IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 73768/2016

In the matter between:

DUDUZILE BALENI First Applicant

And 128 Others

and

MINISTER - DEPARTMENT OF MINERAL RESOURCES First Respondent

And Six Others

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SIGNED AT JOHANNESBURG ON THIS 12th DAY OF FEBRUARY 2018.

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North Tower
424 Hilda Street
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Pretoria
Email:johan@richardspoorinc.co.za,
henk@lrc.org.za

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT PRETORIA**

AND TO: **OFFICE OF THE STATE ATTORNEY**
ATTORNEYS FOR THE 1st to 4th and 6th and 7thRESPONDENTS
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Ref: 8216/16/Z51 and 8217/16/Z51
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AND TO: **PRINSLOO INC ATTORNEYS**
ATTORNEYS FOR THE FIFTH RESPONDENT
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3001 William Nicol Drive
Bryanston
Service by Email: Prinsloo@prinslooinc.com, larkens@prinslooinc.com
Ref: PP/AML/TRAN29887.4
C/O Venter & De Villiers
389 Alexander Street
Brooklyn
Pretoria
Email: info@vdevattorneys.co.za
Ref: Venter / S1472

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

CASE NO: 73678/16

In the matter between:

DUDUZILE BALENI	First Applicant
MAKATI NDOVELA	Second Applicant
MABHUDE DANCA	Third Applicant
GCINAMANDLA MTHWA	Fourth Applicant
MDUMISENI DLAMINI	Fifth Applicant
MALIYEZA DENGE	Sixth Applicant
122 OTHERS LISTED IN ANNEXURE A TO NOTICE OF MOTION	7th to 128th Applicants
BENCHMARKS FOUNDATION	129th Applicant

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
PRETORIA 0001
2016 -09- 20
L. P. M. BATISTA
REGISTRAR'S CLERK
GRIFFIER VAN DIE HOË HOF VAN
SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

and

MINISTER - DEPARTMENT OF MINERAL RESOURCES	First Respondent
DIRECTOR GENERAL - DEPARTMENT OF MINERAL RESOURCES	Second Respondent
DEPUTY DIRECTOR GENERAL: MINERAL REGULATION - DEPARTMENT OF MINERAL RESOURCES	Third Respondent
REGIONAL MANAGER: EASTERN CAPE – DEPARTMENT OF MINERAL RESOURCES	Fourth Respondent
TRANSWORLD ENERGY AND MINERAL RESOURCES (SA) Pty Ltd	Fifth Respondent
MINISTER – DEPARTMENT OF RURAL	

DEVELOPMENT AND LAND REFORM Sixth Respondent

DIRECTOR GENERAL – DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM Seventh Respondent

---

NOTICE OF MOTION

TAKE NOTICE THAT the Applicants shall, on a date to be arranged with the Registrar of this Court, apply for a final order, in the following terms.

1 It is declared that the First Respondent lacks any lawful authority to grant a mining right in terms of section 23, read with section 22 of the *Mineral Petroleum Resources Development Act* 28 of 2002, over land anywhere in the Republic of South Africa owned or occupied under a right to land held in terms of any tribal, customary or indigenous law or practice of a tribe, as defined by the *Interim Protection of Informal Rights to Land Act* 31 of 1996, unless the provisions of *Interim Protection of Informal Rights to Land Act* 31 of 1996 have been complied with.

2 It is declared that the First Respondent lacks any lawful authority to grant a mining right to the Fifth Respondent in terms of section 23, read with section 22 of the *Mineral Petroleum Resources Development Act* 28 of 2002, unless the First, Sixth and Seventh Respondents have complied with the provisions of the *Interim Protection of Informal Rights to Land Act* 31 of 1996.

3 It is declared that in terms of the *Interim Protection of Informal Rights Land Act* 31 of 1996, the First Respondent is obliged to obtain the full and informed consent of the Applicants and their community, the Umgungundlovu

Community, as holders of rights in land, prior to granting any mining right to the Fifth Respondent in terms of section 23, read with section 22 of the *Mineral Petroleum Resources Development Act* 28 of 2002.

4 It is declared that the applicants, members of the Umgungundlovu Community, and the Umgungundlovu Community itself, are holders of rights in land (including informal rights) as defined in section 1 of the *Interim Protection of Informal Rights Act* 31 of 1996.

5 It is declared that the Umgungundlovu Community is a community as defined in section 1(1)(ii) of the Interim Protection of Informal Rights Act 31 of 1996.

6 It is declared that any decision to grant a mining right would constitute a deprivation of rights (including informal rights) in land as provided for in section 2 of the *Interim Protection of Informal Rights Land Act* 31 of 1996.

7 It is declared that First Respondent may not deprive the applicants of any of their rights in land without complying with the living customary law of the Umgungundlovu Community and of the amaMpondo People, which law is protected by sections 211 and 212 of the Constitution.

8 In regard to paragraph 3 above, the following declaratory orders are granted:-

8.1 In terms of the customary law of the Umgungundlovu Community, any deprivation of rights in land requires meaningful consultation with the affected individual households and the Umgungundlovu Community.

8.2 In terms of the customary law of the Umgungundlovu Community, any deprivation of rights in land in communal areas can only take place with

the consensus of the individual members of the community or substantial consensus of the affected members of the Umgungundlovu Community itself.

9 In the *alternative* to the above:

9.1 It is declared that the First Respondent may not grant a mining right over the land held by the Applicants or the Umgungundlovu Community unless or until compensation, the nature and amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a competent court or through arbitration, alternatively;

9.2 It is declared that any mining right granted by the First Respondent will not come into effect until compensation, the nature and amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a competent court or through arbitration.

10 Further and/or alternative relief.

11 The costs of this application are to be paid, jointly and severally by any Respondents opposing it.

KINDLY TAKE NOTICE FURTHER that the founding affidavit of **DUDUZILE BALENI** together with the annexures thereto, and the accompanying affidavits of the Second, Third, Fourth, Fifth, Sixth, 113th, 125th, 126th, 127th, 128th, and 129th Applicants, as well as various experts, will be used in support of the application.

KINDLY TAKE NOTICE FURTHER that the Applicants have appointed the Legal Resources Centre and Richard Spoor Inc care of Brazington McConnell Attorneys, whose address is set out below, as the address at which they will accept notice and service of all documents in these proceedings.

KINDLY TAKE NOTICE FURTHER if any of the Respondents intend opposing this application, they are required:

1. to notify the Applicants' attorneys in writing, within ten (10) days of the service of the Notice of Motion, of such intention to oppose;

2. within fifteen (15) days of notifying the Applicants' attorneys of their intention to oppose the application, to deliver their answering affidavit, if any, together with any relevant documents in answer to the allegations made by the applicants; and

3. to appoint in their notice of opposition an address, within eight (8) kilometres of the Registrar of this court, at which they will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER that if no notice of intention to oppose is given, the application will be heard set down and heard on _____, the ___ day of _____ 2016 at 10h00, or as soon thereafter as counsel may be heard.

SIGNED AT Johannesburg **ON THIS** 20th **DAY OF** September **2016.**

LEGAL RESOURCES' CENTRE
Attorneys for the Applicants
With attorneys Richard Spoor Inc
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/ johan@richardspoorinc.co.za

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT PRETORIA**

AND TO: **MINISTER**
DEPARTMENT OF MINERAL RESOURCES
FIRST RESPONDENT
c/o Meintjes and Francis Baard Street
Sunnyside
Pretoria
Gauteng
0007
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By fax: 012 444 3754
Care of:
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Email: simathebula@justice.gov.za
Fax no: 086 629 1380

AND TO: **DIRECTOR-GENERAL**
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0007
khayalethu.matrose@dmr.gov.za /
nwabisa.qwanyashe@dmr.gov.za
Per fax: (086) 624 5509

AND TO: **DEPUTY DIRECTOR-GENERAL: MINERAL REGULATION**
DEPARTMENT OF MINERAL RESOURCES
THIRD RESPONDENT
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Pretoria
Gauteng
0007
Per email: joel.raphela@dmr.gov.za and ivan.moloto@dmr.gov.za

AND TO: **REGIONAL MANAGER**
DEPARTMENT OF MINERAL RESOURCES
FOURTH RESPONDENT
444 Govan Mbeki Avenue
Port Elizabeth
Eastern Cape

6000
Per email: Azwihangwisi.Mulaudzi@dmr.gov.za
Zimkita.Tyala@dmr.gov.za
Per fax: (041) 373 8171

AND TO: **TRANSWORLD ENERGY AND MINERAL RESOURCES (SA) PTY LTD**
FIFTH RESPONDENT
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Northbank Lane
Century City
Cape Town
Western Cape
7442
c/o Shepstone & Wylie
Ground Floor, The Lodge,
38 Wierda Road West
Wierda Valley
Sandton, Jhb
2132
Ref: PP/AML/mr/TRAN29887.1
By email: Prinsloo@wylie.co.za
By fax: 011 290 2551

AND TO: **MINISTER**
DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM
SIXTH RESPONDENT
184 Jeff Masemola Street
Pretoria
0001
Minister G Nkwinti (MP)
Gugile.Nkwinti@drdlr.gov.za / nomava.notshe@drdlr.gov.za
Care of:
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Old Mutual Centre
8th Floor
167 Andries Street
Pretoria, 0001
Ref: S P Mathebula
Email: simathebula@justice.gov.za
Fax no: 086 629 1380

AND TO: **DIRECTOR-GENERAL**
DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM
SEVENTH RESPONDENT
184 Jeff Masemola Street

Pretoria
0001
Mr Mduduzi Shabane
c/o: Debbie Khan - DGOffice@drdlr.gov.za

Annexure A to Notice of Motion in Duduzile Baleni and 128 Others // Minister of Mineral Resources and Six Others

LIST OF APPLICANTS					
No.	**APPLICANT**	**VILLAGE**	**No.**	**APPLICANT**	**VILLAGE**
1	Duduzile Baleni	Mnyameni	91	Nonceba Ntsebetsha	Mphahlana
2	Makati Ndovela	Sikombe	92	Andiswa Ntshilibe	Mphahlana
3	Mabhude Danca	Mtentu	93	Nophelo-Nomazethi Danca	Mphahlana
4	Gcinamandla Mthwa	Kwanyana	94	Nwabisa Dimane	Mphahlana
5	Mdumiseni Dlamini	Mphahlana	95	Nokulunga Elvinah Yalo	Mphahlana
6	Maliyeza Denge	Mnyameni	96	Mazindela Dlamini	Mphahlana
7	Makolishi Jojisa	Kwanyana	97	Ncumisa Dlamini	Mphahlana
8	Celani Mthwa	Kwanyana	98	Nobuhle Dlamini	Mphahlana
9	Mjijwa Ntuli	Kwanyana	99	Philile Dlamini	Mphahlana
10	Mabondi Ntuli	Kwanyana	100	Thandokazi Dlamini	Mphahlana
11	Mathethisa Ndovela	Kwanyana	101	Sihle Dlamini	Mphahlana
12	Toloza Mzobe	Mphahlana	102	Sicelo Dlamini	Mphahlana
13	Nondumiso Mzobe	Mphahlana	103	Zesitsho Dlamini	Mphahlana
14	Nothobile Mthwa	Mnyameni	104	Elam Sankobe	Mphahlana
15	Siziwe Mthwa	Mnyameni	105	Sebenzile Jali	Kwanyana
16	Thofolo Mndiyatha	Mphahlana	106	Mqatshwa Ndovela	Mphahlana
17	Magilede Ndovela	Mphahlana	107	Zolile Ndovela	Mphahlana
18	Mayalo Mzobe	Mphahlana	108	Bonginkosi Ntsebetsha	Mphahlana
19	Bongekile (Happiness) Tshazi	Mphahlana	109	Mlungisweni Ntsebetsha	Mphahlana
20	Qhamka Ndovela	Sikombe	110	Ntombi Mbotho	Kwanyana
21	Masiyeni Ndovela	Sikombe	111	Power Ntsebetsha	Mphahlana
22	Lungi Ndovela	Sikombe	112	Matom Dlamini	Mphahlana
23	Mhlangatyezwa Bhuthuma	Mphahlana	113	Mashona Wetu	Mphahlana
24	Nomonde Mbuthuma	Mphahlana	114	Dayina DlaminiMfeketwa Dlamini	Mphahlana
25	Nomfanelo Dlamini	Mphahlana	115	Yaleka Dlamini	Mphahlana
26	Zimele Dlamini	Mphahlana	116	Thulele Dlamini	Mphahlana
27	Mzamo Richman Dlamini	Mphahlana	117	Thembekile DlaminiMa-ambhulosi	Mphahlana
28	Sizwe Dlamini	Mphahlana	118	Dlamini	Mphahlana
29	Nompendulo Diwini	Sikombe	119	Madadeni Mthwa	Mphahlana
30	Nokuza Dinini	Sikombe	120	Mublesi Yalo	Sikombe

