

Nomination of Professor Hanri Mostert Citation

Opening statement

Mining? No other economic activity has been as central to the making of modern South Africa as mining. Mining provided the capitalist infrastructure for the nation's industrial take-off, upon which the superstructure of ideological apartheid was built. Mining is at the iron core of South Africa's rise as a modern state. It is also the dark core of social and inhuman engineering. It is also, in Africa, a potential exemplar of the social promises that a well-regulated and human-oriented industry holds.

This complexity of ideas is at the crux of Professor Mostert's signal and unique scholarship in the field of Law.

The hallowed South African legal tradition, and remarkable, adaptative legal innovation that have characterized the interplay of the mining and economic infrastructure within the ideological constructs, has "force" as philosopher Bourdieu famously wrote.¹ This force is seen when it investigates uncompromisingly how juristic thought and judicial practices intersect with the reality of mining.

Therein lies Professor Mostert's distinguished achievement in Mining Law, worthy of the conferment of a Fellowship.

Main statement

The nominee

Professor Mostert is a Professor in the Faculty of Law, a position she has held since 2008. She holds also the prestigious NRF/DST SARCHI Research Chair for Mineral Law in Africa (MLiA), a Research Chair sponsored by the National Research Foundation and the Department of Science and Technology. The MLiA Chair is now in its second 5-year cycle.

The brief for the position Professor Mostert currently holds, as SARCHI Research Chair: Mineral Law in Africa has been to develop the discipline of Mineral Law in Africa, focusing specifically on the growing of African expertise at postgraduate and especially doctoral level. In pursuing the goals of this position, she has established an extensive network of African scholars. They collaborate on matters pertaining to an area of the law which is of utmost importance to the African continent, yet severely under-researched.

Professor Mostert obtained all her qualifications (BA, LLB and LLM degrees, as well as the LLD degree) from Stellenbosch University, an institution reputable for its scholarship in and teaching of Law. Having secured successfully generous and prestigious funding (e.g. the DAAD ("sandwich") scholarship, the Commonwealth

¹ Bourdieu, Pierre. 1987. "The Force of Law: Toward a Sociology of the Juridical Field." *Hastings Law Journal* 38 (5): 814–853.

Fellowship and the Alexander von Humboldt Georg Foster Fellowship), she embarked on a lifelong journey in legal research into a difficult and, before her endeavours, largely neglected field, a journey of which this nomination is the natural and highly deserving outcome.

A research trajectory toward excellence

Professor Mostert approached her special interest in natural resource law (minerals, oil and gas, to be specific), from the broader yet strongly theorized discipline of Property Law. Her interest in Property Law related primarily to the public-law aspects thereof. Her doctoral work concerned the interpretation of constitutional property provisions, from a legal-comparative perspective. She was supervised at Stellenbosch University by the world-renowned Property Law scholar, Prof C G van der Merwe, and Prof J.M. Pienaar, who is widely regarded as the leading expert on land reform law in South Africa, and internationally highly acclaimed for her work in this field.

Between 1998 and 2000, Professor Mostert undertook most of the research for her doctoral dissertation during a DAAD-funded two-year research sojourn at the University of Heidelberg in Germany, in particular at the Max Planck Institute for Comparative Public and International Law, under the supervision of the Institute's Director, Prof. Dr. J. A. Frowein. Nearly a decade later, when she returned to Germany for another research stay, she spent a total of twelve months, over a two-year period, at the University of Freiburg i. Breisgau, hosted by the Chair (IV) in Public Law, of Prof Friedrich Schoch, on a prestigious Alexander von Humboldt Fellowship. She attests that these research periods have had a strong influence on her thinking over the past twenty years. She advocated that well-being (now often called "human flourishing") depended on a relational understanding and operationalising of responsibility: that of the individual in pursuing quality of life; and that of the state in enabling engaged citizenship (cf 2010 *SALJ*). She has carried this fundamental idea with her from her initial work in the sphere of Property Law (cf Chapter 13, OUP's *Principles of Property Law*), and into the area she is now responsible for promoting and developing: the Law of Extraction and Use of Mineral and Petroleum Resources (cf commissioned chapter on *Custodial Resource Holding* in N Steytler & CM Fombad (eds) *Constitutions, Constitutionalism and the Economy in Africa*).

Comparative and multidisciplinary research

The law pertaining to minerals and mining is an area of expertise that requires insight into a wide range of other legal subdisciplines, from administrative and constitutional law, through mercantile and labour law, to property and contract negotiation. It is an area of the law which renders itself excellently placed for multidisciplinary collaboration. Professor Mostert has harnessed the potential of this subject to collaborate with colleagues from universities in Africa and abroad, in fields of law, engineering, science and economics. Some of the results of these collaborations are documented in the series of MLiA Occasional Papers (included among publications). Others are expressed in working papers and conferences. Professor Mostert has availed herself and the considerable capacity of her SARChI Chair to participate in large-scale interdisciplinary projects in respect of e.g. the rehabilitation of degraded mine-land, intragovernmental co-operation, mining and waste, and green mining. Details are included in the CV and supporting documents.

