



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

The Voice Community Representative Council  
1534 Phumula Location  
Vukuzakhe  
Volksrust  
2470

Attention: Mr Thabiso Nene  
[thevoicecsrc@gmail.com](mailto:thevoicecsrc@gmail.com)

16 August 2018

Dear Mr Nene

### **GRIEVANCES ABOUT THE PARTICIPATION OF THE CENTRE FOR ENVIRONMENTAL RIGHTS**

1. This is a formal response by the Centre for Environmental Rights (CER) and the eight civil society organisations we represent in the legal challenges of the coal mine proposed by Atha-Africa Ventures (Pty) Ltd to the memorandum of grievances delivered to us in Braamfontein on 26 July 2018. We thank you for taking the time to record these grievances in writing.
2. Despite our many public statements about this, and the contents of substantive legal challenges to the approvals for the proposed coal mine, we can see from the memorandum that there are many misapprehensions about CER, the coalition, and the reasons for the legal challenges against the approvals for the mine (we will refer to this as “the Mabola case”).

### **The Centre for Environmental Rights**

3. The Centre for Environmental Rights is a non-profit organisation and law clinic based in Observatory, Cape Town and Braamfontein, Johannesburg, South Africa. We are activist lawyers who help communities and civil society organisations in South Africa realise our Constitutional right to a healthy environment by advocating and litigating for environmental justice. By advocating and litigating for environmental justice, we seek to advance our vision of a just, equitable, compassionate society which is resilient, celebrates diversity, and respects the inter-dependence between people and the environment.
4. The CER condemns all violations of human rights, all forms of racism and xenophobia, and is deeply committed to the alleviation of poverty and inequality in South Africa.
5. You are correct that the CER has criteria for selecting the cases we take on. The Mabola case fulfils all of those requirements.

### **Who CER represents, and who CER doesn't represent, in the Mabola case**

6. The CER represents eight non-profit organisations in the Mabola case (in no particular order):
  - 6.1 Earthlife Africa Johannesburg
  - 6.2 the Mining & Environmental Justice Community Network of SA

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Johannesburg: 9th Floor, Southpoint CNR, 87 De Korte Street, Braamfontein, 2001, South Africa  
Tel 021 447 1647 (Cape Town) | Tel 010 442 6830 (Johannesburg)  
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- 6.3 the Endangered Wildlife Trust
  - 6.4 BirdLife South Africa
  - 6.5 the Federation for a Sustainable Environment
  - 6.6 the Bench Marks Foundation
  - 6.7 the Association for Water and Rural Development (AWARD)
  - 6.8 groundWork.
7. CER has never claimed to represent any communities in the area – this includes communities in the Volksrust area in which The Voice is based.
  8. However, CER and our clients work in the Mpumalanga area. One of the members of the Coalition is the Mining & Environmental Justice Community Network of SA, a network of communities, community-based organisations and community members whose environmental and human rights are affected, directly or indirectly, by mining and mining-related activities. Some of the other Coalition members have worked in the specific area around Wakkerstroom for many years.
  9. In relation to this case, both CER and Coalition members have engaged with local people in the area that would be affected by the proposed mining. We must record here, and you will recall that, at least one of the Coalition’s efforts to meet with the communities who live directly adjacent to the proposed mine in June 2017 was disrupted.
  10. As we have said before, CER are not the attorneys for any farmers or landowners in the area, nor do we represent their interests in any way. Neither CER nor the Coalition organisations have knowledge of the statements that you attribute to farmers in the area, nor do we have knowledge of any violations by farmers of the kind you describe in your memorandum. We condemn human rights violations of any kind. For this reason, we urge you to report your allegations of acts of violence by farmers or against farmworkers to the South African Human Rights Commission, and to ask them to investigate these claims. You can find details of the SAHRC’s Complaints procedure here: <https://www.sahrc.org.za/index.php/what-we-do/lodge-complaints>
  11. CER are not attorneys for WWF-SA. CER was not part of the June 2017 Journey of Water event to which you refer. No CER staff member was present at this event, and we have no knowledge of the incident involving Mr Bheki Zwane. Please direct questions about this event to WWF-SA.
  12. CER are also not attorneys for the Mpumalanga Tourism & Parks Agency. We were not present at any of the meetings you mention, and we have no knowledge of the statements you attribute to MTPA officials. Please direct questions about this to MTPA.

