

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

**CASE NO: 71147/17**

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES**

**UNITED IN ACTION**

**First Applicant**

**WOMEN FROM MINING AFFECTED**

**COMMUNITIES UNITED IN ACTION**

**Second Applicant**

**MINING AND ENVIRONMENTAL JUSTICE**

**COMMUNITY NETWORK OF SOUTH AFRICA**

**Third Applicant**

In the matter between:

**CHAMBER OF MINES**

**First applicant**

and

**MINISTER OF MINERAL RESOURCES**

**First Respondent**

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**FILING NOTICE**

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**DOCUMENTS FILED:** APPLICANTS' NOTICE OF MOTION  
: APPLICANTS' FOUNDING AFFIDAVIT

DATED at **JOHANNESBURG** on this the 23<sup>rd</sup> day of **OCTOBER 2017**.



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**ATTORNEY FOR THE APPLICANTS**

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Ref: Ms W Phama

**C/O SAVAGE JOOSTE**

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

**AND TO: NORTON ROSE FULBRIGHT**

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**AND TO: GOITSEONA PILANE ATTORNEYS INC.**

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Ref: Mr G Pilane / MMR0001

C/O VDT Attorneys Inc.

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**AND TO: FINGER PHUKUBJE ATTORNEYS**  
**Attorneys for the Intervening Party (NUM)**  
Email: thuso@fpinc.co.za

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## NOTICE OF MOTION

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**KINDLY TAKE NOTICE** that the applicants intend to make application to the above Honourable Court on 14 November 2017 or soon thereafter as counsel for the applicants may be heard for an order in the following terms:

### **PART A**

1. That the time periods, forms and manner of service provided for in the rules are dispensed with and the matter is heard as one of urgency in terms of Rule 6(12);

Directing that the applicants, **Mining Affected Communities United in Action Mining (MACUA), WOMEN FROM MINING AFFECTED COMMUNITIES UNITED IN ACTION (WAMUA)** And **MINING Environmental Justice Community Network of South Africa (MEJCON)** are granted leave for intervention in the above matter;

2. Directing that the affidavit of **MESHACK MANDLENKOSI MBANGULA** and its annexure be admitted as founding papers filed on behalf of the Applicants in the Review Application.

**TAKE NOTICE FURTHER** that the accompanying affidavit of **MESHACK MANDLENKOSI MBANGULA**, together with the annexures thereto, will be used in support hereof.

**AND TAKE NOTICE** that if the Respondents intend opposing this application they are required to:

- a) Notify the Applicants' attorneys of record by no later than 26 October 2017 of receipt of this application that they intend opposing.
- b) Within 5 days, on 02 November 2017 of notifying the applicants of their intention to oppose the application, deliver an answering affidavit, if any, together with any relevant documents;
- c) Comply with the aforesaid time period so as to give the applicants an opportunity to file a replying affidavit, if any, by no later than 09 November 2017.

**KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY**

#### **PART B**

**KINDLY TAKE NOTICE** that the applicants intend to make application to the above Honourable Court 13 and 14 December 2017 or soon thereafter as counsel for the applicants may be heard for an order in the following terms:

3. Reviewing and setting aside the 2017 Mining Charter for lack of meaningful engagement in the drafting of the Charter with mining affected communities as key stakeholders;
4. Declaring that the mining affected communities are a key stakeholder in all negotiations and engagements on any further Mining Charter.
5. Ordering that the First Respondent pay the costs of the application and/or any party opposing such relief;
6. Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the accompanying affidavit of **MESHACK MANDLENKOSI MBANGULA**, together with the annexures thereto, will be used in support hereof.

**KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY**

DATED at **JOHANNESBURG** on this the 23<sup>rd</sup> day of **OCTOBER 2017**.





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**C/O SAVAGE JOOSTE**

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

**AND TO: NORTON ROSE FULBRIGHT**

**Attorneys for the Applicant (Chamber of Mines)**

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**AND TO: GOITSEONA PILANE ATTORNEYS INC.**

**Attorneys for the Respondent (Minister of Mineral  
Resources)**

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**AND TO: FINGER PHUKUBJE ATTORNEYS**

**Attorneys for the Intervening Party (NUM)**

Email: [thuso@fpinc.co.za](mailto:thuso@fpinc.co.za)

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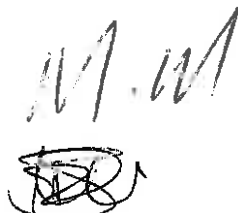
First Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned

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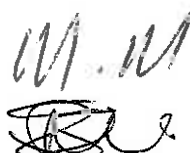
## MESHECK MANDLENKOSI MBANGULA

hereby state under oath:

1. I am an adult Chairperson of **Mining Affected Communities United in Action (MACUA)**, a voluntary movement specialising with capacitating communities and activists on issues of the environment when dealing with corporations, transitional corporations and government. MACUA operates in all eight provinces affected by mining in South Africa. MACUA in principle operates from 27 Clieveden Avenue, Johannesburg, Gauteng.
2. As the chairperson of the first applicant I am duly authorised to depose to this affidavit and to bring this application on its behalf. I attach, marked "**MMM1**", a copy of the resolution signed by the members of the committee. I also attach the supporting affidavits of **GLADYS NESTER NDEBELE** the Chairperson of **Women from Mining Affected Communities United in Action (WAMUA)**, a women's movement within MACUA. The Affidavit is attached and marked "**MMM2**". I further attach the supporting affidavit of **THELMA THANDEKILE NKOSI** the Chairperson of the second applicant, **Mining and Environmental Justice Community Network of South Africa (MEJCON)**. The affidavit is attached and marked "**MMM3**".
3. Save where I state otherwise, or where the contrary appears from the context, the facts herein stated fall within my personal knowledge and I believe them to be true and correct. Where I make legal submissions, I do so on the advice of the applicants' legal representatives, which advise I accept as correct.

### THE SCHEME OF THIS AFFIDAVIT

4. I structure this affidavit as follows:



## PART A: Urgent Application

- 4.1 I set out the background to this application;
- 4.2 I explain why the application is urgent;

## Part B: Intervention Application

- 4.3 First in an introductory section, I explain the relief sought in the main application, and the context in which it arises.
  - 4.3.1 The nature of the Application
  - 4.3.2 Factual background
- 4.4 Second, I describe the interveners and demonstrate their direct and substantial interest in the matter
  - 4.4.1 MACUA as a Stakeholder in Mining
  - 4.4.2 Knowledge of the 2017 Mining Charter
  - 4.4.3 Provisions of the Mining Charter which warrant meaningful engagement with Mining Affected Communities
- 4.5 Thirdly, I identify the submissions the interveners intend to advance in the main application:
  - 4.5.1 Our legal basis for demanding meaningful engagement in the development of the Mining Charter
  - 4.5.2 Impact of the exclusion of mining affected communities in decisions relating to the Mining Charter
- 4.6 Fourth, I conclude by asking for what I am advised is an appropriate order.

