

**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA LOCAL DIVISION, MIDDELBURG**

CASE NO. 1344/20

In the matter between:

**MINING AND ENVIRONMENTAL JUSTICE
COMMUNITY NETWORK OF SOUTH AFRICA**

First Applicant

GROUNDWORK

Second Applicant

BIRDLIFE SOUTH AFRICA

Third Applicant

ENDANGERED WILDLIFE TRUST

Fourth Applicant

FEDERATION FOR A SUSTAINABLE ENVIRONMENT

Fifth Applicant

ASSOCIATION FOR WATER AND RURAL DEVELOPMENT

Sixth Applicant

BENCH MARKS FOUNDATION

Seventh Applicant

And

**GERT SIBANDE DISTRICT JOINT MUNICIPAL
PLANNING TRIBUNAL**

First Respondent

**DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY:
MUNICIPAL APPEAL AUTHORITY**

Second Respondent

UTHAKA ENERGY (PTY) LTD

(formerly ATHA-AFRICA VENTURES (PTY) LTD)

Third Respondent

**MINISTER OF AGRICULTURE, LAND REFORM
AND RURAL DEVELOPMENT**

Fourth Respondent

**THE MABOLA PROTECTED ENVIRONMENT
LANDOWNERS' ASSOCIATION**

Fifth Respondent

**APPLICANTS' REPLYING AFFIDAVIT TO THE FIRST & SECOND RESPONDENTS'
ANSWERING AFFIDAVITS**

AND

**APPLICANTS' ANSWERING AFFIDAVIT TO THE FIRST RESPONDENT'S
COUNTER-APPLICATION**

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R.R.

I, the undersigned,

MARGARET MOLOMO

do hereby make oath and say as follows:

1. I am the chairperson of the first applicant (MEJCON-SA) and am duly authorised to depose to this affidavit on behalf of the applicants.
2. The facts set out in this affidavit are within my personal knowledge, unless expressly stated or the context indicates otherwise, and are, to the best of my knowledge and belief, both true and correct. Where I make legal submissions, I do so based on the advice of the applicants' legal representatives, which advice I accept as correct.
3. This affidavit is filed in reply to the first and second respondents' answering affidavits and in answer to the first respondent's counter-application.
 - 3.1. I do not intend to deal with the allegations in the first and second respondents' ("the respondents") answering affidavits paragraph-by-paragraph, and my failure to do so should not be construed as an admission or acceptance of such allegations.
 - 3.2. To the extent that the allegations contained in the respondents' answering affidavits conflict with what is in this affidavit, the applicants' founding affidavit and supplementary founding affidavit, they must be taken to be denied.

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THE LAND USE CHANGE APPROVAL HAS LAPSED

4. The land use change approval was subject to:
 - 4.1. the payment by third respondent (“**Atha**” or “**Uthaka**”) of development charges and/or monies for the provision of engineering services (where applicable); and
 - 4.2. Uthaka providing proof to the satisfaction of the Dr Pixley Ka Isaka Seme Local Municipality that the conditions have been complied with in order to bring the approved rights into effect, within twelve months from the date of approval or further period as the Municipality may allow, failing which the approval shall lapse.
5. These conditions should have been fulfilled by 6 February 2020.
6. The applicants’ attorneys have requested confirmation that these conditions have been met but no response has been forthcoming. A copy of the correspondence is attached as annexure “RA1”. The respondents’ silence on the request is an indication that the conditions have not been met.
7. I submit that unless the first or third respondent can provide proof to the contrary, the land use change approval has lapsed, and the applicants seek relief in terms of paragraph 1A of the amended notice of motion. The amended notice of motion will be filed together with this affidavit.
8. In the event that the approval has not lapsed, the applicants seek relief in terms of paragraphs 2 to 6 of the amended notice of motion and reply to the first and second respondents’ answering affidavits below.

G.M.

R.R.

THE FIRST RESPONDENT'S ANSWERING AFFIDAVITLocus standi (ad paras. 8 – 10)

9. I deny that the applicants do not have the necessary locus standi to bring the review application and deny that the applicants do not have an interest in the rezoning decision.
10. There is no merit in the first respondent's contention that the applicants do not have locus standi under section 38 of the Constitution and section 32(1) of NEMA. This is a matter for argument and will be dealt with at the hearing of this matter.
11. MEJCON-SA is a non-profit voluntary network of communities, community-based organisations, and community members with the primary objectives to promote and defend the environmental and human rights of communities affected by mining, and to ensure the sustainable use of resources. MEJCON-SA is an association as contemplated in section 38(e) of the Constitution. A number of the applicants conduct work across South Africa, including in Mpumalanga. For some, their core work is on the Mpumalanga Highveld. MEJCON-SA is one of those applicants with members living in Mpumalanga. It has a membership of approximately 300 in number, spread across 5 provinces of South Africa, and approximately 80 of which are living in Mpumalanga.
12. MEJCON-SA has the authority to act on behalf of the second to seventh applicants in this matter, evidenced by the copies of the resolutions attached as annexure "RA2" to "RA7".
13. I note the first respondent's complaint in paragraph 44 that the applicants have

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not attached documents setting out their objectives. The applicants do not want to unnecessarily burden an already voluminous court file. However, copies will be made available at the hearing of this matter should they be required.

Non-joinder (ad paras. 11 – 16)

14. I deny that this application implicates parties who are not joined to the proceedings.

14.1. I am advised that the Premiers of the nine provinces do not have a direct and substantial interest in these proceedings.

14.2. The fifth respondent – the Mabola Protected Environment Landowners Association – has been cited for any interest it has in the review.

15. The Voice Community Representative Council ("**the Voice**") brought an application to intervene in the review on 21 October 2020. The applicants did not oppose the Voice's intervention application.

15.1. The application for intervention was struck from the roll on 16 February 2021. The applicants have tried to establish the status of the intervention application, but no response has been forthcoming. A copy of the correspondence addressed to the Voice's attorney of record is attached as annexure "RA8".

Lis pendens (ad paras. 17 – 25, 74)

16. I deny that the applicants did not have to bring this review, and that this review was not necessary while other challenges brought against different approvals

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granted to Uthaka are pending.

- 16.1. The applicants have the right to administrative action that is lawful, reasonable and procedurally fair. The fact that challenges to various approvals granted to Uthaka are pending does not strip the applicants of their right to review an unlawful and arbitrary decision, independent of the other approvals, merely because it has been granted in favour of the same entity, Uthaka.
- 16.2. I submit that there is no pending litigation between the same parties on the same cause of action, and in respect of the same subject matter. There is no abuse of the court process. This is a matter for argument and will be dealt with at the hearing of this matter.
- 16.3. The PAJA mandates that proceedings for judicial review must be instituted without unreasonable delay and not later than 180 days after the conclusion of internal remedies. The applicants had to institute this review on or before 25 May 2020.
17. An order was granted by the Gauteng Division, Pretoria on 23 March 2021 interdicting and restraining Uthaka from conducting any mining and mining-related operations until the final determination of various reviews and appeals, including this review. On 8 November 2021, after this review was instituted, the Constitutional Court dismissed Uthaka's appeal against the interdict granted by the Gauteng Division, Pretoria. Copies of the Constitutional Court's order and the order of the Gauteng Division are attached as annexure "RA9" and "RA10".
- 17.1. Considering these developments, the applicants do not pursue the

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relief sought in paragraph 1 of the notice of motion.

17.2. For that reason, this relief has not been replicated in the amended notice of motion.

18. I deny that the applicants bring review proceedings and interdicts that they have no intention to finalise. On the contrary, the applicants' review of the Ministers' decision to grant Uthaka permission in terms of section 48 of the National Environmental Management: Protected Areas Act, 2003 to mine in a Protected Environment was successfully prosecuted, and defended through various unsuccessful appeals by Uthaka. At the time of deposition hereof, the applicants' review of the MEC's decision to exclude the proposed mining properties from the Mabola Protected Environment is set down for hearing in the Mbombela High Court on 7 October 2022 and the water use licence High Court appeal (section 149 of the National Water Act) is set down for hearing in the Pretoria High Court on 18 and 19 October 2022. Any delay in the various proceedings has been as a result, *inter alia*, of Uthaka's and various state respondents' failure to file answering papers.

Principle of subsidiarity (ad paras. 26 – 30, 97)

19. I am advised that this review does not offend the principle of subsidiarity. The review is brought under the PAJA, alternatively under the principle of legality.

Ad paras. 31 – 32, 118, 125 – 128

20. I submit that the first respondent's points in limine are without merit and should be dismissed.

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21. The first respondent has also failed to establish any facts in support of a punitive costs order.

Ad paras. 47, 85 – 92, 98

22. I deny the first respondent's interpretation of section 52 of SPLUMA.
23. I further deny that it would have been futile for the first respondent to inform the Minister of the land use application and that the Minister would not have dealt with the application. I submit that it is possible to establish which rezoning applications are likely to (or will) affect the national interest.
24. I am advised that interpretation is a matter of law and not fact, and the interpretation of section 52 of SPLUMA will be dealt with in full at the hearing of this matter.

Ad paras. 52 – 53, 61 – 62, 66 – 67, 76 – 77, 104 – 106, 110 – 113

25. The first respondent's admission that:
- 25.1. it fails to understand the relevance of Mabola's environmental vulnerability and significance;
- 25.2. the environmental impact of the proposed mine is outside of its competence;
- 25.3. its duty to ensure compliance with environmental legislation was discharged by approving the rezoning application subject to the condition which requires a valid environmental authorisation;

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25.4. it lacks the necessary authority to pronounce on environmental or water matters;

25.5. *"the issue concerning environment and water falls outside the competence of the first respondent";*

25.6. the local community has nothing to lose from the proposed mine; and

25.7. no harm will be caused to the adjacent landowners and occupiers, and that the potential harm can be mitigated through the implementation of the recommendations of the Environmental Impact Assessment Report;

is further evidence of the irrationality of its decision and its failure to consider environmental considerations.

26. The decision to approve a change in land use from agriculture to mining has a significant impact on the environment and required the first respondent to properly apply its mind to the facts placed before it, and not to simply defer to the decision of another authority (which is the subject of an ongoing review).

27. I submit that the first respondent failed to apply its mind to the facts before it.

28. I deny that the potential harm can be mitigated. Not only are the proposed mitigation measures inadequate, but some of the harm will also be irreversible.

28.1. The scientific reports commissioned by Uthaka itself show that the potential harm will not be mitigated, as alleged by the first respondent. There are severe risks posed by the mine. For example, the dewatering

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of the wetlands would have 'high' impact on the area, both mitigated and unmitigated (as demonstrated in the copy of the relevant portions of the SAS Report attached as annexure "RA11").

- 28.2. The decant of contaminated water post-closure of the mine poses a high risk to water resources in a Strategic Water Source Area and ecologically sensitive area. The mine will result in a degree of contamination of groundwater and surface water, with uncertainty regarding the adequacy of the proposed mitigation measures.

Ad paras. 78 – 82

29. I note that the first respondent has failed to respond to the various negative impacts on the local communities and the long-term consequences of ground and surface water contamination.

Ad paras. 99 – 100

30. Attaching a "checklist" that forms part of the land use application, compiled by Uthaka's consulting town planner, does not equate to compliance with the criteria for consideration and determination of an application by the first respondent.

Ad paras. 101 – 102

31. I deny the content of these paragraphs and that the applicants failed to demonstrate the requisite interest.

Ad paras. 119 – 124

G. M

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32. I deny the contents of these paragraphs. I point out the irrationality to allow and decide the applicants' appeal and to now allege that the applicants did not have locus standi to bring the appeal.

Ad para. 164

33. I deny that the applicants concede that they did not seek to be admitted as interveners. To the contrary, paragraph 49 of the supplementary founding affidavit states: "[t]he applicants did seek to be admitted as interveners".

Ad paras. 165 – 166

34. Uthaka's representative correctly stated that it would be procedurally unfair if they were provided with an opportunity to make one representation. Despite this, Uthaka made substantial submissions and representations as detailed in the supplementary founding affidavit. The transcript of the proceedings speaks for itself.

Ad paras. 169 – 171

35. I deny that special consideration was taken into account with regards to the pending review of the environmental authorisation and refer to paragraphs 58 to 61 of the supplementary founding affidavit.
36. I note that the approval of the rezoning will lapse on non-compliance with the environmental authorisation. I submit that does not mean that if the environmental authorisation is revoked, the approval of the land use application will automatically lapse.

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THE FIRST RESPONDENT'S COUNTER-APPLICATION

37. As stated above, there is no pending litigation between the same parties on the same cause of action, and in respect of the same subject matter. It is not correct that the outcome in the pending proceedings will inevitably affect the status of the first respondent's approval of the rezoning application.

38. There is no condition in the land use change approval that requires a valid environmental authorisation or water use license. The land use change approval is not subject to the existence of any of the authorisations under review.

39. It is also not correct that the approval of the rezoning application will automatically lapse should the applicants successfully review the decision to grant a mining right.

39.1. The resolution states:

"4. The approval of the special zoning shall lapse in terms of section 54(2)(v) under the following conditions:

4.1. On the 7th of June 2030, being the same period as the expiry of the mining right (Protocol No: 5012/2016) granted in terms of the Mineral and Petroleum Resources Development Act 28, 2002 or on the date as may be extended from time to time by the department responsible for issuing mining rights in the Republic.

4.2. [...]

5. The zoning of the subject property shall revert back to Agriculture as

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per applicable Town Planning or Land Use Scheme upon the lapse of the mining right.” (FA31 to the founding affidavit).

- 39.2. Paragraph 4.1 provides that the special zoning approval will lapse on the expiry of the mining right.
- 39.3. Paragraph 5 indicates that upon the lapse of the mining right, due to the expiration of time as contemplated in paragraph 4.1, the zoning of the property will revert to agriculture.
- 39.4. There is no condition in the resolution that provides that the rezoning application will automatically lapse if the mining right is set aside on review.
40. The matter is one as contemplated in section 32(3) of NEMA and falls within the ambit of the *Biowatch* principle governing costs in constitutional matters. The applicants have brought this matter in the public interest and should not bear the costs.
41. In the premises, the applicants respectfully submit that the first respondent's counter-application should be dismissed with costs.

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THE SECOND RESPONDENT'S ANSWERING AFFIDAVIT

42. Much of the second respondent's answering affidavit is not relevant to the merits of this review or amounts to legal argument that will be addressed in full at the hearing of this matter.

Non-joinder (ad paras. 12 – 16)

43. I deny that the MEC: Environment has a direct and substantial interest in these proceedings.
44. I further deny that it was the responsibility of the MEC to ensure that NEMA was applied in the impugned decisions – that was the responsibility of the first and second respondents as the authorities established in terms of the SPLUMA, the SPLUMA By-law and regulations.
45. The fact that an environmental authorisation was issued by the MEC does not establish a direct and substantial interest in this review. The MEC is not material to the issues and the decision under consideration.

Ad paras. 54 – 55

46. At the time of the land use change approval, the farms had not been excluded from the Mabola Protected Environment.
- 46.1. Initially, a notice to exclude the farms was published in October 2018 and was later withdrawn in January 2019.
- 46.2. A further notice was published in August 2019, months after the first



respondent's decision. The farms were ultimately excluded by notice on 15 January 2021 (which decision is the subject of a review brought by the applicants and which is set down for hearing on an unopposed basis on 7 October 2022).

47. Not only is the notice of intention to exclude the farms from the Mabola Protected Environment irrelevant to these proceedings, but it would also be irrational if the second respondent considered the notice in its determination of the appeal.

Ad paras. 161 – 167, 179

48. I refer to paragraphs 9 to 11 above and specifically incorporate the content herein.
49. The reference to an area of utmost environmental vulnerability and significance is factually accurate and is supported by numerous scientific reports. Although the land use change approval relates to land that falls outside of the Mabola Protected Environment, the reports demonstrate its environmental sensitivity from a biodiversity and hydrological perspective. The land also falls within a strategic water source area. These are important considerations supported by science and are not a conflation of facts, as alleged by the second respondent.
50. I deny that the grant of an environmental authorisation means that the first and second respondents have *"lesser legal authority as NEMA places that issue squarely in the MEC's control"*.
51. The second respondent was required to carefully consider and take account of the environmental impacts of the project, in terms of its obligations under SPLUMA.

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Ad para. 171

52. Save to state that NEMA provides that development must be socially, environmentally, and economically sustainable, I am advised that this is a matter for argument and will be dealt with in full at the hearing.

Ad para. 196

53. I deny that the applicants are under an incorrect impression on the location of the proposed Yzermyn property and refer to paragraph 49 above as well as paragraphs 49 and 52 of the founding affidavit.

Ad paras. 202 – 203

54. I deny that the applicants *"bluntly advocate a restrictive and prohibitory approach"*.
55. I further deny that appropriate mitigatory and remedial conditions have been prescribed and submit that adequate measures have not been put in place to mitigate the environmental damage that will be caused by the proposed mine.
56. To the contrary the decisions to grant the environmental authorisation and water use licence have been taken on review and High Court appeal in terms of section 149 of the NWA, which are the same authorisations the second respondent relied on in making its decision.

Ad paras. 35, 50 – 52, 206 – 222

57. I deny that paragraphs 143 to 153 of the founding affidavit are vague and not

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based on evidence. The evidence that the clear contentions are based on is provided in those paragraphs.

58. I deny that the applicants contend that employment of 570 people is insignificant. The second respondent misconstrues the applicants' case.
59. I refer to paragraphs 130 to 153 of the founding affidavit. It is clear from Uthaka's socio-economic study and social and labour plan that the local community will not benefit from the proposed jobs.
60. The second respondent selectively presents coal mining as the cornerstone for economic development for mining-affected communities and ignores the evidence that the benefits of mining are skewed against mining-affected communities that, in the majority, are left worse off than they were before the mining took place. This was found in a national investigation undertaken by the South African Human Rights Commission in 2018 that recorded that many mining-affected communities continue to experience significant levels of poverty and systemic inequalities, reinforcing the notion that the benefits of mining operations disproportionately favour mining companies and the state to the detriment of local communities.
61. There is evidence that mining aggravates unemployment in certain communities. According to a report published by the seventh applicant on coal mining impacts and communities, mining companies often promise local communities jobs at the mine but the communities are seldom employed. Instead, people are brought in from areas outside of the local community increasing the strain on already scarce basic infrastructure and resources and increasing the burden on the local community.

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62. ActionAid found that between 2009 and 2018, only 0.9% of the value generated by mines went into community development. In fact, R5.92 bn of an estimated R7.7 bn earmarked for community development did not reach the intended beneficiaries.
63. The reports referred to in this section are publicly available and copies of the relevant extracts relied on are attached as annexure "RA12", "RA13" and "RA14".
64. The impact of coal on mining-affected communities cannot be ignored. Coal mining is a water intensive activity that puts strain on water quantity and quality. Air pollution from coal mines mainly caused by emissions of particulate matter, coal dust and methane emissions are an immediate health hazard to the exposed population. Mining-affected communities report an increase in respiratory illnesses due to dust from mining operations and water-borne illnesses due to water pollution (Bench Marks report, pp. 43–48, 50, 58).
65. Some of the major role players in South Africa's coal mining industry have started divesting. Anglo-American, South32 and Glencore have sold or are selling their coal assets. These assets become stranded assets (not commercially viable in future), often sold to smaller usually black-owned companies disguised as empowerment deals. In support of these contentions, I attach a copy of an article published in the Mail & Guardian as annexure "RA15".
66. Most of the major financial institutions in South Africa have indicated an intention to stop financing new coal projects, showing the shift away from polluting fossil fuels to renewable energy.
67. Globally, the demand for coal has plateaued due to its phase out in countries

including France, Australia, the United Kingdom, the United States of America and China. Overall, the coal mining industry is on the decline.