#### **Why the Coalition is involved in the Mabola case**

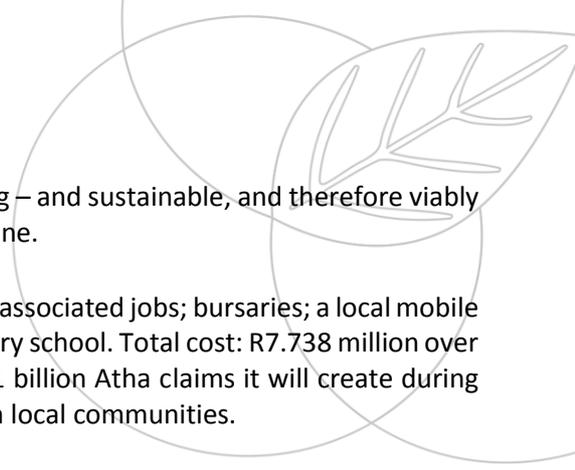
13. We and our clients are non-profit organisations working to realise people’s Constitutional environmental rights to clean air, clean water and health, and sustainable, decent jobs. We defend the rights of all interested and affected parties, particularly local people, to be consulted on new developments, and to benefit equitably from them.
14. CER and the Coalition organisations are deeply committed to job creation and improving the quality of life of local people, and to addressing the economic and racial inequality that continues to plague our country. However, we also know from our many years of work in the mining sector, and in Mpumalanga specifically, that coal mining does not alleviate poverty and inequality: instead, coal mining has devastated the lives, health and well-being of communities across the Highveld. After 150 years of coal mining in Mpumalanga, unemployment rates remain high and communities’ access to clean, piped water and to electricity is unacceptably limited. Coal mining has not delivered employment or economic development for local people anywhere near what is promised by mining companies before mining starts.
15. We previously referred you to these reports, and sent hardcopies to your address in Volksrust in July 2018:

- groundWork (2016): ***Destruction of the Highveld***: [http://www.groundwork.org.za/reports/gWReport\\_2016.pdf](http://www.groundwork.org.za/reports/gWReport_2016.pdf) and <https://cer.org.za/news/new-report-by-cer-partner-groundwork-on-destruction-of-the-highveld-by-coal-mining>;
- Centre for Environmental Rights (2016): ***Zero Hour: Poor Governance of Mining and the Violation of Environmental Rights in Mpumalanga***: <https://cer.org.za/news/zero-hour>
- Bench Marks Foundation (2014): ***SOUTH AFRICAN COAL MINING: Corporate Grievance Mechanisms, Community Engagement Concerns and Mining Impacts***: [http://www.benchmarks.org.za/research/policy\\_gap\\_9.pdf](http://www.benchmarks.org.za/research/policy_gap_9.pdf);
- Forrest, K., and Loate, L. (2017) ***Coal, water and mining flowing badly***. Working Paper: 9. Johannesburg: Society, Work and Development Institute, University of the Witwatersrand: <https://www.swop.org.za/working-papers>

16. We also recommend that you watch some of the short films on our website – here, ordinary people from mining-affected communities talk about how they have experienced mining: <https://cer.org.za/video-library>.
17. Various Coalition members and other civil society organisations working in the area who are not part of the Coalition have been involved with the protection of the Mpumalanga grasslands and the various protected environments declared in and around the Wakkerstroom area for more than a decade – well before Atha applied for a mining right in this important area. These organisations, as well as conversation agencies, also participated in the environmental impact assessment process (including the scoping phase). It was made it clear to both the authorities and Atha that attempts to mine in this important area would be opposed.
18. The Coalition of organisations involved in these legal challenges do so because the proposed mine would be inside a declared protected area and a Strategic Water Source Area. We have submitted detailed arguments with expert reports in our various legal challenges, but in essence this mine would threaten water security not only in the local area, but in the region. The damage that this mine would do to water resources cannot be undone.
19. Importantly, there is a lot of coal to be mined elsewhere in Mpumalanga that is not inside a Strategic Water Source Area or a protected area. Only 15% of the coalfield that Atha seeks to mine is within a Strategic Water Source Area. It makes no sense for Atha to mine within the 15% that is in a Strategic Water Source Area when it was open to it to apply for a mining right in an area without the strategic importance and sensitivity of this area.