## PARTIES

The applicants in intervention

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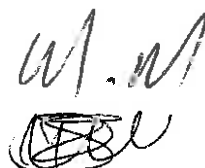
5. The first applicant in the application for intervention is **MINING AFFECTED COMMUNITIES UNITED IN ACTION (MACUA)** an organisation formed in the interests of mining affected communities. A copy of MACUA's subscribing document detailing its vision and mission is attached and marked "**MMM4**".
6. The second applicant in the application for intervention is **Women from Mining Affected Communities United in Action (WAMUA)** an organisation formed in the interests of women in mining affected communities as a structure within MACUA. WAMUA shares the same subscribing document with MACUA.
7. The third applicant in the application for intervention is the **MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA (MEJCON)** an organisation formed in the interests of mining affected communities. A copy of MEJCON's constitutions detailing its vision and mission is attached and marked "**MMM5**".

#### **The applicants in the main application**

8. The applicant in the main application is the **CHAMBER OF MINES, SOUTH AFRICA (the Chamber)** and carries on business at 5 Hollard Street, Johannesburg. The Chamber of Mines is represented by Norton Rose Fulbright, on whose offices all service of process shall be served. Norton Rose Fulbright is situated at 15 Alice Lane, Sandhurst, Sandton.

#### **The respondents**

9. The respondent is the **MINISTER OF MINERAL RESOURCES (the Minister)**, whose offices are situated at corner of Meintjes and Francis Baard Street (Formerly Schoeman Street), Sunnyside Pretoria. Service will be effected on the attorneys of the Minister Goitseona Pilane Attorneys Inc. No. 72, 6th Avenue, Florida, Johannesburg, South Africa.

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## **STANDING**

10. The applicants bring this application in order to assert their constitutional rights to just administrative action in terms of section 33 of the Constitution and section 6 of the Promotion of Administration Justice Act 3 of 2000.
11. The first and second applicant further bring this application:
  - 11.1 On their own behalf in terms of section 38(a) of the Constitution;
  - 11.2 On behalf of their members of and their respective constituents, in terms of section 38(e) of the Constitution;
  - 11.3 In the interest of all people living in mining affected communities in South Africa; and
  - 11.4 In the public interest in terms of section 38(d) of the Constitution.

## **PART A:**

### **BACKGROUND TO THE APPLICATION**

12. On 26 June 2017 the Chamber of Mines lodged an urgent interdict application in which it sought an order prohibiting the Minister from implementing or applying the provisions of the 2017 Mining Charter in any way directly, or indirectly, pending the final determination of an application for judiciary review and setting aside of the Minister's decision to publish the 2017 Mining Charter.
13. Following the Chamber of Mines having issued its urgent application and

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after negotiations between the Chamber of Mines and the Minister, the Minister then gave an undertaking not to implement the 2017 Charter pending a judgment in a review application. With effect the urgent application was never heard by this Court. The terms of this undertaking were made an order of court by this Honourable Court dated 14 September 2017. A copy of the Minister's undertaking is annexed hereto and marked "MMM6".

14. The Review application was, by agreement between the Chamber of Mines and the Minister, and upon the direction of the Judge President was set down for hearing on the 13<sup>th</sup> and 14<sup>th</sup> of December 2017 before a full a bench of the High Court.
15. A time table was further agreed between the Chamber of Mines and the Minister for filing of a record on expedited basis prior to filing the applicant being the Chamber of Mines' founding affidavit. The Minister duly filed the record on the 19<sup>th</sup> of September 2017.
16. In terms of the directives issued by the Deputy Judge President the following time frames were made an agreement between the parties:
  - 16.1 17 October 2017: Chamber of Mines to file supplementary affidavit;
  - 16.2 10 November 2017: Department of Mineral Resources was to file answering affidavit;
  - 16.3 22 November 2017: Chamber of Mines to file replying affidavit;
  - 16.4 13 November 2017: Chamber of Mines to file heads of argument;



16.5 5 December 2017: Department of Mineral Resources are to file heads of argument.

17. I am advised that the Chamber of Mines filed the answering affidavit on the 18<sup>th</sup> of October 2017. It's on these papers that we as the Applicants in this urgent application seek to join as intervening parties in this matter.

#### **Steps taken prior to litigation**

18. On 29 September 2017, we consulted with the **Centre for Applied Legal Studies (CALS)** following a decision we had taken as MACUA to intervene in the Chamber of Mines matter against the first respondent regarding the challenge to the 2017 Mining Charter.
19. In our discussions with CALS we made clear we do not support the case of the Chamber of Mines, but wanted to intervene on the basis of the exclusion of mining affected communities during the drafting processes of the 2017 Mining Charter.
20. In the meeting MEJCON and WAMUA also indicated interest to bring a joint case on behalf of the constituents in mining affected communities.
21. During the week of 2 October 2017, we had engagements with our members in various provinces to discuss our intervention in this matter.
22. On 11 October 2017, our attorney, Ms Wandisa Phama addressed a letter to the Deputy Judge President and all the Parties notifying them of our application to intervene as a party in this matter. A copy of the letter is attached and marked "**MMM7**".
23. On 13 October 2017, our attorney, Ms Wandisa Phama directed the

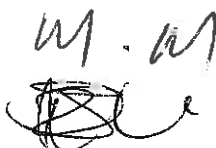
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same correspondence to the office of the Judge President, regarding our intervention in this matter.

24. On 12 October 2017, we received a letter from the attorneys of the first respondent indicating that the first respondent shall abide with the decision of the court in relation to interventions by parties like us in the matter. The letter further indicated that the matter may need to roll over to 15 December 2017 in the event that interventions of parties like ours are permitted by the court. The letter of the first respondent is attached and marked "**MMM8**".
25. On 13 November 2017, we received a letter from the attorneys of the Chamber of Mines informing us that the Chamber of Mines is opposed to our intervention disputing that we have a substantial and direct interest in the matter. The letter of the Chamber of Mines is attached and marked "**MMM9**".
26. Although we will leave it for the court to determine our intervention in this matter at the commencement of the hearing, it is worth mentioning that yet again the Chamber of Mines has failed to see mining affected communities as stakeholders to be engaged with in decisions which have impact on our lives. The Chamber of Mines seems to take the view that it should make a case for its inclusion in the drafting of the 2017 Mining Charter and simultaneously call for the exclusion of mining affected communities in the same processes.

#### **WHY IS THIS APPLICATION URGENT**

27. As traversed above, this matter is set down to be heard on the 13<sup>th</sup> and 14<sup>th</sup> of December 2017. Despite prior notice to the prospective parties in the reviewing application we have not been granted consent to intervene

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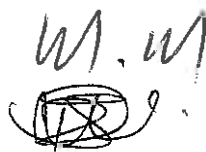
by specifically the Chamber of mines.

28. In response to our letter dated 11 October 2017 requesting or notifying the parties of our intention to intervene as co-applicants in the matter, the Chamber of Mines responded in a letter dated 13 October 2017 indicating the following:

28.1 *"To the extent that your letter expresses your client's intention to intervene in the judicial review application to be instituted by our client, the Chamber of Mines of South Africa against the Minister, this review has not yet been instituted in accordance with the directives of the Judge President (not the Deputy Judge President to whom you address your letter) the review application has to be instituted by the 17<sup>th</sup> of October 2017. Accordingly there is presently no application in which your client can apply to intervene.*

28.2 *We are instructed that our client does not consent to your client's irregular request for intervention and the Chamber's intended review application for the following reasons."* The Chamber then lists their reasons.

