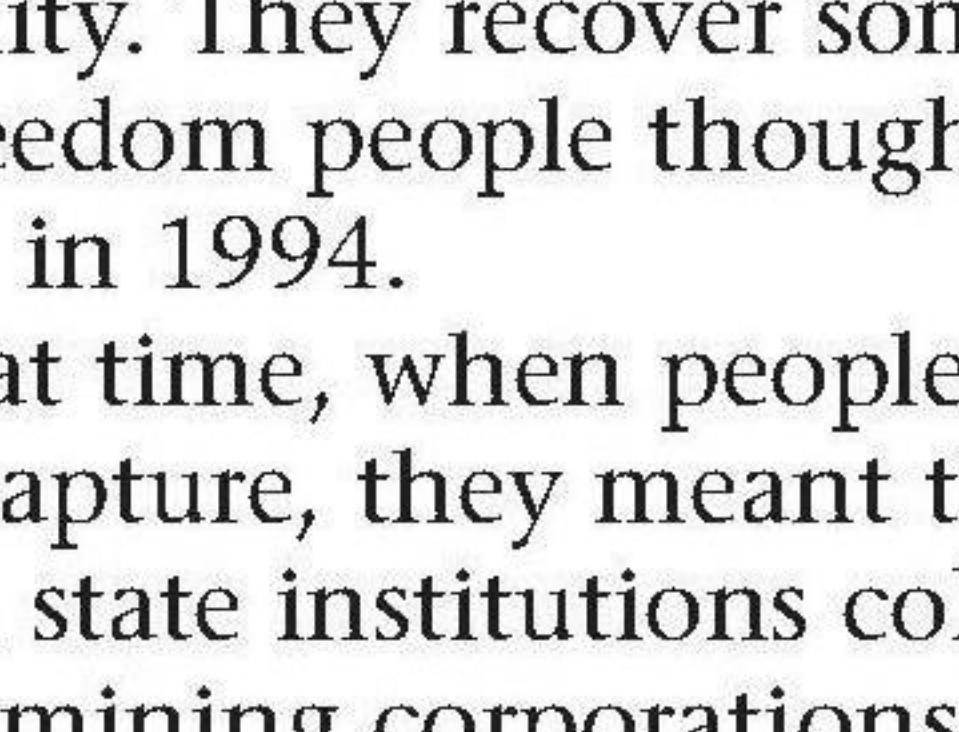


COMMENT

VICTORY FOR PEOPLE'S RIGHT TO INFORMATION

DAVID HALLOWES



THE Umgungundlovu community in the Eastern Cape is taking on the Department of Mineral Resources and Energy (DMRE) and winning.

Last month it won the right for all affected communities to see corporate applications for mining rights. This judgment will go a long way in making sure communities impacted by mining are awarded fair and proper engagements on mining issues and their rights to access information on the subject.

Two years ago, they won the right to say no to mining on their land at Xolobeni. The victories were secured in the courts but are the outcome of years of struggle by a motivated community. They recover something of the freedom people thought they had won in 1994.

At that time, when people talked of state capture, they meant the way in which state institutions colluded with big mining corporations, notably Anglo American and Glencore. Together, the state and private entities constituted the minerals energy complex (MEC), created by imperial capital in the early 20th century.

They shaped South Africa's development as a mining colony. They created an economy in which wealth and power were concentrated in the hands of very few people who required cheap labour and land secured through dispossession. To maintain such an unequal hierarchy, they reproduced patriarchal and authoritarian relations, held information behind a wall of secrecy.

In response, the "open democracy" agenda was articulated through the anti-apartheid movement and partially realised in the Constitution of 1996.

A draft Open Democracy Bill was intended to give an expansive interpretation of people's democratic rights under the Constitution. It mandated open meetings – promoting people's access to and participation in government decision making, even in Cabinet meetings – as well as open information based on the presumption that people have an automatic right to information held by government and, if it affects the exercise of their rights, also to corporate information.

The political transition, however, coincided with the global restructuring of industry under neo-liberal orders, to which the post-apartheid government acceded with the Growth Employment and Redistribution (Gear) economic policy. Redistribution was choked off, jobs were shed and even growth failed. The government soon acquired the instincts of the mining colony. Economic transformation was reduced to the creation of a black capitalist class enabled – by fair means or foul – by the privatisation of state services and assets. Corporate rights to secrecy were reasserted through the Competition Act.

By the late 1990s, ministers and bureaucrats were slashing the Open Democracy Bill. They cut the chapter on open meetings, excluded Cabinet records from people's right to know and removed the supports for people to enforce open democracy rights.

Under the Mbeki administration, Open Democracy was reduced to the Promotion of Access to Information Act (PAIA) of 2000. The title was Orwellian in its phrasing: like Gear, it meant the opposite of what it said. It gives bureaucrats the power to decide what information people can have. To effectively request the information, people need a lawyer.

The DMRE is notorious as a black hole of information. PAIA requests are routinely refused or ignored. The department acts as if to protect mining corporations from the people and, incidentally, from environmental regulation.

The decisions won by the Umgungundlovu community recover something of the democratic promise. People's right to information must take precedence over the MEC preference for secrecy. The decision that people have the right to say no to mining means the government cannot decide the matter without their participation.

It is instructive that Minister Gwede Mantashe said he would appeal. He said it would be the death of mining. That seems a clear admission that the interests of the industry are in contradiction with the interests of the people.

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