68. I deny that the harm to the environment is restricted to the 22.4 hectares on the visible surface and point out that this statement is evidence of the irrationality of the respondents' decisions. The harm to the environment far outweighs any alleged "*greater socio-economic benefits*" and I submit will harm the local community.

Ad paras. 239 – 240, 261

69. I deny the contents of these paragraphs and note that these allegations amount to hearsay and are not supported by the record. As such, I put the second respondent to the proof thereof.
70. In any event, I submit that the existence of an environmental authorisation has no influence on and would not obviate the recommendation in terms of section 52 of SPLUMA.

Ad para. 245

71. I deny that the proposed mine demonstrates significant socio-economic benefits for the Municipality and its people.

CONCLUSION

72. The applicants do not pursue the relief sought in paragraph 1 of the notice of motion.

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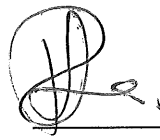
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73. The applicants persist in the remainder of the relief sought by them in the notice of motion, as amended.


MARGARET MOLOMO

I hereby certify that the deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn to before me at Mokopane on this the 2nd day of SEPTEMBER 2022, and that the regulations contained in Government Gazette Notice R.1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

 **KEKANA ATTORNEYS**
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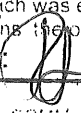

COMMISSIONER OF OATHS

Full names:

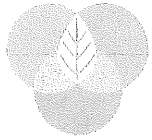
I certify that this document is a true copy of the original which was examined by me and that from my observations the original has not been altered in any manner

Address:

Capacity:


RAISIBE RACHEL KEKANA

2 September 2022



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

RA1

Mr Mohlala
Mohlala Attorneys Inc
Attorneys for the First and Second Respondents
By email: info@mohlalainc.co.za

Our ref: Tatenda Muponde/Catherine Horsfield
24 November 2021

Dear Mr Mohlala

MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA & OTHERS V GERT SIBANDE DISTRICT JOINT MUNICIPAL TRIBUNAL & OTHERS (CASE NO: 1344/20)

1. We refer to the rezoning approval granted to Uthaka Energy (Pty) Ltd ("The Third Respondent") by the First Respondent on 29 April 2019 that is the subject of the above review application and to the First Respondent's Counter-Application that was served on 23 September 2021.
2. We refer specifically to the several conditions in the rezoning approval which must have been fulfilled by the Third Respondent within a period of 12 months from the date the approval was granted. Of relevance in the present circumstances are conditions 1 and 3(a) as stipulated in the rezoning approval notification letter:

Condition 1 requires that *"This approval is subject to the payment by the applicant of development charges and/or monies for the provision of engineering services (where applicable) as contemplated in the LUM By-Law read with sections 40(7), 49 and 50 of SPLUMA, the holder of a valid mining right which attaches to the aforesaid property in terms of the Minerals and Petroleum Resources Development Act, 2002"*.

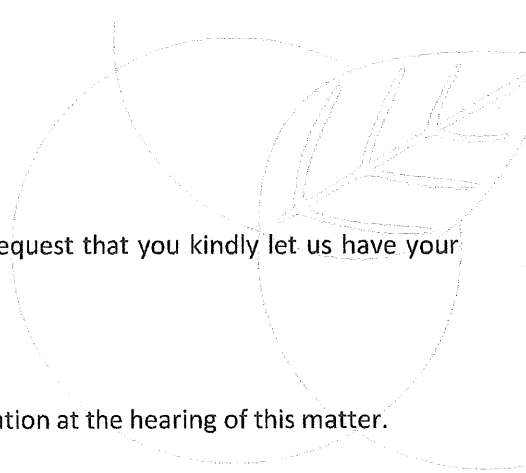
Condition 3(a) requires that *"the applicant shall provide proof to the satisfaction of the Municipality that the conditions that have to be complied with in order to bring the approved rights into effect have indeed been complied with within 12 (twelve) months from the date of this approval or such further period as the Municipality may allow, failing which this approval shall lapse."* (our emphasis)

3. Without fulfillment of the conditions, the validity of the rezoning approval comes into question. We therefore ask that your clients kindly clarify the following:
 - 3.1. Whether the Third Respondent has made payment of the development charges and/or provided monies for the provision of engineering services, thereby fulfilling condition 1 as stipulated in the approval notification letter; and if it has, when that was. Please provide us with documentary evidence of such compliance;
 - 3.2. If the answer to the above is no, whether the First Respondent has extended the time period within which the Third Respondent should make such payment, and if so, when that was. Please provide us with copies of the correspondence between the First and Third Respondent in which such extension was sought and granted;
 - 3.3. Whether the Third Respondent has made an application to amend the above conditions of the rezoning approval, and if it has, when that was. Please provide us with any copies of such application;

Cape Town: 2nd Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa
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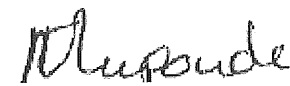
Centre for Environmental Rights (CER) is a non-profit company with registration number 2009/020736/08, NPO Ref 075-5031 (PEW) and a Law Firm registered with the Legal Practice Council. Directors: Rachael Shosha Aducci, Gregory Daniels, Melissa Forde (Executive), Prof Tracy-Lynn Field, Sandra Meyersfeld, Fenecho Piene, Nompotiwe Vilakazi (Chair). Attorneys: Brandon Abdoor, Melissa Forde, Leanne Goddard, Thobela Amanda Gureeds, Danyen Hahn, Catherine Horsfield, Ntombi Lelebeke Kupa, Mabel Koyana, Timothy Hendria Lloyd, Nicola Loner, Danyelle Moleky, Tanya Mqunyane, Tatenda Muponde, Laura Omar, Wandee Prano, Michelle Smit, Candice Attorneys, Kwame Lorde, Danyelle Smit.

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4. Given the relevance of this information to the review application, we request that you kindly let us have your response as soon as possible.
 5. We reserve our clients' rights in the interim.
 6. Kindly be advised that our instructions are to oppose the Counter-Application at the hearing of this matter.

Yours sincerely

CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

Tatenda Muponde

Attorney

Direct email: tmuponde@cer.org.za





RESOLUTION OF THE BOARD OF TRUSTEES OF GROUNDWORK

It was resolved that:

1. The appeal by Earthlife Africa Johannesburg, Birdlife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), the Endangered Wildlife Trust, the Federation for a Sustainable Environment, groundWork (gW), the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. gW, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 2.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources (DMR) to approve the EMPR (the EMPR review); and
 - 2.2 In respect of any application submitted by or on behalf of Atha for the change of use of land and/or amendment of a land-use scheme by rezoning of land in respect of the proposed Yzermyn underground coal mine (the land-use change application) in terms of the provisions of the Spatial Planning and Land Use Management (SPLUM) By-Law for: Dr Pixley Ka Isaka Seme Local Municipality, 2016 (the By-law), read with the relevant provisions of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters 2015 (the SPLUM Regulations):
 - 2.2.1 object to and/or comment on the land-use change application in terms of the relevant provisions of the By-Law, and/or any relevant provisions of the SPLUMA and the SPLUM Regulations, in response to any public notice of such application for land-use change received in terms of the By-law, and/or any relevant provisions of the SPLUMA and the SPLUM Regulations; and/or
 - 2.2.2 petition the Municipal Planning Tribunal, authorised official, Minister of Rural Development and Land Reform (Minister) and/or an appeal authority to be granted intervener status in the land-use change application or appeal, as the case may be, before any of the aforesaid parties in terms of the relevant provisions of the By-Law, the SPLUM Regulations and the SPLUMA, and participate in such proceedings; and/or
 - 2.2.3 in the event that the Municipal Planning Tribunal or Land Development Officer and/or Minister approves the land-use change application, in whole or in part, appeal such decision in terms of the relevant provisions of the SPLUMA, the SPLUM Regulations and the By-law (the LU appeal); and/or
 - 2.2.4 following determination by the appeal authority of the LU appeal, institute judicial proceedings to review and set aside or to defend, as the case may be, the decision of the appeal authority as well as the decision of the Municipal Planning Tribunal or Land Development Officer and/or Minister (the LU review); and
 - 2.3 With reference to the Resolutions taken by gW on 4 September 2015 and 19 June 2017:

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G.M

R.R.

- 2.3.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
- 2.3.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the DMR in respect of the grant of a mining right to Atha-Africa Ventures (Pty) Ltd (Atha);
 - 2.3.1.2 the NEMPAA review;
 - 2.3.1.3 the EA review;
 - 2.3.1.4 the EMPR review (in paragraph 2.1 above); and
 - 2.3.1.5 the LU review (in paragraph 2.2.4 above).
- 2.4 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal and administrative proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
- 2.5 Seek an appropriate costs order against the respondents should gW be successful in any of the legal and administrative proceedings described above, and to enforce such costs order; and
- 2.6 Seek any further appropriate relief in relation to the above legal proceedings.
3. Authorised persons
- 3.1 Sven Eaton Patrick Peek, the Director of groundWork, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings on behalf of gW.
- 3.2 The Chairperson of MEJCON-SA, in her/his capacity as such, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of gW.
- 3.3 With reference to the Resolution taken by gW on 19 June 2017, the Chairperson of MEJCON-SA, in her/his capacity as such, is hereby authorised to depose to any affidavit and sign any other documents which may be required in the relevant administrative and legal proceedings and to take all other necessary steps to fulfil that resolution on behalf of gW.
4. The Centre for Environmental Rights (CER) is hereby appointed to represent gW in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.
5. All steps taken by gW and the CER on behalf of gW in the EMPR appeal are ratified to the extent necessary.
6. All steps taken by gW and the CER on behalf of gW in proceedings as contemplated in paragraph 2.2 in respect Atha's land-use change application dated 4 April 2018 are ratified to the extent necessary.

*Full
gW
RML*

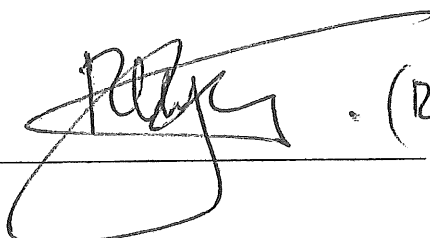
G.M

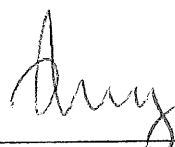
R.R.

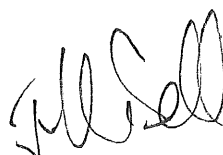
7. All steps taken by gW and the CER on behalf of gW in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

Signed:

DATED AT DURBAN on the 9TH day of DECEMBER 2019

 (R. M. Lyster)

 (C. E. S. KISTNASAMY)



G.M. R.R.

RESOLUTION OF THE BOARD OF DIRECTORS OF BIRDLIFE SOUTH AFRICA (BIRDLIFE SA)

It was resolved that:

1. The appeal by Earthlife Africa Johannesburg, BirdLife SA, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), the Endangered Wildlife Trust, the Federation for a Sustainable Environment, groundWork, the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. BirdLife SA, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 2.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources (DMR) to approve the EMPR (the EMPR review); and
 - 2.2 With reference to the Resolutions taken by BirdLife SA on 9 November 2015, 9 June 2017 and 12 September 2018:
 - 2.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
 - 2.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the DMR in respect of the grant of a mining right to Atha;
 - 2.2.1.2 the NEMPAA review;
 - 2.2.1.3 the EA review;
 - 2.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change; and
 - 2.2.1.5 the EMPR review (in paragraph 2.1 above).
 - 2.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
 - 2.4 Seek an appropriate costs order against the respondents should BirdLife SA be successful in any of the legal proceedings described above, and to enforce such costs order; and
 - 2.5 Seek any further appropriate relief in relation to the above legal proceedings.
3. Authorised persons
 - 3.1 Mark David Anderson, in his capacity as Chief Executive Officer of BirdLife SA, is hereby authorised to depose to any affidavit and sign any other documents which may be required in

G. M. R. R.

respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of BirdLife SA.

3.2 The following persons are also hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of BirdLife SA:

- 3.2.1 the Chairperson of MEJCON-SA, in her/his capacity as such; and
- 3.2.2 Sven Eaton Patrick Peek, Director of groundWork.

3.3 With reference to the Resolutions taken by BirdLife SA on 9 June 2017 and 12 September 2018, the Chairperson of MEJCON-SA, in her/his capacity as such, is hereby authorised to depose to any affidavit and sign any other documents which may be required in the relevant administrative and legal proceedings and to take all other necessary steps to fulfil those resolutions on behalf of BirdLife SA.

- 4. The Centre for Environmental Rights (CER) is hereby appointed to represent BirdLife SA in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.
- 5. All steps taken by BirdLife SA and the CER on behalf of BirdLife SA in the EMPR appeal are ratified to the extent necessary.
- 6. All steps taken by BirdLife SA and the CER on behalf of BirdLife SA in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

Signed:

DATED AT Johannesburg on the 8 day of August 2019



PHILIP GALINIKOS


Wade Anderson.



F. D. CAMPBELL

G.M. R.R.

respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of BirdLife SA.

3.2 The following persons are also hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of BirdLife SA:

- 3.2.1 the Chairperson of MEJCON-SA, in her/his capacity as such; and
- 3.2.2 Sven Eaton Patrick Peek, Director of groundWork.

3.3 With reference to the Resolutions taken by BirdLife SA on 9 June 2017 and 12 September 2018, the Chairperson of MEJCON-SA, in her/his capacity as such, is hereby authorised to depose to any affidavit and sign any other documents which may be required in the relevant administrative and legal proceedings and to take all other necessary steps to fulfil those resolutions on behalf of BirdLife SA.

- 4. The Centre for Environmental Rights (CER) is hereby appointed to represent BirdLife SA in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.
- 5. All steps taken by BirdLife SA and the CER on behalf of BirdLife SA in the EMPR appeal are ratified to the extent necessary.
- 6. All steps taken by BirdLife SA and the CER on behalf of BirdLife SA in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

Signed:

DATED AT Johannesburg on the 8th day of August 2019



PHILIP CALINIKOS



Mark Brown

G.M. R.R.

3.2 The following persons are also hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of BirdLife SA:

3.2.2 Sven Eaton Patrick Peek, Director of groundWork.

4. The Centre for Environmental Rights (CER) is hereby appointed to represent BirdLife SA in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.

6. All steps taken by BirdLife SA and the CER on behalf of BirdLife SA in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

Signed: _____
DATED AT Jacksonburg on the 28 day of August 2019

PHILIP CALINIKOS
GUT MORISAPONI

G.M.

P.R.



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WILDLIFE TRUST**
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**BOARD RESOLUTION 07/2019 OF THE BOARD
OF THE ENDANGERED WILDLIFE TRUST,
NONPROFIT ORGANISATION REGISTRATION NUMBER 015-520 NPO
AND PBO REGISTRATION NUMBER 930 001 777,
APPROVED BY INDIVIDUAL EMAIL APPROVAL
AND SIGNED AS PER BOARD-APPROVED PROTOCOL**

Purpose:

The Resolution requests to authorise the EWT as a coalition member to confirm CER's mandate to act for the coalition, and each coalition member's standing to challenge the licence whereupon Atha is intent on making things as hard as possible. This resolution will deal with all of the below.

CER already has the EWT's resolutions for the mining right review, the NEMPAA review, the environmental authorisation review, the various stages of the land-use planning challenge, a WUL review (a review of the Water Tribunal's dismissal of your appeal of Atha's WUL, which CER will launch – in consultation with EWT – by early November 2019), and any interdict/s that we may need to launch to prevent/stop commencement by Atha pending the determination of these legal challenges. (These existing resolutions are attached for convenience.)

The EWT Board, by virtue of the powers invested in it by the Amended and Restated Deed of Trust 2014, Section 17, hereby authorises the following that:

1. The appeal by Earthlife Africa Johannesburg, BirdLife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), EWT, the Federation for a Sustainable Environment, groundWork, the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. The appeal in terms of section 149 of the National Water Act, 1998 by EWT and the Federation for a Sustainable Environment (case no.: A155/19) against the Water Tribunal's 22 May 2019 appeal decision (appeal no.: WT 03/17/MP) is authorised and, to the extent necessary, ratified (the s149 WUL appeal).
3. EWT, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 3.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources to approve the EMPR (the EMPR review); and
 - 3.2 With reference to the Resolutions taken by EWT on 31 August 2015/1/9 September 2015, 19 June 2017 and 28 June 2018:

Physical Address: Building K2, Ardeer Road, Pinelands Office Park,
Modderfontein 1609, Gauteng, South Africa
Postal Address: Private Bag X 11, Modderfontein 1645, Gauteng, South Africa
Tel: +27 (0) 11 372 3600 Fax: +27 (0) 11 608 4682 E-mail: ewt@ewt.org.za Web: www.ewt.org.za

The Endangered Wildlife Trust is a non-profit, public benefit organisation dedicated to conserving species and ecosystems in southern Africa to the benefit of all people.

NPO Number: 015-502, PBO number: 930 001 777, Member of IUCN - The International Union for Conservation of Nature
The Endangered Wildlife Trust is US 501(c)(3) compliant under US IRS Registration number: EMP98-0586801.



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- 3.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
 - 3.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the Department of Mineral Resources in respect of the grant of a mining right to Atha;
 - 3.2.1.2 the NEMPAA review;
 - 3.2.1.3 the EA review;
 - 3.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change;
 - 3.2.1.5 the EMPR review (in paragraph 3.1 above);
 - 3.2.1.6 the judicial review proceedings to review and set aside the decision of the Water Tribunal in the WUL appeal, as well as to review and set aside the decision of the Director-General of the Department of Water and Sanitation to issue a WUL to Atha on 7 July 2016; and
 - 3.2.1.7 the s149 WUL appeal (in paragraph 2 above).
- 3.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
- 3.4 Seek an appropriate costs order against the respondents should EWT be successful in any of the legal proceedings described above, and to enforce such costs order; and
- 3.5 Seek any further appropriate relief in relation to the above legal proceedings.
4. **Authorised person**
Yolan Friedmann, in her capacity as Chief Executive Officer of EWT, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of EWT.
5. The Centre for Environmental Rights (CER) is hereby appointed to represent EWT in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.
6. All steps taken by EWT and the CER on behalf of EWT in the EMPR appeal are ratified to the extent necessary.

G.M. R.R.

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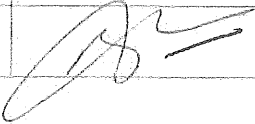
7. All steps taken by EWT and the CER on behalf of EWT in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

And the EWT Board further:

- i) hereby ratifies and approves whatsoever actions the aforesaid Yolán Friedmann as the EWT Chief Executive Officer may hitherto have taken in respect of the abovementioned matter.

This resolution may be signed in one or more counterparts, all of which together shall be considered to

constitute one and the same resolution as at the date of signature by the party last signing one of the counterparts.