29. Given the adverse reaction towards any intervention from any parties to the review application the Chamber of Mines sought a meeting with the Deputy Judge President and such meeting was held on the 20<sup>th</sup> of October 2017.
30. The Deputy Judge President was requested to give directives on the proposed intervention by Lesethleng, Sefikile, Babina, Phuthi, Baga, Makola and Kgatlu Communities as co-applicants in the review application under case number 71147/2017. The 7 communities are all represented by the Lawyers for Human Rights ("LHR"). The Deputy

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Judge President was also called to give directives to the proposed intervention by us MEJCON and MACUA as co-applicants represented CALS in the review application under the same case number.

31. The second directive the Deputy Judge President was requested to make or consider was whether a separate review application should be instituted by LHR parties and CALS parties in order for us to pursue the review application in the normal course.
32. In the alternative, a third directive sought was whether an *amici* application by LHR and CALS parties are to be accommodated within the time table for the review application set down for the 13<sup>th</sup> and 14<sup>th</sup> of December 2017 and if the Deputy Judge President was amenable to grant the intervention then a proposal that an additional day of the 15<sup>th</sup> of December 2017 be added as the third court day.
33. The meeting with the Deputy Judge President duly took place on the 20<sup>th</sup> of October 2017. Present was a representative of the Chamber of Mines, the Minister of Mineral Resources, the proposed co-applicants represented by LHR and ourselves represented by CALS and representatives of the National Union of Mineworkers (NUM) attended the meeting with the Deputy Judge President. After the Deputy Judge President heard representation from all parties concerned, the Deputy Judge President directed that the set time table already allocated by the Judge President in the initial agreement in the review application must still stand.
34. The Deputy Judge President indicated that any intervening party should bring an urgent application for intervention and that this Honourable Court decides whether such party should intervene in the review application.

M. M.  


35. Against this background I am advised that the present matter should be enrolled as an urgent application, and that our non-compliance with the Uniform Rules of Court be condoned to the extent necessary for the reasons that follow:
- 35.1 Given the truncated timeframes, the Minister is set to file his answering affidavit on the 10<sup>th</sup> of November 2017. CALS has given an undertaking that these papers would be filed on the 24<sup>th</sup> of October 2017 in order not to interrupt the processes already laid down and set forth between the parties prior to CALS intervention. The suggested timeframes for filing the intervention application has not been opposed but agreed to by the Minister.
- 35.2 This application has been set down for the 13<sup>th</sup> and 14<sup>th</sup> of December 2017. Should the parties succeed in their intervention application the parties in the main review application need to make provision for a hearing of the matter to include MAJCON and MACUA.
36. I am mindful to bring to the Court's attention that the only party which indicated that they will oppose intervention application is Chamber of Mines, the applicant in the main review application, however we must point out that there will be no prejudice to the applicant's case if MAJCON and MACUA are joined as intervening parties simply because no relief is sought against Chamber of Mines. In fact, save for lamenting that the intervening parties should have lodged their own review applications, no prejudice was alleged by the Chamber of Mines. Moreover, if each of the intervening parties were to lodge a separate review application as suggested by the Chamber of Mine, that would result in further delays and a multiplicity of actions, which Rule 10(1) seeks to avert.

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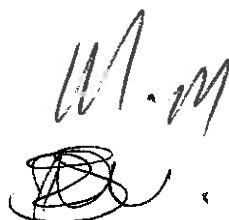
37. In any event, substantive or legal interest in the review application is one which seeks relief against the Minister in his role in drafting the 2017 charter, therefore on this score alone there can be no prejudice to the Chamber of Mines as an applicant in the review applicant.
38. I also pause to note that the urgency in this matter is not one that was self-created. The Court's attention is brought to the fact that the review application in itself was only served and filed on the 18<sup>th</sup> of October 2017. Therefore this intervention application is brought within reasonable time periods after the main review application having been served on the parties and publicly available in the public domain.
39. Finally, I am advised that certifying the matter as one of urgency only seeks to uphold the principles of justice, as to allow the Applicant intervention into the main review application would seek to avoid multiplicity of actions and to avoid wasted costs.
40. I respectfully submit that the present application be enrolled urgently in terms of prayer 1 of the notice of motion

PART A:

## **INTRODUCTION**

### **NATURE OF APPLICATION**

41. The main application instituted by the Chamber of Mines is an application to review and set aside the Broad Based Black-Economic-Empowerment Charter for the South African Mining and Minerals Industry, 2016 (the 2017 Mining Charter).

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42. Distinguishably, this application is for an order granting the applicants right to intervene in terms of Rule 10 (1) of the Uniform Rules of Court.
43. As mining affected communities, the applicants have a direct and substantial interest in bringing this application as they are major stakeholders in the mining sector; I deal with this issue below.
44. The applicants further seek an order to have the 2017 Mining Charter reviewed and set aside on the basis that the first respondent failed to meaningfully engage with the applicants in the drafting and the finalisation of the 2017 Mining Charter. Such failure has adverse impacts on the applicants' rights to an environment that is not harmful to health and wellbeing in terms of section 24 of the Constitution, the rights to procedural fairness in terms of section 33 of the Constitution and section 3 of Promotion of Administrative Justice Act<sup>1</sup>.

## Factual Background

<sup>1</sup> Act 3 of 2000.

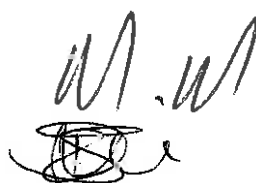
46. In December 2012, MACUA was established as a movement in the eight provinces where there are mining operations in South Africa for the purposes of raising awareness on issues faced by mining affected communities. We established MACUA to function as a medium between communities and government and mining companies. Mining affected communities wanted to have community members with experiences of being affected by mining to represent communities in negotiation forums with government and other relevant bodies.
47. In the establishment of MACUA, the community elected representatives from each of the nine provinces. When we formed MACUA, NGOs that worked with us were present and assisted us with the logistical aspects of forming a community based organisation.

48. Since the establishment of MACUA, we have taken opportunities to assert our concerns and voices through various fora. In so doing we have raised the concerns of mining affected communities and made MACUA known to other relevant stakeholders in mining in particular, the Department of Mineral Resources and mining companies.
49. February 2013 was our first engagement with Government. Members of MACUA including myself attended at the Alternative Mining Indaba, in Cape Town in response to an invitation the Environmental Justice Network ("EJNF"). The ENJF was established in 1994 to serve as an umbrella organisation to coordinate environmental organisations for environmental justice and sustainable development through networking. The Alternative Mining Indaba was in session at the same time as the Mining Indaba attended by corporations and government was in session. It was at the Alternative Mining Indaba that we saw that the Mining



Indaba did not include a platform for communities affected by mining to raise their experiences and issues to both the government and mining companies.

50. At the Alternative Indaba, MACUA discovered that there would be a Mining Lekgotla in August 2013. MACUA took a decision to organise a gathering outside the Sandton Convention Centre where the Mining Lekgotla was taking place.
51. In light with our decision to gather outside the Mining Lekgotla, we filed a notification to gather to Johannesburg Metro police Department (JMPD) in terms of the Regulations of Gatherings Act ("RGA") 205 of 1993. Our notification to gather was denied JMPD Knowing that the concerns of mining affected communities were important issues for consideration at the Mining Lekgotla by both the government and corporations, on the day of the Mining Lekgotla, MACUA decided to hold gathering of 15 people at points of 100 metres away between each group. The decision to gather in groups of 15 was to avoid non-compliance with the RGA and arrests.
52. The organisers of the Mining Lekgotla told us that if we wanted to participate in the event, attendees had to be dressed formally, which meant in suits and ties. This excluded us from the meeting, as many of MACUA's members do not own formal wear. I pause to note the discrimination mechanisms employed by the organisers of the Mining Lekgotla to selectively exclude exploited minorities such as mining community members on non-rational basis.
53. We marched at the Mining Lekgotla for about three days, but were not allowed to enter the building. Again, despite our efforts to bring the community voices in the discussions at the Mining Lekgotla, the

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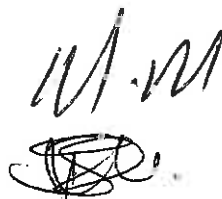
organisers of the Mining Lekgotla turned a blind eye to our cause.