31	Linah Dinini	Sikombe	121	Shlanga Yalo	Kwanyana
32	Nonhle Mbuthuma	Mphahlana	122	Mashouta Dlamini	Kwanyana
33	Nokwanda Dlamini	Mphahlana	123	Goodwill Yalo	Kwanyana
34	Hloniphile Dlamini	Mphahlana	124	Samson Gampe	Mphahlana
35	Luleka Funwa	Mtentu	125	Anelisa Dlamini	Mphahlana
36	Siyabonga Ndovela	Mtentu	126	Bonakele Ncamane	Mphahlana
37	Nokukhanya Ndovela	Mtentu	127	Mashangumane Mtidala	Kwanyana
38	Thengelakhe Ndovela	Mtentu	128	Bench Marks Foundation	KwanyanaJohannesburg
39	Khanyisa Mgingi	Mtentu	129		
40	Noloyiso Sonjica	Mtentu			
41	Bulelwa Nqoko	Mtentu			
42	Nomsa Ndovela	Mtentu			
43	Ziswebenzele Ndovela	Mtentu			
44	Nowandile Ndovela	Mtentu			
45	Thembisa Mathumbu	Mtentu			
46	Vulindlela Mdukisa	Kwanyana			
47	Eslina Mdukisa	Kwanyana			
48	Thobeka Jali	Kwanyana			
49	Phazama Mthwa	Kwanyana			
50	Bulelwa Ndovela	Sikombe			
51	Akhona Mthwa	Sikombe			
52	Fikelwa Mthwa	Sikombe			
53	Mdudeni Mthwa	Sikombe			
54	Mafenela Danca	Sikombe			
55	Bhekeni Danca	Sikombe			
56	Mhlanganyelwa Danca	Sikombe			
57	Mathethisa Ndovela	Sikombe			
58	Balekani Ndovela	Sikombe			
59	Thembi Yalo	Kwanyana			
60	Mablesi Yalo	Kwanyana			
61	Zwelidumile Yalo	Kwanyana			
62	Shlangu Yalo	Kwanyana			
63	Konjiwe Mthwa	Kwanyana			
64	Mdunyiswa Sisusa	Kwanyana			
65	Vuyisile Dlamini	Kwanyana			

66	Bongeka Dlamini	Kwanyana			
67	Bongekile Jali	Kwanyana			
68	Chitiwe Hlongwe	Kwanyana			
69	Phumzile Dlamini	Kwanyana			
70	Andile Dlamini	Kwanyana			
71	Nomathemba Yala	Kwanyana			
72	Nosipho Mthwa	Kwanyana			
73	Madayithi Ndovela	Mtentu			
74	Ndovela Nobuhle	Mtentu			
75	Msweli Shude	Kwanyana			
76	Ntombizanele Pawana	Mtentu			
77	Nokuzola Cele	Mtentu			
78	Mandishandi Ndovela	Mtentu			
79	Simlindile Ndovela	Mtentu			
80	Busisiwe Ndovela	Kwanyana			
81	Wibha Ndovela	Kwanyana			
82	Nontlahla Ndovela	Kwanyana			
83	Mthuthu Ndovela	Kwanyana			
84	Majemese Dlamini	Kwanyana			
85	Duduzile Dlamini	Kwanyana			
86	Nongedle Dlamini	Kwanyana			
87	Vuyani Dlamini	Kwanyana			
88	Lungile Dlamini	Kwanyana			
89	Fikephi Ndovela	Kwanyana			
90	Nongcaciso Denge	Kwanyana			

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

CASE NO:

In the matter between:

DUDUZILE BALENI	First Applicant
MAKATI NDOVELA	Second Applicant
MABHUDE DANCA	Third Applicant
GCINAMANDLA MTHWA	Fourth Applicant
MDUMISENI DLAMINI	Fifth Applicant
MALIYEZA DENGE	Sixth Applicant
122 OTHERS LISTED IN ANNEXURE A TO NOTICE OF MOTION	7th to 128th Applicants
BENCHMARKS FOUNDATION	129th Applicant

and

MINISTER OF MINERAL RESOURCES	First Respondent
DIRECTOR-GENERAL - DEPARTMENT OF MINERAL RESOURCES	Second Respondent
DEPUTY DIRECTOR-GENERAL: MINERAL REGULATION - DEPARTMENT OF MINERAL RESOURCES	Third Respondent
REGIONAL MANAGER: EASTERN CAPE – DEPARTMENT OF MINERAL RESOURCES	Fourth Respondent
TRANSWORLD ENERGY AND MINERAL RESOURCES (SA) Pty Ltd	Fifth Respondent
MINISTER OF RURAL DEVELOPMENT AND LAND REFORM	Sixth Respondent
DIRECTOR-GENERAL – DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM	Seventh Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

DUDUZILE BALENI

do hereby make oath and say that:

1 I am an adult female, currently residing at Mdatya, Bizana, Eastern Cape. I am the iNkosana (headwoman) of the Umgungundlovu community ("the community") and the head of the Umgungundlovu iNkosana's Council ("the council"), a body established in terms of customary law. I am also the First Applicant herein.

2 The facts contained in this affidavit fall within my own personal knowledge and belief, save where the contrary appears from the context. They are, to the best of my knowledge and belief, both true and correct.

3 I bring this application in my personal capacity, in my capacity as the iNkosana on behalf of the members of the Umgungundlovu community, and in the public interest. As appears from the resolution annexed hereto marked **DB1**, I am authorised to bring this application by the Umgungundlovu iNkosana's Council. As appears from the resolution annexed hereto marked **DB2**, I am authorised to bring this application by a meeting of the Umgungundlovu community at our Komkhulu on 06 September 2016.

CD

4 Where I make submissions of law, I do so on the advice of our legal representatives.

PARTIES

The Applicants

5 I am the First Applicant. My details and my interest in the matter are set out above.

6 The Second Applicant is Makati Ndovela, an adult male resident of Mpindweni Village, Bizana, Eastern Cape.

7 The Third Applicant is Mabhude Danca, an adult male resident of Mtentu Village, Bizana, Eastern Cape.

8 The Fourth Applicant is Gcinamandla Mthwa, an adult male resident of Xolobeni Village, Bizana, Eastern Cape.

9 The Fifth Applicant is Mdumiseni Dlamini, an adult male, currently resident of Sigidi Village, Bizana, Eastern Cape.

10 The Sixth Applicant is Maliyeza Denge, an adult male resident of Mdatya Village, Bizana, Eastern Cape.

11 The Second to Sixth Applicants bring this application in their personal capacities, on behalf of their respective villages, and in the public interest.

12 The 113th, 125th, 127th and 128th Applicants are elders in the community knowledgeable in the customary law of the Umgungundlovu Community.

They bring this application on their own behalf, on behalf of the Umgungundlovu Community and its members within the proposed mining area, and in the public interest. Their details appear on the schedule annexed to the Notice of Motion marked **A**.

13 The 7th to 124th and 126th Applicants are residents of the proposed mining area or its immediate vicinity and their details appear on the schedule annexed to the Notice of Motion marked **A**.

14 The First to 128th Applicants are all members of the Umgungundlovu community.

15 The First to 128th Applicants bring this application in their own interest, in the interest of the members of their respective imizi, in the interests of all other residents of the proposed mining area, in the interests of the Umgungundlovu Community, and in the public interest. They do so on the basis of sections 38(a), 38(c) and 38(d) of the Constitution.

16 The 129th Applicant is the Bench Marks Foundation ("Bench Marks"), an independent non-governmental organisation located at the 6th Floor, Khotso House, 62 Marshall Street, Marshalltown, Johannesburg, South Africa, 2017. Bench Marks's standing to bring this application is set out in the affidavit of John Capel.

The Respondents

17 The First Respondent is the Minister of Mineral Resources ("the Minister"), with offices at the Department of Mineral Resources' ("the

Department") head office, C/o Meintjes and Francis Baard Street, Sunnyside, Pretoria, 0007.

18 The Second Respondent is the Director-General of the Department of Mineral Resources ("the Director-General"), with offices at the Department's head office, C/o Meintjes and Francis Baard Street, Sunnyside, Pretoria, 0007.

19 The Third Respondent is the Deputy Director-General: Mineral Regulation of the Department of Mineral Resources ("the Deputy Director-General"), with offices at the Department's head office, C/o Meintjes and Francis Baard Street, Sunnyside, Pretoria, 0007.

20 The Fourth Respondent is the Regional Manager: Eastern Cape of the Department of Mineral Resources with offices at Pier 14 Building, 444 Govan Mbeki Avenue, North End, Port Elizabeth, 6000.

21 The First to Fourth Respondents are cited in their capacities as the functionaries of the Department of Mineral Resources responsible for processing mining rights applications in the Eastern Cape.

22 The Fifth Respondent is Transworld Energy and Mineral Resources (SA) Pty Ltd ("**TEM**"), a company incorporated in terms of the company laws of South Africa, having as its registered address 1st Floor, Block A, The Forum, Northbank Lane, Century City, Cape Town, 7442.

23 The Fifth Respondent is cited as a party interested in the outcome of this application. No relief is sought against the Fifth Respondent.

5

24 The Sixth Respondent is Minister of Rural Development and Land Reform ("the Minister of Land Reform"), with offices at the Department's head office at 184 Jeff Masemola Street, Pretoria, 0001.

25 The Seventh Respondent is the Director-General of the Department of Rural Development and Land Reform, with offices at the Department's head office at 184 Jeff Masemola Street, Pretoria, 0001.

26 The Sixth and Seventh Respondents are cited in their capacity as Trustee of land affected by this application, and as the functionaries responsible for upholding the rights contained in the Interim Protection of Informal Rights to Land Act 31 of 1996 ("IPILRA").

OVERVIEW OF APPLICATION

27 TEM has applied for a mining right in respect of a portion of the land owned and occupied by the community. The proposed mining area is some 2 859 hectares in extent and comprises a strip of land some 22 kilometres long between the Mpahlane and Mtentu Estuaries and extending about 1.5 kilometres inland from the high water mark.

28 TEM intends to conduct open-cast mining activities on some 900 hectares of land within the mining area. With stockpiles, dumps, treatment plants, pipelines, powerlines, access roads, offices, stores, vehicle parks, accommodation, workshops and other infrastructure taken into account, the physical area that will disturbed by mining will be much greater than 900 hectares.

29 The vast majority of the Applicants, together with their families, live within or in close proximity to the proposed mining area. The Applicants are the holders of rights in and to the land including rights to use and occupy this land in accordance with our law and custom.

30 The land that comprises the proposed mining area is an important resource and is central to the livelihoods and subsistence of the Applicants and of many community members, who utilise it for grazing for their livestock and for the cultivation of crops and who depend on it for their water supply and its natural resources which include building materials, firewood, edible or medicinal fruits and plants and fish and shellfish.

31 A significant number of community members also rely on tourism and tourism-related activities taking place within the proposed mining area.

32 Mining within the proposed mining area will displace community members from their homes and from their land and will deprive them of their livelihoods and means of subsistence and have a significant impact on their way of life.

33 The Applicants and the community have not consented to the proposed mining activities and are opposed to the award of the mining rights to TEM.

34 This application is an application for the following declaratory relief:

34.1 an order declaring that TEM's mining rights application may not be granted, alternatively, that mining may not commence, save with

cp

the consent of the holders of rights in and to the land in terms of their customary law; alternatively,

34.2 an order declaring that TEM's mining rights application may not be granted, alternatively, that mining may not commence, until such time as compensation, redress, or alternative livelihoods for the loss or damage that community members are likely to suffer as a result of the proposed mining activities have been agreed or determined by arbitration or by a competent court.

35 It goes without saying that the land rights holders will not consent to mining on their land save if there is agreement on compensation which includes agreement on the provision of alternative land, resettlement, and the restoration of livelihoods.

36 The Applicants argue that that the declaratory relief sought is consonant with the Mineral and Petroleum Resources Development Act 28 of 2002 ("the MPRDA"). If this Honourable Court finds that this is not correct, the Applicants seek to challenge the constitutionality of the MPRDA.

LEGAL FRAMEWORK

37 The process in terms of which mining rights applications are submitted is set out in section 22 of the MPRDA. The application must be submitted in the prescribed form at the offices of the relevant Regional Manager. An environmental authorisation must be applied for simultaneously.

38 Mining rights applications are considered by the Minister in terms of section 23 of the MPRDA. The Minister must grant the mining right if:

38.1 the mineral can be mined optimally in accordance with the mining work programme;

38.2 the applicant has access to financial resources and has the technical ability to conduct the proposed mining operation optimally;

38.3 the financing plan is compatible with the intended mining operation and the duration thereof;

38.4 the mining will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation is issued;

38.5 the applicant has provided for the prescribed social and labour plan;

38.6 the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act 29 of 1996);

38.7 the applicant is not in contravention of any provision of this Act; and

38.8 the granting of such right will further the objects referred to in section 2 (d) and (f) and in accordance with the charter contemplated in section 100 and the prescribed social and labour plan.