Knowledge of Legal Systems and Comparative Law

Professor Mostert has taught property law – which she describes as her “first love” – at the basic and advanced undergraduate levels, as well as at masters’ level, for over fifteen years. Although the award of the SARChI Research Chair has shifted her deliverables solely to the minerals, oil and gas context, she continued to teach an LLM course in Property Law Theory (Property Law in a Constitutional Order) and supervised postgraduate research degrees in property-related topics until recently. Expanding operations of the SARChI Research Chair are limiting her input in this regard at present, but she remains an active participant in the Rethinking Expropriation expert group, operating from Groningen University, as well as the Progressive Property Scholars’ reading group in the United States.

Professor Mostert’s early-career exposure, while building a body of research, allowed her to become acquainted with both Common and Civil Law systems. These were opportunities presented, e.g. by her tenure as a Commonwealth Fellow (2006, Reading University, United Kingdom) and Von Humboldt Fellow (2006-2008, Freiburg University, Germany); and also her seven-year long position as a Visiting Professor at the Rijksuniversiteit Groningen in the Netherlands. The work emanating from these opportunities are mentioned in her publications list and should demonstrate the breadth of her comparative work with different legal systems.

Africa-oriented focus

In her position as SARChI Chair for Mineral Law in Africa, Professor Mostert has harnessed the abovementioned skills to devise a programme of research based on comparative legal methodology that involves a large number of different African jurisdictions across the Anglophone, Lusophone and Francophone legal systems of Africa. The programme will see the publication of several jurisdiction-specific books, and even more comparative work on various topics related to the extractives industry and the legal frameworks supporting it. Examples of such work are already present in her publications list (e.g. the collaborative work on Corporate Social Responsibility in the Mining Sectors of Africa, Namibia and Zambia).

Distinguished publications

Professor Mostert’s monograph, *Mineral Law: Principles and Policy in Perspective* (2012, Juta: Cape Town), stands out as a distinguished achievement in her career as a researcher.

This book has had a significant, if not momentous, impact on the research field of Mineral Law in South Africa, which, until its publication, had been a largely under-researched field. It addresses contemporary challenges of nationalising mineral resources and the expropriation of existing property interests in South Africa.

The book received a University of Cape Town Meritorious Book Award and has been cited in influential court cases by the Supreme Court of Appeal and the Constitutional

Court.² One reviewer said: "Mineral Law: Principles and Policies in Perspective is a significant contribution to the literature on mineral law in South Africa and its value".³

However this benchmark book does not stand alone. It is part of a long track of research achievements in print. Professor Mostert has authored two monographs and co-authored six textbooks and commentaries. She has contributed significantly to textbooks, such as Silberberg & Schoeman's *The Law of Property* (4th and 5th editions) and Juta's *Mineral and Petroleum Law of South Africa*. These sources are not mere textbooks but are hailed as standard authoritative academic reference works in the fields of law of property and mineral law.

The Principles of the Law of Property in South Africa, which she co-edited in 2010 and to which she contributed 6 substantive and formative chapters, is no prescribed textbook in the common sense of the word: it is scholarship engaging with social reality, and shaping reality.

Professor Mostert has also co-edited six volumes, of which the series "Rethinking Expropriation Law" brought together influential international collaborators. It provided much-needed scholarship on the crucial contemporary debate of expropriation without compensation in South Africa.

Professor Mostert has authored some thirty-nine articles, notes and case discussions in peer-reviewed journals across the world; and thirty-two chapters in books and published conference proceedings across a broad range of subjects covering Mineral Law, Energy Law, Law of Property, Land Reform and Constitutional Property Law. In many of these contributions, the lens of social justice is used to investigate the potential of law reform that can make a positive difference in South Africa for all its citizens. This body of work is unique in her field.

Google scholar indicates that Professor Mostert have a Hirsch h-index: 8 (a=5.52, m=0.33, 194 cites=55.0% coverage) based on 411 citations since 2016. Scopus provide a Hirsch h-index: 1 (a=4.00, m=0.14, 2 cites=50.0% coverage) since 2014. The influential international database, Heinonline, indicate an H-Index of 2.