Effective Date:	Immediate effect
Meeting or correspondence date:	
Meeting or correspondence type:	via round robin email
Authorized by:	Signature
Dirk Ackerman (Chair)	
Antony Wannell (Vice Chair)	
Paul Smith (Treasurer)	
Sharmila Govind	
Mike Esterhuysen	
Barry Ackers	

G.M.

R.R.

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NPO Number: 015-502, PBO number: 930 001 777, Member of IUCN - The International Union for Conservation of Nature
The Endangered Wildlife Trust is US 501(c)(3) compliant under US IRS Registration number: EMP98-0586801.



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G.M.

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The Endangered Wildlife Trust is US 501(c)(3) compliant under US IRS Registration number: EMP98-0586801.



**BOARD RESOLUTION 07/2019 OF THE BOARD
OF THE ENDANGERED WILDLIFE TRUST,
NONPROFIT ORGANISATION REGISTRATION NUMBER 015-520 NPO
AND PBO REGISTRATION NUMBER 930 001 777,
APPROVED BY INDIVIDUAL EMAIL APPROVAL
AND SIGNED AS PER BOARD-APPROVED PROTOCOL**

Purpose:

The Resolution requests to authorise the EWT as a coalition member to confirm CER's mandate to act for the coalition, and each coalition member's standing to challenge the licence whereupon Atha is intent on making things as hard as possible. This resolution will deal with all of the below.

CER already has the EWT's resolutions for the mining right review, the NEMPAA review, the environmental authorisation review, the various stages of the land-use planning challenge, a WUL review (a review of the Water Tribunal's dismissal of your appeal of Atha's WUL, which CER will launch – in consultation with EWT – by early November 2019), and any interdict/s that we may need to launch to prevent/stop commencement by Atha pending the determination of these legal challenges. (These existing resolutions are attached for convenience.)

The EWT Board, by virtue of the powers invested in it by the Amended and Restated Deed of Trust 2014, Section 17, hereby authorises the following that:

1. The appeal by Earthlife Africa Johannesburg, BirdLife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), EWT, the Federation for a Sustainable Environment, groundWork, the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. The appeal in terms of section 149 of the National Water Act, 1998 by EWT and the Federation for a Sustainable Environment (case no.: A155/19) against the Water Tribunal's 22 May 2019 appeal decision (appeal no.: WT 03/17/MP) is authorised and, to the extent necessary, ratified (the s149 WUL appeal).
3. EWT, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 3.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources to approve the EMPR (the EMPR review); and
 - 3.2 With reference to the Resolutions taken by EWT on 31 August 2015/1/9 September 2015, 19 June 2017 and 28 June 2018:

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- 3.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
 - 3.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the Department of Mineral Resources in respect of the grant of a mining right to Atha;
 - 3.2.1.2 the NEMPAA review;
 - 3.2.1.3 the EA review;
 - 3.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change;
 - 3.2.1.5 the EMPR review (in paragraph 3.1 above);
 - 3.2.1.6 the judicial review proceedings to review and set aside the decision of the Water Tribunal in the WUL appeal, as well as to review and set aside the decision of the Director-General of the Department of Water and Sanitation to issue a WUL to Atha on 7 July 2016; and
 - 3.2.1.7 the s149 WUL appeal (in paragraph 2 above).
- 3.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
- 3.4 Seek an appropriate costs order against the respondents should EWT be successful in any of the legal proceedings described above, and to enforce such costs order; and
- 3.5 Seek any further appropriate relief in relation to the above legal proceedings.
4. **Authorised person**

Yolan Friedmann, in her capacity as Chief Executive Officer of EWT, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of EWT.
5. The Centre for Environmental Rights (CER) is hereby appointed to represent EWT in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.
6. All steps taken by EWT and the CER on behalf of EWT in the EMPR appeal are ratified to the extent necessary.

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G.M. R.R.

The Endangered Wildlife Trust is a non-profit, public benefit organisation dedicated to conserving species and ecosystems in southern Africa to the benefit of all people.



7. All steps taken by EWT and the CER on behalf of EWT in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

And the EWT Board further:

- i) hereby ratifies and approves whatsoever actions the aforesated Yolán Friedmann as the EWT Chief Executive Officer may hitherto have taken in respect of the abovementioned matter.

This resolution may be signed in one or more counterparts, all of which together shall be considered to

constitute one and the same resolution as at the date of signature by the party last signing one of the counterparts.

Effective Date:	Immediate effect
Meeting or correspondence date:	
Meeting or correspondence type:	via round robin email
Authorized by:	Signature
Dirk Ackerman (Chair)	
Antony Wannell (Vice Chair)	
Paul Smith (Treasurer)	
Karin Ireton	
Mike Esterhuysen	

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C. M.

R. R.

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**ENDANGERED
WILDLIFE TRUST**
Protecting forever, together.

**BOARD RESOLUTION 07/2019 OF THE BOARD
OF THE ENDANGERED WILDLIFE TRUST,
NONPROFIT ORGANISATION REGISTRATION NUMBER 015-520 NPO
AND PBO REGISTRATION NUMBER 930 001 777,
APPROVED BY INDIVIDUAL EMAIL APPROVAL
AND SIGNED AS PER BOARD-APPROVED PROTOCOL**

Purpose:

The Resolution requests to authorise the EWT as a coalition member to confirm CER's mandate to act for the coalition, and each coalition member's standing to challenge the licence whereupon Atha is intent on making things as hard as possible. This resolution will deal with all of the below.

CER already has the EWT's resolutions for the mining right review, the NEMPAA review, the environmental authorisation review, the various stages of the land-use planning challenge, a WUL review (a review of the Water Tribunal's dismissal of your appeal of Atha's WUL, which CER will launch – in consultation with EWT – by early November 2019), and any interdict/s that we may need to launch to prevent/stop commencement by Atha pending the determination of these legal challenges. (These existing resolutions are attached for convenience.)

The EWT Board, by virtue of the powers invested in it by the Amended and Restated Deed of Trust 2014, Section 17, hereby authorises the following that:

1. The appeal by Earthlife Africa Johannesburg, BirdLife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), EWT, the Federation for a Sustainable Environment, groundWork, the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. The appeal in terms of section 149 of the National Water Act, 1998 by EWT and the Federation for a Sustainable Environment (case no.: A155/19) against the Water Tribunal's 22 May 2019 appeal decision (appeal no.: WT 03/17/MP) is authorised and, to the extent necessary, ratified (the s149 WUL appeal).
3. EWT, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 3.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources to approve the EMPR (the EMPR review); and
 - 3.2 With reference to the Resolutions taken by EWT on 31 August 2015/1/9 September 2015, 19 June 2017 and 28 June 2018:

Physical Address: Building K2, Ardeer Road, Pinelands Office Park,
Modderfontein 1609, Gauteng, South Africa

Postal Address: Private Bag X 11, Modderfontein 1645, Gauteng, South Africa

Tel: +27 (0) 11 372 3600 Fax: +27 (0) 11 608 4682 E-mail: ewt@ewt.org.za Web: www.ewt.org.za

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NPO Number: 015-502, PBO number: 930 001 777, Member of IUCN - The International Union for Conservation of Nature
The Endangered Wildlife Trust is US 501(c)(3) compliant under US IRS Registration number: EMP98-0586801.



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Protecting forever, together.

- 3.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
 - 3.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the Department of Mineral Resources in respect of the grant of a mining right to Atha;
 - 3.2.1.2 the NEMPAA review;
 - 3.2.1.3 the EA review;
 - 3.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change;
 - 3.2.1.5 the EMPR review (in paragraph 3.1 above);
 - 3.2.1.6 the judicial review proceedings to review and set aside the decision of the Water Tribunal in the WUL appeal, as well as to review and set aside the decision of the Director-General of the Department of Water and Sanitation to issue a WUL to Atha on 7 July 2016; and
 - 3.2.1.7 the s149 WUL appeal (in paragraph 2 above).
- 3.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
- 3.4 Seek an appropriate costs order against the respondents should EWT be successful in any of the legal proceedings described above, and to enforce such costs order; and
- 3.5 Seek any further appropriate relief in relation to the above legal proceedings.
4. **Authorised person**
Yolan Friedmann, in her capacity as Chief Executive Officer of EWT, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of EWT.
5. The Centre for Environmental Rights (CER) is hereby appointed to represent EWT in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.
6. All steps taken by EWT and the CER on behalf of EWT in the EMPR appeal are ratified to the extent necessary.

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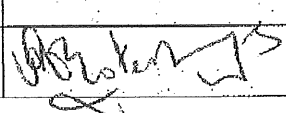
7. All steps taken by EWT and the CER on behalf of EWT in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

And the EWT Board further:

- i) hereby ratifies and approves whatsoever actions the aforesated Yolán Friedmann as the EWT Chief Executive Officer may hitherto have taken in respect of the abovementioned matter.

This resolution may be signed in one or more counterparts, all of which together shall be considered to

constitute one and the same resolution as at the date of signature by the party last signing one of the counterparts.

Effective Date:	Immediate effect
Meeting or correspondence date:	
Meeting or correspondence type:	via round robin email
Authorized by:	Signature
Dirk Ackerman (Chair)	
Antony Wannell (Vice Chair)	
Paul Smith (Treasurer)	
Karin Ireton	
Mike Esterhuysen	

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The Endangered Wildlife Trust is US 501(c)(3) compliant under US IRS Registration number: EMP98-0586801.



**BOARD RESOLUTION 07/2019 OF THE BOARD
OF THE ENDANGERED WILDLIFE TRUST,
NONPROFIT ORGANISATION REGISTRATION NUMBER 015-520 NPO
AND PBO REGISTRATION NUMBER 930 001 777,
APPROVED BY INDIVIDUAL EMAIL APPROVAL
AND SIGNED AS PER BOARD-APPROVED PROTOCOL**

Purpose:

The Resolution requests to authorise the EWT as a coalition member to confirm CER's mandate to act for the coalition, and each coalition member's standing to challenge the licence whereupon Atha is intent on making things as hard as possible. This resolution will deal with all of the below.

CER already has the EWT's resolutions for the mining right review, the NEMPAA review, the environmental authorisation review, the various stages of the land-use planning challenge, a WUL review (a review of the Water Tribunal's dismissal of your appeal of Atha's WUL, which CER will launch – in consultation with EWT – by early November 2019), and any interdict/s that we may need to launch to prevent/stop commencement by Atha pending the determination of these legal challenges. (These existing resolutions are attached for convenience.)

The EWT Board, by virtue of the powers invested in it by the Amended and Restated Deed of Trust 2014, Section 17, hereby authorises the following that:

1. The appeal by Earthlife Africa Johannesburg, BirdLife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), EWT, the Federation for a Sustainable Environment, groundWork, the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. The appeal in terms of section 149 of the National Water Act, 1998 by EWT and the Federation for a Sustainable Environment (case no.: A155/19) against the Water Tribunal's 22 May 2019 appeal decision (appeal no.: WT 03/17/MP) is authorised and, to the extent necessary, ratified (the s149 WUL appeal).
3. EWT, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 3.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources to approve the EMPR (the EMPR review); and
 - 3.2 With reference to the Resolutions taken by EWT on 31 August 2015/1/9 September 2015, 19 June 2017 and 28 June 2018:

G.M. R.R.

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**ENDANGERED
WILDLIFE TRUST**
Protecting forever, together.

- 3.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
 - 3.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the Department of Mineral Resources in respect of the grant of a mining right to Atha;
 - 3.2.1.2 the NEMPAA review;
 - 3.2.1.3 the EA review;
 - 3.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change;
 - 3.2.1.5 the EMPR review (in paragraph 3.1 above);
 - 3.2.1.6 the judicial review proceedings to review and set aside the decision of the Water Tribunal in the WUL appeal, as well as to review and set aside the decision of the Director-General of the Department of Water and Sanitation to issue a WUL to Atha on 7 July 2016; and
 - 3.2.1.7 the s149 WUL appeal (in paragraph 2 above).
- 3.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
- 3.4 Seek an appropriate costs order against the respondents should EWT be successful in any of the legal proceedings described above, and to enforce such costs order; and
- 3.5 Seek any further appropriate relief in relation to the above legal proceedings.
4. **Authorised person**
Yolan Friedmann, in her capacity as Chief Executive Officer of EWT, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of EWT.
5. The Centre for Environmental Rights (CER) is hereby appointed to represent EWT in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.
6. All steps taken by EWT and the CER on behalf of EWT in the EMPR appeal are ratified to the extent necessary.

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7. All steps taken by EWT and the CER on behalf of EWT in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

And the EWT Board further:

- i) hereby ratifies and approves whatsoever actions the aforesaid Yolán Friedmann as the EWT Chief Executive Officer may hitherto have taken in respect of the abovementioned matter.

This resolution may be signed in one or more counterparts, all of which together shall be considered to

constitute one and the same resolution as at the date of signature by the party last signing one of the counterparts.

Effective Date:	Immediate effect
Meeting or correspondence date:	
Meeting or correspondence type:	via round robin email
Authorized by:	Signature
Dirk Ackerman (Chair)	
Antony Wannell (Vice Chair)	
Paul Smith (Treasurer)	
Sharmila Govind	
Mike Esterhuysen	
Veniela Pillay	

GM R.R

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WILDLIFE TRUST
THE ENDANGERED WILDLIFE TRUST

**BOARD RESOLUTION 07/2019 OF THE BOARD
OF THE ENDANGERED WILDLIFE TRUST,
NONPROFIT ORGANISATION REGISTRATION NUMBER 015-520 NPO
AND PBO REGISTRATION NUMBER 930 001 777,
APPROVED BY INDIVIDUAL EMAIL APPROVAL
AND SIGNED AS PER BOARD-APPROVED PROTOCOL**

Purpose:

The Resolution requests to authorise the EWT as a coalition member to confirm CER's mandate to act for the coalition, and each coalition member's standing to challenge the licence whereupon Atha is intent on making things as hard as possible. This resolution will deal with all of the below.

CER already has the EWT's resolutions for the mining right review, the NEMPAA review, the environmental authorisation review, the various stages of the land-use planning challenge, a WUL review (a review of the Water Tribunal's dismissal of your appeal of Atha's WUL, which CER will launch - in consultation with EWT - by early November 2019), and any interdict/s that we may need to launch to prevent/stop commencement by Atha pending the determination of these legal challenges. (These existing resolutions are attached for convenience.)

The EWT Board, by virtue of the powers invested in it by the Amended and Restated Deed of Trust 2014, Section 17, hereby authorises the following that:

1. The appeal by Earthlife Africa Johannesburg, BirdLife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), EWT, the Federation for a Sustainable Environment, groundWork, the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. The appeal in terms of section 149 of the National Water Act, 1998 by EWT and the Federation for a Sustainable Environment (case no.: A155/19) against the Water Tribunal's 22 May 2019 appeal decision (appeal no.: WT 03/17/MP) is authorised and, to the extent necessary, ratified (the s149 WUL appeal).
3. EWT, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 3.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources to approve the EMPR (the EMPR review); and
 - 3.2 With reference to the Resolutions taken by EWT on 31 August 2015/1/9 September 2015, 19 June 2017 and 28 June 2018:
 - 3.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:

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- 3.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the Department of Mineral Resources in respect of the grant of a mining right to Atha;
 - 3.2.1.2 the NEMPAA review;
 - 3.2.1.3 the EA review;
 - 3.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change;
 - 3.2.1.5 the EMPR review (in paragraph 3.1 above);
 - 3.2.1.6 the judicial review proceedings to review and set aside the decision of the Water Tribunal in the WUL appeal, as well as to review and set aside the decision of the Director-General of the Department of Water and Sanitation to issue a WUL to Atha on 7 July 2016; and
 - 3.2.1.7 the s149 WUL appeal (in paragraph 2 above).
- 3.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
 - 3.4 Seek an appropriate costs order against the respondents should EWT be successful in any of the legal proceedings described above, and to enforce such costs order; and
 - 3.5 Seek any further appropriate relief in relation to the above legal proceedings.
4. **Authorised person**
Yolan Friedmann, in her capacity as Chief Executive Officer of EWT, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of EWT.
 5. The Centre for Environmental Rights (CER) is hereby appointed to represent EWT in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.
 6. All steps taken by EWT and the CER on behalf of EWT in the EMPR appeal are ratified to the extent necessary.
 7. All steps taken by EWT and the CER on behalf of EWT in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

And the EWT Board further:

G.M. R.R. S.

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Postal Address: Private Bag X 11, Modderfontein 1645, Gauteng, South Africa

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- i) hereby ratifies and approves whatsoever actions the aforesated Yolán Friedmann as the EWT Chief Executive Officer may hitherto have taken in respect of the abovementioned matter.

This resolution may be signed in one or more counterparts, all of which together shall be considered to

constitute one and the same resolution as at the date of signature by the party last signing one of the counterparts.

Effective Date:

Immediate effect

Meeting or correspondence date:

Meeting or correspondence type:

via round robin email

Authorized by:

Signature

Dirk Ackerman (Chair)

Antony Wannell (Vice Chair)

Paul Smith (Treasurer)

Karin Ireton

Mike Esterhuysen

G.M. R.R.

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE FEDERATION FOR A SUSTAINABLE
ENVIRONMENT (FSE)**

It was resolved that:

1. The appeal by Earthlife Africa Johannesburg, BirdLife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), the Endangered Wildlife Trust (EWT), FSE, groundWork, the Association for Water and Rural Development (AWARD) and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. The appeal in terms of section 149 of the National Water Act, 1998 by the Endangered Wildlife Trust and FSE (case no.: A155/19) against the Water Tribunal's 22 May 2019 appeal decision (appeal no.: WT 03/17/MP) is authorised and, to the extent necessary, ratified (the s149 WUL appeal).
3. FSE, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 3.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources to approve the EMPR (the EMPR review); and
 - 3.2 With reference to the Resolutions taken by FSE on 4 November 2015, 13 June 2017 and 14/15/17 August 2018:
 - 3.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
 - 3.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the Department of Mineral Resources in respect of the grant of a mining right to Atha;
 - 3.2.1.2 the NEMPAA review;
 - 3.2.1.3 the EA review;
 - 3.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change;
 - 3.2.1.5 the EMPR review (in paragraph 3.1 above);
 - 3.2.1.6 the judicial review proceedings to review and set aside the decision of the Water Tribunal in the WUL appeal, as well as to review and set aside the decision of the Director-General of the Department of Water and Sanitation to issue a WUL to Atha on 7 July 2016; and
 - 3.2.1.7 the s149 WUL appeal (in paragraph 2 above).
 - 3.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
 - 3.4 Seek an appropriate costs order against the respondents should FSE be successful in any of the legal proceedings described above, and to enforce such costs order; and

Guy 1

R.R.

3.5 Seek any further appropriate relief in relation to the above legal proceedings.

4. Authorised persons

4.1 Mariette Liefferink, in her capacity as CEO of FSE, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of FSE.

4.2 The following persons are also hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of FSE:

4.2.1 the Chairperson of MEJCON-SA, in her/his capacity as such;

4.2.2 Sven Eaton Patrick Peek, Director of groundWork; and

4.2.3 Yolan Friedmann, Chief Executive Officer of the EWT.

4.3 With reference to the Resolutions taken by FSE on 13 June 2017 and 14/15/17 August 2018, the Chairperson of MEJCON-SA, in her/his capacity as such, is hereby authorised to depose to any affidavit and sign any other documents which may be required in the relevant administrative and legal proceedings and to take all other necessary steps to fulfil those resolutions on behalf of FSE.