39 Receiving an environmental authorisation is a prerequisite to receiving a mining right, and must be applied for simultaneously with the lodging of

a mining right application. While environmental authorisation applications are governed by the National Environmental Management Act 107 of 1998 ("NEMA"), the Minister of Mineral Resources is the responsible authority for considering such applications. To receive an environmental authorisation, a mining right applicant must first complete a scoping report. Once this is accepted, an environmental impact assessment ("EIA") must be completed. An environmental authorisation is granted or refused based on the contents of this EIA.

40 Upon receiving a mining right, section 5 of the MPRDA grants the mining right holder with a limited real right over the mineral as well as a limited real right to enter the land to which the right relates.

41 There is no express provision that the consent of a community land rights holder is required in the MPRDA. The MPRDA does, however, require the Regional Manager (section 10) and the applicant (section 22(4)) to consult with interested and affected parties as part of the application process. The environmental authorisation process also entails public consultation in the scoping report and EIA stages.

42 Section 54 provides for compensation for loss or damage suffered as a result of the mining.

43 The MPRDA provides that where the common law is inconsistent with the MPRDA, the MPRDA prevails. The MPRDA does not purport to prevail over any other statutory law. Indeed, section 25(2)(f) of the MPRDA provides that the holder of a mining right must comply with the relevant provisions of any other relevant law.

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44 In this application, the Applicants argue that the provisions of the Interim Protection of Informal Rights to Land Act ("IPILRA") must be complied with prior to the grant of a mining right. This argument is set out in more detail below.

JURISDICTION

45 I am advised that this Honourable Court has jurisdiction to hear this matter on the grounds that the First to Third Respondents (the functionaries responsible for overseeing the MPRDA and the granting of mining rights), and the Sixth and Seventh Respondents, have their seat in Pretoria.

46 Furthermore, in terms of section 8 of the MPRDA, the Director-General designates the Regional Manager in the service of the Department for each region contemplated in section 7 of the Act and may delegate functions to them in terms of the MPRDA or any other law.

THE RESIDENTS OF PROPOSED MINING AREA

47 There are approximately 70 to 75 households, known in isiMpondo as imizi (singular: umzi), comprising more than 600 individuals, who live within 1.5 kilometres of the coast in Umgungundlovu. The vast majority of these imizi are in the proposed mining area.

48 The Applicants include representatives of 68 of these imizi. These imizi include 307 adults and 315 children.

49 The map annexed hereto marked **DB3** shows the proposed mining area to the best of the Applicants' knowledge and the locations of those Applicants' homes and the homes of the other imizi living within 1.5 kilometres of the coast in Umgungundlovu.

50 Several hundred more imizi reside in close proximity to the proposed mining area. Many of these imizi utilise the land within the proposed mining area for the grazing of their livestock, to harvest its natural resources, or for other purposes. These imizi will also be affected by the proposed mining activities.

51 The affected imizi are all members of the Umgungundlovu community and have owned the land used and occupied by them for generations. Individuals and imizi have rights in and over their residential and arable plots. The balance of the land, including grazing land, forestry, and unallocated parcels, is owned and used by the community in a layered structure of collective rights and responsibilities defined by our customary law.

52 While our residences were once universally rondavels made of local materials that were readily abandoned, our imizi increasingly include both rondavels and more 'modern' structures that are usually rectangular in form and made with concrete blocks, tin roofs, and other expensive materials. These new structures require considerable investment and are rarely, if ever, abandoned.

53 Community members enjoy a right to access and harvest community resources including grazing and the harvesting of its natural resources.

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54 Almost without exception the affected imizi cultivate their arable lands and keep cattle and other livestock. The products of their labour are used for the umzi's subsistence, but a large proportion of imizi also generate a cash income by selling their surplus.

55 Many affected imizi rely on marine resources, including fish and shellfish that are harvested from the ocean, and from the five river estuaries within the proposed mining area to supplement the umzi's subsistence and cash income.

56 Agricultural production through use and access to our lands for crops and grazing is the biggest contributor to the food security of affected imizi.

57 There are also networks of mutual support and dependency between the affected imizi relating to the sharing and exchange of food and other natural resources between them, in the pooling or sharing of draught animals and human labour as it pertains to specialised labour and labour intensive activities like ploughing, harvesting and building. These reciprocal relationships play an important role in sustaining the individual imizi and the community during times of hardship and shortages and in ensuring social cohesion.

58 The most important commercial activity outside of farming is eco-tourism, which employs more than 40 community members on a full or part time basis.

59 Tourism has repeatedly been identified as an important potential driver of economic growth in the area as the area is one of great natural beauty and is of significant ecological interest and value.

60 The growth potential inherent in tourism has not been realised. This is in no small part due to the repeated prospecting and mining right applications brought by TEM, which is a deterrent to investment in tourism and eco-tourism which are activities that are contingent upon the preservation of the area's natural beauty and ecological diversity.

61 Most of the affected imizi in the area are related by blood or by marriage and have lived in this area for generations. The overwhelming majority have family graves in the proposed mining area. The Applicants have identified more than 450 graves in the proposed mining area. These graves are marked, though not in the western tradition of concrete and/or granite, and are essential sites for family and community rituals.

62 The Umgungundlovu community enjoys a rich social and cultural life. Births, weddings and funerals are community affairs, community gatherings at our Komkhulu, or Great Place, are well attended by community members. Many community members walk for hours over great distances to attend community gatherings.

63 Community members are proud of their membership of the greater Amadiba Traditional Community and the amaMpondo nation. They take pride in their shared culture and their heritage. The culture and history of resistance to oppression is strong and still fresh in the community's

memory. There are still older men and women who have a first-hand recall of the Pondo Revolt of the 1950s and 1960s.

64 Further detail on the economic and social position of the Applicants specifically and the Umgungundlovu community generally is set out in the affidavit and annexed reports of Michael Koen annexed hereto.

CUSTOMARY LAW OF UMGUNGUNDLOVU COMMUNITY

65 The members of the Umgungundlovu community pride ourselves on our long history of occupying, owning and using our land. Our history stretches far back to the early 1800s when our forebears established settlement on this land after they had emigrated from Zululand to escape the conquests of Mfecane that sought to subdue and incorporate autonomous territories into Zulu domination.

66 Since then, the Umgungundlovu community has continued to sustain and reproduce itself primarily by paying observance to, and application of the precepts of our customary law. While we adhere generally to the Pondo system of customary law, the customary law of the Umgungundlovu community has been developed to meet our community's lived experiences and needs and is the system around which we organize the continued life of our community both as constituent individual members and as collective social units.

67 The Umgungundlovu community is made of the collection of intertwined relationships between the living and the dead.

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68 Our customary law builds from our dearly held meanings of our shared history, culture, individual and collective interests, together with our shared responsibility to sustain the life of our community.

69 Our customary law governs our lives, as we live them collectively and individually, and it is the order around which we organise and legitimate our rights and obligations to each other with respect to valuable resources such as land.

70 Our customary law is traced back to the times of our forebears, and is passed from one generation to the other through oral tradition and practice.

71 While our customary law can be adapted in response to various forces of social change, it remains sacrosanct to the life of our community, is accordingly held dear by its members and is not changed without consensus.

72 Regarding matters of landed property, our customary law proceeds on the concept of layered communitarian rights. This is a complex arrangement in which the sum total of rights in land is constituted by a consideration of both collective, household, and individual rights that are enjoyed and vested at all levels that collectively together constitute the hierarchy of community organisation.

73 Notwithstanding small variations and deviations that sometimes occur, our customary law is very clear on procedures of land allocation and administration.

74 An applicant for land consults the neighbourhood within which they desire to be allocated land. After such neighbourhood has duly assessed the applicant's request, the applicant approaches the sub-headman, known in isiMpondo as the isibonda (plural: izibonda) and explains to them where they desire to be allocated a piece of land. There are usually four or five izibonda per village.

75 Subsequently, the isibonda convenes a meeting with the applicant's prospective neighbours at which the isibonda asks what the prospective neighbours think about the applicant's request. The prospective neighbours have right to allow or disallow the isibonda to grant the application. When approved, the isibonda and village elders take the applicant to my Council. The isibonda and indunas give an oral report to the Council of what transpired in the process of land application. When everything is agreed upon, the Council assigns a group of people including member of the Council, the isibonda, elders, and some prospective neighbours of the applicant to go and peg and officially hand the land parcel to the applicant. Typically I will be the last to speak and my responsibility is largely to confirm that there is a consensus or not and if not what is to be done.

76 On the day when the land is pegged and handed over, the applicant offers food and beer to the people present as a customary way of facilitating social bonding between them and their new neighbours, as well as the community leadership. On this day, the member of my

Council engages with the neighbours and ascertains whether there are any disputes regarding the land.

77 Should the member of Council confirm that there are no objections, the applicant is accompanied by their isibonda to my Council to have their name entered in my register, which takes the form of a receipt book, for purpose of administrative records.

78 Further to this, the Secretary of the Council issue the applicant with a copy of the relevant page in the register that serves to confirm that the land that they occupy was duly granted to them by the authority of our community. On issuance of this page, the applicant pays an administrative fee. Currently this fee is R50 (and is subject to change). I note that it is critical to recognise that the page issued to the applicant is identical to the page in the register as this is a key protection to prevent the amendment of these pages to change the description of the land or the identity of the rights holder.

79 The procedure above demonstrates that the powers to allocate and administer land are not vested in one individual or one structure of leadership; it is instead a shared responsibility that flows from the bottom (the neighbourhood) up to the izibonda and the iNkosana's Council.

80 According to our customary law, rights in land are accruable to persons by virtue of their being members of Umgungundlovu community. One can belong to the community either by birth or by association – as (in the latter instance) often occurs in regard to people who immigrate to the area, regardless of their previous "tribal" affiliations.

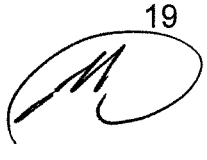
81 Umgungundlovu customary law provides that we welcome and give land to people that come from other communities provided these people satisfy all our proper processes of land application as set in our law.

82 Because of our shared need to protect the continued life of our community, land applications by outsiders are subjected to robust assessment processes. Our reason for doing this is to make sure that by granting the interests of outsiders, we do not prejudice the interests of our community.

83 When assessing an outsiders' application, our law demands that broad inclusive participation takes place. In this case the line of decision-making stops from being just bottom-up; it becomes lateral. Decisions by lower community structures such as neighbourhoods can be rejected by upper structures including the iNkosana's council, and vice versa. When this happens, the application gets referred back for further discussion.

84 Typically an application gets declined if it is likely to cause conflict between community members, or division within or between imizi, or different interest groups within the community, such as cattle owners or fishermen or small traders, church groups or transport operators.

85 In this case we rely on the customary law of the Mpondo community and the provisions of IPILRA. However, it is important to highlight that our customary law does not work on a majoritarian basis. Decisions are seldom if ever taken on the basis of a simple majority vote. If a decision is likely to give rise to conflict and division in a community is unlikely to be approved, even if it enjoys majority support.



86 The higher the potential for conflict and division entailed in any decision, the higher the degree of consensus required to pass it. The arbiter entrusted to determine whether or not there is a sufficient degree of consensus to determine an issue is the senior traditional leader in the forum where the decision is to be taken. In our community therefore it will be up to me, on the advice of the members of the iNkosana's Council, to determine whether or not consensus has been reached. This decision is made in terms of, and is subject to, our customary law. As previously indicated that determination is made only at the close of proceedings when the issue in dispute has been exhaustively debated.

87 When granted, our rights in land are both exclusive and inclusive. While individual imizi enjoy exclusive rights over their residential and arable plots, they do so with an inclusive consideration of the interests and rights of the broader community.

88 Our customary law confers both ownership and user rights depending on the nature of land parcel in question. Ownership rights are conferred to imizi over residential and arable plots allocated to them. Such rights are individual umzi rights. User rights are conferred to cells of community organisation such as neighbourhoods over grazing and forestry lands within their immediate surroundings. Accordingly, such rights are shared because they vest in all that live in that particular cell of community.

89 Our customary law provides that rights in land may be alienated only in the following circumstances:

89.1 If all the members of an umzi emigrate to another community. When this happens, the emigrating umzi no longer need the land for its livelihoods. Such land is reserved for potential land applicants; or

89.2 If the land-holding umzi gets into irreconcilable bad relationships with their neighbourhood to an extent that the umzi's security is threatened. In this event, the residents together with the leadership convene a meeting to discuss the best way of assisting the threatened umzi to re-locate either to another village within Pondoland or outside of Pondoland.

90 Under no circumstances are imizi permitted to sell their land.

91 The tradition of our land administration and allocation as prescribed by our customary law is that while structures of community leadership lead and organise relevant processes such as land allocation, substantively their role in doing this is to facilitate a community process, and not to dictate, nor to make overriding decisions.