54. Towards the end of 2013, MACUA had opportunities to raise concerns of communities affected by mining with the government in the review processes of the Mineral and Petroleum Resources Development Act No. 28 of 2002 (MPRDA). In November 2013, MACUA attended a meeting at the office of the Presidency called by the Department of Mineral Resources. The invitation indicated the first respondent's interest to work with communities on the amendments of the MPRDA. MEJCON was also present at this meeting.
55. Subsequent to the meeting at the Presidency, there was no follow up by the first respondent to engage communities on its processes. We therefore sought to engage the various Provincial Departments of Mineral Resources, to address the issues of the communities in the provinces. The provincial departments did not follow through favourably with the community participation in the processes.
56. In early 2014 MACUA addressed a letter to the Minister of Mineral Resources in which it raised concerns about the manner in which the consultation on the MPRDA was handled. A copy of the letter is attached and marked "**MMM10**".
57. On 2 April 2017 MACUA, Land Access Movement, and Association for Rural Development, represented by Legal Resources Centre ("LRC") addressed a letter to President Jacob Zuma, requesting that he refers the MPRDA Bill B15B-2013 and the Restitution of Land Rights Amendment Bill B35B-2013 be referred back to Parliament due to the failure of the National Council of Provinces and Provincial Legislatures to take reasonable steps to facilitate public participation. A copy of the

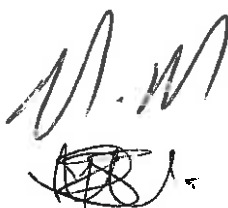
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letter is attached and marked **"MMM11"**. We received no response to that letter.

58. MACUA decided to picket in all the provinces reinforcing the issues we raised in our letters. MACUA held pickets at provincial offices of the DMR in Gauteng, North West, Limpopo, Mpumalanga, the Free State and Northern Cape. The gatherings were to call upon the President to refer the MPRDA back to Parliament for proper consultation. Following these pickets we issued a press statement and a copy is attached and marked **"MMM12"**.
59. The pickets were structured in different ways. For example, in Gauteng members of MACUA were picketing outside the DMR provincial offices and when it became apparent that it was not working in our interest; members occupied the offices of the DMR for two hours. MACUA's members requested that the Minister to attend to us. However, the then Minister Susan Shabangu did not make an appearance but promised to respond us.
60. On 13 August 2014, we marched to the Chamber of Mines and handed over a memorandum of 10 demands to the Chamber of Mines, the first respondent, the then Minister of Mineral Resources, Susan Shabangu, Parliament of South Africa and President Zuma. MACUA demanded that the MPRDA in its entirety be 'scrapped' and for the President to return the current bill B15B- 2013 back to Parliament for proper consultations with communities affected by mining.' Furthermore, that Parliament, Government, the Chamber of Mines and organised labour recognize communities affected by mining as legitimate stakeholders and that legislation is passed to that effect. A copy of the memorandum is attached and marked **"MMM13"**.

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61. In response to the march, the Chamber of Mines undertook to only address the issues of mines which were part of their constituency. On the issues relating to the MPRDA, the Chamber of Mines informed MACUA that they should raise such issues with government as they were unable to address those issues.
62. MACUA's concerns and issues were not adequately addressed. MACUA decided to call for a meeting with all organisations of communities affected by mining. MACUA members visited all communities in the various provinces consulting in an attempt to draft the "People's Mining Charter", of which its aim and objective was to apprise our comments to the MPRDA.
63. From 24 March up to and including 26 March 2015, MACUA held a meeting in Berea, Johannesburg. The meeting was held with all relevant community organisations to deal with collective issues of communities affected by mining. At the meeting we took a resolution to draft the People's Mining Charter. Organisations at the meeting included MACUA, WAMUA and MEJCON, individual communities and civil society organisations decided to form what is now commonly known as the MPRDA Coalition.
64. The meeting resulted in the draft People's Mining Charter or 'Berea Declaration'. The draft People's Mining Charter was workshopped with all communities affected by mining before it could be adopted as a final document. After the consultation with the communities, the Peoples Mining Charter was adopted on 26 July 2016. A copy of the People's Mining Charter is attached and marked "MMM14".

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65. On various occasions we have communicated the People's Mining Charter to both the Chamber of Mines and the Department of Mineral Resources. Even though there have been little attempts made by DMR to engage us on mining related issues, as MACUA, WAMUA and MEJCON we have taken every opportunity to make our movements known to both DMR and Chamber of Mines. With no consultation on the 2017 Mining Charter, it cannot be that the DMR did not know what we stand for and what we do as movements of mining affected communities.
66. The above seeks to indicate that the intervening party has consistently been of the view that they hold a vested interest in the Charter and how its objectives are implemented.

#### ***Knowledge of the 2017 Mining Charter***

67. Although the first respondent published the Reviewed Broad Based Black Empowerment Charter for South African Mining and Minerals Industry, 2016 ("Draft Reviewed Mining Charter") in 15 April 2016, which draft was not published on another accessible platform, As MACUA we could not access the draft Mining Charter and only become aware of it through Action Aid.
68. From the above, it is evident that our lack of knowledge of the draft Mining Charter was not due to our lack of interest but rather, the lack of accessible publicity around it for mining affected communities.
69. In July 2016, through Action Aid we heard of a meeting that was to be held with stakeholders with an interest in mining at the offices of the first respondent. The meeting was held on 19 July 2016. The first respondent did not invite MACUA to make submissions at that meeting, nonetheless, we attended without invitation.

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70. In that meeting, we were at the mercy of other participants such as ActionAid SA which generously gave us the platform to make submissions on the draft review of the Mining Charter 2016 during a time assigned to them. As MACUA we spoke for only 10 minutes. Speaking on behalf of MACUA, my submissions focused on the deficiencies of the process with respect to community participation.
71. My presentation included the flawed consultation processes in drafting the Mining Charter, in that the first respondent makes itself available for mining companies but not to communities. I submitted that the meeting should have been held in mining affected areas to be in touch with people. I substantiated the statement with an example that when government seek people's votes, they approach communities, but to address issues as important as the Mining Charter, they use inaccessible means such as government gazettes.
72. I further elaborated on the steps we have taken to be heard, which included pickets and gatherings. I finally concluded by stating that as communities affected by mining, we reject the draft on the basis of the lack of meaningful engagement with us. In the 10 minutes I also presented the People's Mining Charter which we table for consideration in drafting an all-inclusive mining charter.
73. Following that meeting we were informed that the office of the first respondent would engage with us at a later stage, but those undertakings never materialised.
74. MACUA requested a number of meetings with the first respondent to discuss the Mining Charter. The first respondent would accept our

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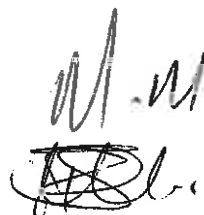
invitations, but cancel the day before the planned meeting without rescheduling.

