

The Honourable Minister Gwede Mantashe
Minister of Mineral Resources
Department of Mineral Resources
Private Bag X447
Pretoria
0001

Per email:
minister@dmr.gov.za
Buang.Mokate@dmr.gov.za
Mandisi.Mavata@dmr.gov.za

19 September 2018

Dear Minister Mantashe

RE: VISIT TO SOMKHELE, MPUKUNYONI, SATURDAY 22 SEPTEMBER 2018

1. With reference to your visit to Somkhele, Mpukunyoni area on Saturday 22 September 2018, and the ongoing issues that the community has with Tendele Coal Mining (Pty) Ltd (Tendele), we confirm that we have been instructed on behalf of the following local community organisations and local and international NGOs:
 - 1.1. The Mfolozi Community Environmental Justice Organisation (MCEJO), a voluntary association of 3 516 members from the Mpukunyoni Community Area in which Tendele Coal Mining (Pty) Ltd (Tendele) operates;
 - 1.2. The Mpukunyoni Community Property Association,
 - 1.3. The Concerned Group;
 - 1.4. Siyaphakama, women's group from Machibini;
 - 1.5. Phondweni Concerned Group;
 - 1.6. The Global Environmental Trust¹;
 - 1.7. The Earthlore Foundation;
 - 1.8. groundWork²; and
 - 1.9. WoMin³.

¹ A Trust with the general object of pursuing and supporting environmental causes and which has the power to bring legal proceedings to advance its objects.

² A non-profit environmental justice service and developmental organization working primarily in Southern Africa in the areas of Climate & Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals, and Waste. groundWork is the South African member of Health Care Without Harm and Friends of the Earth International.

³ An African gender and extractives alliance, which works alongside national and regional movements and popular organisations of women, mining-impacted communities

2. Somkhele incorporates seven villages (Myeki, Mahujini, Ntandabantu, Esiyembeni, Machibini, Ugengele, Dubelenkhunzi) which are part of the Mpukunyoni Community Area, consisting of 30 villages in total. The seven villages mentioned above are where Tendele is currently operating and the residents have been dealing with a multitude of human rights violations since 2004.
3. Our clients are looking forward to welcoming you into their community on Saturday for you to hear first hand the hardship that they are living with as a consequence of the Tendele operations. We have been requested to update you on the matters in the Mpukunyoni area prior to your arrival, which are set out below:
 - 3.1. On 24 August 2018, we brought an Application in the Pietermaritzburg High Court to interdict Tendele from operating until such time as it complies with the applicable legislation. The Application was brought on behalf MCEJO, Sabelo Dladla, a resident of Dubelenkhunzi, at the edge of the Tendele discard dumps, and the Global Environmental Trust. It is averred in our papers that Tendele is acting illegally in conducting the mining in that it has no Environmental Authorisation issued in terms of Section 24 of the National Environmental Management Act 107 of 1998 ("NEMA") or any equivalent thereof such as Section 38 A of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) as amended.
 - 3.2. Furthermore, Tendele is conducting the mining without any land use authority or approval from any Municipality and no waste management licence issued by the Minister of Environmental Affairs in terms of Section 43 (1) or the Minister of Minerals and Energy in terms of Section 43 (1A) of the National Environmental Management: Waste Act 9 of 2008 ("the Waste Act") despite requiring a licence as a result of its activities.
 - 3.3. Tendele and has no written approval in terms of Section 35 of the KwaZulu-Natal Heritage Act 4 of 2008 to remove or alter traditional graves from their original position. Hundreds of graves have been removed during the last 10 years and have been the cause of
 - 3.4. We are waiting for Judgement in the matter.
 - 3.5. On 2 August 2018, the South African Human Right Commission (SAHRC) released a report headed: "**National Hearing on the Underlying Socio-economic Challenges of Mining-affected Communities in South Africa**". Many of our clients participated in the research that informs this report during 2016 and for this reason it formed part of our Application papers. Tendele is referred to on pages 22, 23, 38, 57, 78 and 86 and most of the findings and recommendations in the entire report are applicable to Tendele.

Two of many statements that support our arguments put forward in our Application that was heard on 24 August 2018 are:

“The Commission finds that mining companies who restrict compensation to the physical structure of the land are offering below what is considered to be appropriate in terms of global industry standards and are causing systemic economic displacement and impoverishment within mining-affected communities”,

and:

“The Commission finds that there is a very real potential for the infringement of cultural and other human rights as a result of inappropriate grave relocation practices that are carried out by mining companies. Many mining companies appear to overlook or undervalue the sanctity and importance of grave relocations, which necessitates an evaluation of current processes. The Commission further finds that, despite strict regulatory requirements, unlawful grave relocations have been, and continue to be, conducted by a number of mining companies.”