Standing and academic leadership

Peer recognition of excellence

Professor Mostert enjoys formal recognition by the National Research Foundation of South Africa as an established researcher with a coherent body of work, whose peers agree that her work enjoys considerable international recognition (NRF Rating: B2) Her SARChI Chair: Mineral Law in Africa is at a Tier 1 position, which is a position usually given to leading scholars. She also held a prestigious position as Visiting Professor at Groningen University for seven years. Her international standing should further be supported by the fact that she has acted as external supervisor at Oldenburg University (Germany) and Loyola University of Chicago; and that as a visiting scholar to Bar Ilan University, Tel Aviv.

² *Agri South Africa v Minister for Minerals and Energy* ZACC 9; 2013 (4) SA 1 (CC).

³ T Humby "Book Review: Mineral Law: Principles and Policies in Perspective by Professor Mostert" (2013) 31 (2) *Journal of Energy & Natural Resources Law* 351-358.

In her position as Visiting Professor at Groningen University, Professor Mostert played a leading role in conceptualising and organising the Rethinking Expropriation project (since 2013), as a founding member of the Expert Group on Expropriation (<http://expropriation.info>). She is also the only South African in the exclusive Academic Advisory Group (AAG) of the International Bar Association's Sector on Energy, Environmental and Natural Resource Law (since 2015), and as of 2020 is a member of that AAG's steering committee.

How her teaching has developed the field and embodies social engagement

Professor Mostert now has twenty years of experience in teaching law at various levels of the undergraduate degree and postgraduate degrees. She has done so at several South African Universities, as well as in her visiting capacity at Groningen University, and at Bar Ilan University in Tel Aviv where she was invited to teach an advanced seminar in Property in Natural Resources; and, as guest lecturer at the University of Aberdeen, the University of Reading, the University of Namibia, *inter alia*.

As a teacher of law, she has played an important role in re-conceptualising the manner in which Property Law is taught to undergraduate students at South African Universities, especially through her work on OUP's *Principles of Property Law in South Africa* and LexisNexis' Silberberg & Schoeman's *Law of Property* (4th and 5th editions).

She has been instrumental in introducing a study of progressive property theory into law courses at a postgraduate level, most notably through the design of the LLM course Property in a Constitutional Order.

In her role as SARChI: Mineral Law in Africa she has also worked to establish a recently approved Specialised Masters Programme in the Extraction and Use of Mineral Resources, viewable at <http://www.mlia.uct.ac.za>, which is attracting considerable interest from students across Africa. In the same capacity, she has promoted the creation of a professional short course in French for Mining Lawyers, in which she also participated herself as a student, and in which she now has very basic communicative skills. Similarly, she has created and participated in the creation of international short courses on Natural Resource Regulation (taught for instance at Oslo University) and the Law of Electricity Market Design (taught at UCT with participation from Oslo University, Webber Wentzel, SA and Koep & Partners, Namibia).

As the curating partner in the foundational phase of the World Bank's African Mining Atlas Project, Professor Mostert also carried a primary responsibility for the conceptualising and execution of the training programme for the Atlas' legal research team.

Supervisory work and mentorship

Professor Mostert is a devoted supervisor of postgraduate work and a mentor to postdoctoral and early-career staff members at UCT and several other universities in South Africa (NWU, UJ, Rhodes).

Since 2008 13 PhDs have graduated under her supervision, 3 are under examination or about to submit, and 15 are currently registered. In regard of LLMs and LLMs (mini) over the same period, 20 have graduated (8 cum laude), 3 are under examination or about to submit, and 14 are currently registered.

As Research Director of the Law Faculty, she has also started an initiative for PhD-writing members of the Faculty, to provide targeted support and mentoring.

Fundraising abilities

Professor Mostert has often succeeded in obtaining external funds for research, over the long period of her career. The most recent and prominent of those grants include the collaborative funding from UTFORSK, the curating partnership with the World Bank initiated African Mining Legislation Atlas (www.a-mla.org) and the general funding from the NRF/DST that supports the SARChI: Mineral Law in Africa. Through recent efforts, her fundraising ability has benefitted academic partners in collaborating institutions in Namibia, Zambia, Tanzania, Ghana and Norway.

In 2020 Professor Mostert was successful in obtaining highly competitive funding for a team of researchers from the SARChI: MLiA for science engagement and public intellectual interventions around Covid-19 in the Mining Sector. This has enabled her team to broaden its work in the public sphere, and its engagement with government departments and municipalities, especially in mining-dependent regions of South Africa.

Citation prepared by Philippe-Joseph Salazar, Distinguished Professor, Faculty of Law, Fellow.

The Nomination and Citation will be moved by Professor Salazar, and the Oration will be delivered by Professor Emeritus Hugh Corder, sometime Dean of Law, and Life Fellow.

The nomination is seconded jointly by Professor Emeritus Hugh Corder, Professor Emeritus Clifford Shearing, both Life Fellows, and Professor Dee Smythe, Law Faculty.

18th March 2021