



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

The Honourable S G Mantashe
Minister of Mineral Resources

c/o Mr Mavata Mandisi
Personal Assistant to the Minister
By email: Mandisi.Mavata@dmr.gov.za

And to: Mr Natie Shabangu
Media Liaison Officer
Department of Mineral Resources
By email: Nathi.Shabangu@dmr.gov.za

5 February 2019

Our Ref: L Govindsamy

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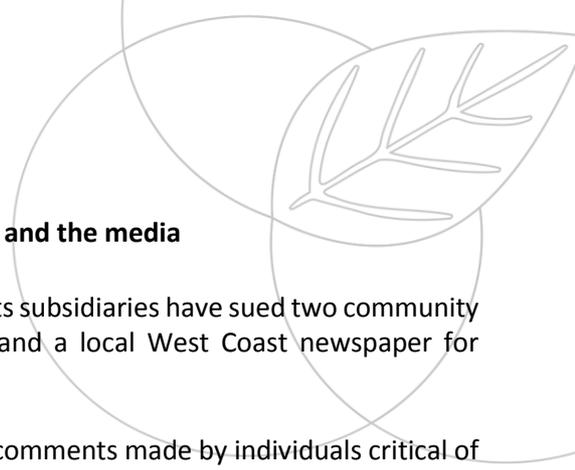
Dear Minister Mantashe

MINISTERIAL VISIT TO MRC'S TORMIN MINERAL SANDS PROJECT, WESTERN CAPE

1. The Centre for Environmental Rights is a non-profit organisation of 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.
2. We understand from media reports that the Minister plans to visit the Tormin Mineral Sands Project (Tormin) operated by Mineral Sands Resources Pty Limited (MSR), a subsidiary of Australian mining company Mineral Commodities Ltd (MRC),¹ on 8 February 2019, in order to assess compliance with mining and environmental laws.
3. We are writing to you in order to bring to your attention two important issues relevant to your visit:
 - 2.1 **MRC's coordinated campaign of litigation against activists, lawyers and the media to silence criticism of the company and its operations, and intimidate its critics.** This campaign violates Constitutional rights of freedom of speech, freedom of the media, academic freedom and environmental rights; and
 - 2.2 **important information regarding MSR's track record of non-compliance with mining and environmental laws and regulations.**

¹ MRC is a company registered in Australia, listed on the Australian Securities Exchange (ASX), and via Mineral Sands Resources (Pty) Ltd (MSR) and two of its subsidiaries in South Africa, Tormin Mineral Sands (Pty) Ltd and Transworld Energy and Mineral Resources (SA) (Pty) Ltd, MRC operate the Tormin and Xolobeni Projects respectively.

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Campaign of defamation lawsuits aimed at silencing eight activists, lawyers and the media

4. You may not be aware of the fact that, over the past two years, MRC and its subsidiaries have sued two community activists, three environmental attorneys, a social worker, a journalist and a local West Coast newspaper for defamation claims that amount to more than R9 million.
5. These defamation suits, which are all vigorously defended, are based on comments made by individuals critical of MRC and its subsidiaries' operations in South Africa, in particular at its Tormin operation and its proposed Xolobeni operation – including statements made at a lecture at the University of Cape Town Summer School in January 2017.
6. These defamation suits are what are commonly termed around the world to be “SLAPP suits”, or “strategic litigation against public participation”. SLAPP suits are a type of litigation which has, or can be assumed to obstruct the rights of free speech and the ability of people to participate in public debate over matters of public interest and concern. Globally, they are targeted predominantly at environmental activists.
7. It is undeniable that MRC is attempting, through these SLAPP suits, to silence and intimidate its critics, and prevent issues of immense public interest and concern from being aired and debated. This conduct threatens and undermines the hard-fought South African Constitutional right to freedom of expression, a right which is integral in ensuring transparency and accountability, particularly in relation to corporate actors. Our recent history in relation to corruption and maladministration involving both state and private actors exemplifies the need to protect the media, civil society and community activists from unjustified derision and attack.

Track record of non-compliance at the Tormin operation

8. Given the stated purpose of your planned visit to Tormin, we further want to draw key information to your attention in relation to that operation. These include:
 - 8.1. MRC subsidiary MSR's history of repeated non-compliance with the National Environmental Management Act, 1998 (NEMA) as also confirmed by a judgment of the Western Cape High Court, and MSR's acknowledgement of certain non-compliances in its application for retrospective authorisation under section 24G of NEMA; and
 - 8.2. reliance on section 102 of the Mineral and Petroleum Resources Development Act, 2002 (MPRDA) to amend its mining right and significantly expand the footprint of this operation without applying for a new prospecting or mining right – after your Department had refused its application for new prospecting rights. This does not only pose significant risks for the environment, but serves to undermine and circumvent the environmental regulatory regime.
9. We are able to provide the Minister with more details, and supporting documents, in writing or in person.

Conclusion

10. The Minister is already well aware of the longstanding resistance against mining by MRC at Xolobeni on the Wild Coast – an area of immense significance from a cultural, social and environmental perspective. The moratorium on further mining activities at Xolobeni as well as the recent high court judgment,² which clarified the rights of communities in relation to mining on their communal land, are all outcomes of fierce contestation over whether mining development in the area is appropriate or acceptable. The conflict at Xolobeni, and the shocking March

² <http://www.saflii.org/za/cases/ZAGPPHC/2018/829.html>

2016 assassination of Sikosiphi “Bazooka” Rhadebe, for which no suspect has yet been arrested, have been the subject of intense media coverage and debate, both here and internationally.

11. We ask that the Minister, when making any decisions about MRC, Tormin’s existing operation or its proposed expansion, or any new mining at Xolobeni, also to have regard to MRC’s bullying tactics³ to silence critics through its coordinated campaign of SLAPP suits, and its track record of blatant disregard for South African environmental law and Constitutional rights and values.
12. Please contact us should you require further information about any aspect of this correspondence.
13. We confirm that given the public interest and concern in these matters, as well as in the interests of transparency, this correspondence and any response may be published.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

Melissa Fourie

Executive Director

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³ In this regard, it is worth having regard to this article published in the *Sunday Times* in 2015, just a few months before the Rhadebe assassination: <https://www.pressreader.com/south-africa/sunday-times/20151129>