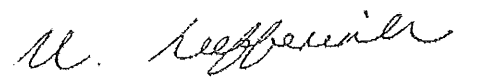
5. The Centre for Environmental Rights (CER) is hereby appointed to represent FSE in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.

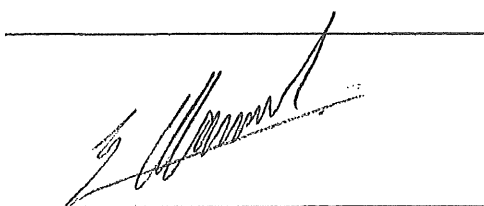
6. All steps taken by FSE and the CER on behalf of FSE in the EMPR appeal and the s149 WUL appeal are ratified to the extent necessary.

7. All steps taken by FSE and the CER on behalf of FSE in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

Signed:

DATED AT FOURWAYS on the 24th day of July 2019





G.M. R.R.

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE ASSOCIATION FOR WATER AND RURAL
DEVELOPMENT (AWARD)**

It was resolved that:

1. The appeal by Earthlife Africa Johannesburg, Birdlife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), the Endangered Wildlife Trust, the Federation for a Sustainable Environment, groundWork, AWARD and the Bench Marks Foundation of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. AWARD, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 2.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources to approve the EMPR (the EMPR review); and
 - 2.2 With reference to the Resolutions taken by AWARD on 9 November 2015, 19 June 2017 and 5/13/14 December 2018:
 - 2.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
 - 2.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the Department of Mineral Resources in respect of the grant of a mining right to Atha;
 - 2.2.1.2 the NEMPAA review;
 - 2.2.1.3 the EA review;
 - 2.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change; and
 - 2.2.1.5 the EMPR review (in paragraph 2.1 above).
 - 2.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
 - 2.4 Seek an appropriate costs order against the respondents should AWARD be successful in any of the legal proceedings described above, and to enforce such costs order; and
 - 2.5 Seek any further appropriate relief in relation to the above legal proceedings.
 3. Authorised persons
 - 3.1 Sharon Pollard, in her capacity as Executive Director of AWARD, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the

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aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of AWARD.

3.2 The following persons are also hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of AWARD:

3.2.1 the Chairperson of MEJCON-SA, in her/his capacity as such; and

3.2.2 Sven Eaton Patrick Peek, Director of groundWork.

3.3 With reference to the Resolutions taken by AWARD on 19 June 2017 and 5/13/14 December 2018, the Chairperson of MEJCON-SA, in her/his capacity as such, is hereby authorised to depose to any affidavit and sign any other documents which may be required in the relevant administrative and legal proceedings and to take all other necessary steps to fulfil those resolutions on behalf of AWARD.

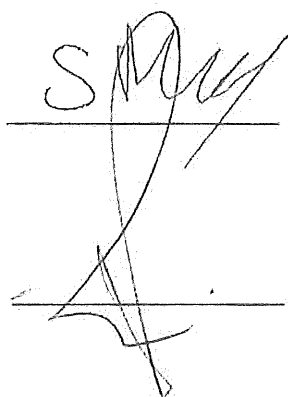
4. The Centre for Environmental Rights (CER) is hereby appointed to represent AWARD in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.

5. All steps taken by AWARD and the CER on behalf of AWARD in the EMPR appeal are ratified to the extent necessary.

6. All steps taken by AWARD and the CER on behalf of AWARD in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

Signed:

DATED AT _____ on the _____ day of _____ 2019



McGurk, Sandra

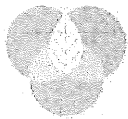
From: Suzanne Powell <spowell@cer.org.za>
Sent: 01 October 2019 10:52 AM
To: Joanne Taylor; McGurk, Sandra; Prior, Matthew; Prior, Matthew
Cc: Catherine Horsfield; Tatenda Muponde
Subject: RE: REQUEST FOR ASSISTANCE: AWARD resolution for Mabola
Attachments: [Untitled].pdf

Dear Sandra and Matthew

Have you kindly been able to take (sign) the attached resolution?

With thanks and kind regards

Suzanne Powell
Attorney
Centre for Environmental Rights NPC
A non-profit company with registration number 2009/020736/08
PBO No. 930032226, NPO No. 075-863, VAT No. 4770260653
and a Law Clinic registered with the Legal Practice Council
2nd Floor, Springtime Studios, 1 Scott Road, Observatory 7925, Cape Town, South Africa
Tel 021 447 1647 Fax 086 730 9098
spowell@cer.org.za www.cer.org.za
www.facebook.com/CentreEnvironmentalRights www.twitter.com/CentreEnvRights



Centre for
Environmental Rights

Advancing Environmental Rights in South Africa

From: Joanne Taylor [mailto:joanne@award.org.za]
Sent: 13 September 2019 10:04
To: Suzanne Powell <spowell@cer.org.za>; McGurk, Sandra <Sandra.McGurk@lifehealthcare.co.za>; Prior, Matthew <Matthew.Prior@lifehealthcare.co.za>; Prior, Matthew <MatthewP@life.co.za>
Cc: Catherine Horsfield <chorsfield@cer.org.za>; Tatenda Muponde <tmuponde@cer.org.za>
Subject: RE: REQUEST FOR ASSISTANCE: AWARD resolution for Mabola
Importance: High

Good Day Sandra and Matthew

Please can Matthew urgently signed the attached and send onto CER (email addresses copied in here)

This is the updated Mabola resolution

Many thanks
Kind regards

Joanne

From: Suzanne Powell [mailto:spowell@cer.org.za]
Sent: Thursday, 12 September 2019 10:53
To: Joanne Taylor <joanne@award.org.za>

G.M. R.R.

Annexure 8

RESOLUTION OF THE BOARD OF DIRECTORS OF THE BENCH MARKS FOUNDATION (BENCH MARKS)

It was resolved that:

1. The appeal by Earthlife Africa Johannesburg, Birdlife South Africa, the Mining and Environmental Justice Community Network of South Africa (MEJCON-SA), the Endangered Wildlife Trust, the Federation for a Sustainable Environment, groundWork, the Association for Water and Rural Development (AWARD) and Bench Marks of Atha-Africa Ventures (Pty) Ltd's (Atha) environmental management programme (EMPR no.: MP30/5/1/2/2/10069MR) (the EMPR appeal) is authorised and, to the extent necessary, ratified.
2. Bench Marks, on its own behalf; in the interests of protecting the environment; as a member of, or in the interests of, a group or class of persons; in the public interest; and/or as an association acting in the interests of its members, will:
 - 2.1 Following determination of the EMPR appeal, deemed or otherwise, institute legal proceedings to review and set aside or defend, as the case may be, the appeal decision, as well as to review and set aside the decision of the Regional Manager (Mpumalanga Region) of the Department of Mineral Resources to approve the EMPR (the EMPR review); and
 - 2.2 With reference to the Resolutions taken by Bench Marks on 26/27/30 November 2015, 19 June 2017 and 13 December 2018:
 - 2.2.1 prosecute the following legal proceedings to final conclusion, including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals:
 - 2.2.1.1 the judicial review proceedings to review and set aside the decisions taken by the Minister of Mineral Resources and the DG of the Department of Mineral Resources in respect of the grant of a mining right to Atha-Africa Ventures (Pty) Ltd (Atha);
 - 2.2.1.2 the NEMPAA review;
 - 2.2.1.3 the EA review;
 - 2.2.1.4 the judicial review proceedings to review and set aside, or defend, as the case may be, the decision of the appeal authority in any appeal of the approval of any application submitted by or on behalf of Atha for land-use change; and
 - 2.2.1.5 the EMPR review (in paragraph 2.1 above).
 - 2.3 Launch such other court proceedings as may be required to ensure that Atha does not commence mining activities, or preparations therefor, at the proposed Yzermyn underground coal mine pending the final determination of the legal proceedings described in this resolution, including prosecuting those proceedings to final conclusion (including bringing and/or opposing, as the case may be, applications for leave to appeal and appeals);
 - 2.4 Seek an appropriate costs order against the respondents should Bench Marks be successful in any of the legal proceedings described above, and to enforce such costs order; and
 - 2.5 Seek any further appropriate relief in relation to the above legal proceedings.

G.M. R.R.

3. Authorised person

John Capel, in his capacity as Executive Director of Bench Marks, is hereby authorised to depose to any affidavit and sign any other documents which may be required in respect of the aforesaid administrative and legal proceedings and to take all other necessary steps to fulfil this resolution on behalf of Bench Marks.

4. The Centre for Environmental Rights (CER) is hereby appointed to represent Bench Marks in all of the aforesaid administrative and legal proceedings; and Melissa Fourie, Executive Director of the CER, Catherine Horsfield, attorney at the CER, and/or any other attorney employed as such by the CER are hereby authorised to depose to any affidavit and take any steps as may be required in respect of the aforesaid administrative and legal proceedings.

5. All steps taken by Bench Marks and the CER on behalf of Bench Marks in the EMPR appeal are ratified to the extent necessary.

6. All steps taken by Bench Marks and the CER on behalf of Bench Marks in opposing the applications for leave to appeal in the NEMPAA review against the judgment of Davis J handed down on 8 November 2018 are ratified to the extent necessary.

Signed:

DATED AT Sunninghill on the 17 day of September 2019

D Du.

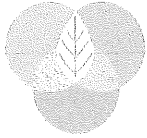
[Signature]

MB-A.

[Signature]

[Signature]

[Signature]



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

RA8

Mr Ebrahim Kaka
Ayoob Kaka Attorneys
Attorneys for The Voice Community Representative Council
By email: Ebrahim@kakalaw.co.za
ayoob@kakalaw.co.za

Your ref: Mr A Kaka/EK/VCR001
Our ref: Tatenda Muponde/Catherine Horsfield
22 September 2021

Dear Mr Kaka

RE: THE VOICE COMMUNITY REPRESENTATIVE COUNCIL INTERVENTION APPLICATION: MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA & OTHERS V GERT SIBANDE DISTRICT JOINT MUNICIPAL PLANNING TRIBUNAL & OTHERS, CASE NO: 1344/20

1. We refer to the above matter and your client's intervention application lodged on 21 October 2020.
2. We note that on 27 May 2021, a Notice to amend in terms of Rule 28 was filed on behalf of your client to amend their Notice of Motion. However, we have not received any further communication from you regarding this matter.
3. Please advise us of the status of your client's application to intervene in the above matter, including, whether such application has been set down for hearing and when.
4. We look forward to hearing from you.

Yours sincerely
CENTRE FOR ENVIRONMENTAL RIGHTS

per: 

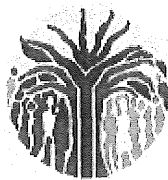
Tatenda Muponde
Attorney
Direct email: tmuponde@cer.org.za

Cape Town: 2nd Floor, Springlame Studios, 1 Scott Road, Observatory, 7925, South Africa
Johannesburg: G/F the Cottage, 2 Shearwood Road, Forest Town, Johannesburg, 2193, South Africa
Tel 021 447 1647 (Cape Town)
www.cer.org.za

Centre for Environmental Rights NPC is a non-profit company (no registration number 200902073606, NPO Ref No: 2001/016001/06, 606002226, and a Law Clinic registered with the Legal Practice Council) | Directors: Richard Maseko, Anneli Gregory Daniels, Melissa Fouche (Executive), Prof Terry-Lynn Field, Bonita Meyersfeld, Pansy Prins, Mphahlele Mphahlele (Chair) | Attorneys: Graham Abbot, Melissa Fouche, Leanne Govindaraj, Thobela Amanda Gumede, Doreen Hall, Catherine Horsfield, Matome Lathazo Kapa, Misozi Kuyana, Timothy Maudie Lloyd, Mande Lyster, Daniela Mupfey, Tanya Phagwayo, Tatenda Muponde, Zafra Omar, Wanda Phiso, Michelle Sefiso | Candidates: Anwar, Chuma Lesole, Dineke Sefiso

GM

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CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 122/21

In the matter between:

UTHAKA ENERGY (PTY) LIMITED

Applicant

and

**MINING AND ENVIRONMENTAL JUSTICE
COMMUNITY NETWORK OF
SOUTH AFRICA**

First Respondent

GROUNDWORK

Second Respondent

BIRDLIFE SOUTH AFRICA

Third Respondent

ENDANGERED WILDLIFE TRUST

Fourth Respondent

**FEDERATION FOR A SUSTAINABLE
ENVIRONMENT**

Fifth Respondent

**ASSOCIATION FOR WATER AND
RURAL DEVELOPMENT**

Sixth Respondent

BENCH MARKS FOUNDATION

Seventh Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR
AGRICULTURE, RURAL DEVELOPMENT,
LAND AND ENVIRONMENTAL AFFAIRS,
MPUMALANGA**

Eighth Respondent

**MINISTER OF ENVIRONMENT, FORESTRY
AND FISHERIES**

Ninth respondent

**MINISTER OF MINERAL RESOURCES
AND ENERGY**

Tenth Respondent

G. M

R. R

**MINISTER OF HUMAN SETTLEMENTS,
WATER AND SANITATION**

Eleventh Respondent

**ACTING CHIEF DIRECTOR: ENVIRONMENTAL
AFFAIRS, DEPARTMENT OF AGRICULTURE,
RURAL DEVELOPMENT, LAND AND
ENVIRONMENTAL AFFAIRS,
MPUMALANGA**

Twelfth Respondent

GERT SIBANDE DISTRICT MUNICIPALITY

Thirteenth Respondent

**DR PIXLEY KA ISAKA SEME LOCAL
MUNICIPALITY**

Fourteenth Respondent

WATER TRIBUNAL

Fifteenth Respondent

ESTATE LATE PIERRE WILLIAM BRUWER UYS

Sixteenth Respondent

**OCCUPIER OF PORTION 1, FARM
YZERMYN 96 HT**

Seventeenth Respondent

**VOICE COMMUNITY REPRESENTATION
COUNCIL**

Eighteenth Respondent

**THE MABOLA PROTECTED ENVIRONMENT
LANDOWNERS ASSOCIATION**

Nineteenth respondent

ORDER DATED 4 NOVEMBER 2021

CORAM: Zondo ACJ, Madlanga J, Madondo AJ, Majiedt J, Mhlantla J, Pillay AJ, Rogers AJ, Theron J, Tlaletsi AJ and Tshiqi J.

The Constitutional Court has considered the application for leave to appeal. It has concluded that the application should be dismissed as it is not in the interests of justice for this Court to entertain it at this stage.

Order: The application for leave to appeal is refused with costs.

G. M. R.R.



**MR DUNISANI MATHIBA
ACTING REGISTRAR
CONSTITUTIONAL COURT**

TO: FASKEN ATTORNEYS

Attorneys for the Applicant
Building Two, Inanda Greens
54 Wierda Road West
Sandton

JOHANNESBURG

Tel: 011 586 6089

Fax: 011 586 6189

Email: fjoubert@fasken.com

Ref: Francois Joubert



AND TO: CENTRE FOR ENVIRONMENTAL RIGHTS

Attorneys for the First to Seventh Respondents
2 Sherwood Road
Forest Town

JOHANNESBURG

Email: chorsfield@cer.org.za / nmia@cer.org.za / tmuponde@cer.org.za

Ref: Catherine Horsfield / Nabeelah Mia / Tatenda Muponde

AND TO: STATE ATTORNEY, PRETORIA

Attorneys for the Eighth to Twelfth Respondents
SALU Building
316 Thabo Sehume Street

PRETORIA

Tel: 012 309 1500

Email: simathebula@justice.gov.za / lnkuna@justice.gov.za

Ref: Sipho Mathebula / Nyiko Lucky Nkuna

AND TO: MOHLALA ATTORNEYS

Attorneys for the Thirteenth and Fourteenth Respondents
1 MacDonald Street

ERMELO

Email: info@mohlalainc.co.za

Ref: Mr Mohale

G.W

R.R.

AND TO: REGISTRAR OF WATER TRIBUNAL

Fifteenth Respondent

Sedibeng Building

185 Francis Baard Street

PRETORIA

Email: madimabes@dws.gov.za

AND TO: WERKSMANS ATTORNEYS

Attorneys for the Sixteenth Respondent

The Central

96 Rivonia Road

Sandton

JOHANNESBURG

Email: cstevens@werksmans.com

Ref: C Stevens

AND TO: OCCUPIER OF PORTION 1, FARM YZERMYN 96 HT

Seventeenth Respondent

Portion 1, Farm Yzermyn 96 HT

WAKKERSTROOM

AND TO: AYOOB KAKA ATTORNEYS

Attorneys for the Eighteenth Respondent

182 Barry Hertzog Avenue

Greenside

JOHANNESBURG

Tel: 011 726 1710

Email: ebrahim@kakalaw.co.za

Ref: Mr E Kaka

**AND TO: THE MABOLA PROTECTED ENVIRONMENT
LANDOWNERS ASSOCIATION**

Nineteenth Respondent

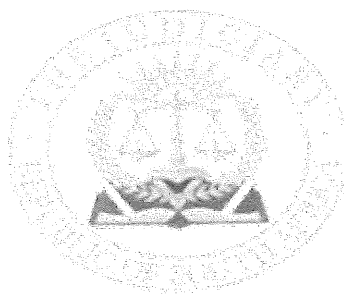
Farm Schoongezicht

VOLKSRUST

Email: malansp@vodamail.co.za / pjuyz@icloud.com

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P.R.



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Private Bag X67, Pretoria 0001

Case No:11761/2021

In the matter between:

2021 -03- 23

GD-PRET-006

MINING AND ENVIRONMENTAL JUSTICE

COMMUNITY NETWORK OF SOUTH AFRICA

First Applicant

GROUNDWORK

Second Applicant

BIRDLIFE SOUTH AFRICA

Third Applicant

ENDANGERED WILDLIFE TRUST

Fourth Applicant

FEDERATION FOR A SUSTAINABLE ENVIRONMENT

Fifth Applicant

ASSOCIATION FOR WATER AND RURAL DEVELOPMENT

Sixth Applicant

THE BENCH MARKS FOUNDATION

Seventh Applicant

and

UTHAKA ENERGY (PTY) LTD

First Respondent

**MEC FOR AGRICULTURE, RURAL DEVELOPMENT,
LAND AND ENVIRONMENTAL AFFAIRS, MPUMALANGA**

Second Respondent

**THE MINISTER OF ENVIRONMENT, FORESTRY
AND FISHERIES**

Third Respondent

**MINISTER OF MINERAL RESOURCES AND ENERGY
ACTING CHIEF DIRECTOR: ENVIRONMENTAL AFFAIRS,
DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT,**

Fourth Respondent

G.M

R.P.