92 Our tradition of land administration is emphatically underpinned by a strong ethic of broad participatory inclusivity that proceeds on the need for extensive consultation, as well as consideration of both collective and individual interests.

93 While findings from these consultation processes help us take decisions on community matters, it is not so much the balance of numbers that matters. Contributions are carefully considered against the interests of

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the continued life our Umgungundlovu community and the prescriptions of our customary law.

94 Our customary law holds that land is allocated primarily to support livelihoods of umzi members. Therefore any exercise of land administration including allocation, re-allocation, transfer and alienation should always duly consider the welfare of the people.

95 Given the centrality of land to the lives and livelihoods of the members of the Umgungundlovu community, the customary law of the Umgungundlovu emphasises extensive consultation and consensus-seeking in decisions regarding land use and development.

96 Land is typically allocated to an umzi and not to individuals. The head of umzi in whose name the land gets allocated holds it in trust for all members of their umzi. After allocation, such land becomes a resource exclusively belonging to that particular umzi in perpetuity. This is so even if it is clear that only specific family members, such as the women in the umzi, will have the primary or even exclusive use thereof.

97 An umzi's land resources are passed down to relevant umzi leaders through succession. Customarily, our succession tradition is intestate, and details on how that gets to be done depend on the practical circumstances of individual imizi.

98 Because residential and arable lands exclusively belong to imizi, succession matters to these lands are internal umzi concerns.

99 Any adult member of the community may be allocated a portion of the community land for their umzi's exclusive use, for example to construct a dwelling or for cultivation or to build a shop or a church or some other facility.

100 The most common examples where land may be allocated to an outside agency is if it were for to a public purpose such as a school or clinic or to construct a road or a hall that will serve the community.

101 Even in such a case there would be extensive consultation and as indicated a very high degree of consensus would be sought.

102 Clearly the wider and the greater the impact of the proposed allocation or award of rights the wider and more extensive the consultation would be and the greater the degree of consensus required.

103 An application for mining rights such as has been made by TEM will impact very negatively on the rights of a great many community members. A large number would lose their homes and their ploughing and grazing lands if TEM's were permitted to mine on community land. For obvious reasons such persons would be strongly opposed to any decision to permit mining on community land without thorough information and concrete provisions regarding alternative lands and livelihoods.

104 In customary law relating to land, the notion of some overall benefit for the "wider community" is simply not an adequate ground to deprive a significant number of community members of their rights in and to their

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land. What is important is full and informed consent. Also important is the need to avoid conflict and division. Our customary law places a special premium on social harmony and sound communal relations. Decisions which are likely to cause conflict are treated with the greatest degree of circumspection. The greater the likelihood of conflict, the greater the need for consensus in decision-making processes, despite any supposed economic benefits stemming from those decisions.

105 A decision to approve mining operations without consensus having been achieved would trigger massive conflict between those community members who may benefit and those who would be severely prejudiced and harmed. It would tear the community apart. This is why even if a majority of residents favoured mining, which is denied, this would not be sufficient grounds to consent to mining on our land under our customary law.

106 This does of course not mean that it is not possible to approve mining on community land. If those community members who would be negatively impacted by the proposed mining activities were guaranteed compensation that they accepted as sufficient to make up for the harm and loss and inconvenience that they would suffer, if mining were permitted, and were therefore willing to be displaced and resettled elsewhere, and the other members of the community who are not as directly affected supported it, then it may well be possible to secure the necessary consensus to permit mining. It would be necessary, of course, that any agreement was made on detailed and accurate information

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regarding mining's impact, and that provisions for compensation and relocation were definite and secure.

107 An example of this occurring on a wide scale has been conveyed to me by my elders. In the late 1960s or 1970s, authorities sought permission to construct a railroad along our coast. Several consultative meetings were held where the community was advised as to the extent of land required and the nature of the railroad's impact. This culminated in a community-wide meeting at Komkhulu where a consensus decision was made to allow the railroad to be built.

108 In part this is because it is a fundamental precept of our law, a precept that I am advised is reflected in the provisions of IPILRA, that community members who are expected to give up their rights should be appropriately compensated for their loss. Appropriate in the context of the Umgungundlovu community generally means by the allocation of other land equivalent to that which they are required to give up, though it may vary depending on the views of the affected individuals.

109 'Appropriate compensation' in our law is not an abstraction. What is appropriate is measured against the subjective assessment of the person who is to be deprived of their rights. It goes without saying that such subjective assessment must be informed by extensive informed consultation and discussion with the person concerned, their family and neighbours, and ultimately with the whole community as represented at the Komkhulu.

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110 A land rights holder, whose livelihood and whose place and role in the community is largely defined by their physical place in the community, will not give up that place except if they are confident that the alternative to be provided is adequate and tangible and that their status and position in the community will be preserved or enhanced.

111 As I will elucidate further below, TEM has given no indication, much less any tangible assurances, that it will engage with community members who may be displaced by their proposed mining activities to seek agreement regarding appropriate compensation that ensures that their livelihoods and their place and role in the community will be secured or enhanced.

112 Our reluctance to subordinate the rights and interests of the individual to that of the "wider community" is based less on the idea of individual rights than it is on the great emphasis that our customary law places on the value of consensus.

113 Central to our way of life is the social and economic inter-connectedness of our community. We are first and foremost a community and the quality and value of our lives, as individuals, is substantially determined by our place in and our involvement with community.

114 In our social structure we are all treated as members of an extended family, and these extended families are all closely integrated with each other and with the wider community. Our social, our cultural and our economic lives are inextricably intertwined and inter-dependent.

115 Any event that disrupts the social and economic interdependence that characterises our social, economic and cultural lives is approached with great caution. Social conflict and physical or economic displacement threaten our collective security, as does the sudden and massive disruption of the natural resources that we depend upon for our subsistence.

116 An example of how our customary law works in practise is in relation to a request made by an employee of Bizana municipality in or around 2014 for the allocation of a large portion of land at Sigidi, in the Umgungundlovu district. She stated that she wanted the piece of land to employ large numbers of people for large-scale commercial agricultural production. A large community meeting was convened by Mashona Wetu, also called "Mr Dlamini", a senior member of the Umgungundlovu iNkosana's Council. At this meeting, the community decided against the allocation on the grounds that the area was required for grazing and due to concerns regarding the insecurity of formal employment.

117 Also in the 1950s, the Union Government attempted to impose 'betterment' programme in the Umgungundlovu community. Through the betterment programme, the government wanted to relocate us into densely clustered villages arranged in a way that our residential plots would be separated from our arable and grazing lands. That would have required us to be resettled in formalised townships instead of being scattered across the landscape in relatively isolated dwellings as has always been our culture.

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118 Our community rejected this programme and fought to repel the attempts in the Pondo Revolt of 1960s. In our language this war is referred to as 'Nonqulwani'. In this war, all able-bodied men of the community took up arms, while women were supplying intelligence, food and protection. Some of those that participated in this war are still alive and resident in this community.

119 Relocating into betterment villages entailed that we would have to leave behind the graves of our ancestors. In the process of land use planning and re-arrangement that the government would undertake, some of the graveyards would be turned into grazing lands and even arable plots for other imizi. Unless proper procedures are followed, separation of the living and their ancestors' graves is a gross contravention of customary law, and is likely to bring social ills such as misfortune, incessant illnesses and degeneration of umzi institutions.

120 Again, re-location meant that most of us would have to leave behind our residential plots. In our customs, a residential plot ("umzi") is far more than a place of living. It is a symbol of social maturity and social dignity, and it offers space for the umzi to reproduce itself.

121 Moreover, through our routine rituals that we practise at the umzi, the residential plot serves as a critical conduit for the perpetuation of relations of inter-linkage and mutual dependence between the living and the dead. Such relations are critically important for the wellbeing of our imizi.

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122 Furthermore, leaving behind our arable plots that we had used for long, and in the process getting to understand and trust their productive capacities, meant that our livelihoods would henceforth become uncertain and threatened. Given the reality that since historical times, our community has been and still is heavily dependent on agrarian production, being asked to part with our arable lands is not something we could take lightly.

123 We won the war against betterment, and as a result the betterment programme was not implemented in Umgungundlovu and our land continued to be under our ownership and administered according to our customary law.

124 The account above is confirmed by the supporting affidavits of the 113th, 125th, 126th, 127th and 128th Applicants, all elders in the Umgungundlovu community.

125 Further detail on our community's land rights and decision-making processes are canvassed in the expert affidavit of Professor William Beinart annexed to this affidavit.

126 The proposed mining activities of TEM threaten to tear our community apart and to leave us divided, insecure and vulnerable. That it has come this far without any effort to seek community consent has already triggered pain and conflict, as is documented in more detail below.

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127 In the absence of any cogent, considered and concrete proposals from TEM as to how these potentially catastrophic impacts will be mitigated or compensated this community cannot consent to mining on its land.

128 TEM may answer that community benefit is covered in part by the Xolobeni Empowerment Company ("XolCO"), a company established by TEM to comply with the MPRDA's requirement of minimum 26% black ownership. While XolCO is touted as a community benefit initiative wholly owned by community development trusts, we have never seen a meeting of these trusts in our community and do not even know whether they have been registered. The only benefit XolCO has brought has been to benefit a limited number of community members, most of whom are not from the proposed mining area or even Umgungundlovu, as directors. It is denied that XolCO is a community structure at all.

129 TEM has made no effort at all to present a proposal to the community as to how they plan to mitigate the impacts of their proposed mining activities on individual families and the community as to how they will compensate families and the community for the harm and loss that they will suffer and how they will restore the sustainable livelihoods that will be lost as a result of mining.

TEM'S MINING RIGHT APPLICATION

130 In this section I briefly outline TEM's mining right application with a specific focus on understanding the extent of land required by mining and ancillary activities, as well as the nature of the use of land and resources required.

131 For reference, the mining right application is annexed hereto marked **DB4**. This annexure includes the following:

131.1 The standard application for a mining right form ("the MRA");

131.2 The mining work plan ("the MWP");

131.3 The social and labour plan ("the SLP"); and

131.4 Recent financial reports submitted by TEM together with its application.

132 I pause to note that TEM initially refused to furnish the Applicants with a redacted copy of their mining right application on the grounds that most of its contents were deemed by its directors to be confidential. A copy of the application was only obtained in February 2016 after the Applicants brought an application to this Honourable Court for access to the application under case number 96628/2015. The pleadings in this application are not annexed to avoid belabouring these papers but will be made available at the hearing of this matter.

133 Mining right application form requires particulars about and a description of the land with reference to Surveyor General diagrams. In part D of the MRA, the land is described as farm name "Bizana Area, Amandiba (sic)." There is no Surveyor General diagram attached to the application. Five longitude and latitude coordinates are supplied.

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134 Attached to the MRA is a plan, apparently as envisaged in regulation 2(2), prepared by Tradestuff Survey dated 16 February 2015 with the following legend:

> *"The figure lettered A.B.C.D.E represents a mining area in the extent of approximately 2859 hectares in the Transkei coastal area situated in the Mbizana Local Municipality and or OR Tambo District Municipality which Tranasworld (sic) Energy and Mineralas (sic) Recources (sic) (SA) (Pty) (Ltd) with registration 1999/013621/07 (sic) has applied for a mining right application in terms of section 27(2) (sic) of the Mineral and Petroleum Resources Development Act 2002 (Act 28 of 2002)."*

135 While title deeds are required for mining right applications, no title deeds were submitted in this application. This is because the land is unregistered and unsurveyed and is regarded as "state land" by the Deeds Registry and the Surveyor General. As noted above and in the expert affidavit of Beinart, the land is not in fact owned or registered in the name of the state. It is communally owned and controlled in accordance with the customary laws and practices of the community.

136 The MWP purports to provide a "registered description of the land to which the application relates in terms of regulation 11(1)(c)" with the following:

> *"The Xolobeni area is the home of the Xhosa speaking Amadiba tribal community, the traditional landholders. The minerals rights in the project area are owned by the Republic of South Africa.*
>
> *TEM have found that subsistence farming is an integral part of rural lifestyle around Xolobeni..."*

137 The numbers and identities of the persons and families living within the proposed mining area are not provided. To the best of my knowledge TEM has never attempted to identify the families within this area.

138 Regulation 11(1)(d) requires information on the 'extent of the area required for mining'. TEM's MWP provides this description as follows:

> *"The Xolobeni Mineral Lease covers 2859 ha and takes in a coastal corridor 22 km long by about 1.5 km wide. Mining is proposed on about 30% of the tenement area or 855 ha in extent."*

139 Figures 12 to 15 of the MWP document the areas that will be actively mined in the five mining blocks.

140 When asked to describe the extent of the area required for infrastructure, roads, servitudes, etc, the MWP again states that "[t]he Xolobeni Mineral Lease covers 2 859 ha and takes in a coastal corridor 22 km long by about 1.5 km wide."