75. Despite our attempt to engage with the first respondent on the 2017 Mining Charter, we were taken by surprise when we discovered that the first respondent gazetted the 2017 Mining Charter on 15 June 2017. We did not see the government gazette ourselves but we were informed by the MPRDA Coalition on 15 June 2017 that the first respondent had gazetted the 2017 Mining Charter.
76. When we found out about the action taken by the Chamber of Mines to review and set aside the 2017 Mining Charter for failure to consult with the Chamber of Mines, we took a decision to intervene in the matter.
77. Our intervention is not aligned to that of the Chamber of Mines, neither do we find ourselves coming into this case from the same perspectives as the Chamber of Mines. We cannot align ourselves with the Chamber of Mines because mining companies themselves have failed in their own processes to include mining affected communities as stakeholders in mining. Our exclusion by mines is more pronounced in the drafting and implementation of Social and Labour Plans.
78. It therefore comes as no surprise to us that when the Chamber of Mines wanted the 2017 Mining Charter to be set aside for lack of engagement with the Chamber, at no point did the Chamber of Mines equally acknowledge the exclusion of mining affected communities in the processes of the 2017 Mining Charter.
79. As mining affected communities we are therefore intervening in our own right as a party with a direct and substantial interest in this matter.

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### Steps taken prior to litigation

80. On 29 September 2017, we consulted with the Centre for Applied Legal Studies (CALS) following a decision we had taken as MACUA to intervene in the Chamber of Mines matter against the first respondent regarding the challenge to the 2017 Mining Charter.
81. In our discussions with CALS we asserted that we do not support the case of the Chamber of Mines, but wanted to intervene on the basis of the exclusion of mining affected communities during the drafting processes of the 2017 Mining Charter.
82. In the meeting MEJCON and WAMUA also indicated interest to bring a joint case on behalf of the constituents of mining affected communities they work with.
83. During the week of 2 October 2017, we had engagements with our members in various provinces to discuss our intervention in this matter.
84. On 11 October 2017, our attorney, Ms Wandisa Phama addressed a letter to the Deputy Judge President and all the Parties notifying them of our application to intervene as a party in this matter. A copy of the letter is attached and marked "MMM 7".
85. On 13 October 2017, our attorney, Ms Wandisa Phama directed the same correspondence to the office of the Judge President, regarding our intervention in this matter.
86. On 12 October 2017, we received a letter from the attorneys of the first respondent indicating that the first respondent shall abide with the decision of the court in relation to interventions by parties like us in the matter. The letter further indicated that the matter may need to roll over

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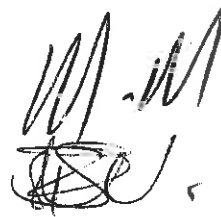
to 15 December 2017 in the event that interventions of parties like ours are permitted by the court. The letter of the first respondent is attached and marked "**MMM 8**".

87. On 13 November 2017, we received a letter from the attorneys of the Chamber of Mines informing us that the Chamber of Mines is opposed to our intervention disputing that we have a substantial and direct interest in the matter. The letter of the Chamber of Mines is attached and marked "**MMM9**".
88. Although we will leave it for the court to determine our intervention in this matter at the commencement of the hearing. It is worth mentioning that yet again the Chamber of Mines has failed to see mining affected communities as stakeholders to be engaged with in decisions which have impact on our lives. The Chamber of mines seems to take the view that it should make a case for its inclusion in the drafting of the 2017 Mining Charter and simultaneously call for the exclusion of mining affected communities in the same processes.

### **Provisions of the Mining Charter which warrant meaningful engagement with Mining Affected Communities**

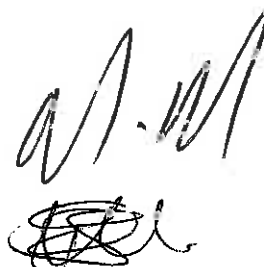
#### *The positive elements for mining affected communities*

89. The 2017 Mining Charter has been drafted as a document with a number of provisions for the benefit of communities. The Charter has catered for mine communities and defines a mine community as a community where mining takes place, major labour sending areas, as well as adjacent

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communities within a local municipality, metropolitan municipality and/or district municipality.

90. The preamble of the 2017 Mining Charter acknowledges that although the MPRDA has transferred the ownership of mineral wealth of the country to all the people in South Africa, under the custodianship of the state a proliferation of communities living in abject poverty continues to be a large characteristic of the surroundings of mining operations.
91. In its objectives, the Mining Charter undertakes to ensure the enhancement of social and economic welfare of Mine Communities and major labour sending areas in order to achieve social cohesion.
92. The Mining Charter has further made provision for 8% of total shares by the mining right holder to be held in the form of a community trust managed by an agency called the Mining Transformation and Development Agency ("MTDA").
93. There is very little information about the processes the Minister will follow to establish the MTDA, but for that it will be managed by and shall report to the Minister.
94. The 2017 Mining Charter is also silent on the skills that will be taken into account in the appointment of functionaries who will serve in the MTDA. It is unclear whether some of the members of the MTDA will be from mine affected communities, be it sending or host communities.
95. Although we welcome this provision of the 2017 Mining Charter, the Charter is also silent on how communities will have access on the funds held by the MTDA.

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96. In relation to procurement, the 2017 Mining Charter contains new targets for mining goods and services. The 2017 Mining Charter requires a mining rights holder to identify what goods and services are available within the community where its mining operations are taking place and where feasible give preference to suppliers within that community.
97. This is another provision mining affected communities welcome. However, without our engagement in the drafting of this Charter, we could not raise concerns with the first respondents of the need to avoid a situation when such procurement arrangement only benefit traditional authorities as it has been the case in the past.
98. The 2017 Mining Charter 2017 also increases targets for Black Persons to be employed at different levels of management and importantly requires that half of those positions be occupied by black women.
99. The provision increasing the targets of employment of Black Persons in the Mining Charter is of paramount importance to mining affected communities. As matters stand and acknowledged in the preamble of the 2017 Mining Charter mining affected communities live in abject poverty and high unemployment rates. A provision calling for the employment of Black Persons would receive much support from mining affected communities. our exclusion in the negotiation processes of the 2017 Mining Charter make it hard for mining affected communities to access information on how such provisions could be implemented.
100. In relation to Human Resources Development the 2017 Mining Charter expressly provides that expenditure on human resources development is to be allocated to training of both employees and community members who are not employees. This provision of the 2017 Mining Charter is important for improving the quality of lives of people living in mine

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affected community as skills development may increase their employment chances.

101. It is not only the positive provisions of the 2017 Mining Charter that we find to be imposing a duty on the first respondent to engage with us. In provisions that we find to have a negative impact on mining affected communities, an engagement with us by the first respondent would have created a space for mutual understanding and reaching resolutions to mitigate differences.