LAND AND ENVIRONMENT AFFAIRS, MPUMALANGA

Sixth Respondent

GERT SIBANDE DISTRICT MUNICIPALITY

Seventh Respondent

DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY

Eighth Respondent

THE WATER TRIBUNAL

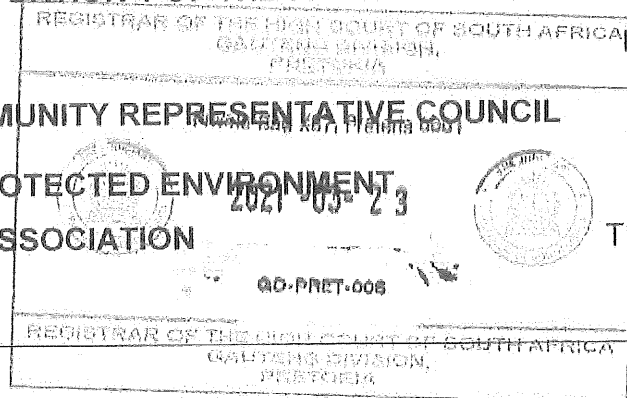
Ninth Respondent

ESTATE LATE PIERRE WILLIAM BRUWER UYS

Tenth Respondent

OCCUPIERS OF PORTION 1 OF THE FARM YZERMYN

96 HT



Eleventh Respondent

THE VOICE COMMUNITY REPRESENTATIVE COUNCIL

Twelfth Respondent

THE MABOLA PROTECTED ENVIRONMENT

LANDOWNERS ASSOCIATION

Thirteenth Respondent

ORDER

Having heard the parties and, having read and considered the papers filed of record, it is ordered as follows:

1. It has been directed that this matter be heard on an urgent basis in terms of rule 6(12).
2. The first respondent ("Uthaka") is interdicted and restrained from conducting any mining activities and mining-related operations (including any activities preparatory, ancillary or incidental to mining, including without limitation any fencing, cutting or clearing of vegetation, any establishment of roads, any construction or installation of buildings, infrastructure or equipment and any drilling, excavation, digging, removal of soil, coal, ore or any mineral) ("mining activities") save for the survey pegging of the surface infrastructure boundary as contemplated as activity 1 in the first respondent's Gantt Chart, and the wetlands demarcation pegging

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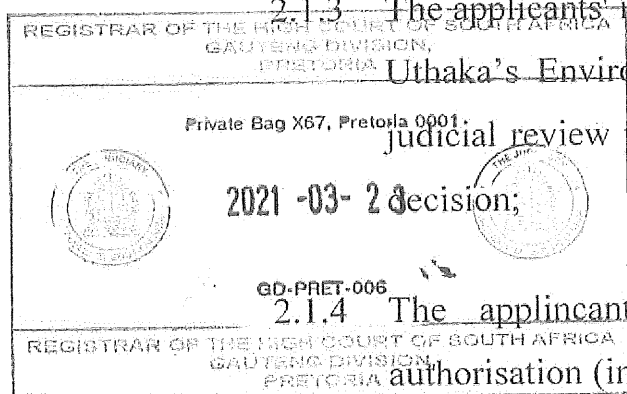
of the approved plan, contemplated as activity 2 in the Gantt Chart, on the properties listed in annexure 'A' to the Applicants' Notice of Motion ("the properties") unless and until, the following has taken place -

2.1 The final determination of the following reviews and appeals –

2.1.1 The applicants' appeal in this division under case number A155/19 in terms of section 149 of the National Water Act 36 of 1998;

2.1.2 The applicants' judicial review in this division under case number 86261/19 of the water use licence;

2.1.3 The applicants' internal statutory appeal against the approval of Uthaka's Environmental Management Programme and any proceedings instituted in respect of that appeal



2.1.4 The applicants' judicial review of the environmental authorisation (in the Mpumalanga Division of the High Court, Mbombela under case number 1390/18);

2.1.5 The applicants' judicial review of Uthaka's mining right (in this division under case number 73278/15);

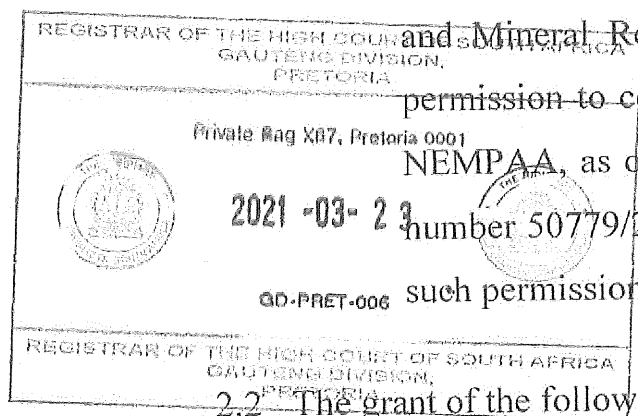
2.1.6 The applicants' judicial review of the decision by the Gert Sibande District Joint Municipal Planning Tribunal to approve the rezoning of Portion 1 of the farm Yzermyn 96 HT from agriculture to mining, and the Municipal Appeal Authority of the Dr Pixley Ka Isaka Seme Local Municipality's confirmation of the approval of that decision (in the

G.M. R.R.

Mpumalanga Division of the High Court, Middleburg under case number 1344/20); and

2.1.7 The applicants' judicial review of the MEC's decision to exclude the properties from the Mabola Protected Environment, which review application must be instituted within 30 days after the MEC has delivered his reasons for said decision;

2.1.8 The reconsideration by the Ministers of Environmental Affairs and Mineral Resources of Uthaka's application for written permission to conduct mining in terms of section 48(1)(b) of NEMPAA, as ordered by Davis J in his judgment under case number 50779/2017, should Uthaka need or persist in seeking such permission.



2.2 The grant of the following authorisations and permissions –

2.2.1 A valid mining right, in respect of which the period for commencement has been duly extended in terms of section 25(2)(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA");

2.2.2 the exhaustion of the statutory procedures in terms of section 54 of the MPRDA vis-à-vis the owner of portion 1 of Yzermyn 96 HT and any occupier of that land; and

2.2.3 the fulfillment of all relevant conditions laid down in statutory authorisations, including those imposed by the Water Tribunal.

3. The first respondent is ordered to pay the costs of this application including the costs of two counsel, such costs in respect of the applicants' instruction

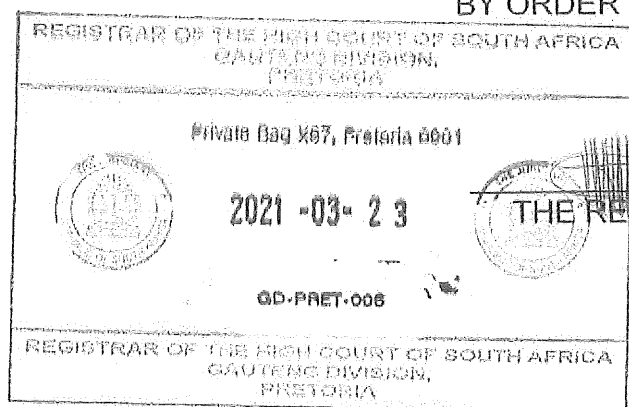
G.M.

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attorneys and senior counsel to be payable in terms of section 32(3)(a) of the National Environmental Management Act 107 of 1998.

4. In view of the fact that the Acting Deputy Judge President's directive that papers should not exceed 500 pages has been disregarded, primarily by the first respondent, reasons for this order will only be handed down a week from date hereof, on 30 March 2021.

BY ORDER OF COURT.



G.M

R.R.

**WETLAND ECOLOGICAL ASSESSMENT AS PART OF THE
ENVIRONMENTAL ASSESSMENT AND AUTHORISATION
PROCESS FOR THE PROPOSED YZERMINE COAL MINING
PROJECT NEAR DIRKIESDORP, MPUMALANGA
PROVINCE**

Prepared for

ECO PARTNERS

JUNE 2014

Report author: A. Milesen
Report Reviewers: S. van Staden (Pr. Sci. Nat)
N. van de Haar (Pr.Sci. Nat)
Report Reference: SAS 214124
Date: June 2014
Revised: August 2014

Scientific Aquatic Services CC
CC Reg No 2003/078943/23
Vat Reg. No. 4020235273
91 Geldenhuis Rd
Malvern East, Ext 1
Tel: 011 616 7893
Fax: 011 615 6240/086 724 3132
E-mail: admin@sasenvironmental.co.za



G.M.

R.R.

- All pollution control facilities should be lined with an HDPE liner system to prevent seepage.

Essential mitigation measures in the closure phase:

- All related waste and rubble must be removed from site and disposed of according to relevant SABS standards. No waste must be permitted to enter wetland resources;
- Edge effects such as erosion must be monitored and managed to prevent sedimentation of wetland resources;

Construction Phase	Managed	Probability of Impact	Sensitivity of receiving environment	Severity	Spatial scale	Duration of impact	Likelihood	Consequence	Significance
	Channelled Valley Bottom Systems	3	5	2	2	3	8	7	56 (Medium-Low)
	Hillslope Seep Systems	5	4	4	3	3	9	10	90 (Medium-High)
Operational phase	Managed	Probability of Impact	Sensitivity of receiving environment	Severity	Spatial scale	Duration of impact	Likelihood	Consequence	Significance
	Channelled Valley Bottom Systems	3	5	3	3	4	8	10	80 (Medium-High)
	Hillslope Seep Systems	5	4	2	3	4	9	9	81 (Medium-High)
Closure phase	Managed	Probability of Impact	Sensitivity of receiving environment	Severity	Spatial scale	Duration of impact	Likelihood	Consequence	Significance
	Channelled Valley Bottom Systems	3	5	2	3	3	8	8	64 (Medium-Low)
	Hillslope Seep Systems	5	4	3	2	3	9	8	72 (Medium-Low)

Probable latent impacts

None perceived.

IMPACT 3: IMPACTS ON WETLAND HYDROLOGICAL FUNCTION

Pre-Construction	Construction	Operational	Closure
Placement of infrastructure within sensitive wetland areas	Site clearing and the removal of vegetation leading to increased runoff and erosion	Ongoing disturbance of soils as a result of general operational activities, leading to increased risk of erosion and increased sedimentation of wetland habitat	Disturbance of soils as part of demolition activities, leading to increased risk of erosion and increased sedimentation of wetland habitat
Inadequate design of infrastructure leading to changes in hydrological function and sediment control capacity	Site clearing and the disturbance of soils leading to increased erosion	Earthworks in the vicinity of wetland areas leading to increased runoff and altered runoff patterns and erosion of wetland systems	Movement of construction vehicles within wetland areas resulting in disturbances to the soil profile, resulting in increased sedimentation of wetland habitat



Pre-Construction	Construction	Operational	Closure
	Earthworks in the vicinity of wetland areas leading to increased runoff and erosion and altered runoff patterns	Dewatering of wetland habitat downgradient of mining activities, leading to loss of water within wetland habitat and altered hydrological patterns	Altered hydrology due to decant of water from the underground mine voids via the adit and/or unsealed boreholes in the vicinity
	Construction of stream crossings altering stream and baseflow patterns and water velocities	Formation of groundwater cone of dewatering, leading to reduced recharge of wetland resources	Accumulation of toxic water in the ground water plume, resulting in the long-term, large scale contamination of aquifers and surface water
	Topsoil stockpiling adjacent to wetlands and runoff from stockpiles leading to sedimentation of the system		
	Movement of construction vehicles within wetlands		
	Increased runoff volumes due to increased paved and other impervious surfaces		

Construction Phase	Unmanaged	Probability of Impact	Sensitivity of receiving environment	Severity	Spatial scale	Duration of impact	Likelihood	Consequence	Significance
	Channelled Valley Bottom Systems	5	5	3	2	3	10	8	80 (Medium-high)
	Hillslope Seep Systems	5	4	4	3	3	9	10	90 (Medium-high)
Operational phase	Unmanaged	Probability of Impact	Sensitivity of receiving environment	Severity	Spatial scale	Duration of impact	Likelihood	Consequence	Significance
	Channelled Valley Bottom Systems	5	5	3	4	5	10	12	120 (High)
	Hillslope Seep Systems	5	4	5	3	5	9	13	117 (High)
Closure phase	Unmanaged	Probability of Impact	Sensitivity of receiving environment	Severity	Spatial scale	Duration of impact	Likelihood	Consequence	Significance
	Channelled Valley Bottom Systems	5	5	3	4	4	10	11	110 (High)

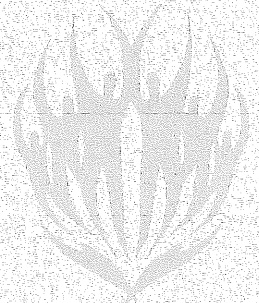


National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa

13-14 SEPTEMBER; 26 AND 28 SEPTEMBER; 3 NOVEMBER 2016



Executive Summary



When underpinned by good governance and a respect for the community and environment in which they operate, extractive industries harness significant potential to transform a country's social and economic development. Employment opportunities, increased investment and access to revenues can drive economic growth and reduce poverty at local, regional and national levels. However, often these opportunities are not realised and the negative impacts of extractive industries detract from and undermine the potential benefits and opportunities that accompany them.

Over the past 23 years, South Africa has established a comprehensive regulatory framework to enable its mining industry to operate in a manner that protects and promotes the well-being and safety of communities affected by its operations (mining-affected communities). The framework is designed to facilitate sustainable and equitable development of South Africa's mining industry, while enabling and promoting inclusive growth and prosperity. While the framework has the potential to drive positive social and economic development, particularly at the local level, this Report reveals a disjuncture between its intended impact and the lived reality of many of South Africa's mining-affected communities.

Despite extensive regulation and notable attempts by mining companies and government to implement progressive and sustainable projects, current industry practice is characterised by inconsistent legal compliance and reflects concerning legislative gaps. As a result, many mining-affected communities continue to experience significant levels of poverty and systemic inequality, which reinforces the notion that the benefits of mining operations disproportionately favour mining companies and the State, and are often to the detriment of local communities.

Furthermore, existing socio-economic challenges in mining-affected communities are compounded by a lack of coordination and cooperation among industry stakeholders and a general disregard for South Africa's unique context and the cultural affiliation to land that grounds social relations and livelihoods. These challenges are heightened in rural or remote communities, where inadequate access to basic services, poor infrastructure, endemic unemployment and high levels of poverty often reflect an unresponsive and inactive local government.

However, this Report reveals that progressive, evidence-based reform requires more than improved cooperation and collaboration among industry stakeholders; it requires an appreciation for, and understanding of, the diversity of risks and challenges that accompany the mining industry and its impact on local communities. It shows that the prioritisation of social and environmental needs in the regulatory and policy framework governing South Africa's mining industry is crucial to ensuring equitable access to the benefits of resource development

and addressing the underlying socio-economic challenges experienced by mining-affected communities.

Furthermore, the Report highlights that a greater focus on social and environmental sustainability coupled with the introduction of improved measures to address systemic non-compliance and ineffective monitoring, is key to ensuring that the negative impacts of the mining industry are minimised and that the rights of mining-affected communities, particularly vulnerable groups such as women, children, the elderly and people with disabilities, are upheld.

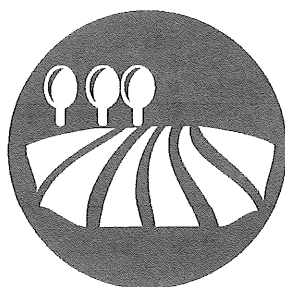
It is against this backdrop that the South African Human Rights Commission (SAHRC or Commission) hosted a National Hearing to investigate the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa (National Hearing or the Hearing). This Report documents the legal context and the proceedings of the SAHRC's National Hearing. It draws on existing literature and evaluates oral and written submissions by respondents with varied roles and responsibilities in addressing the challenges and opportunities in South Africa's mining-affected communities.

FINDINGS

The Commission has made a number of findings based on the underlying issues that contribute to the socio-economic challenges experienced by mining-affected communities. The Commission's directives and recommendations attempt to address these findings.

All parties to whom directives and recommendations have been addressed are required to provide a detailed written report to the Commission in six months, and again in 12 months, from the date of receipt of the final report. The detailed written report must address all measures taken to implement the directives and recommendations contained herein.

In addition, as required by section 18(4) of the SAHRC Act, the executive authority of all relevant national and provincial departments concerned must, within 60 days of the final report, provide a written response to the Commission indicating the intention to take any steps to give effect to the recommendations.



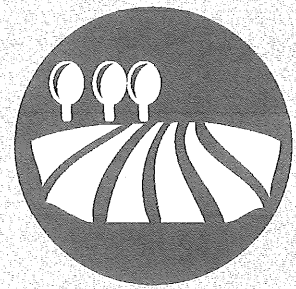
Land

Land use management

The Commission finds that a considerable gap exists in the mining licence application process, where mining companies, the Department of Mineral Resources (DMR) and the Department of Rural Development and Land Reform (DRDLR) appear to systematically disregard key pieces of legislation, particularly the Municipal Systems Act, 32 of 2000, the Spatial Land Use Management Act, 16 of 2013 (SPLUMA), and the Interim Protection of Informal Land Rights Act, 31 of 1996. The Commission further finds that there is an immediate need for municipalities to be consulted throughout the licence application process to enable them to provide for integrated and sustainable land use systems.

The Commission finds that municipalities should fulfill their mandates and ensure that zoning requirements are met, i.e. applicants for mining rights are required, where appropriate, to lodge applications for land use change and municipalities have an

Land



Mining of necessity occurs on land, irrespective of whether it takes the form of surface or underground operations. The phases of exploration, mine development, mine operation, and rehabilitation and closure, all significantly affect economic, social and environmental land relations. Mining is not a temporary use of land: its effects are long-term and are often environmentally detrimental.

Typically, where local communities occupy or use land that is subject to mining rights, mining companies are required to relocate families and facilitate the exhumation and internment of graves. While relocation can cause severe emotional hardship, it can also result in the breakdown of community structures, particularly when some community members are moved and others are not.

Many communities lose access to land vital for their livelihoods, including land used for grazing and farming purposes. Where land is key to a community's sustainable livelihood and food security, its importance goes beyond its economic or productive value and reflects a more deeply entrenched cultural affiliation that grounds social relations in particular localities. Therefore, many communities do not view land as a commodity, but rather as a heritage, a means of basic survival and the key to independence. When communities are displaced from communal land, not only are their individual rights impacted, but their collective interests may also be affected through the rupture of the community's social cohesion.

This section will be divided into four main areas of concern identified by the Commission, namely land use management, land relocation processes, mining in sensitive and protected areas, and the closure of mines and concomitant rehabilitation of land.

Closure and rehabilitation

The Commission notes that various challenges persist regarding post-closure land use, and the absence of legislative provision for concurrent rehabilitation and in respect of derelict and ownerless mines and closure costing.

The EMPs outlining post-closure land use are often vague or inappropriate. Although it should be clear from the commencement of mining operations the condition land will be restored to, some companies have merely identified objectives such as "a final land use that is optimised from an economic, social and environmental perspective". In other cases, unrealistic promises are made that land will be restored to its pre-mining state. On the other hand, some mining companies have identified post-closure land use early on, but these are sometimes of significantly depreciated quality, such as that land will be restored to a quality suitable for grazing purposes. The land use option identified by mines is sometimes the cheapest option (for example, grazing or wilderness options) whereas others propose residential development for low cost or social housing, particularly where the quality of land is significantly degraded.