#### **Job opportunities and economic development: Who benefits?**

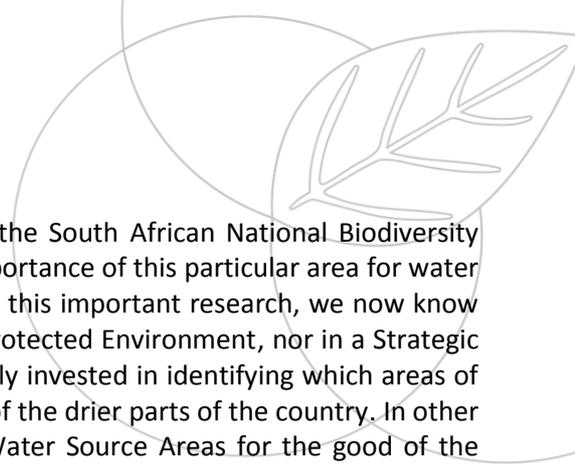
20. In your memorandum you state that The Voice believes that “the Yzermyn project will unlock the creation of job opportunities and business opportunities for the local people”.
21. Atha’s own report to the authorities claims the mine would generate 576 jobs once fully operational, but without any guarantee that these jobs will be sourced locally. It states “the majority of labour and employees are likely to come from outside the ADI [Area of Direct Influence] due to the lack of skills locally” and “due to the limited numbers of unskilled, semi-skilled and skilled employment opportunities, the proposed mine will offer little or no economic benefit for the local area without skills development”. However, Atha has not provided any details of, nor any financial or other commitment to do, any skills development for the purpose of up-skilling local people to work at the mine.
22. The Atha report states that the 60 “skilled” (skilled but not managerial) jobs estimated to be created for the mine’s construction will not be sourced locally, and that 10 management staff will come from Atha’s Indian operations.
23. Our repeated experience, and that of our partners and the mining-affected communities with whom we work, is that the number of jobs promised by mining companies rarely materialise, particularly not for local people.

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24. Moreover, at least some of the current jobs in agriculture and in a growing – and sustainable, and therefore viably long-term – nature-based tourism sector may be lost as a result of the mine.
  25. Atha’s Social and Labour Plan (SLP) is very limited: some training – with no associated jobs; bursaries; a local mobile clinic; and an extra classroom and some guest teachers for a local secondary school. Total cost: R7.738 million over 5 years, about R1.5 million per year. Compared to revenue of at least R1 billion Atha claims it will create during the first 10 years of the mine’s operations, this is not major investment in local communities.
  26. It is important to know that the SLP is unlikely to be enforced by Department of Mineral Resources. At Marikana, for example, mining company Lonmin built 3 out of the 5000 houses its SLP required it to build for local mine workers. It has still not been held accountable by the DMR to deliver on that commitment.
  27. Atha concedes in its SLP that it may leave the community with “negative impacts on the health and safety of the surrounding community and future employees from the generation of dust, airborne emissions (noxious gases and smoke), noise, vibrations, traffic, and contamination of surface and groundwater on downstream users”; an increase in foreign workforce; and a negative impact on crime and security.
  28. All over the Highveld, communities live with coal dust and polluted water from coal mines that make them and their livestock sick, and make it impossible to grow crops. Regular blasting by the mines cracks houses and is disruptive and distressing. Nowhere on the Highveld has coal mining left communities better off than before.
  29. The mine would result in less water for communities, as it would lower the water table, and it would contaminate water resources for likely significantly more than 80 years after the mine closes. In other words, if the mine starts in 2019, mining will take place until 2034, water level rebound will be in 2079 and contaminated water treatment must continue until, at a conservative estimate, 2099. Atha has not provided for that water treatment. It provided a financial guarantee for closure costs of only R5.758 million. Treating the polluted water would cost more in the region of R200 million – far more than Atha has made available, or even acknowledged it would have to pay.
  30. As you know, Atha is not a South African company. It is a subsidiary of Atha Group, a private company registered in India. The current directors are Gaurav Atha, Vishal Atha and Morgambary Munsamy. Profit extracted by Atha from this mine would, therefore, likely be taken out of South Africa. Atha’s BEE partner is the Bashubile Trust. The trust deed shows that the trustees are Prince Thabo Mpofo, Vincent Gezhnhliziyo Zuma, and Sizwe Christopher Zuma. As far as we know, none of these trustees or beneficiaries live in or near Wakkerstroom, Dirkiesdorp or Volksrust – or even in Mpumalanga.

