



# Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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By email: [Aubrey.Tshivhandekano@dmr.gov.za](mailto:Aubrey.Tshivhandekano@dmr.gov.za)

cc: Lydia Mapopa  
Department of Mineral Resources: Mpumalanga  
By email: [Lydia.Maphopha@dmr.gov.za](mailto:Lydia.Maphopha@dmr.gov.za)

Your ref: MP 30/5/1/2/2/10069 MR  
Our ref: CH/MT  
Date: 23 February 2015

## URGENT

Dear Mr Tshivhandekano

### **MINING RIGHT APPLICATION MP 30/5/1/2/2/10069 GRANTING OF MINING RIGHT TO ATHA-AFRICA VENTURES (PTY) LTD IN RESPECT OF PROPERTIES IN THE MABOLA PROTECTED ENVIRONMENT**

1. The Centre for Environmental Rights is a non-profit organisation and law clinic established to advance environmental rights in South Africa. One of our areas of work, which we regard as central to realisation of section 24 of the Constitution, is the protection and defence of protected areas and areas of critical biodiversity and hydrological value and sensitivity. The Centre also works closely with numerous other civil society organisations concerned with ensuring transparency, accountability and environmental compliance in the mining sector. This includes WWF South Africa and BirdLife South Africa who have worked for the protection of the broader grasslands area in Mpumalanga, KwaZulu-Natal and Free State for many years, as well as the Mining and Environmental Justice Community Network for South Africa.
2. For these reasons, we supported the declaration of the Mabola Protected Environment under the National Environmental Management: Protected Areas Act, 2003 (NEMPAA) by the Mpumalanga MEC in January 2014.
3. It appears from recent media reports and other sources that, since that declaration, the Department of Mineral Resources has granted a mining right to Atha-Africa Ventures (Pty) Ltd (AAV) in respect of a mining area that falls within the Mabola Protected Environment. **Please, as a matter of urgency, provide us with any letter from your office to the AAV confirming that a mining right has been granted to it in terms of section 23 of the Mineral and Petroleum Resources Development Act, 2002 in respect of properties in the Mabola Protected Environment.**
4. It further appears that AAV intends pursuing the exercise of those rights despite the provisions of section 48 of NEMPAA. Section 48(1)(b) of NEMPAA provides, in relevant part, as follows:

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*(1) Despite other legislation, no person may conduct commercial... mining... or related activities*

*(b) in a protected environment without the written consent of the Minister [of Environmental Affairs] and the Cabinet member responsible for mineral and energy affairs..."*

5. Has the DMR requested the written consent envisaged in this section from the Minister of Environmental Affairs and the Minister of Mineral Resources? If so, we urgently need copies of this request and any responses from the Minister of Environmental Affairs, the Minister of Mineral Resources and/or the Department of Environmental Affairs.
6. If the DMR still intends to make such request of the Ministers, a reasonable public participation process is required in terms of the Promotion of Administrative Justice Act, 2000, which Act sets out the obligations relating to procedural fairness in administrative decision-making. Should the Ministers have been requested to consent to the undertaking of mining or related activities in the Mabola Protected Environment, kindly advise us of the public participation process underway.
7. Kindly let us have your response to this letter by no later than 25 February 2015.

Yours sincerely

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per: 

**Catherine Horsfield**

**Attorney**

**Programme Head: Mining**

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