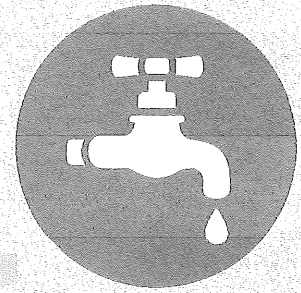
In order to obtain a mining licence, mining companies must make financial provision for rehabilitation or management of negative environmental impacts, and annually assess the adequacy of financial provisions. The MPRDA empowers the Minister to appoint an independent assessor if s/he deems it necessary. Submissions received during the National Hearing reflect that many mining companies do undertake concurrent rehabilitation. The failure to conduct concurrent rehabilitation activities may result in higher levels of degradation, longer-term impact, increased cost for remediation and rehabilitation, and arguably violate provisions of the NEMA.³¹ Partial closure is also not currently provided for in legislation, although some mines submitted that a partial closure provision in legislation could be a useful addition to the current framework.

In 2005, the DMR produced a Guideline Document for the Evaluation of the Quantum of Closure. Whereas some mining companies apply the Guideline rehabilitation costing, multiple concerns have been raised over its adequacy. First, these calculations do not factor in inflation, and second, they are viewed as too generic and unable to determine realistic financial liability. In practice, therefore, mining companies develop their own closure costing calculation models, resulting in multiple distinct approaches and no standardised approach for the assessment of appropriate liability. The fact that mining companies are responsible for determining their own model has, in some instances, meant that the required quantum for proper closure is grossly underestimated. For instance, funding models should be established to deal with historic pollution, to address rehabilitation beyond surface rehabilitation, and to cater for situations where there have been a succession of mining rights-holders. According to the DWS, the "no-project option" should be pursued where mines cannot prove that financial provision will be adequate for residual impact associated with issues such as mine water management including acid mine drainage (AMD), or where other long-term impacts cannot be sustainably addressed.³²

³¹ Sections 24N(7)(c) and (e) of the NEMA.

³² DWS Submission to the SAHRC (2016) 2.

Water



The Commission noted throughout its consultations with mining-affected communities and the Hearing that some of the most crucial challenges in respect of mining operations relate to the depreciation of water sources (availability of water) as well as the potential contamination of water (quality of water).

Mining operations utilise large quantities of water, and can impact significantly on availability and quality of water resources through the depreciation of water sources and their potential contamination.⁴⁶ In both instances, the right to water⁴⁷ is vulnerable to grievous violation where inadequate safeguards and remediation measures are in place. The Commission is cognisant of the fact that irresponsibly conducted mining operations may frequently give rise to the contamination of water sources. AMD in particular has long lasting impacts – it sterilises soil and contaminates food crops, poses a risk to biodiversity and is dangerous to health. The risk is particularly severe for abandoned mines where water is no longer pumped and treated. Despite the extensive impact of mining legacy issues, “AMD” and “Mine Water Management” are not formally defined in current legislation. According to the DWS, this hinders the process of dealing with AMD decisively. AMD is dealt with on a case-by-case basis, and civil society organisations have contended that the treatment process is often inadequate.⁴⁸

The DWS also raised concern over the lack of an integrated inter-governmental approach, leading to some conflicts or overlaps in powers and functions, specifically between the DWS, DMR and local government. For example, local authorities often grant permits for sand mining in rivers, which the DWS regulates. It has therefore proposed the development of a National Mine Water Strategy to give more clarity on roles and responsibilities and to enable an integrated and proactive approach to addressing the issues.⁴⁹

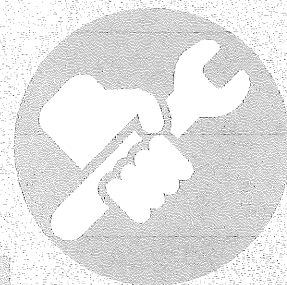
⁴⁶ The Federation for a Sustainable Environment *Rand Water Dialogue on Acid Mine drainage: The role of Civil Society: Acid Mine Water on the West Rand Goldfields* (2016) 11.

⁴⁷ S 27(1)(b) of the Constitution. The constitutional right of access to sufficient water is associated with the enjoyment of other rights, such as the right to health, safety and an environment that is not harmful to human health or well-being. Furthermore, a lack of access to water and sanitation has a disproportionate effect on vulnerable groups, including women, children, persons with disabilities, the elderly and those with ill health and hinders the ability of persons to access education and employment opportunities.

⁴⁸ The Federation for a Sustainable Environment *Letter to Department of Water and Sanitation: Urgent Request for Enforcement by the DWS for the Ongoing Pollution of the Rietspruit by Municipalities* (1 September 2016).

⁴⁹ DWS Submission to the SAHRC (2016) 1.

Social and Labour Plans



"There has been some significant implementation of the social and labour plan by way of hospitals and schools and the community did not have that. We know of many communities that do not still have that. That clearly brings something in, but the community that is in a situation where those things are really mainly associated with being Government's responsibility... and when they are looking at the mine they are looking at what the mine takes away in terms of wealth...I think when you navigate the difficulty you need to navigate it from not so much the perspective that you are bringing something, but also the cost analysis. What from a community perspective and from particular people in the community are you taking away ..."

- Janet Love, quote from National Hearing transcript

In terms of the MPRDA Regulations, all mining companies are required to submit an SLP as part of their application for a mining licence. The overall impetus for the SLP component of the regulatory regime is the desire to address historical socio-economic imbalances by driving socio-economic transformation in some of the most underdeveloped and marginalised communities in the country. The SLP system is also aimed at addressing the negative impacts of mining, and projects should therefore seek to prioritise these issues. An SLP must incorporate a number of elements, including a human resource development programme and a local economic development (LED) programme to spur economic growth and improve socio-economic welfare. The LED programme must include information regarding the social and economic background and key economic activities of the area in which the mine operates. The plan must include initiatives aimed at poverty eradication and infrastructure development; plans to address housing and living conditions, as well as the nutrition of mine employees; together with procurement progression plans.⁶¹ In terms of the SLP Guidelines developed by the DMR, development projects should consist of both infrastructure as well as income-generating projects.⁶²

⁶¹ Section 46.

⁶² Department of Mineral Resources *Revised Social and Labour Plan Guidelines* (2010) Available at: <http://www.dmr.gov.za/guidelines-revised-social-and-labour-plans.html>.



Throughout the National Hearing, multiple stakeholders referred to a “social licence” in their written and oral submissions. Globally, the need to obtain a “social licence to operate” is identified as standard mining industry practice. Broadly, this term denotes the idea of community acceptance and deals with approval, consent, and the overall reputation of mining companies. Given the ability of stakeholders to affect the sustainability and profitability of mining operations, mining companies endeavour to both obtain approval from relevant stakeholders to commence with mining operations, and to maintain such support throughout the lifecycle of a mine. However, a social licence to operate is not a legal requirement, and is often belied by the socio-economic reality in mining-affected communities. A “social licence to operate” should not be confused with legally binding SLPs. SLPs are a core legal requirement for the granting of a mining licence, and must be submitted to and approved by the DMR. As explained below, SLP obligations are not discretionary, and non-compliance breaches both the social licence and the legal mining licence – a fact that does not appear to be adequately acknowledged by all industry stakeholders.

Overview of previous findings on Social and Labour Plans

A number of concerns have repeatedly been raised relating to the effectiveness of the SLP system, including a plethora of issues surrounding the design as well as compliance with SLP commitments. The Commission recognises that substantive research has already been conducted by multiple organisations. The most comprehensive assessment of the SLP system to date is that of the Centre for Applied Legal Studies (CALS), having culminated in the production of two reports as well as a community toolkit.⁶³ Many of the findings outlined in CALS’ research was further corroborated during the Commission’s National Hearing, as well as in the course of the Commission’s previous work. This Report will not, therefore, provide a detailed assessment of the multiple challenges identified during previous inquiries, but will focus on additional information received. Briefly, however, the following are the key challenges identified in the SLP system:

- A lack of adequate consultation and meaningful participation, including in relation to the absence of a requirement for consultation where an SLP is amended, and the question as to whether replacement SLP projects have equivalent value to original projects.
- A lack of sufficient alignment with other relevant documents and processes, especially municipal IDPs. In addition, SLPs are often not aligned to social impact assessments (SIAs), EIAs and EMPs.
- The content, scope and layout of SLPs are not standardised across the industry. Although the DMR has produced SLP Guidelines aimed at assisting companies, these guidelines are not binding, resulting in the divergent quality and content between different companies. In addition, SLPs frequently exhibit what CALS has referred to as the “year zero scenario” in that SLPs rarely take into account the historical and cumulative social and environmental impact of mining operations as well as other industry activities within the area.

⁶³ Centre For Applied Legal Studies *The Social and Labour Plan Series* (2016) <<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/Social%20and%20Labour%20Plans%20First%20Report%20Trends%20and%20Analysis%2030%20March%202016.pdf>>. See also Centre For Applied Legal Studies *Social and Labour Plan Mining Community Toolkit* (2017) <<https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/environment/resources/SLP%20Community%20Toolkit%202%20March%202017.pdf>>.

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- There is often a failure to conduct proper feasibility studies during the conceptualisation phase, resulting in projects being scrapped, or where completed, facing serious sustainability challenges:

Examples identified in the National Hearing

- Twickenham identified the development of a pack-house, but subsequently realised that the current pack-house already in existence is already not fully utilised and the construction of a new one was therefore not sustainable.
- Twickenham built a Centre for Orphans and Vulnerable Children (OVC Centre). However, following completion, the centre did not meet the stipulations of multiple accommodation as required by the Department of Social Development (DSD). Moreover, it was established that two existing OVC Centres were already under-utilised. It was thereafter proposed that the Centre be converted into a Day Care Centre or Drop-in Centre.
- Marula Platinum initiated a hydroponic project aimed at empowering women, but as a result of harsh weather conditions, prices for the products and a lack of an available market for the products, the project failed and was replaced by a brickmaking project.
- In one case the development of a community centre had been identified through consultation with communities and the local municipality. However, the location of the community centre was disputed and eventually replaced by another project. Similarly, the development of a clinic was identified, but following consultation with the Department of Health, it was determined that the location of the clinic would need to be changed. The building of the clinic was subsequently interrupted by protests.

However, the non-sustainability of projects is not always due to the failure to conduct feasibility studies. The Commission noted several examples where external factors such as a lack of commitment and cooperation by other stakeholders has significantly hampered the delivery or operationalisation of projects. The Lebalelo Water User Association (LWUA) pipeline project in Limpopo constitutes a prime example: In this instance, several mining companies collaborated with the DWS to build a pipeline to provide water to certain mining developments. In addition, the pipeline would make raw water available to the municipality for conversion into potable use and delivery to local communities. The pipeline was completed in 2013 and registered with the Sekhukhune District Municipality as the Water Services Authority, but has not yet been operationalised. Despite infrastructure having been developed, communities still do not have access to potable water. In addition, the Mooihoek Water Treatment Plant was built but never commissioned. The DWS has allegedly declined several proposals to assist in operationalising the Plant. In a further example, Twickenham Mine committed to the electrification of households. After the successful electrification of 52 households, the electrification of remaining households was stalled after Eskom advised that it lacked the capacity to support additional domestic connections.



Analysis of SLP projects

The Commission notes with concern challenges in respect of the types of SLP projects that are undertaken, the isolated impact of certain SLP projects, and the conflation of responsibilities associated with SLP projects and rehabilitation liabilities, respectively.

The Commission's National Hearing highlighted serious concerns around the kind of projects undertaken under the guise of development. If one considers the negative impacts of mining operations holistically, some of the main challenges experienced by communities include access to and quality of water, health concerns (particularly in relation to increased levels of dust in the air), access to quality housing and basic services, increased traffic placing strain on local road networks, and greater competition for employment opportunities. Therefore, it makes sense for the DMR's SLP Guidelines to emphasise infrastructure (including water, sanitation, electricity and road networks), housing and income-generating projects. Increased migration often associated with the commencement of new mining operations also places strain on existing public services such as health care and basic education. The emphasis of SLP projects should thus ideally be aimed at addressing these issues as the ones that most directly affect the lived reality of people residing in local communities. SLPs should therefore always be formulated on the basis of socio-economic challenges faced by communities in specific contexts, rather than through a top-down, a contextual process that fails to respond to local needs.⁶⁴

Some of the most common projects identified include the construction of houses, schools, clinics, roads and water infrastructure, which can be clearly linked to human rights-based development outcomes. However, the Commission has previously noted the views raised by community members that the construction of roads and bridges – while improving the transportation network for local communities – simultaneously benefits mining companies. In this regard, the Commission has noted allegations raised that such initiatives were not in line with community-based priorities, but rather that such projects were predetermined by mining companies to enhance the sustainability and profitability of the mining operation. This is not always the case, and improved road networks may significantly address barriers to accessing basic services such as education and health care, while providing easier access to economic opportunities for communities more broadly. However, the perception created amongst affected communities is important and underscores the need for meaningful consultations to promote local ownership of the types of projects subsequently implemented. Some such projects have been specifically identified by the DMR – such as the contribution towards a portion of a Provincial Road in Limpopo.

Other projects include the development of sporting facilities and community centres, as well as investment in income-generating projects and small business enterprises. Examples include investment in a small sewing project, commercial farming initiatives, or the provision of dumping trucks to be used in providing services to the mine. SLP commitments also include the provision of basic services, such as water, refuse removal, and electricity to local communities. However, the suitability of this approach has been questioned on several occasions since some projects blur the lines between public and private goods, constitutional accountability, and sustainable welfare.

⁶⁴ CoM Comments on SAHRC Provisional Report: National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa (31 January 2018) 5.

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One of the contributing factors to communities' perception that SLP projects do not bring about sufficient benefits may be the type of projects undertaken in certain instances. Some examples provided to the Commission include projects identified by Nkomati Nickel Mine in Mpumalanga for the upgrading of the Chief Mnisi Pavillion at Mantjolo Village Badplaas and Chief Malaza Pavilion at Tjakastad "to be utilised during the cultural celebration held in April each year by VIPs".⁶⁵ African Rainbow Minerals (ARM), likewise contributed approximately R1.2 million to the construction of the Matimatjatji Tribal Office, and R5 million on a community hall and offices. During its oral submission, ARM further explained that each of the host communities (eight in total) will be receiving a tribal office at an estimated amount of R2 million each. Other examples include Leeuw Mining, which undertook to provide six houses to address the housing needs of the Mbilani community,⁶⁶ the provision of electricity to 44 houses in Inkululeko and Masakhane by Jindal Mining, as well as the establishment of a "government service centre" aimed at improving access to local government for local community members in Matzikamma Local Municipality.⁶⁷ Wescoal Intibane Colliery built 18 houses for pensioners, drilled four boreholes, renovated a crèche and provided educational toys. In the Elandspruit Colliery it renovated ablution facilities at a primary school and funded small sewing and bakery businesses. It further identified a sustainable housing project, although the number of houses had not been determined. Projects of this nature, although linked to socio-economic conditions, are small with isolated benefit. Generally, it is rare to find collaboration between mining companies in larger projects that hold the potential for greater socio-economic impact more broadly, although the Commission has noted a few good examples of how the industry is beginning to break the silo approach.

Superficially, SLP projects appear to be in line with broader development objectives and capable of improving the socio-economic welfare of affected communities, while contributing to economic growth at a municipal and provincial level. However, communities have not seen a great enough improvement to offset the negative impacts of mining. The DPME explained that credible social and economic projects that meet the real needs of communities on a regional level are curtailed by the SLP being linked to an individual licence to operate. The DPME further explained that "the economic development projects that are part of SLPs are not sustainable, do not have the necessary market or cannot be marketed outside the locale and generally do not have the scale required to lift communities into meaningful economic development". Each company ultimately contributes significant financial resources to multiple community development projects, but due to the fact that projects are varied and dispersed, communities do not adequately benefit from such projects. For example, one SLP that allocates an average of R25 million over a five-year cycle is divided between the construction of a mobile clinic, the tarring of a portion of a road, the construction of a school, the construction and electrification of a number of houses, provision of water, and capital support to a small business enterprise. The effects are, therefore, divided between different portions of the community.

Despite the entire community experiencing negative impacts of mining, there is no overall improvement in socio-economic circumstances of the community as a whole. Similarly problematic is where projects are perceived to benefit influential stakeholders such as Traditional Councils. Where communities are not adequately consulted, or do not collectively support projects of this

⁶⁵ DMR Submission: Annexure A to Question 8.5 (28 August 2016) items 13 and 14.

⁶⁶ Item 32.

⁶⁷ A collaborative project between Saint Gobain (Pty) Ltd, Steenkamps Kraal Monazite, Tronox, and Mineral Sands Resources.



nature, perceptions of bribery and corruption may arise. This may, in turn, catalyse a breakdown of trust between communities, Traditional Councils, municipalities and mining companies. This does not mean that the contribution of mining companies is insignificant, nor does it mean that the intentions of mining companies are dubious. Rather, the current SLP system might merit holistic reconsideration.

A final example relates to the conflation of SLP project-related responsibilities with other financial obligations, potentially arising as a result of a loophole in regulation. According to documentation provided by the DMR, BHP Billiton undertook to develop an environmental remediation project “to treat the net surplus of contaminated mine water from BHP Billiton Energy Coal South Africa (Pty) Ltd (BECSA) to qualify a release back into the Upper Olifants River Catchment”. The project was identified as “water infrastructure development”. The Commission raises concern with this project, noting the conflation of environmental protection and rehabilitation responsibilities with SLP projects, thus significantly reducing the company’s overall financial obligations.⁶⁸

The Commission accordingly finds that the current SLP system does not adequately address the negative impacts of mining activities and the shortcomings in the design of, and compliance with, SLP commitments limit their ability to drive socio-economic transformation in mining-affected communities. In addition, the process of developing SLPs should be consultative, and should respond to input by communities and local government regarding required socio-economic outcomes.

The Commission accordingly finds that there is an immediate need for the DMR to develop clear and binding requirements for the content of SLPs and to ensure that they are aligned to EIAs and EMPs and include environmental information on the potential impacts of mining and post-closure quality of land. There is also an immediate need for the DMR to enforce compliance and develop sanctions for those mining companies that fail to comply with their SLP commitments.

SLP investment

The Commission is concerned about the absence of clear guidelines to determine proportionate investment in SLP projects by mining companies.

There is currently no regulation around the financial contribution to be made towards SLP projects other than the requirement outlined in the Mining Charter that such contributions must be “proportionate to the size of the investment”. No guidance is provided on the meaning or determination of proportionality, although general practice appears to accept a benchmark of around 1% of a company’s annual turnover. However, without objective criteria or guidance for determination, this is left largely to the discretion of individual mining companies. Disappointingly, although the draft 2016 Mining Charter had initially proposed a commitment of 1% of annual turnover, this was later removed from the 2017 version. The DMR thus missed a crucial opportunity to provide certainty amongst stakeholders. When the Commission asked

⁶⁸ DMR Submission: Annexure A to Question 8.5 (28 August 2016) item 16.

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Environmental law and regulations

Submissions to the National Hearing revealed that there is significant non-compliance with various environmental laws and regulations by mining companies. When coupled with the severe capacity restraints of compliance and regulatory bodies, concerns over the sustainability and constitutionality of operations are amplified.