- 3.6. Tendele avers that it cannot be made to cease operations as it is beneficial to the community and the local economy, however my clients strongly contest the validity of both these claims. We confirm that MCEJO has a growing membership of 3 516 people who are opposed to Tendele continuing with its mining and, in particular, the expansion thereof. Further to this, there are an estimated 50 000 people in the surrounding area that are negatively affected by the operations of Tendele which ignores the Bill of Rights of the Constitution, in particular everyone’s right to “an environment that is not harmful to their health or well-being”. On-going complaints against the mine include health problems from the inhalation of coal and dust, loss of arable fields, blocked off access and pollution of water, cracked houses and loss of livestock. Ongoing intimidation and incitement to violence through letters sent by mine management is prevalent and expanded on further below.
- 3.7. A report (attached) prepared by Professor Edelstein in support of the MCEJO (and others) Application, sets out the psycho-social impact that Tendele has on the people living nearby. Prof Edelstein’s Psycho-Social Impacts investigation derives from his theory of Environmental Turbulence, a term that references the disruption and harm caused to affected people by often chronic and protracted human-caused adverse environmental change. In the Psycho-Social Impacts Associated with Tendele Coal Mine Assessment, his findings show that people no longer feel healthy, they feel their personal control has been lost, that their home and community are no longer secure, that their environment is unsafe and their livelihood impaired. He further finds that the manner in which Tendele has dealt with the community has caused social distrust and serious lifestrain impacts: “Tendele mine has been a source of extreme and deleterious stress for residents of nearby communities”. The report refers to environmental stigma,

the degraded value of place and property, economic damages suffered by the community, community conflict and environmental injustice.

- 3.8. He concludes that in his extensive experience, the residents “proximate to the Tendele Mine are subject to many of the adverse Psycho-Social Impacts described above ... [and] these impacts justify cessation of mining...”
- 3.9. Further to this, in 2018 ActionAid⁴ conducted an audit of the Tendele Social and Labour Plan. The report concludes that “there is sufficient evidence for DMR to do an in-depth audit that requires Tendele Coal Mining to provide detailed documentation of the claims in their SLP and Integrated Report which the recent social audit calls seriously into question. There is an urgent need for DMR to produce Tendele’s annual SLP compliance reports for the years 2013 to 2017. The mine must be called on to provide clear evidence and substantive proof of the actual benefits arising for the Mpukonyoni residents, particularly from villages directly affected by the mine, from its commitments for this 5 year period.”
- 3.10. The intimidation by Tendele as well as their incitement to violence through letters to their workforce is creating an environment that is unsafe and has enormous potential to result in one or more of our clients being physically harmed. A standard mine management letter sent to communities when people refuse to be relocated for grossly inequitable sums of money states that the mine “cannot accept the [community] demand”. The letter goes on to threaten that if an agreement cannot be reached then the mine “will have no option to inform all stakeholders, including the ITB (Ingonyama Trust Board), the DMR, the MCMF (and all its members including Nkosi and Indunankula (sic) and the Municipality) our employees (1000 people working at the mine (including some 160 from Myeki) and our customers that we are unable to find an amicable solution and that we are unable to develop an economically viable Mine”.
- 3.11. The management of Tendele incites violence against our clients on a regular basis through its communication with its workforce.
- 3.12. A letter sent on 14 December 2017 by the Tendele CEO, Jan du Preez, mentioned MCEJO, Sabelo Dladla and Bongani Pearce (a member of MCEJO) by name as those “who are fighting to close down the mine”. On 21 February 2018, a letter by Jarmi Steyn, Tendele’s Chief Operational Officer, sent out two days before an attack on Bongani Pearce’s home, forewarns employees and sub-contractors that future bonuses are unlikely to be paid because the mine is not doing well and that their employment is threatened “because of a few community members who choose to stand in the way of

⁴ ActionAid is an international non-governmental organization whose primary aim is to work against poverty and injustice worldwide. ActionAid is a federation of 45 country offices that works with communities, often via local partner organisations, on a range of development issues.

future development, and huge economic and social investment and upliftment in the Community.”

3.13. On 25th February 2018, Bongani Pearce, mentioned in the letters above, woke up to the gruesome find of a dead cat in his yard, as well as two burnt wooden roof trusses on his house. The matter was reported to the police, and a case of arson was opened. Our clients links this event to the letters sent on 14 December 2017 and 21 February 2018.

3.14. Regarding the Court Application in August 2018, a letter was sent by D Coetzee, the Human Resources Manager at Tendele that stated: “There was not one recognised Mpukunyoni Community Leader amongst the Get Foundation “rent a crowd!” and “The GET Foundation and MCEJO have been very active on social media and the Press in general in advocating their case, but it is time that they be held accountable for their actions as well. For example, when you interact with them, please establish the following: Will GET and MCEJO employ the people that will lose their jobs...? Who are the people and organisations that are funding their cause and do they know that their funds are being used to close a Mine, cause job losses and cause poverty and financial ruin to Mpukunyoni?”

3.15. With respect to a tragic shooting that occurred at the mine gate on 27 August 2018, it was stated by Mr Coetzee that “confirmed that there was no evidence to suggest that the incident was Mine or taxi related” and “by not working, we are also saying to Bongani Pearce, to the GET Foundation and to brutal killers that they are winning!”

3.16. In 2016, more than 70 people were arrested for public violence at the instance of Tendele, only to have the charges later dropped. These people were protesting the lack of commitment by Tendele to the promises of jobs. Several members of the community have had strategic lawsuits against public participation (SLAPPs) instituted against them by Tendele too.

4. In light of the above, your considered approach to the following is needed:

- 4.1. The concerns of the Mpukunyoni community about the negative impacts of Tendele mine on the lives, livelihoods of and the well-being of residents;
- 4.2. Government’s response to the intimidation and incitement to violence by Tendele and the need to ensure the safety of our clients and the Mpukunyoni community;
- 4.3. Government’s response to the SAHRC report; and
- 4.4. Government’s response to the illegality of Tendele’s operations and the message this sends out to reputable mining companies and foreign investors about the status of mining in South Africa.

5. Our clients’ look forward to a constructive discussion on Saturday.

Yours faithfully



Kirsten Youens