141 The clearest interpretation of this statement is that the entire proposed mining area will be required by TEM for activities. If this is not the case, it is clear that TEM's activities will require significant segments of land in the proposed mining area beyond the 855 hectares required for mining itself.

142 I am advised that it will be necessary for TEM to fence off the mining area to ensure that people and livestock do not inadvertently enter the area thereby endangering their lives.

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143 The mining method described in the MWP is described as one where TEM "will utilise scrapers as the main method to excavate material and haul to a hopper, which in turn feeds an in-pit slurry plant to enable the ore to be pumped to the WSP."

144 This mode of excavation requires a number of plants and operations which will make up future land use, including large wet separation plants [which will be moved from time to time] and the accompanying slimes dams, tailings dams, slurry pipes and water pipes, roads, workshops, offices, administration offices and storage areas and buildings.

145 The MWP mentions that an employee villages or "housing option" may be needed "separate from but near the mine site." No details are provided as to where these villages will be constructed, who will live in them or what social and communal amenities will be constructed to service their needs for schooling, health and recreation. There will be strong opposition in the community to significant members of outsiders coming to live in our community. We are concerned that they will overwhelm our existing and limited social services, that they may introduce crime, alcohol, prostitution and other social ills, as is often the case and is set out in the research of the Bench Marks Foundation in the affidavit of John Capel.

146 According to the TEM MWP "housing and transport requirements for the local workforce is subject to the final social plan." We have not had sight of such a final plan and it has not been prepared in consultation with us.

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147 Para 5.6 of the MWP deals with the infrastructure requirements relating to water, roads and electricity. The TEM MWP states that water will be needed, amongst others, for two or three slurry plants and the large wet separation plant. According to the MWP, the water supply for the Xolobeni project is expected to be sourced from "the nearby rivers and from ground water using boreholes." The EIA, water study and bankable feasibility study will assess how the water resources are managed. A permanent water supply is planned to be established from the development of a borefield and drawing from one or two of the nearby estuaries. Subject to the water study, each mining block may have its own independent supply of water or draw from rivers and bore holes, according to the MWP.

148 We are deeply concerned as to the impact of mining on our water resources. According to the MWP preliminary estimates show an annual WSP consumption of 13 - 15 Mm3 of water. Other water needs besides the WSP have not been quantified in the MWP. Families in this area are largely dependent on shallow seeps and wells to meet domestic water needs. If mining impacts on the water table, which we are advised large-scale excavations and abstraction often do, our wells and seeps may dry out and we will be left without water for our imizi. We are also advised that there is significant risk of seawater seeping through the dunes should the freshwater table drop too low.

149 Two or three dams will be built. The Wet Separation Plants will require two water storage dams. A reclaim dam is also required to contain

recycled water from the plant and decanted water from tailings. Due to the high slimes content in some areas to be mined, there may be a need for a settlement dam associated with the reclaim dam. It is not at all clear how big they will be or where they will be situated.

150 The life of mine and the timeline for exploitation of the resource is depicted in figure 27 of the MWP. This figure shows that the mining activities will cover a period of 22 years. Bizarrely, this figure seems to suggest that no mining will occur in Mtentu. This is directly contradicted by figure 13, which plots the proposed mining area in Mtentu block. The period of 22 years is also contradicted by the MRA's provision that the right is required for '30-35 years'.

THE IMPACT OF PROPOSED MINING

151 Given the description of the proposed activities in the previous section, it is clear that the impact of the proposed mining and associated operations will be extensive.

152 The use of the land for mining will result in physical displacement of community members from their land or from their homes and result in economic displacement associated with the loss of assets or of access to assets and resources upon which they rely for their livelihoods.

153 The proposed mining activities will also have a significant social impact on those directly affected and on the community as a whole.

154 The likely impacts include:

154.1 Community members will be physical displaced from their homes, from their ploughing fields and gardens and from their grazing lands;

154.2 Community members will either lose their access to communal resources within the proposed mining area or find that their access thereto is substantially restricted.

154.2.1 This would include access to communal resources such as grass and thatch, wood poles for construction, firewood and food and medicinal plants;

154.2.2 It would also include access to the sea and the estuaries within the proposed mining area upon which community members rely for fish and shellfish;

154.2.3 It would result in the destruction or depletion or denial of access to wells and springs and river upon which the community and its livestock depend, it may also result in the destruction or depletion of those fresh water resources;

154.3 Mining would certainly destroy the local tourism industry, whose success is predicated on the area's natural beauty, the unique and diverse ecology and the rich and fairly unique culture and traditions of the local people;

154.4 The destruction of livelihoods associated with the above impacts;

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154.5 The destruction or disruption of the social and economic linkages that bind the community together and ensure its sustainability;

154.6 Negative social impacts associated with industrialisation including the influx of outsiders seeking work on the mine or who come to provide services to those employed there. These impacts may include;

154.6.1 Increased pressure on existing social services such as schools and clinics;

154.6.2 an increase in squatting and the proliferation of backyard and shack dwellers;

154.6.3 an increase in crime, alcohol abuse and other social evils;

154.6.4 the further destruction of traditional authority structures and traditional norms and culture, associated with, the influx of outsiders, the loss of traditional livelihoods and physical displacement;

154.7 The loss of the community's cultural identity and our way of life;

155 I record that the above impacts are well documented both in South Africa and elsewhere in the world where traditional communities are displaced by mining or other large industrial projects like dam building or large scale commercial farming. See in this regard the International Finance Corporation Guidance Note 5 that deals with the impact of Land Acquisition and Involuntary Resettlement and the means by which those

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impacts may be mitigated. The IFC is a subsidiary of the World Bank and corporations which borrow money from the bank or its affiliates are obliged to subscribe to and to comply with these guidelines when undertaking large scale development projects any where in the world. A copy of this guidance note is annexed hereto marked **DB5**.

156 The IFC references the following impacts:

156.1 Landlessness (paragraphs 27–28);

156.2 Joblessness (paragraph 28);

156.3 Homelessness (paragraphs 20–21);

156.4 Marginalization (paragraphs 8 and 19);

156.5 Food insecurity (paragraph 28);

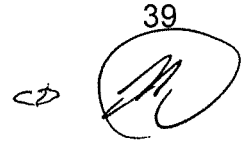
156.6 Increased morbidity and mortality;

156.7 Loss of access to common property and services (paragraphs 5 and 28); and

156.8 Social disarticulation (paragraph 20).

157 In its application for a mining right TEM has failed to address these impacts and has failed to disclose what it will do to compensate community members for the loss and harm associated with these impacts or how it will mitigate them or restore the livelihoods that will be lost.

158 By way of example TEM has failed to indicate:



158.1 Which imizi will be resettled, when they will be resettled, where they will be resettled, on what terms they will be resettled.

158.2 What if any alternative land will be provided to replace grazing and arable land that will be lost to mining, when it will be provided and it will be provided;

158.3 How it intends to restore the livelihoods that will be lost as a result of mining on communal land.

158.4 How it proposes to mitigate the harmful social and economic impacts alluded to above.

158.5 How it proposes to compensate community members for the loss or harm occasioned them by displacement and the loss of livelihoods and which cannot be mitigated.

159 To the extent that TEM does address some of the negative social and economic impacts social and impacts arising from the proposed mining activities it only references mitigation. It makes no reference to compensation, the provision of alternative land or the restoration of livelihoods.

160 The impact of the proposed mining is also detailed in the affidavit of John Capel annexed hereto.

DECLARATORY RELIEF REQUIRED

161 I am advised that a court will consider granting declaratory relief only where the applicant has an interest in an existing, future or contingent

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right or obligation and the court is of the view that it should exercise its discretion to grant such an order. In exercising its discretion, the court may decline to make an order where there is no actual dispute, or where the question raised is hypothetical, abstract or academic.

162 I am advised that it may be argued that the issues raised in this application should rather be considered in other fora, namely, in the Minister's consideration of the Fifth Respondent's application for a mining right, the MPRDA's internal appeal against the grant of the mining right, and any subsequent litigation.

163 In the following, I explain why this Honourable Court should exercise its discretion to afford the Applicants the relief they seek at this juncture. The crux of the argument is this:

163.1 The history of the Fifth Respondent's mineral rights applications have been marked by a fraught relationship with members of the Umgungundlovu community that arises in part from its view that informed community consent is not a requirement for the grant of a mining right.

163.2 If this Honourable Court declares that community consent is a requirement prior to the grant of a mining right, this will likely fundamentally transform the Fifth Respondent's approach to this application process.

163.3 Should this Honourable Court fail to grant the relief sought, mining may commence while the MPRDA's internal appeal process is exhausted.

Previous Applications

164 TEM first applied for prospecting rights in respect of the proposed mining area in 2002. It applied for a mining right over Kwanyana block in 2007.

165 As appears from the minute annexed hereto marked **DB6**, TEM's consultants, GCS (Pty) (Ltd), were advised by the then Department of Land Affairs that a community resolution was required wherein "[a]ffected land owners agree[d] to be compensated for their land use."

166 While GCS acknowledged that IPILRA enables communities to decide whether they wish to dispose of rights, they went on to state that IPILRA was not relevant as an IPILRA right "does not trump the real right of ownership." A copy of this letter is annexed hereto marked **DB7**.

167 On 14 July 2008, the then Director-General of Minerals and Energy granted TEM a mining right over Kwanyana block without the Fifth Respondent having sought to comply with IPILRA.

168 Having learned that the mining right had been granted over our land through an announcement on the Australian Stock Exchange, the Amadiba Crisis Committee (ACC) appealed the decision in terms of section 96 of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) on 2 September 2008.

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169 The then king of Mpondoland, King Mpondombini Sigcau of the Royal Qaukeni House, supported the ACC's application.

170 King Sigcau was subsequently removed as king by the President. The decision to remove him was reviewed and set aside by the Constitutional Court.

171 The challenge by the ACC raised the following inadequacies in TEM's application:

171.1 That meaningful consultation with the community had not occurred;

171.2 That the community had not adopted a resolution consenting to the mining right application and reflecting the terms in which the community would be compensated; and

171.3 That the EIA conducted was inadequate and the comments of Department of Environment and Tourism critical of the mining right application had not been taken into consideration.

172 In 2011, the ACC's appeal was upheld by the Minister on environmental grounds. In upholding the ACC's appeal, the Minister expressly stated that TEM's consultation process had been adequate. A copy of this decision is annexed hereto marked **DB8.**

173 TEM was afforded 90 days to submit further information, which it failed to do.

174 In 2012, TEM filed a further prospecting right application over Kwanyana block. The ACC again opposed this application and made representations for its dismissal before the Regional Mining Development and Environment Committee (RMDEC). This application is still pending.

175 TEM's initial applications were marked by community conflict and discontent. As appears from the following, this has only worsened with the new application.

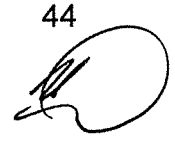
2015 Mining Right Application

176 On 03 March 2015, TEM filed yet another application under the MPRDA for a mining right over our land.

177 Much like the 2008 mining right process, the members of the Umgungundlovu community received no formal notification that the application had been lodged or accepted.

178 Having heard of the application, I, as well as the ACC, instructed our attorneys to ascertain whether a mining right application had been filed, and to request a copy of the application. As the Regional Manager and TEM consistently declined to furnish copies of the mining right application, we were compelled to launch an application in this Court for access to the mining right application as mentioned above.

179 The first official confirmation that we received that the mining right application had been lodged was on 08 April 2015. This was when TEM's environmental assessment practitioner (EAP), Mr Pieter



Badenhorst, convened and addressed a public participation meeting at Komkhulu at Xolobeni as part of the scoping report process in TEM's environmental authorisation application. At this meeting Mr Badenhorst confirmed that a mining right application had been made by TEM.

180 Mr Badenhorst declined, however, to disclose to the community how many imizi would be affected by the proposed mining. No written documents were given out during that meeting. A copy of the minute of this meeting, prepared by Mr Badenhorst, is annexed marked **DB9**.

181 Mr Badenhorst's meeting was facilitated by iNkosi Lunga Baleni. While he was once a staunch opponent of mining in Xolobeni, he abruptly changed position. The reasons for this shift are set out in an affidavit he deposed to in April 2014 annexed hereto marked **DB10**, namely:

181.1 Whilst engaged in a dispute over his standing as iNkosi, he was approached by Zamile Qunya and told that a court challenge to his chieftaincy would be withdrawn should he persuade his constituents to support mining.

181.2 He was also advised that the "chieftaincy would be entitled to 4% of the profits obtained by titanium mining."

182 INkosi Baleni has subsequently acknowledged that he has been afforded the use of a vehicle belonging to TEM. As appears from annexures **DB11** and **DB12**, he is also a director of XolCo and TEM, respectively, and thus has a fiduciary duty to advance these companies' interests.