The majority of non-compliance cases relate to inadequate financial provision for closure and rehabilitation liabilities.⁹² Other common issues included the failure to submit revised EMPs; failure to conduct dust fallout, noise, and groundwater monitoring exercises; inadequate waste disposal, including hazardous waste;⁹³ spillages and water pollution; the release of contaminated water back into dams; impeding the flow of rivers; and taking water from boreholes meant for drinking.⁹⁴ The DWS stated that, since 2010, 394 mines were investigated. Of those investigated, 14 directives were issued for non-compliance, 23 resolved and 22 were under rehabilitation. The remaining mines were partially compliant and still under investigation.

The DMR is the responsible authority for monitoring and the enforcement of environmental laws and licence conditions and the DWS is the competent authority in relation to water. While these two departments conduct monitoring and evaluation exercises individually, the DMR, DWS and DEA, through the Enforcement Task Team of the IPIC, also conduct joint monitoring exercises. Since the OES came into operation in December 2014, environmental criminal investigations, including cases concerning biodiversity, pollution, waste, EIA and oceans and coasts, have been referred to the DMR and not investigated by the DEA. The DEA provides support and guidance to the DMR and the SAPS where required.

Section 93 of the MPRDA empowers any authorised person to issue compliance orders, instructions, or to order the suspension or termination of a mining licence for a variety of reasons, including a breach of any material term or condition or a contravention of any condition in the environmental authorisation. Such order or instruction is confirmed by the Director-General of the DMR. In addition, section 47 of the MPRDA enables the Minister to cancel or suspend mining licences. However, this sanction is generally reserved for extremely serious contraventions. The Minister must direct the holder of a licence to take specified measures to remedy any contravention, breach or failure, and afford the holder an opportunity to give reasons why the licence should not be cancelled or suspended. From the information before the Commission, it does not appear that a mining licence has ever been withdrawn in line with section 47.

When the Commission requested the DMR to provide information on the rate of compliance with statutory orders, the DMR indicated that in the 2015/16 financial year, 666 non-compliance orders were issued for all offences (not limited to environmental matters). The Commission notes that non-compliance is not characteristic of all mining companies, and that there are good practices amongst some industry stakeholders. According to a report by DPME, DEA and DMR on environmental governance in the mining industry, approximately 5% of all completed

⁹² See section 2.4 above.

⁹³ See section 5.3 above.

⁹⁴ See section 4 above.

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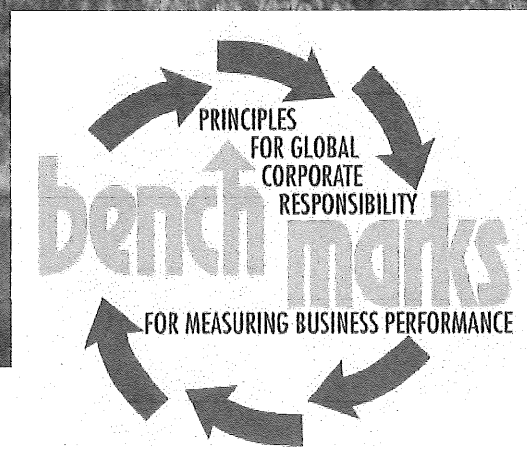
POLICY GAP 9

SOUTH AFRICAN COAL MINING

Corporate Grievance Mechanisms, Community
Engagement Concerns and Mining Impacts

BENCH MARKS FOUNDATION

2014



Guy R.R.

PH levels lower than 6.6 would have a significant impact on the irrigation of maize. Magnesium levels in the ground water will also affect milk production and meat quality. High calcium levels will affect the growth of calves and skull formation. The mines respond by saying that they have put test boreholes in place around pits to measure seepage impact into ground water. What farmers are not told is that these well fields around open pits are often used to drop the water table to ensure that mining operations occur in dry conditions. Farmers are worried that underground water that is discharged above ground will alter the chemicals of the soil in the area.

Photo 3: Lakeside Colliery owned by Glencore in Kendal destroying a wetland



6.1.2 Council concerns about water

The town of Ogies periodically suffers water shortages and boreholes regularly dry up. The community is also concerned about the cumulative impact of all the mines on their tap water quality. The council is also concerned about who should pay for cleaning mine-polluted water noting the escalating cost of producing potable drinking water. The Democratic Alliance laid a case with the Emalahleni Council with the South Africa Human Rights Commission after collecting 4000 signatures to complain about the poor quality of drinking water in the area (South African Human Rights Commission, 2012).

6.1.3 Community and individual water and environmental concerns

Individuals and communities are concerned about the impact of mining on wetlands, streams and rivers. They point out that the mines in the area do not have a good track record concerning the preservation of wetlands. In particular, those who are concerned point out that the Isibonelo wetland offset program, where after a few years Anglo Coal wanted to abandon the project due to non-achievement of goals, speaks volumes for the company's track record for rehabilitation. There also seems to be a problem reclaiming or re-establishing mined pans at their Mafube Colliery. This indicates that communities are becoming more informed, concerned and demanding of coal mining companies and their operations.

Respondents also expressed concern about the impact of mining on local streams and rivers such as the Wilge River.

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6.2 Coal mining and air pollution

Air pollution in coalmines is mainly caused by emissions of particulate matter, coal dust, burning discard dumps, underground fires (Goldblatt, 2002) and methane (CH₄) emissions – a GHG that is released during coal extraction when coal seams are cut (Singh, 2008). Apart from posing a health hazard to the exposed population, the GHGs contribute to global warming. The main operations that produce dust and gases in mines are blasting, drilling, hauling, crushing and transportation. Air pollution is more of a problem in opencast mines than in underground mines, as opencast mines do not only create pollution on the mining premises, but also in the areas surrounding the mines (Singh, 2008). Coal mining is a hazardous activity that is associated with high fatality and mortality rates. Mineworkers may suffer injuries or even die from rock falls, material handling, methane explosions or accidents while transporting coal. Another health-related risk emanates from noise pollution, which as in all mining in South Africa, causes problems such as hearing loss, while air pollution causes problems such as pneumoconiosis or, black lung disease (Goldblatt, 2002).

The risk of black lung disease is greatly increased in areas where tuberculosis is highly prevalent. Countries with the highest incidence and prevalence of black lung are:

- China: 10 million people exposed
- Brazil: 6.6 million people exposed
- Colombia: 1.8 million people exposed
- India: 1.7 million people exposed
- South Africa: 600,000 people exposed (WHITIA, 2012)

Black lung disease can affect both mine workers in shaft and opencast mines and near-mine communities.

Photo 7: Poor air quality near BHP Billiton's Middelburg operations



Photo taken less than 1km from Duvha power station at 10 am on a winter's morning

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During visits to several communities near mines with Bench Marks' trained monitors, notably Coronation (abandoned former Anglo Coalmine), the research team came across individuals suffering from black lung disease. Mr Samson Zulu (68 years old) living in Clewer, a contract grader operator on the coalmines all his life, indicated that he had been diagnosed with Tuberculosis, but that his sputum was black every time he coughed. The symptoms he described were typical of someone suffering from black lung disease: coughing, and disabling shortness of breath. According to the MERCK Manual of Medical Information, prevention of black lung disease "...is crucial because there is no cure for black lung. Black lung can be prevented by adequately suppressing coal dust at a work site (Beers, 2003, pp. 266-267). Apart from being exposed to coal dust most of his working life, Mr Zulu lives in a house in Clewer less than 500 meters from a major Anglo Coal opencast mining operation. Mr Zulu's family reports that their property is covered in dust and suffers major tremors, every time there is blasting at the mine.

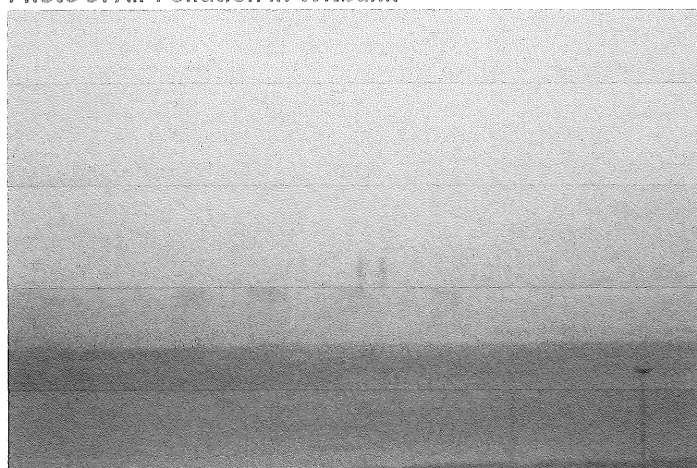
Photo 8: Community Interview



Residents at the edge of MNS informal settlement residing less than 50 meters from Slater Mine, being interviewed by Mr Chris Molebatsi, a BMF trained monitor. The mine is evident in the background.

The second individual residing in MNS informal settlement also spits black mucous every time she coughs, and is weakened by poor lung function. She has lived all her life in this settlement surrounded by mines. Slater Mine operates less than 50 meters from her house, with dust particulate from both grading and haul trucking severely affecting her household.

Photo 9: Air Pollution in Witbank



According to Green Peace Africa Witbank has the dirtiest air in the world

Source: South African Broadcasting Corporation (2013)

The Department of Environmental Affairs reported in 2011 that, "The total estimated emissions of fine particulate matter (PM_{10}) on the High Veld Priority Area (HPA) are 279 630 tons, of which approximately half is attributed to dust entrainment on opencast mine haul roads... The emission of PM_{10} from the primary metallurgical industry accounts for 17% of the total emission, with 12% of the total from power generation. By contrast, power generation contributes 73% of the total estimated oxides of nitrogen (NO_x) emission of 978 781 tons per annum and 82% of the total sulphur dioxide (SO_2) emission of 1 622 233 tons per annum" (Chief Directorate Air Quality Management, 2011, p. 10).

According to the Department of Environmental Affairs, industrial sources in total are by far the largest contributor of emissions in the priority area, accounting for 89% of PM_{10} , 90% of NO_x and 99% of SO_2 . The Department grouped the major industrial sources for these emissions into the following categories:

- a) Power Generation;
- b) Coal Mining;
- c) Primary Metallurgical Operations;
- d) Secondary Metallurgical Operations;
- e) Brick Manufacturers;
- f) Petrochemical Industry;
- g) Ekurhuleni Industrial Sources (other than the above); and
- h) Mpumalanga Industrial Sources (Other than the above) (Chief Directorate Air Quality Management, 2011, p. 11).

Visual confirmation of the Department's findings were made by the BMF research team on a number of visits to Witbank, Middelburg and the suburbs, townships and informal villages of Coronation, Klarinet, MNS informal Settlement and Clewer.

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Black lung disease, the common name for underground coal worker's pneumoconiosis, has now been linked to workers who take part in surface coal mining, according to an investigation by NPR News and the Centre for Public Integrity (CPI), with additional reporting by the Charleston Gazette.

The illness is the direct consequence of inhaling coal dust, which progressively builds up in the lungs until it can't be removed by the body. This leads to inflammation, fibrosis and, in the worse cases death.

The study shows that diagnosed cases in the last decade have doubled, while the detection of advanced stages of the disease has quadrupled since the 1980s in central Appalachia, which includes the states of Virginia, Kentucky and West Virginia.

NPR and CPI report that increased regulation – and near eradication of the disease – following a 1969 law gave way to systemic exploitation of coal dust measurement by mining companies, and weak enforcement by regulators. Federal data obtained by NPR and CPI indicates that thousands of coal miners were exposed to excessive levels of mine dust despite the strict limits established 40 years ago.

A lawyer quoted by The Courier-Journal in Louisville, Ky., hinted the high percentage of black lung tied to Appalachian surface mines might be linked to the shortage of unionized mines in the region. "Non-union miners are job-scared," the professional told The Courier. "[Black Lung Disease] is a product of non-union workplaces. It's sad, really."

The three states with the most cases of black lung disease also pay the most in Black-lung claims. Based on data published by the U.S. Department of Labour, West Virginia paid \$46 million in black lung claims in 2011; Kentucky, \$34 million and Virginia, \$23 million.

(Jasamie, 2012)

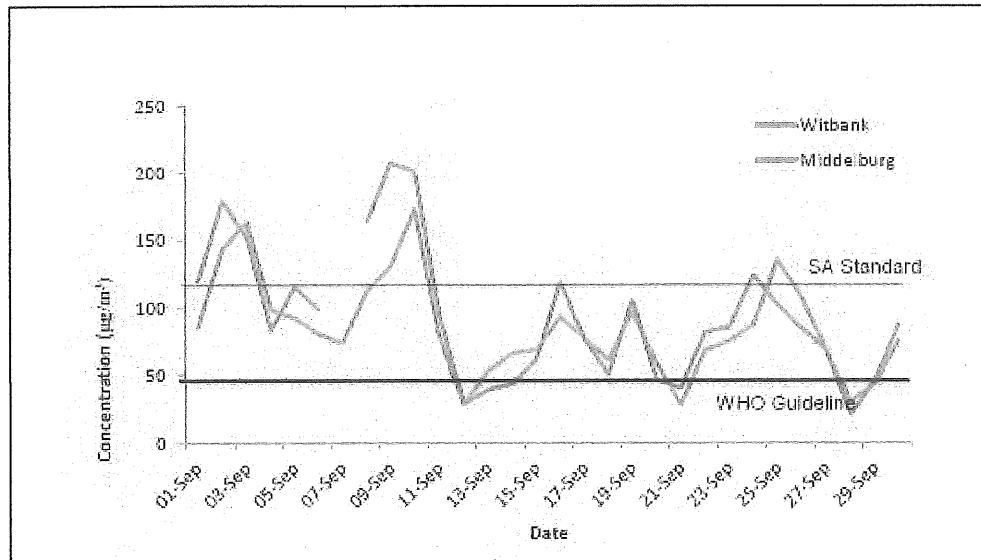
Patricia Nicole Albers (2011, p. 85) did an assessment study of child respiratory health in the Highveld Priority Area, and looked at PM₁₀ distribution over the month of September 2008 showing exceedances of both World Health Organisation (WHO) guidelines and South African Standards for Witbank and Middelburg. It should be noted that the South African Standard is extremely lenient and biased towards polluting industries and therefore undermining of the Constitutional Rights to a clean and safe environment of the residents of both Witbank and Middelburg. The WHO guideline is massively exceeded on an almost daily basis (*see Figure 10 below*). It must be noted that the biggest single contributor to dust pollution in Mpumalanga is mining.

Figure 11 below shows that the greatest daily exposure to toxic dust and smoke in households in Middelburg and Witbank occur between 5:00 and 9:00 and between 16:30 and 21:00. This is typically the periods in which people wake up and prepare to go to work and school (with an associated increase in traffic), with elevated uses of energy and when they return from work (with an associated increase in traffic) in the evening and prepare the evening meal.

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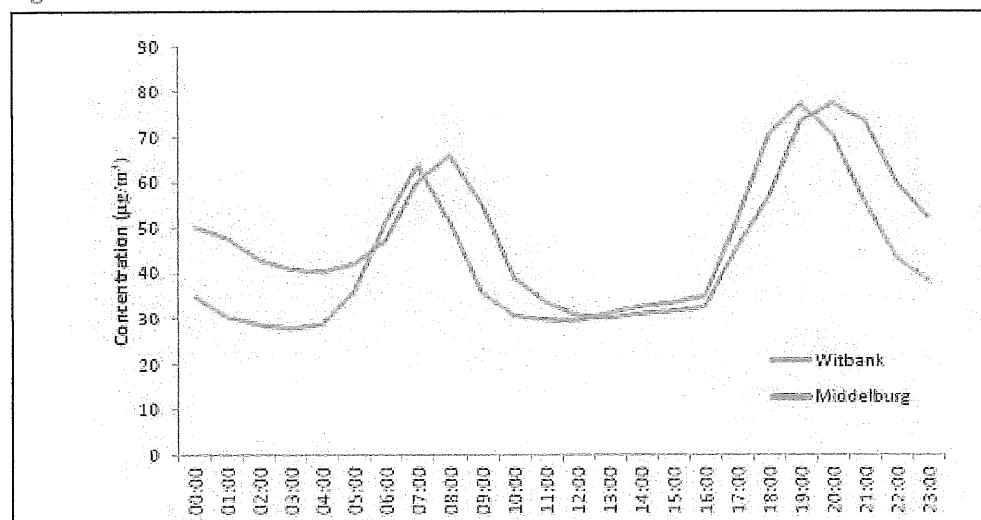
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Figure 10: PM₁₀ distribution during September 2008 over Witbank and Middelburg



Source: Alberts (2011)

Figure 11: Diurnal distribution of PM₁₀ in both towns

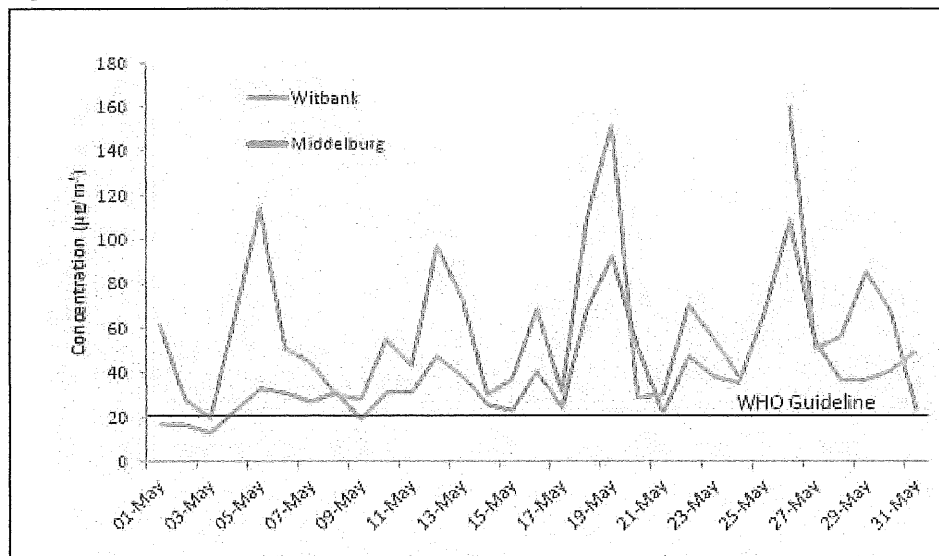


Source: Alberts (2011)

Figure 12 below shows that during the month of May 2009, the Sulphur Dioxide (SO₂) emissions exceeded the WHO guidelines significantly on an almost daily basis. It is hugely problematic that South Africa does not have an SO₂ standard at all (Albers, 2011, p. 90). SO₂ emissions are associated with the burning of fossil fuels both by the high concentration of coal-fired power stations in the area and by households. The graphs also indicate a heavy reliance on fossil fuels for household energy. The irony of the situation is that many people residing in the province with the highest number of coal-fired power stations supplying power to the entire country (8 out of 11 power stations are in Mpumalanga where Witbank and Middelburg are located), have limited or no access to electricity.

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Figure 12: Monthly distribution of SO₂ for May 2009 for Witbank and Middelburg



Source: Alberts (2011)

Alberts (2011) finds that there is a significant correlation between dust and air pollution in the area and major respiratory problems among the children residing there.