### **The Loskop mine, and reports of abandoned mines**

31. As mentioned above, CER does not represent Mr Malan, and he is not a member of the Coalition. However, we have investigated the allegations about the Loskop mine. Our understanding is that Mr Malan never himself operated the 80 hectare Loskop mine on his farm – the mining right over his property was granted to a mining company in the 1980s. (Under our mining law, a landowner cannot refuse to allow someone who has a mining right to mine there, and can only claim compensation for loss caused as a result of the mining.) Our understanding is that the first operator of the mine went insolvent, and later the DMR shut down the mine for health and safety reasons. The mining company who holds the right is now in business rescue, and the mine is again not operating, nor has it been rehabilitated. For more information, you can contact the business rescue practitioner, Mr Grant Chittenden, from Credible Practitioners:

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Pretorius Park, 0081  
PO Box 2795  
Faerie Glen, 0043  
Fax +(27) 086 249 7259  
[grant@crediblepractitioners.co.za](mailto:grant@crediblepractitioners.co.za)

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32. When this mining right was granted in the 1980s, all the research by the South African National Biodiversity Institute and the Council for Scientific and Industrial Research on the importance of this particular area for water security and other ecosystem services had not yet been done. Based on this important research, we now know that coal mining should not take place inside what is now the Mabola Protected Environment, nor in a Strategic Water Source Area. South Africa is a water scarce country and specifically invested in identifying which areas of the country produce the most water to allow the economic functioning of the drier parts of the country. In other words, South Africa has invested enormously in identifying Strategic Water Source Areas for the good of the country as a whole.
33. For all the reasons that we oppose the new mine proposed by Atha, the Coalition is opposed to all other mining in the Mabola Protected Environment - even where mining rights or approvals were granted before the declaration of the Protected Environment. Moreover, we believe that the environmental damage caused by any past mining in the Mabola Protected Environment should be rehabilitated in a responsible manner, and to such extent possible, local people should be employed as part of such rehabilitation and restoration projects.
34. If you are aware of any abandoned mines in the Mabola area, we ask that you send us details of these sites. If there is any mining underway at these sites, it is likely that these sites are not being operated legally; if mining has taken place but has now been abandoned, the sites should be rehabilitated. If you provide us with the necessary details (location, photographs if possible) we will report this to the Departments of Mineral Resources and Water & Sanitation for investigation and action.

## Conclusion

35. Neither CER nor the Coalition in this case are engaged in “stunts”, and we are also not “anti-development”. We are using such rights as the Constitution and legislation provide to ensure that the decisions made in this case are made lawfully, and in accordance with the requirements of the Constitution and applicable laws. This includes section 24 of the Constitution, which guarantees everyone “the right to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” The Constitution also enshrines the right to access justice, and the right to just administrative action.
36. We have made no threats against Mr Nene. On the contrary, CER and some of our Coalition members have received a number of threats from individuals that appear to be associated with or sympathetic to Atha and/or The Voice. Unfortunately we have had to take a number of measures to protect our staff, including CER blocking users on social media: <https://cer.org.za/news/zero-tolerance-to-abusive-conduct-on-our-social-media-platforms>.
37. The position of CER and the Coalition is that it is unacceptable to build this proposed coal mine inside this declared protected environment and Strategic Water Source Area, and that Atha has not provided for mitigation measures can address the threats posed to the environment. We are of the view that the proposed mine would set the worst possible precedent for mining and the environment.
38. For these reasons, we don't think that any purpose would be served by having a meeting between Atha, The Voice and ourselves “to find a way of coexistence between environment and mining”. The Coalition also cannot withdraw the legal challenges, and now wait for the independent tribunals and courts to adjudicate this dispute.
39. We look forward to further engagement with The Voice, and hope that we can finalise arrangements for a delegation from The Voice to come to Emalahleni to see the devastation that coal mining has caused in that area, and speak to people in that area about their experiences.

40. We will place your Memorandum of Grievances and this reply in the public domain to make sure that this information is publicly available to everyone.

Yours faithfully

**Centre for Environmental Rights NPC**

**groundWork**

**Endangered Wildlife Trust**

**Bench Marks Foundation**

**Earthlife Africa**

**BirdLife South Africa**

**Federation for a Sustainable Environment**

**Mining & Environmental Justice Community Network of South Africa**

**Association for Water & Rural Development (AWARD)**