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183 INkosi Baleni's shift has served to intensify conflict and dissatisfaction in the community.

184 Having merely written down our comments and recorded the comments of other stakeholder, Mr Badenhorst submitted the scoping report in April 2015. It was approved by the Department in June 2015.

185 The application has brought renewed conflict to the community. This conflict came to a head when directors of XolCo and their associates used violence to attempt to gain access to the proposed mining area. In a subsequent event, XolCo directors discharged firearms and hospitalised a community member with blunt trauma to her back and a gash on her arm. A copy of the relevant J88 is annexed hereto marked **DB13**.

186 This violence was the subject of an interim interdict granted on 28 May 2015 against certain XolCo directors and their associates preventing them from intimidating, victimising, threatening, harassing and/or assaulting members of the Umgungundlovu community and from bringing firearms to community meetings. A copy of the order is annexed hereto marked **DB18**. This interdict was discharged by agreement as no further acts of violence or intimidation had occurred.

187 While the EIA required as part of the environmental authorisation process was due in October 2015, the Applicants' attorneys have advised us that announcements on the Australian Stock Exchange have indicated that TEM has received extensions from the Department for the

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late filing of the EIA. The Applicants have not received any notification regarding such extensions.

188 While an uneven calm persisted for most of the rest of 2015, violence flared afresh in December 2015. This began with armed men arriving at my home on both 19 and 20 December. On both nights I managed to flee before the men arrived. On both nights the men discharged their firearms into the air before leaving.

189 The renewed intimidation intensified on 29 December 2015 when four mining opponents were assaulted by a group of mining supporters. This assault is now subject to an on-going criminal investigation under case number 99/12/2015. Further gunshots were fired outside the homes of other mining opponents on the same night.

190 The above incidents are documented in a complaint lodged with the South African Police Services regarding inadequate, and possibly biased, conduct by the police, by Nonhle Mbuthuma, secretary of the ACC, annexed hereto marked **DB14**.

191 On 3 February 2016, we finally received a redacted copy of the mining right application from TEM's attorneys. We then instructed our attorneys to file an objection in terms of section 10 of the MPRDA within 30 days of receipt of the mining right application. A copy of this objection and a further supplement are attached hereto marked **DB15** and **DB16**, respectively.

192 While our attorneys were preparing this objection, I was approached by iNkosi Baleni who informed me that TEM would be conducting drilling on 22 February 2016 and that if access was not allowed, force would be used. This caused immense alarm and unease in our community.

193 As appears from the correspondence annexed hereto marked **DB17**, our attorneys immediately wrote to TEM's attorneys to seek further information regarding the proposed drilling.

194 Instead of responding to our attorneys' query, TEM's attorneys replied by simply denying that I have the authority to act on behalf of the Umgungundlovu community. No response to our queries regarding the nature of the proposed drilling was offered whatsoever. A copy of this correspondence is annexed hereto marked **DB18**.

195 Our attorneys immediately wrote back to TEM's attorneys on 17 February 2016 to again request information on the proposed drilling activities as appears from annexure **DB19**. No response to this correspondence was received.

196 No drilling activities occurred on 22 February 2016. As appears from annexure **DB20**, Mark Caruso, the CEO of TEM's Australian parent company, MRC, subsequently described these events as follows:

> *"There was a recently planned drilling programme to deliver fresh drinking water, (which) was withdrawn in an attempt to hose down any potential violent confrontation between pro and anti-mining lobby groups."*

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197 To the extent that TEM genuinely sought to provide fresh water to the residents of Xolobeni, this could easily have been explained in correspondence to our attorneys. Instead TEM chose to refuse to engage at all, further exacerbating distrust in the community. In any event, subsequent correspondence from the Department confirmed that the drilling activities were for hydrological studies required for TEM's mining right application. A copy of the correspondence confirming this is annexed hereto marked **DB21**.

198 On 23 February 2016, our attorneys again wrote to TEM's attorneys decrying TEM's refusal to engage "to mitigate the risk of conflict and violence also demonstrates a complete lack of respect or concern for the wellbeing of the members of the Umgungundlovu traditional community." The letter also sought to confirm a report that Mr Badenhorst, TEM's EAP, had been dismissed. A copy of this correspondence is annexed hereto marked **DB22**. No response was ever received.

199 On 22 March 2016, the ACC's Chairperson, Sikhosiphi Radebe advised Nonhle Mbuthuma, the ACC's Secretary, that he had recently learned of a hit list of mining opponents. He told Ms Mbuthuma that he was on top of the list, and she was second. That same evening Mr Radebe was shot and killed by two unknown assassins.

200 Given the context, speculation has been rife as to the motivations for Mr Radebe's killing.

201 On the day of Mr Radebe's funeral, two mining opponents and two journalists were assaulted by mining supporters while reporting on Mr

Radebe's death. This assault is being investigated under the following case numbers: 170/5/2016, 51/04/2016 and 52/04/2016.

202 The ACC has sought to assist the SAPS's investigation through the sharing of statements and documents, as well through appointing a ballistics expert and a forensic pathologist to investigate the crime scene and to participate in the autopsy.

203 Having learned through the media of a task team established by the Department to defuse tensions, our attorneys wrote to the Department prior to the funeral to urgently request information about the task team. A copy of this letter is annexed hereto marked **DB23**. Initially, the Department responded by indicating that no task team had been formed. A copy of this correspondence is annexed hereto marked **DB24**. Ms Mbuthuma was subsequently contacted directly by an official in the Department to arrange for a meeting with a task team of Department officials.

204 When the task team arrived at our Komkhulu, they advised that they were there to hear the views of the community and to advise the Minister thereon. I was not at the meeting but a number of the members of the council were there together with the executive of the ACC and some 300 members of the community. Prior to the meeting, the mood was tense as there was a feeling that the Department favoured mining. My councillors reported to me that they ensured that the Department officials were afforded the opportunity to present. The members of the community advised the task team that they must report to the Minister that our

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livelihoods will be destroyed if mining is allowed on our land and that, given this reality, we will not consent to mining on our land.

205 On our instructions, our attorneys again shared our objection to the mining right application and associated documents together with the record of the meeting annexed hereto marked **DB25**. We received no feedback from the task team or the Minister.

206 Some two weeks later, we received media reports regarding statements made by the Minister at a press conference associated with his budget speech before Parliament. At this press conference he was asked about the murder of Mr Radebe, the status of the mining right application in Xolobeni, and the status of community rights regarding mining right applications in general and in Xolobeni in particular. The relevant portions of the Minister's answers have been transcribed and are annexed hereto marked **DB26**. I draw this Court's attention to the following comments in particular:

> *"What attracts us though, and I think we must raise it in this platform, is what we continue to see how people are being bought by interested stakeholders, either against and for mining. When we arrived at Xolobeni, t-shirts were there, arranged beautifully for people to see "we are against mining", … because agriculture can do better, etc. We want our people to be given a chance to raise their own genuine views in terms of their areas and we will listen to them…*
>
> *If the majority do not want mining, it means this government and everybody should be able to say hang on, there is something that we are not doing correctly here. Why would the majority fail to see a point? If there is a point that is going to benefit everybody in the area. Our people, we believe, are genuine people, they should be able to see that this mining is going to*

create jobs for us here, this mining is going to be able to open other avenues because that is what mining does, in a lot of places where it has been started. Peoples lives get better, and as we say, a better life for all. Our people should be able to see that. But if the majority does not see that, it means that...we must go back to the drawing board and deal with. We cannot continue against the majority of the people, we are not the kind of government that will rule South Africa in that fashion."

207 Given the troubling implications that we had been 'bought' by mining opponents, as well as the suggestion that the Department's role is to convince us to support mining and any opposition to mining stemmed from a failure to fulfil this role, our attorneys wrote to the Minister on 03 May 2016 to seek a face-to-face meeting with the Minister to explain our genuine concerns to him. A copy of this correspondence is annexed hereto marked **DB27.**

208 No response to this correspondence has been received.

209 On 18 July 2016, our attorneys were advised that MRC had filed an announcement on the Australian Stock Exchange regarding a proposed divestment of its interests in the Xolobeni Mineral Sands Project. A copy of this announcement is annexed hereto marked **DB28**.

210 The announcement is clear that MRC's divestment is not a withdrawal of TEM's mining right application. Instead, MRC's share in TEM is to be sold to Keysha Investments 178 Pty Ltd ("Keysha"). The stated purpose of this decision is that:

"[t]he Xolobeni Project's development should not be influenced directly or indirectly by the stakeholder focus being placed on an international mining company, as opposed to legitimate debate surrounding the economic benefits (or otherwise) and the

environmental issues concerning the development of the Xolobeni Project."

211 As we had previously been advised that Keysha is a wholly owned subsidiary of XolCo, which itself is ostensibly owned by the Xolobeni community, our attorneys wrote to TEM's attorneys seeking a copy of the memorandum of understanding in terms of which this sale has been proposed. A copy of this letter is annexed hereto marked **DB29**.

212 As appears from the correspondence annexed hereto marked **DB30**, TEM's attorneys refused this request.

213 While we never received a response to our correspondence to the Minister, we were invited to a community engagement imbizo convened by the Deputy Minister of Police on security in the area that took place on 19 July 2016. The imbizo was also attended by the Deputy Minister of Mineral Resources, Mr Godfrey Olifant. In Deputy Minister Olifant's comments included the following:

"...we changed the law, and said that the mining and mineral resources of this country belong to the people of South Africa as a whole. That's why you can't claim here that this land tenure belongs to you, it doesn't. This land tenure belongs to the people of South Africa as a whole..."

214 After disapproval of the community members was voiced, he appeared to shift this position, saying:

"What belongs to you here is your land. What belongs to you here is your house...No forced removal will be allowed by this government."

215 A transcription of the relevant portions of this speech is annexed hereto marked **DB31**.

216 Following this imbizo, the SAPS advised the media that a task team would be formed. A copy of this media statement is annexed hereto marked **DB32**. One of the conditions of this task team is the following:

> *"No mining will take place without the consent of the Xholobeni community members, and no one will be removed from his/her land."*

217 Given the variance between the Deputy Minister's comments at the imbizo and the task team's mandate to ensure that no mining will take place without the consent of the people of Xolobeni, our attorneys wrote to the First Respondent seeking an undertaking that no mining right would be granted without the consent of the Umgungundlovu community in terms of IPILRA and our customary law within 21 days. A copy of this correspondence is annexed hereto marked **DB33**. No response to this correspondence was received.

Summary of History

218 As appears from the above, in the history of the mining right application TEM has not recognised the Applicants' right to consent prior to the grant of the mining right. Indeed, there has been no effort to engage with the Applicants regarding the terms under which the Applicants will be compensated for their loss of land rights.

219 The First to Fourth Respondents have also refused to acknowledge the Applicants' right to consent. Indeed, a mining right was granted to TEM

in 2008 without consent in terms of IPILRA or under any other standard. While this right was set aside in 2011, the Minister specifically stated that the consultation with the Applicants and others was not defective.

220 The recent comments of the Minister and Deputy Minister of Mineral Resources, as well as the terms of the task team established by the SAPS, establish concretely that there is immense confusion regarding the question of whether community consent is required for a mining right within government itself.

Consequences of Not Granting Relief

221 As set out above, the grant of a mining right creates a limited real right in favour of the mining right holder over land to the extent necessary to access the mineral. It is clear from the above that the question of whether consent is required prior to the grant of the mining right needs answering.

222 An important reason why this question should be answered at this stage is the nature of the appeal process under the MPRDA. Under section 96 of the MPRDA, an appeal does not suspend the administrative decision to award the right unless the Minister or Director-General expressly suspends the decision's effect.

223 This means that mining may commence while the lawfulness of the grant of a mining right without the community's consent is tested through the administrative process.

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224 I am advised that this is not an academic point. As is set out in more detail in the affidavit of Mr Capel annexed hereto, Ivanplats mine has commenced extensive mining activities in terms of a mining right granted to it despite the fact that a section 96 appeal is pending.

225 The Applicants in this matter fear, reasonably so, that if a mining right is granted without this court pronouncing upon the question of whether the community's consent is required, mining may commence while the section 96 appeal is pending. Even if the appeal, or subsequent court reviews, are successful, the damage from mining that has occurred will likely be irreversible.

226 It is therefore submitted that the matter is ripe for this Honourable Court to provide clarity on the question of whether the community's consent is required prior to the grant of a mining right.

Public Interest

227 As is set out in more detail in the affidavit of John Capel, the declaratory relief sought by the Applicants is in the public interest as it will have a significant impact on communities across South Africa.

GROUNDS FOR DECLARATORY RELIEF

228 As set out above, the MPRDA does not expressly require the consent of community land rights holders prior to the grant of a mining right. In the following, the Applicants' argument that a mining right may only be granted with the consent of the community, alternatively with the prior agreement of the community on compensation, is set out in brief. I am

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advised that these questions are primarily for legal argument, and that further argument on them will be presented by Counsel at the hearing of this matter.