The Bench Marks Foundation is concerned that companies like Sasol and Eskom, among others, are allowed to apply for exemptions and postponements from requirements in the National Environmental Management Air Quality Act (Kings, 2014, p. 7). The act legally protects the right of all South Africans to live in a clean environment. In 2005, when the act was made law, legal provisions for postponement and exemption applications were included. In 2009, South Africa committed at the Copenhagen climate change conference to lower emissions of carbon dioxide by 42% by 2025. In 2010, the minimum standards were passed into law.

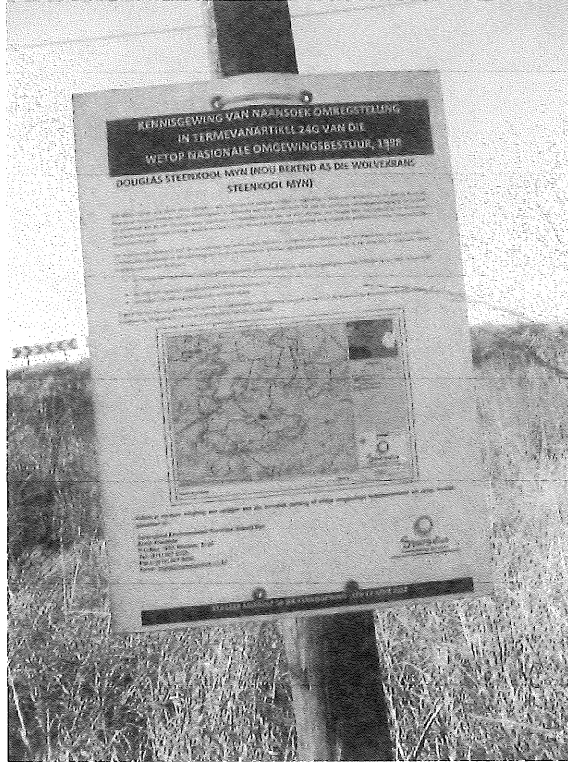
6.2.1 Council concerns about air quality issues

Councillors and ordinary members in the area are concerned about the cumulative impact on air quality caused by the existing Kendal power station and the new Kusile power station. They are also concerned about the dust from operations and the emissions from trucks, vehicles and machinery. Councillors and community members note that the increase in smoke and dust in the Kendal and Ogies area is causing increasing respiratory problems and that it is straining the public health infrastructure in the area. Members of the community complain that on windy days dust can travel further than the standard 500m buffer zone and that the management of this dust should be better managed.

6.2.2 Farmer concerns about air quality issues

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Photo 11: Notice of expansion of Wolwekrans coalmine (BHP Billiton)



Literacy levels in the area are about 65%, meaning that 35% of the population will not understand the content of this notice in English, never mind in Afrikaans

6.4 Coal mining and human health

Coal mining is a major contributor to acid mine drainage (AMD) in South Africa. Human exposure to acid mine drainage pollutants can occur through ingestion of contaminated water, food or through dermal absorption via water or air. According to Coetzee *et al*, (cited in WWF-SA, 2011:58): “Metals such as aluminium, copper, zinc and arsenic (all related to AMD effects) can concentrate in plant tissue when plants are exposed to elevated concentrations of these metals near mining activities”. If such plants are consumed by animals and humans, the metal concentrations may be carried along in the food chain. Animals that drink contaminated water and/or feed on contaminated plants have been shown to accumulate metals in their tissue or in their milk (Bureau for Food and Agricultural Production, 2012, p. 6).

Coal mining in Mpumalanga also has further health risks for communities as a recent study showed. The effects of mining on local coal mining communities are also sometimes overlooked. A social and labour plan might detail how they will build houses and provide water, but, according to the West Virginia University Health Sciences Centre, 2008 as cited in World Wildlife Fund-SA (2011:58): “Studies have looked at health effects in coal mining communities and found that community members have a 70% greater risk of developing kidney disease and a 64% greater risk of developing chronic obstructive

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mining companies and their transport subcontractors, yet they do not have the same destructive impact on the roads.

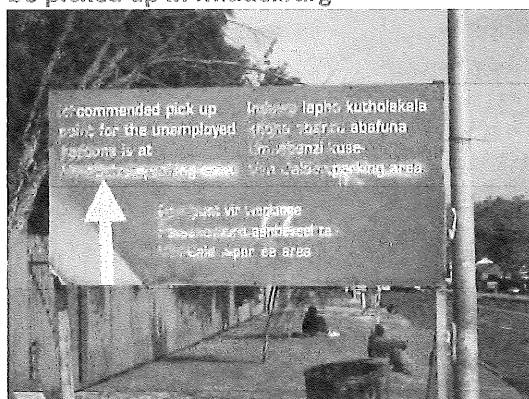
6.8 Coal mining and economic concerns in the area

People in the area complain that the various mines often hold several meetings and promised the Ogies and Phola residents that they would benefit from local employment. However, the mines employ people from Witbank and other areas and hardly any local people are employed. The violent protests early in 2010 were the result of the frustration of local people about the expectations created by mining companies in public meetings and the subsequent failure of these operations to live up to the promises made during consultation processes.

Bench Marks Foundation researchers were bluntly told that the community no longer trusts the mining companies because of their experiences with them.

Communities have discovered that the number of jobs created during construction and operations is very limited. Mining thus aggravates unemployment as land that people who were formerly employed in the agricultural sector, is now turned over to mining. This is particularly so for coal mining which is more capital intensive than other forms of mining.

Photo 22: A severely vandalised picture directing labour brokers to where unemployed people could be picked up in Middelburg



Men in the community complain that mines rely heavily on subcontracting workers who are mostly from other areas. There is no training or employment of locals. Mines look towards local women to make up their Charter targets for women. This creates conflict between local men and women, and between local men and men brought in from outside.

Older people in the Witbank/Middelburg/Kendal/Wilge/Ogies/Phola communities complain that they suffer all the same negative impacts as the rest of the population but that they are completely excluded from any opportunities of employment by the mines.

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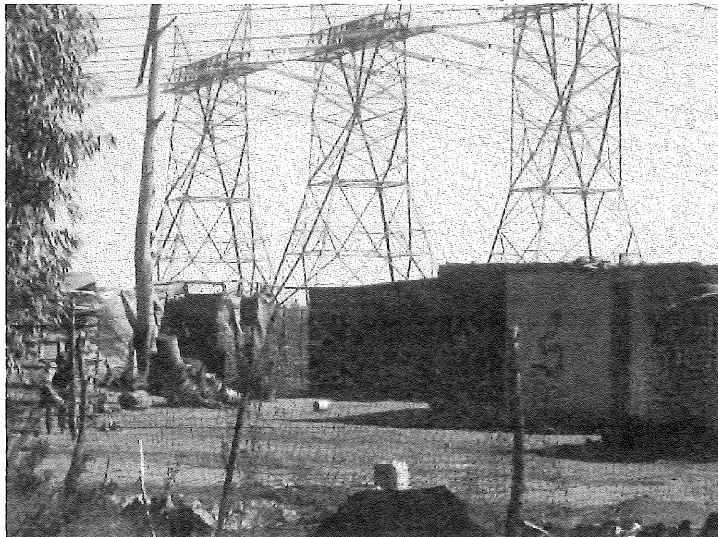
6.9 Coal mining and social/cultural concerns in the area

6.9.1 Social and health concerns

Communities and individuals raised the following social/health concerns:

- The capacity of existing public health facilities are not coping with the rapid increase in population attracted by the rapid growth of coal mining and hopes of employment in the area;
- Increases in squatter camps/informal settlements;
- Lack of access to services such as electricity and clean water in squatter camps/informal settlements;
- Increases in respiratory problems due to dust from mining operations;
- Increases in water borne illnesses due to water pollution in the area;
- Increases in alcohol and substance abuse;
- Increases in sexually transmitted disease;
- Increases in HIV/AIDS because of casual and transactional sex between single mineworker migrants and unemployed women in communities; and
- Increases in sex work especially along supply routes to and from mining operations and between mining operations and power stations.

Photo 23: Informal settlement in proximity to Bhp Billiton's Middelburg operations



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SOUTH AFRICA

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MINING

IN SOUTH AFRICA 2018

Whose Benefit and Whose Burden?



Social Audit Baseline Report

Tracing the socio, political and economic conditions of mining-affected communities in South Africa using participatory research and social audit methodology to build community agency. G.M. R.R.

The declared profits do not include the undeclared illicit financial flows which the African Monitor claims peaked at R237 Billion per annum in 2011. According to the African Monitor, South Africa has lost a cumulative R1,007 Billion to illicit outflows between 2002 and 2011

These are significant amounts that has a direct impact on whether communities are able to escape their poverty traps or not. In the Lonmin case a submission by the Centre for Applied Legal Studies (CALS) to the Marikana Commission the legal researchers who had studied the Lonmin case specifically reported that:

"A number of programmes suffered from poor planning with resulting problems of implementation. These programmes include brick-making factory, the agricultural farm project and most importantly, the construction of 5,500 houses as committed in the 2006 SLPs. The failure of these projects points to non-compliance that requires further investigation."

They further conclude that:

"The lack of delivery under these projects and the resultant lack of impact on the lived reality of the mine-affected communities, including workers and their families, could constitute a significant factor precipitating the events in Marikana of 09 to 16 August 2012."

The state on the other hand, remains a significant beneficiary of the mining regime as it is currently configured and the same PWC report series from 2009 to June 2018, suggests that the state has received R160 billion in direct tax revenues during this period. An additional amount of approximately R45 billion is estimated to have been paid to government as Royalties. In all, the PWC reports (which do not factor in any potential mis-invoicing and/or illicit financial flows) estimate that **government takes approximately 24% of value reported** among the listed JSE mining corporates, **employees 47% of value reported and shareholders, 29% of value reported. Community investments by contrast has only amounted to 0.9% over the same period**. But, as has been shown in this report, none of the value from these community investments are experienced in the lived realities of communities who participated in this survey. **Up to 79% of respondents, those to whom these benefits are meant to accrue, have not participated in or benefited from the claimed investments.**

By our calculations, this implies that close to R5.92 billion of the estimated R7.5 billion earmarked for community development did not reach its intended beneficiaries during this period.

The extent of the unaccounted for expenditure on community development no doubt plays a significant role in maintaining the cycles of poverty that continue to manifest in mining affected communities.

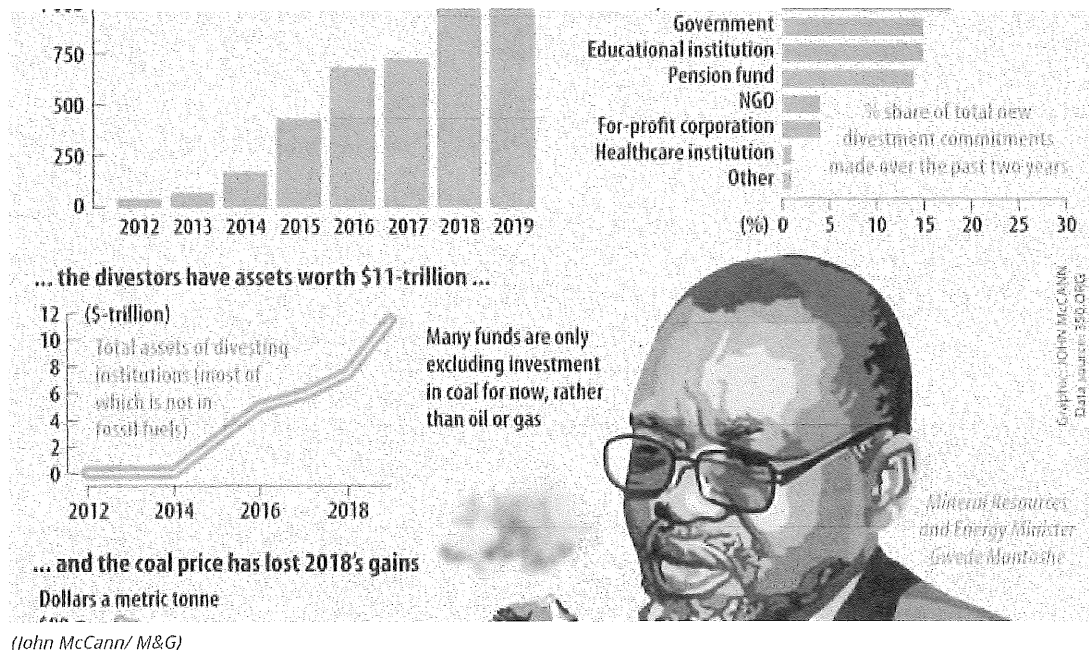
The extent and scale of the potential misappropriation of funds meant for community development implies both that high levels of corruption exist in the way that funds are allocated to community development and that besides the potential corruption inherent in the way funds are distributed, that the projects meant to advance community development are not trickling down to communities in the way envisaged by the corporations and the DMR.

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BUSINESS

Coal divestment hits South Africa

Kevin Davie 13 Sep 2019



COMMENT

If you're a global mining giant, you want out of coal quick sticks for the simple reason that the major investment funds will no longer put their money into fossil fuels, especially coal. Global funds have announced that their collective \$11-trillion under management will no longer fund investments that contribute to the climate catastrophe that is global warming.

Two of the biggest names in mining, Anglo American and South32, have sold or are selling their South African coal mines, rather than face divestment pressure from investors that would affect their overall holdings.

READ MORE: Change for climate a risky business

This has created opportunities for local investors, specifically black-owned companies, to pick up these mines at bargain-basement prices. In South32's case, chief executive Graham Kerr reportedly said that the sale of its South African coal interests could be concluded for a token \$1, the caveat being that the buyer would be responsible for putting up the required rehabilitation funds in the event of closure of \$756-million, or about R11-billion.

Business Day opined that South32 had put money in to facilitate a deal: "It doesn't look like South32 expects to make a killing from the sale.

If anything, the multinational miner is paying in to offload the business. In anticipation of selling [its South African coal interests], South32 invested \$377-million from the business's own cash flows to make it sustainable.

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READ MORE: Big deal over 'strange' coal mine meeting

BHP Billiton this year signalled its intention to exit the thermal coal business, Rio Tinto last year divested from large coal assets and Glencore has agreed to cap its current coal production, *Business Day* said.

ADVERTISING

The *Financial Times* reported on August 22 that South32 said it was in "exclusive talks" to sell its South African coal mines to local mining house Seriti Resources. The offer includes a "modest" upfront cash payment with a deferred payment mechanism to allow both companies to share in any coal price increase, South32 said.

Closely held Seriti has entered into exclusive negotiations to buy South32's thermal coal assets after starting production in 2017 and 2018 with tied mines (those linked to specific power stations) it bought from Anglo American for R3-billion. Should the South32 deal go ahead, Seriti will supply one-third of Eskom's coal.

Seriti chief executive Mike Teke is cautious about the process, MiningMx reported. Seriti has been chosen as the preferred bidder; it is not yet the de facto owner, Teke said. So, in the next 12 months, his company has to conclude and finance the purchase of the asset, which involves not only paying an upfront fee — still to be agreed with South32 — but also winning the support of Eskom, according to MiningMx.

Eskom's agreement is needed because it is the counterparty of coal sales agreements on domestic coal produced by South32's mines. It will also have to be agreed by the competition authorities and the department of minerals and energy.

Meanwhile, Exxaro Resources, Eskom's largest supplier of coal, said it is working on a new strategy for its business founded on coal mining amid investor and public concerns about the effect of climate change, Bloomberg reported on August 28.

The mining house said that it is planning "structural changes", including clean-power initiatives, to make the business sustainable. Exxaro will extract "as much value as quickly as possible" from the assets it holds, particularly thermal coal, chief executive Mxolisi Mgojo said.

Shareholder activist Tracey Davies of Just Share, which has led campaigns for climate equity at Standard Bank and Sasol, said the big mining houses are divesting their coal assets while dressing this up to look like really good empowerment deals.

She said the mining majors are selling what could become stranded assets, meaning that sometime in the near future they will not be commercially viable. Davies says the sales are happening at a time when there

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is much uncertainty about the energy future of the country, with a new integrated resource plan awaited and a lack of clarity on what the Eskom restructuring will look like. In the meantime, the risks associated with mining coal mean a higher cost of capital, while renewable costs continue to fall.

This, said Davies, does not help the country in its transition to a low-carbon future. "One of the worrying things is that they may be less able [than the major resourced companies now exiting] to deal with the clean-up," she said.

Seriti, which is poised to become South Africa's second-largest coal producer, is exploring alternative methods of funding, including from equipment suppliers, and will hold off on a listing, as coal is being shunned by financiers because of its environmental impact.

"We see the project financing ability of new coal projects ... frankly becoming harder and harder," Seriti's chief financial officer, Doug Gain, told Bloomberg in August. Seriti will wait until next year to decide whether to list or to seek alternative funding options, he said.

The company may seek less traditional funding options because pollution concerns have led South Africa's biggest banks to limit lending to coal projects and the country's political and economic instability could deter investors from buying shares, Bloomberg reported.

Seriti has been approached by heavy earth-moving equipment suppliers interested in providing funding in exchange for securing contracts on the project, Gain said, declining to identify the companies. Some of the biggest equipment suppliers to coal mines include Caterpillar, Atlas Copco and Sandvik.

"We think that the large equipment manufacturers see an opportunity in the — call it the shrinking ability of coal companies to raise capital — to provide capital themselves behind their fleets," he said.

In March a report by the Climate Policy Initiative (CPI), a London-based think tank, identified South African empowerment companies as potentially at risk as the global transition to a low-carbon economy takes place. The CPI identified "transition risk" as that when the value of assets and income are less than expected because of climate policy and market transformations, and said the risk for smaller South-Africa-focused and sometimes black economic empowerment companies could be more than \$1-billion.

"These companies typically have little diversification and small balance sheets, meaning that any transition risk falling on these entities would likely be implicitly transferred to the state, including state-owned funders, such as the Industrial Development Corporation."

Should the South32 acquisition go ahead, it will mean that Seriti and Exxaro will jointly supply 72% of Eskom's coal needs. This is being justified by some industry sources as good for empowerment. They said the pair are sufficiently financially resilient to be up to the job. South32 executives said concentrating Eskom's coal supply could bring down its coal costs and reduce the use of trucks, which is expensive.

MiningMx wrote that "including supply of coal to Eskom by another company, Exxaro Resources, roughly 72% of Eskom's total 120-million tonnes a year coal burn will be in the hands of two companies. This may seem like the complete opposite of what's intended by broad-based economic empowerment, but in these economically straitened times, it's exactly what Eskom (and the country) needs."

But notwithstanding the real challenges of transitioning from a hopelessly coal-dependent economy to a cleaner future, it is hard to see how anyone could think that Eskom having just two mining houses supply 72% of its coal needs is a good thing.

3/1/2021

Coal divestment hits South Africa - The Mail & Guardian

One of the real benefits renewables offer — over and above that they do not destroy the planet — is that they allow for regionalised, localised and diversified energy inputs. This allows flexibility and adaptability to help to keep the system as a whole efficient and honest.

Having just two major coal suppliers feels too much like Eskom putting all its eggs in two energy baskets, as it did with Medupi and Kusile. We still live with the consequences of this grand folly and it is not at all clear how we will escape it. To repeat the exercise voluntarily by allowing just two mining houses to dominate coal supply makes no sense at all.

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