*The negative elements for mining affected communities*

102. We find the absence of the following issues in the 2017 Mining Charter to be negative elements of the Charter which could have been mitigated by our inclusion in the negotiations around the Charter:

- 102.1 The absence of requirements for restitution and compensation of communities for the harmful impacts of mining;
- 102.2 The absence of mechanisms and processes to address the negative gendered impacts of mining;
- 102.3 The absence of measures to ensure mining affected community development is gender responsive;
- 102.4 The failure to provide for requirements of good governance, democracy, accountability and transparency in the MTDA;
- 102.5 The absence of recognition that the rights and interests of communities, including communities living according to African Customary Law, cannot be reduced to those of traditional leadership;

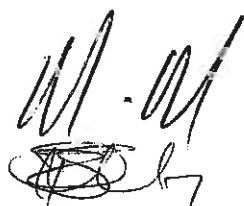
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- 102.6 The failure to provide requirements for meaningful direct community participation in the design, implementation and monitoring of social and labour plans and other mining affected community developments;
- 102.7 The absence of provisions for community housing; and
- 102.8 The failure to provide guidance on ensuring fair and transparent local procurement of mining goods and services.
103. The above description of relevant provision and its positive or negative impact on mining communities indicates that the intervening party hold a vested legal interest in the remedies/ relief this Honourable court may grant.

**C: LEGAL INTEREST IN THE RELIEF THIS HONOURABLE COURT MAY GRANT**

104. Rule 10(1) of the Uniform Rules Of Court reads as follows:

*"Any number of persons, each of whom has a claim, whether jointly, jointly and severally, separately or in the alternative, may join as plaintiffs in one action against the same defendant or defendants against whom any one or more of such persons proposing to join as plaintiffs would, if he brought a separate action, be entitled to bring such action, provided that the right to relief of the persons proposing to join as plaintiffs depends upon the determination of substantially the same question of law or fact which, if separate actions were instituted, would arise on each action, and provided that there may be a joinder conditionally upon the claim of any other plaintiff failing."*

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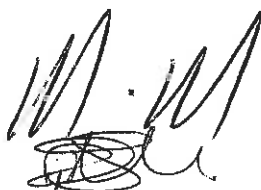
105. I am advised that although Rule 10 refers only to actions, Rule 6(14) stipulates that the provisions of Rule 10 apply mutatis mutandis to applications.
106. The applicant for leave to intervene must show that it has 'a direct and substantial interest' in the subject matter of the action. See: *National Director Of Public Prosecutions v Zuma* 2009 (2) SA 277(SCA) at 308G; *Investec Bank Limited v Mutemeri* 2010 (1) SA 265 (GSJ) at 278E-F. The test for a direct and substantial interest is the whether there is a legal interest in the subject matter of the litigation that may be prejudicially affected by the judgement of the court.
107. The purpose of the applicants' entry into the *lis* is aimed at a change in the orders the Chamber of Mines seeks. It is motivated by the need to foster the inclusion of the community and the enforcement of the rights of the communities affected by mining. There can be no denying that mining affects host communities as well as sending communities. Any endeavour by government to inter alia protect the rights and interests of these communities, gives rise to a direct and substantial interest. The intervening parties have a legal interest in the matter

*Whether the intervening parties has standing to challenge the respondent's decision in review proceedings.*

108. The intervening parties are in the same position is the applicant in that:
- 108.1 They are members of the communities affected directly by mining;

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- 108.2 The respondent recognized their importance in the process, by inviting them to consultative meetings during the pre-drafting process. Can We maintained however that such invitation was woefully short the requirements for consultation infacts in fact foul shorts to such an extent that it can be regarded as non-existent.
- 108.3 The regulatory framework governing mining gives prominence to the consideration of the needs of communities directly affected by mining.
- 108.4 In a country where the legacy has been to ignore communities that are affected by activities of around them it is most important and that their rights are recognised and enforced by this court.
- 108.5 The complaint of the Chamber of Mines and those of the intervening parties are interwoven.
- 108.6 It is no minor coincidence that some of the aims and objectives of the mining charter cannot be implemented without the cooperation and input of the intervening parties.
109. It is clear that if an order is made based on any of the above submissions made by the Chambers of Mines then judgment sought cannot be sustained and carried into effect without necessarily prejudicing the interests' of a party or parties not joined in the proceedings, then that party or parties have a legal interest.

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110. I am advised that the above establishes that communities have a legal interest in the subject-matter, which may be affected prejudicially by the judgment of the court in the proceedings concerned.

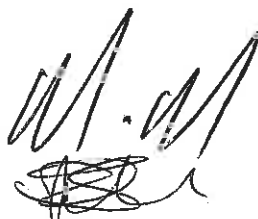
#### **D: THE APPLICANTS SUBMISSION TO INTERVENE SHOULD SUCCEED**

##### *Legal basis to demand meaningful participation*

111. Public participation is a key element in ensuring participatory governance in South Africa. The right to public participation is constitutionally entrenched and further espoused to through the inclusion of provisions mandating public participation and consultation in various pieces of legislation.
112. I will commence by address public participation as provided in legislative processes. And subsequently deal with provisions of the MPRDA that require a facilitation of public consultation in procedures relating to the extractives industry.
113. The objective of this exposition is to highlight the constitutional obligations on the Department of Mineral Resources ("DMR") to consult with mining affected communities in the drafting of the Mining Charter, 2017.

##### **Public Participation a legislated Right**

114. Section 59(1)(a) of the Constitution provides that the National Assembly, as the apex legislative body, must facilitate public involvement in the processes of the Assembly and its committees. Additionally, the National Assembly must conduct its business in an open manner and include the public in committee sittings unless it is reasonable and justifiable in an open and democratic society to conduct such sittings in private. The

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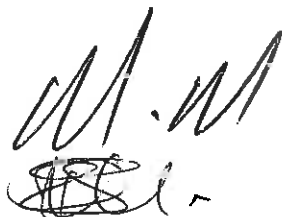
Constitution mandates the National Council of Provinces as well as provincial legislatures to facilitate public involvement in the same way.

115. This onus on the legislative arms of government indicates the Constitution's commitment to participatory governance; where elected leaders are obliged to give meaningful considerations of the views of the public in decision-making processes. In two pivotal cases, the obligation of the legislature to facilitate public participation was pronounced. These cases are ***Doctors for Life International v Speaker of the National Assembly and Others*** and ***Matatiele Municipality v President of the Republic of South Africa & Others***.

116. In engaging the question on the applicable standard of reviewing legislative conduct in relation to facilitating public participation, the court in *Doctors for Life* made the following integral finding: For the conduct of a legislative body to be considered reasonable in respect of meeting the constitutional requirements for public involvement in the sections 59, 72 and 118 of the Constitution, the following two aspects must be met:

116.1 The relevant legislative body must provide meaningful opportunities for public participation in legislative-making procedures. This would include making sufficient effort to ensure that the public has adequate information informing them of their right to be involved in such decision-making procedures and the different avenues through which they can participate; and

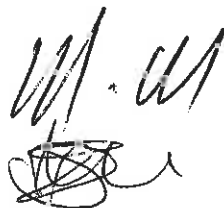
116.2 The relevant legislative body must take measures to ensure that persons interested in participating are given a meaningful and effective opportunity to be heard and their views must be actually considered by members of the legislature.

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117. This is the minimum standard that legislative conduct in relation to public participation and consultation must comply. If the conduct of a legislative body does not meet this step then that conduct is likely to be unlawful and unconstitutional.
118. DMR's failure to meaningfully engage with mining affected communities and other relevant stakeholders such as women, mine employees and mining federations stands in contravention of the principles set out above. The lack of meaningful engagement is further contrary to the constitutional provisions embodied in the above-described sections and therefore constitutes conduct that falls sort of the standard of reasonable and is likely to amount to unlawful and unconstitutional conduct.