Requirement to comply with customary law and IPILRA

229 The Applicants seek a declaratory order that the provisions of IPILRA must be complied with prior to the grant of a mining right. In the alternative, the Applicants seek a declaratory order that IPILRA must be complied with prior to the commencement of mining on their land.

Provisions of IPILRA

230 The starting point is section 2(1) of IPILRA. It provides that no person may be "deprived of any informal right to land without his or her consent". In full, the section states:

> *"Subject to the provisions of subsection (4), and the provisions of the Expropriation Act, 1875 (Act 63 of 1975), or any other law which provides for the expropriation of land or rights in land, no person may be deprived of any informal right to land without his or her consent."*

231 Informal rights to land are defined broadly, and include:

> *"(a) the use of, occupation of, or access to land in terms of—*
>
> *(i) any tribal, customary or indigenous law or practice of a tribe;*
>
> *(ii) the custom, usage or administrative practice in a particular area or community, where the land in question at any time vested in—*

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> *(aa) the South African Development Trust established by section 4 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);*
>
> *(bb) the government of any area for which a legislative assembly was established in terms of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); or*
>
> *(cc) the governments of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei"*

232 Section 2(2) of IPILRA provides that where land is held on a communal basis, "a person may, subject to subsection (4), be deprived of such land or right in land in accordance with the custom and usage of that community." Section 2(3) requires appropriate compensation where a person is deprived under section 2(2).

233 Section 2(4) provides that for the purposes of section 2(2) "custom and usage" is deemed to include:

> *"the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate."*

234 For a deprivation of informal land rights, therefore, the following is required by IPILRA:

234.1 The custom and usage of the community must be complied with. In our context this clearly requires compliance with the customary law of our community.

234.2 The customary law is deemed to include <u>at minimum</u> the following:

234.2.1 a decision taken by a majority of land rights holders;

234.2.2 taken at a meeting where there has been sufficient notice; and

234.2.3 where land rights holders have been afforded a reasonable opportunity to participate.

235 It should be noted that IPILRA upholds two critical constitutional provisions:

235.1 Section 25(6) of the Constitution provides that a person or community whose land tenure is insecure due to past racially discriminatory laws or policies is entitled to secure tenure or comparable redress through an Act of Parliament. IPILRA is therefore constitutionally-mandated legislation.

235.2 The requirement that courts apply customary law where it is applicable, subject to the Constitution and applicable legislation, in terms of section 211(3) of the Constitution. IPILRA explicitly recognises customary law and requires that decisions are taken in terms of the applicable customary law of the community in question.

<u>Department of Rural Development and Land Reform Policy giving effect to IPILRA</u>

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236 Compliance with IPILRA is not an insignificant undertaking. To ensure the robust protection of communities' important constitutional rights to tenure security, the Department of Rural Development and Land Reform developed a policy and procedure to govern land development decisions which require the consent of the Minister of Land as nominal owner of the land. That policy and procedure was adopted by the policy committee of the Department of Land on 20 November 1997 and amended on 14 January 1998. The policy and procedure was approved by the Minister of Land's predecessor and placed on the website of the Department. A copy of that policy document is annexed marked **DB34** ("the policy document"). To the best of my knowledge, neither the Minister nor the Department of Rural Development and Land Reform has withdrawn or amended that policy.

237 As appears from the policy document, it has direct application to the circumstances pertaining to the Umgungundlovu land, being land:

> *"[W]hich is de facto owned and occupied by African people (and) is held in trust by the Minister of Land Affairs. In many such instances, the government is the nominal owner of the land because of previous racially discriminatory laws and practices which prohibited African people from owning land."*

238 The policy anticipates precisely the type of difficulty that has arisen in respect of our land, and specifies the procedures which must be followed in order to avoid such difficulties. The policy records that:

> *"The lack of clarity about the status of such land has created serious disputes in some areas. Disputes are triggered when a change in land use or a development is proposed .... It is necessary to clarify the rights and responsibilities involved, and*

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adopt procedures to govern these situations. This should provide clarity and end the confusion which in some instances has led to disputes."

239 In relation to the rights and status of the land rights holders *vis-à-vis* the traditional authorities and the role of the Minister, the policy records:

> *"It is the policy of the Department (set out in the White Paper on South African Land Policy) that the long term occupants of this land should be treated as the owners of the land. The Department is busy developing legislation which will secure the rights of such individuals and groups of people in the future.*
>
> *In the interim, because the land is still nominally owned by the state, various decisions in respect of the land have legal status only if they are taken by the Minister as trustee or nominee. These decisions relate to matters such as township development, subdivision, granting of servitudes, leases, mortgages and sales.*
>
> *Decisions pertaining to ownership rights in communally owned land are most appropriately made by the majority of the members of such communal systems. If the decisions have been properly taken and it can be shown that they reflect the view of the majority of the rights holders and particularly of the people who will be affected by the decision, then the Minister's role should simply be to ratify such decisions.*
>
> *However, until the legal status of the land is changed by legislation under preparation by the Department of Land Affairs, the Minister is under a fiduciary duty as trustee, to uphold and protect the rights of all the beneficiaries of such trusts. She is also under a duty to ensure that decisions she makes are consistent with the terms and rights protected by the Constitution. Furthermore, decisions taken must be consistent with existing laws. For example, they cannot undermine rights such as those set out in the Interim Protection of Informal Land Rights Act, 31 of 1996."*

240 The purpose of the policy as set out in clause 1.7 is to set out interim procedures:

> *While the Department of Land Affairs is committed to the recognition and protection of pre-existing land rights which were undermined by colonialism and apartheid, it is equally committed to protecting and upholding the basic human rights of all South Africans. In particular the rights of members of group based land holding systems must be protected, especially the process of inclusive decision making in all matters pertaining to the management of the jointly held land asset.*
>
> *This means that where government wishes to introduce any change or development in an area it must have effective access to all the rights holders (or co owners) in the area so that they are in a position to decide about matters which will affect their land rights. It is not acceptable or sufficient for a chief, tribal authority or committee to reject or accept proposals unless their view is based on the majority decision of the members of the tribe or community."*

243 The policy provides for the appointment of an official from the Department of Land to thoroughly investigate the background circumstances, to consult widely, to investigate the social dynamics of the community concerned, to satisfy him/herself in regard to representivity, to ensure that there is a proper climate for negotiations and discussions and that all stakeholders are heard, to ensure that conflict and division is avoided, and generally to take all such measures to ensure that the decision of the community is representative and based on an inclusive, transparent and open and fair process.

244 The Minister of Rural Development and Land Reform must carry out his fundamental responsibility to satisfy himself that the rights of all beneficiaries are protected in the decision-making process; to satisfy himself that the decisions do not contravene any law; to establish

"[T]o govern the circumstances under which decisions pertaining to land development issues are made by the rights holders who are affected and are ratified by the Minister as the trustee or nominal owner ...and should also enable the Department of Land Affairs to ascertain that the decisions taken reflect the views of the majority of rights holders and do not jeopardise or undermine the rights of any party. The Minister's official ratification of such decisions will be conditional on advice to this effect."

241 In relation to the nature of the community's rights and the role of the traditional authority the policy records:

"In situations of group based, communal and/or tribally based land rights the members of the relevant group, community or tribe should be treated as the co-owners of the land, even though formal legal ownership may be held by the State. Any decision in respect of ownership issues is valid only if it reflects the view of the majority of "co-owners".

A critical feature of the policy is that the rightful ownership of communal land vests not in chiefs, tribal authorities or committees but in the members of the group which holds the land. This position is consistent with customary law in terms of which the land belongs to the entire group and not to the chief or tribal authority. This has major implications for the processes in terms of which decisions pertaining to land ownership issues are taken. The members of the group or tribe are the co-owners of the land. This does not imply that all the members have equal and undivided shares in the land. In reality households have strong rights to their own homestead plots and fields, which are protected under the Interim Protection of Informal Land Rights Act, 31 of 1996. However there is also group based ownership of the area as a whole."

242 In relation to majority decisions to be taken the policy records:

"Decisions relating to land rights must be taken by the majority of members of the group or tribe. The White Paper on South African Land Policy states:

whether any informal rights to land will be affected by the decision and how these rights are being accommodated in the proposed changes; and to establish whether the changes protect the rights of women.

245 The Minister of Land (and his officials) are to ensure that:

245.1 the consultative process is fair and inclusive;

245.2 adequate notice is given and that people are given an opportunity to participate in the decision-making process;

245.3 the decision taken is representative of the community's will;

245.4 the interests of the individual land rights holders and the community are protected and addressed;

245.5 the rights of women are protected.

246 The policy specifically provides that:

> *"In preparation for a meeting where a community/land rights holders' resolution will be taken, village or administrative area meetings must be held and presided over (or witnessed by) an official of DLA appointed by the relevant Provincial Director of the DLA."*

247 The policy further specifically provides that the official must gather preliminary information about the community that includes information about the nature of existing land rights in the area concerned. Yet in the present case, there has never been any process by the Minister of Rural Development and Land Reform or his officials to gather information from

the directly affected land rights holders; no audit was done of their rights; and no investigation was done with regard to pending land claims.

248 In relation to the land rights holders meeting, the official should ensure that those present are aware of who will be affected by the decision at issue and who has decision making powers in respect of the decision. The land should be accurately identified and there should be agreement on the administration of the benefits accruing from the change of land use as well as the distribution of benefits to be accrued. Specifically the meeting must reach agreement on a project, or list of projects, to be funded from the benefits. This advance agreement is important in order to ensure that the funds are disbursed in accordance with the wishes of the community.

249 There should be a decision on the compensation or alternative accommodation of land rights holders whose rights are directly affected in the selected area. In this case no steps have been taken in this regard. This also amounts to a contravention of the provisions of IPILRA.

250 The official should oversee the decision to select an interim committee in order to liaise with the Department of Land, pending the appointment of a more permanent committee. The official should also oversee the nomination of co-signatories to any lease agreement and the envisaged agency agreement.

251 The views of any objectors need to be heard, especially in so far as they may feel that any resolution do not take into account their interests as land rights holders.

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IPILRA and the MPRDA

252 The grant of a mining right creates a "limited real right in respect of the mineral or petroleum and the land to which such right relates." Section 5(3) provides that this limited real right empowers the holder of a mining right to, *inter alia*:

> *"[E]nter the land to which such right relates together with his or her employees, and bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purpose of prospecting, mining, exploration or production, as the case may be"*

253 The grant of such rights is clearly a deprivation of the rights of the person who owned or held rights over the land to which the mining right relates.

254 Compliance with IPILRA is therefore required where a mining right is to be granted over land where the occupiers and/or owners hold informal rights to land as defined by IPILRA.

255 It may be suggested that the MPRDA prevails over IPILRA. This is not tenable:

255.1 Where the common law is inconsistent with the MPRDA, the MPRDA prevails. The MPRDA does not purport to prevail over other statutes nor over customary law.

255.2 The MPRDA applies generally to mining and mining rights, and generally requires consultation with landowners. But it imposes that requirement as a minimum, not a maximum. Within the circle

drawn by the Minerals Act is a smaller, more defined circle dealing with land owned by traditional communities. More is required when a statutory mining right is sought in respect of land falling within that smaller circle. The Minerals Act applies, but so does IPILRA. Both statutes must be complied with: there must be consultation (in terms of the MPRDA) and consent (in terms of IPILRA).

255.3 This is particularly so given IPILRA's significance as a constitutionally-mandated remediation of Apartheid's distortions.

IPILRA and the Umgungundlovu Community

256 The Umgungundlovu community is a customary community with insecure tenure as a result of past discriminatory laws. Specifically, it holds informal rights as defined by IPILRA by virtue that it holds rights over land previously vested in the government of the former Republic of the Transkei.

257 The rules of governance of the community, its land and its resources are based in the customary law of our community. Our customary law of decision-making around land are set out above and in the supporting affidavits of the 113th, 125th, 126th, 127th and 128th Applicants.

258 Where there is to be a deprivation of our rights to land, therefore, the protections of IPILRA must apply. This entails compliance with our customary law of decisions relating to land. In addition, it requires at minimum a public meeting compliant with IPILRA's protections.

259 It should be noted that IPILRA is not an absolute right to prevent a deprivation. As noted above, it is subject to any law relating to expropriation. Section 55 of the MPRDA empowers the Minister to expropriate land should it advance certain objects of the MPRDA.

Conclusion

260 The above demonstrates that the provisions of IPILRA must be complied with. For the Minister or his delegate to grant a mining right would therefore breach the applicants' constitutional and statutory right to fair administrative action as would mean that the decision was taken by an administrator:

260.1 not authorised to do so by the empowering provision;

260.2 who failed to comply with a mandatory and material procedure or condition;

260.3 influenced by an error of law; and

260.4 in contravention of a law.