#### **The MPRDA and public participation**

119. The MPRDA regulates, amongst others, the granting of mining right applications, closure of mines and the regulation of mining activities. The objectives of the Act are to expressly promote equitable access to the nation's mineral and petroleum resources to all people in South Africa. The Act is also aimed at promoting employment and advancing the socio-economic welfare of all South Africans. A key mechanism through which these objectives can be achieved is meaningful public participation. In light of this, the MPRDA provides the following avenues for public participation in in certain circumstances:
120. In relation to the granting of mining right application, section 10 of the MPRDA provides that within fourteen days of accepting a mining right application, the Regional Manager must make it known that such an application was lodged and accepted and then call upon interested and affected persons to submit their comments in respect of the land in question.



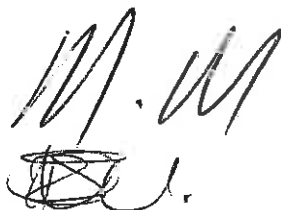
121. In addition to DMT, the MPRDA also imposes an obligation to consult on the mining rights applicant. Within fourteen days of accepting a mining right application, the Regional Manager must notify the applicant to consult with the landowner, lawful occupiers and interested and affected parties on the concerned land and include the results of such consultation in the applicant's environmental impact assessment.
122. These provisions espouse an ethos of participation in the determination of mining related matters. Read with the above constitutional provisions and judicial pronouncement on the legislature's obligation to ensure public participation, it is apparent that sound, meaningful public participation during the drafting of the Mining Charter is a necessary precursor to establish subsequent public consultation on the actual content of the Charter.
123. The Minister is empowered by section 100(2) of the MPRDA to develop the Mining Charter. An empowering provision granting the Minister the obligation to pass secondary legislation makes the decision of the Minister administrative action.

**Administrative Action in decision making regarding the mining charter**

124. Section 33 of the Constitution provides that:

*"(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*

*(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*

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*performing a public function in terms of an empowering provision”.*

128. Section 6 of PAJA lists the grounds upon which an administrative decision can be brought under review. The section provides that:

- “(1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.*
- (2) A court or tribunal has the power to judicially review an administrative action if –*
  - (a) the administrator who took it –*
    - (i) was not authorised to do so by the empowering provision;*
    - (ii) acted under a delegation of power which was not authorised by the empowering provision;*
    - or*
    - (iii) was biased or reasonably suspected of bias;*
  - (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;*
  - (c) the action was procedurally unfair;*
  - (d) the action was materially influenced by an error of law;*
  - (e) the action was taken –*
    - (i) for a reason, not authorised by the empowering provision;*
    - (ii) for an ulterior purpose or motive;*
    - (iii) because irrelevant considerations were taken into account or relevant considerations were not considered;*
    - (iv) because of the unauthorised or unwarranted dictates of another person or body;*

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- (v) *in bad faith; or*
    - (vi) *arbitrarily or capriciously;*
  - (f) *the action itself –*
    - (i) *contravenes a law or is not authorised by the empowering provision; or*
    - (ii) *is not rationally connected to –*
      - (aa) *the purpose for which it was taken;*
      - (bb) *the purpose of the empowering provision;*
      - (cc) *the information before the administrator; or*
      - (dd) *the reasons given for it by the administrator;*
  - (g) *the action concerned consists of a failure to take a decision;*
  - (h) *the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or*
  - (i) *the action is otherwise unconstitutional or unlawful.*
- (3) *If any person relies on the ground of review referred in subsection 2 (g), he or she may in respect of a failure to take a decision, where –*
- (a)
    - (i) *an administrator has a duty to take a decision;*
    - (ii) *there is no law that prescribes a period within which the administrator is required to take that decision; and*




- (iii) *the administrator has failed to take that decision, institute proceedings in a court or tribunal for judicial review of the failure to take the decision on the ground that there has been unreasonable delay in taking the decision;*  
or
- (b) (i) *an administrator has a duty to take a decision;*  
(ii) *a law prescribes a period within which the administrator is required to take that decision;*  
and
- (iii) *the administrator has failed to take that decision before the expiration of that period institute proceedings in a court or tribunal for judicial review of the failure to take the decision within that period on the ground that the administrator has a duty to take the decision notwithstanding the expiration of that period."*

129. In ***Bato Star Fishing (Pty) Ltd v The Minister of Environmental Affairs and Tourism and Others*** the Constitutional Court developed the test of reasonableness in administrative decision. The court held that in considering whether the decision was reasonable or not depends on the circumstances of each case.<sup>2</sup> In terms of the decision in *Bato Star* what is reasonable depends on whether a decision maker in the shoes of the decision maker would have arrived to the same decision taken by the decision maker.

130. The Constitutional Court further held that "factors relevant to determining whether a decision is reasonable or not will include the nature of the decision, the identity and expertise of the decision-maker, the range of

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<sup>2</sup> Para 45.



factors relevant to the decision, the reasons given for the decision, the nature of the competing interests involved and the impact of the decision on the lives and well-being of those affected."

131. Taking a decision as an organ of state, the first respondent should have facilitated meaningful engagement with mining affected communities. The failure to facilitate meaningful engagement with us despite the impact of his decision on our lives and well-being in our opinion renders the decision of the first respondent unreasonable and irrational.
132. With the administrative decision of this nature, which does not go through common legislative processes through parliament, it becomes even more significant for a decision of this nature to be procedurally fair. In light of the transformative imperatives of the charter which are centred on mining affected communities, the first respondent should have engaged us in the processes of deciding those transformative imperatives.
133. I further submit that, when dealing with vulnerable groups such as mining affected communities, the threshold of engagement with such communities is more than passing government gazettes for comments. It is meaningful engagement that is required for a decision of the first respondent to be reasonable and rational.
134. Courts have developed fascinating discourse on the concept of meaningful engagement as a standard by which to assess meaningful participation of those who are affected by decisions of the state. The Constitutional Court started developing jurisprudence on meaningful engagement between municipalities and communities affected by socio-economic decisions taken by the state in ***Government of the Republic of South Africa v Grootboom 2000 11 BCLR 1169 (CC)***.



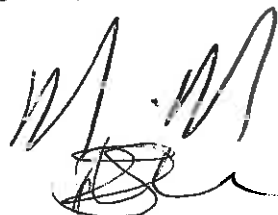


135. The Court held that the state was required to act in a manner that is reasonable in its efforts to progressively realise the right to housing. It found that for a programme of the state dealing with the progressive realisation of socio-economic rights to be considered reasonable, it was important for the state to engage with people who were going through an eviction as soon as it became aware of their illegal occupation of the land. In this way, the court expressed the need for the state to engage communities from the onset when decisions which are going to affect such communities, especially the most vulnerable, are to be taken.

136. In a case involving the transformation sector with the acknowledgement of the abject poverty in which mining affected communities live in, it would have been reasonable for the first respondent to engage with us from the onset to negotiate how such transformative imperatives could have been achieved.