261 For the grounds set out above, the Applicants seek an order that their consent is required in terms of customary law prior to the grant of a mining right, alternatively, that their consent is required prior to the commencement of mining.

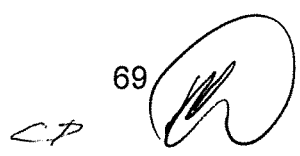
Section 25(1)

262 Should this Honourable Court not find that consent in terms of IPILRA is required, the Applicants seek a declaratory order that compensation must be determined prior to the grant of a mining right, alternatively, prior to the commencement of mining. Such compensation would necessarily encompass the terms of relocation, to the extent required, and should be determined in terms of section 54 of the MPRDA, which provides for compensation by agreement, alternatively by arbitration or by a court.

263 Section 25(1) of the Constitution provides that "No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property."

264 The award of a mining right amounts to a deprivation of property rights in that a successful applicant receives a limited real right over land to the extent necessary to extract minerals. The commencement of mining prior to the determination of compensation is more grievous still.

265 Given this, the award/exercise of mining rights to TEM would be a very significant inroad on the property rights of the residents of the proposed mining area. As discussed above, the proposed mining will entail relocation and the loss of individual and communal agricultural and grazing land. This impact is particularly intense given that the community's current tenure insecurity is a direct product of colonial and apartheid degradation of the community's rights and of their customary law.



266 I am advised that to determine whether such a deprivation would be arbitrary in terms of section 25(1), the negative impact on the community must be measured against the purpose of the deprivation. In this application, the purpose of mining would advance the private interests of TEM and may advance the national interest as described in the MPRDA. If mining rights can be granted over community land without any protections, this must be an arbitrary deprivation of community property.

267 Insofar as the award of the mining right itself amounts to an irrational deprivation of property, the only way to remedy the unfairness/arbitrariness of the deprivation is to require that compensation be agreed prior to the award of the right.

268 Once mining begins, the negative impact on our quality of life and on our livelihoods will be such that we will effectively be placed under duress to accept whatever compensation is on offer before our lives become completely intolerable and we are obliged to move out of necessity.

269 The pressure on the community to accept any proposals from TEM will increase as the mining encroaches further and further into our land and environment and the social economic and environmental impacts intensify. The example of the Mothlothlo community set out in the affidavit of John Capel demonstrates the inadequacy of compensation being determined while mining is on-going, as the Mothlothlo community was compelled to reach agreement on relocation in circumstances where:

269.1 Their ploughing and grazing fields were under mine dumps, leaving them with limited food security and income;

269.2 They faced arrest in attempting to prevent more of their land going under dumps; and

269.3 Their neighbours had already relocated, leading to a disintegration of the community's way of life.

270 It is clear that TEM have taken no steps at all to seek any agreement on compensation or to have same determined in terms of section 54. They have made no proposals at all and have provided no detail at all regarding displacement and the replacement of lost livelihoods. We do not even know who will be displaced and where they will be relocated to.

271 If the Minister were to award the mining right in these circumstances it would amount to an arbitrary, and therefore, unlawful deprivation of property. The commencement of mining would give effect to this deprivation.

272 It is no defence of the Minister to say that the compensation will be determined after the award of the right under section 54 of the MPRDA because:

272.1 By awarding a limited real right over the community's land, the deprivation occurs when the right is awarded not at some later date.

272.2 The award of the rights would undermine the ability of the community to negotiate a fair agreement with TEM on compensation. The commencement of mining will severely undercut the ability of the community to engage with TEM as equal parties, increasing the chances of constructive eviction as was seen in Mothlothlo.

272.3 Fair compensation is an important consideration in the award of a mining right as it relates directly to the objects of the MPRDA as set out in section 2 and the Ministers' duty as custodian in section 3.

273 In addition, our customary law must be upheld. Section 39(3) of the Constitution recognises all rights conferred by customary law in as far as these rights are consistent with the Bill of Rights. In terms of section 211(3) of the Constitution, customary law is only subject to legislation that 'specifically deals with it'. To the extent that customary law may be regulated by statutory law, regulation cannot amount to the complete extinguishment of customary rights unless it is done explicitly and if such extinguishment is done in a manner consistent with section 36 of the Constitution. As the MPRDA does not explicitly extinguish the Applicants customary rights over land, these rights must be understood to apply concurrently with the MPRDA.

Constitutionality of the MPRDA

274 The Applicants contend that the above relief is consonant with the MPRDA.

275 If, however, it is found not to be, the Applicants seek a finding that the MPRDA is unconstitutional in that it breaches the Applicants' constitutional rights against the arbitrary deprivation of property in terms of section 25(1) and to secure tenure in terms of section 25(6).

276 In addition, the following constitutional rights are infringed:

276.1 to human dignity;

276.2 to not be treated in a cruel, inhumane or degrading way;

276.3 to have the environment protected, for the benefit of present and future generations;

276.4 against the arbitrary deprivation of property rights;

276.5 to secure land tenure in terms of an Act of Parliament (IPILRA);

276.6 to access to adequate housing;

276.7 to access to sufficient food and water;

276.8 to participate in the cultural life of our choice; and

276.9 to just administrative action.

CONCLUSION

277 The issues raised in the present matter are of great importance, not only to the Applicants and to the community at large but also across South Africa. I submit that this application has good prospects of success based on the grounds detailed above. This application manifestly raises

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issues of public interest as it deals with the crucial matters of community engagement, participation and consent, transparency and the land and mineral rights of disadvantaged communities. Mining communities in the country have for many years been plagued with discriminatory and unfair treatment in relation to their own land.

278 In the circumstances, I, and the Applicants, pray for an order as set out in the notice of motion, with costs, including costs of two counsel.

279 I know and understand the contents of this statement. I have no objection to taking the prescribed oath. I consider the prescribed oath to be binding to my conscience.

KD Baleni
DUDUZILE BALENI

I certify that the above signature is the true signature of the deponent who has acknowledged to me that he knows and understands the contents of this affidavit was signed and sworn to at Sgt. Port Edward on this the 16 of **SEPTEMBER 2016** in accordance with the provisions of Regulation R128 dated 21 July 1972 as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR 774 of 23 April 1982.

COMMISSIONER OF OATHS

SOUTH AFRICAN POLICE
COMMUNITY SERVICE CENTRE
2016 -09- 16
PORT EDWARD
KWAZULU-NATAL

SAPS Port Edward Boundary Rd.

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UMGUNGUNDLOVU COMMUNITY

RESOLUTION

WHEREAS Transworld Energy and Mineral Resources (SA) Pty Ltd ("TEM") has filed a mining right application over land within our jurisdiction on 3 March 2015;

AND WHEREAS the Umgungundlovu community seek to assert their rights under customary law, the Interim Protection of Informal Land Rights Act 31 of 1996, and section 25(1) of the Constitution;

AND WHEREAS a High Court application is required assert these rights;

AND WHEREAS the Umgungundlovu community considered and deliberated upon the matter of the mining right application in its accustomed manner under local law, the Umgungundlovu community decided that a High Court application must be launched for declaratory relief;

AND WHEREAS Duduzile Baleni is the iNkosana of the Umgungundlovu community;

AND WHEREAS the Umgungundlovu Inkosana's Council is established in terms of customary law to advise the iNkosana:

We, the members of the Umgungundlovu Inkosana's Council hereby mandate iNkosana Duduzile Baleni to take all necessary steps, including deposing to any affidavits, to support the High Court application for a declaration of the community's rights in relation to the mining right application filed by TEM on 3 March 2015.

SIGNED at KOMKHULU on this 15 day of September 2016.

On behalf of the Umgungundlovu community:

Name	Signature
1. FUTHENDI DLAMINI	F E

HS1

Chairperson, meeting dated 6 September 2015

2. Mato Zwelibeemi Ze

Secretary, meeting dated 6 September 2016

5. Bhekeni DANCA — B.D
6. MABHude DANCA — +
7. Yako Iveli dumile — [illegible]
8. DALENI Ndovela — +
9. — 1
10. —
11. —
12. —
13. —
14. —
15. —

UMGUNGUNDLOVU INKOSANA'S COUNCIL

RESOLUTION

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SIGNED at KDMKHULU on this ___ day of September 2016.

On behalf of the Umgungundlovu Inkosana's Council

Name	Signature
1. NONVELWANA MHLENGANI	
2. FUTHENI BLAMINI	
3. THOBILANGA JANUENI	
4. Mashona Weta	

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UMGUNGUNDLOVU COMMUNITY

RESOLUTION

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AND WHEREAS a High Court application is required assert these rights;
AND WHEREAS the Umgungundlovu community considered and deliberated upon the matter of the mining right application in its accustomed manner under local law, the Umgungundlovu community decided that a High Court application must be launched for declaratory relief;
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SIGNED at _____ on this ____ day of _____ 2016.

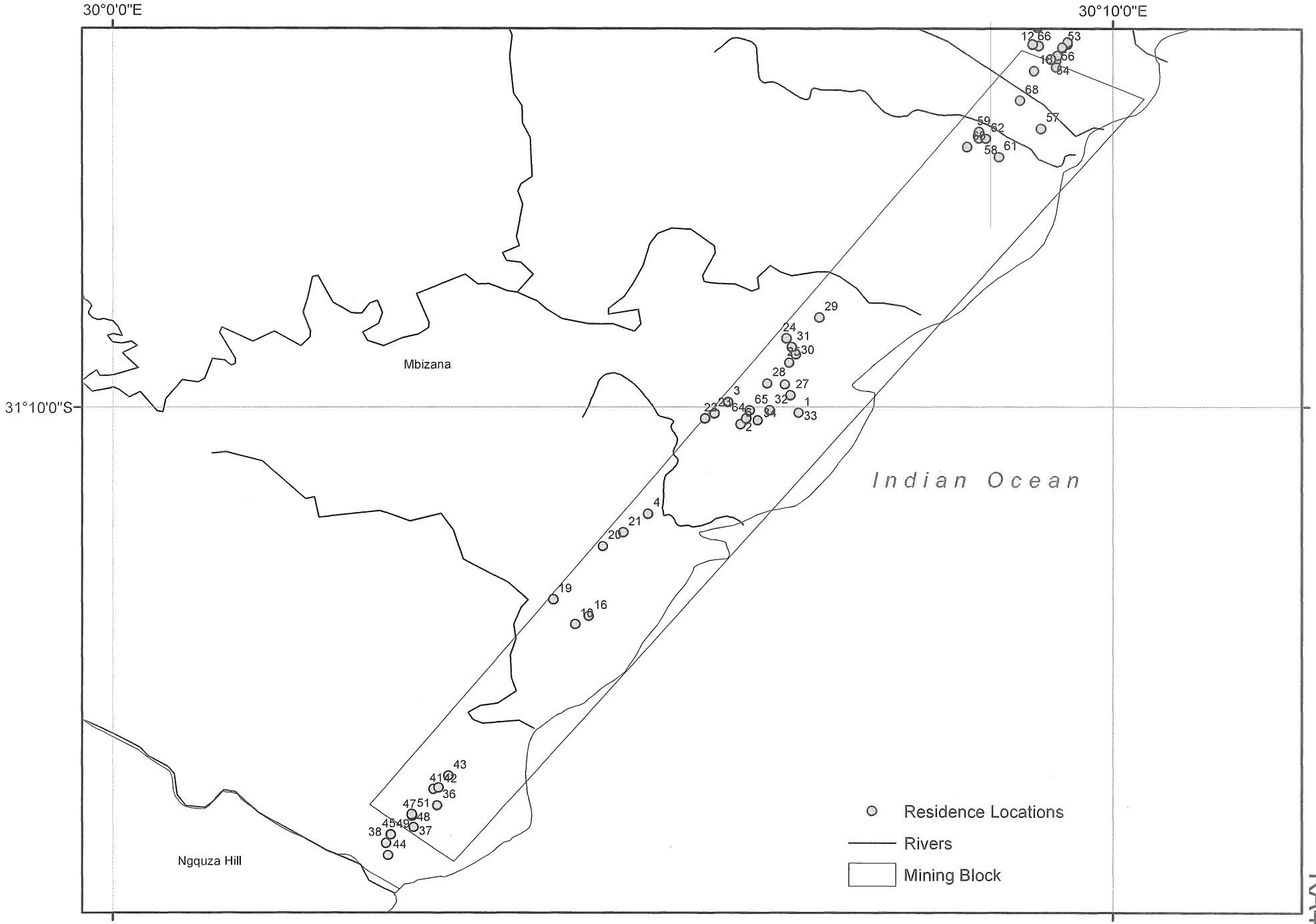
On behalf of the Umgungundlovu community:

Name	Signature
1. FUTHENDI DLAMINI	F E

Chairperson, meeting dated 6 September 2015

2. Mtho Zwelibanzi Le	

Secretary, meeting dated 6 September 2016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Mbizana
Ngquza Hill
Indian Ocean
Residence Locations
Rivers
Mining Block

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