137. In ***Port Elizabeth Municipality v Various Occupiers 2004 (12) BCLR 1268 (CC)***, the Constitutional Court further addressed the issue of engagement between the state and the communities in the realisation of the right to housing in terms of section 26 of the Constitution. The court had to resolve an eviction of a community from an undeveloped piece of land owned by the state in terms of section 6 of the Prevention of Illegal Evictions from, and Unlawful Occupation of, Land Act (PEI). It highlighted the importance of engagement not only as a tool to reach a settlement between the state and the community, but also the value it brings in the process that leads to the outcome of a decision. The Court observed that there were many benefits to facilitating engagement between the state and the affected communities prior to making a decision:

*“Not only can mediation reduce the expenses of litigation, it can help avoid the exacerbation of tensions that forensic combat produces. By bringing the parties together, narrowing the areas*

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*of dispute between them and facilitating mutual give-and-take, mediators can find ways round sticking-points in a manner that the adversarial judicial process might not be able to do. Money that otherwise might be spent on unpleasant and polarising litigation can better be used to facilitate an outcome that ends a stand-off, promotes respect for human dignity and underlines the fact that we all live in a shared society."*

138. In ***Residents of Joe Slovo Community, Western Cape v Thubelitsha Homes 2009 9 BCRL 847 (CC)***, the Constitutional Court found that even though parties do not have to agree with each other on every issue, what was required in an engagement process was for them to engage in good faith, reasonableness and willingness from both sides to listen and understand each other's concerns. In this case despite our efforts and attempts to engage the first respondent on the 2017 Mining Charter, the first respondent has refused to listen to our contributions, be it through the presentation of the People's Mining Charter or requests to meet.
139. Despite the failure of the first respondent to engage with us on negotiations in the 2017 Mining Charter, we submit that the court could still order the first respondents to engage with us on the 2017 Mining Charter and declare mining affected communities as stakeholders to be engaged with in decision of this nature. It was in the *Olivia Roads* case that the Constitutional Court developed the concept of meaningful engagement as a remedy in eviction matters and the Court indeed developed jurisprudence on how meaningful engagement could be used as a remedy in eviction cases. We submit that although the facts in *Olivia Roads* are different the principle applies with equal force herein, the invasive effects of mining on communities, meaningful engagement as a remedy could bring about understanding between the first respondent and mining affected communities.

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140. Sandra Liebenberg has argued that drawing knowledge from cases such as Olivia Road, 'meaningful engagement' is something that people and the state must do in "good faith, reasonably and with transparency".<sup>3</sup> Meaningful engagement therefore means that before the first respondent made the decision to pass the 2017 Mining Charter it should have approached mining affected communities to discuss its plans and how they would benefit from the Mining Charter.
141. Lillian Chenwi and Kate Tissington have defined meaningful engagement as a form of public participation which happens when communities and the government talk and listen to each other and when they try to understand each other's perspective so that they can reach a particular outcome.<sup>4</sup> They further explain that meaningful engagement is a neutral space where people and the state can discuss and shape options and solutions to complex issues. For such engagement to be meaningful, it must enable individuals and communities to be treated as partners in the decision-making process. In an ideal situation, meaningful engagement should take place at the beginning of any process that may result in litigation.

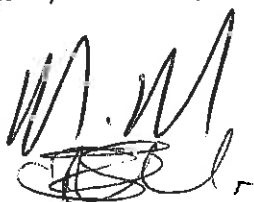
## **IMPACT OF THE EXCLUSION OF MINING AFFECTED COMMUNITIES IN DECISIONS RELATING TO THE MINING CHARTER**

142. The lack of consultation has exacerbated stresses and anger within communities who are already frustrated by mining. The lack of meaningful engagement with mining affected communities has led to adverse impacts to people living in mining affected areas. It has reduced us to people with no existences and worth.

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<sup>3</sup> Liebenberg, Sandra 'Possibilities and Pitfalls of 'Meaningful Engagement' (2012) 12 African Human Rights Law Journal.

<sup>4</sup> Lillian Chenwi & Kate Tissington 'Engaging meaningfully with the government on Socio economic right: a focus on housing' March 2010 Community Law Centre (UWC) at 9

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143. The affidavits of **WAMUA** and **MEJCON** are attached to elaborate further on the effect of exclusion in the 2017 Mining processes.

#### **D:CONCLUSION**

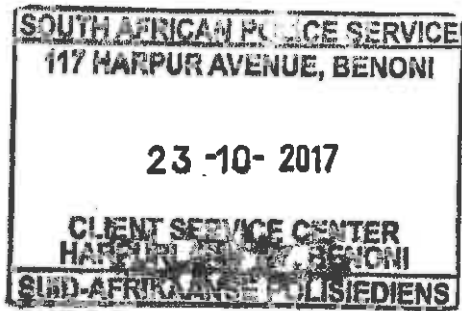
144. There can be no prejudice to the respondents should the interveners be permitted to participate in proceedings affecting them. As has been noted, this intervention application has been brought within days of the Chambers of Mines founding papers in the main application being lodged.
145. For the reasons set out above, I ask that the interveners be granted leave to intervene as applicants, and that this affidavit and its annexures be admitted as founding papers filed on behalf of the applicants.



**MESHECK MANDLENKOSI MBANGULA**

Thus signed and sworn to at BENONI Police Station on this 23<sup>rd</sup> day of OCTOBER 2017, the deponent having acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.





  
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COMMISSIONER OF OATHS

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R. M. M.

*Handwritten initials:* M. M.

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**RESOLUTION**

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We, the committee members of the **MINING AFFECTED COMMUNITIES UNITED IN ACTION (“MACUA”)**, hereby resolve and confirm that the members appoint the **CENTRE FOR APPLIED LEGAL STUDIES** as our attorneys of record, with full power of substitution to be our lawful attorney and agent in our name, place and stead, to act on our behalf and to take all steps necessary, including litigation to review the constitutionality of the Reviewed Broad-Based Black Economic Charter for the South African Mining and Minerals Industry, 2016 (“Mining Charter III”).


Further, the following members of the committee hereby resolve and confirm that:

1. Mr Meshack Mbangula is authorised to represent, and depose to affidavits on behalf of MACUA in this matter and in all related proceedings.
2. Mr Mbangula's deposition to affidavits on behalf of MACUA in the aforementioned proceedings to date is ratified.

**DATED AT** Johannesburg **ON THIS** 20<sup>th</sup> **DAY OF** Oct 2017.

**SIGNED:**

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(“MMM 2”)

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

CASE NO:

Application for intervention of as parties:

**MINING AFFECTED COMMUNITIES**

**UNITED IN ACTION**

First Applicant

**MINING AND ENVIRONMENTAL JUSTICE**

**COMMUNITY NETWORK OF SOUTH AFRICA**

Second Applicant

In the matter between:

**CHAMBER OF MINES**

First Applicant

and


**MINISTER OF MINERAL RESOURCES**

First Respondent

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**SUPPORTING AFFIDAVIT**

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g. NIN  


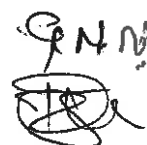
## INTRODUCTION

I the undersigned


**GLADYS NESTER NDEBELE**

Hereby state under oath that;

1. I am adult female employed as service provider at WoMin a feminist organisation that deals with issues of development on behalf of women. WoMin's offices are situated at Office 902, Floor 9, Heerengracht Building, 87 De Korte Street, Braamfontein.
2. I am the chairperson of the Women Affected United in Action ("WAMUA") a women's movement within the MACUA structure. I am duly authorised to depose to this affidavit in terms of the resolution of WAMUA.
3. Save where I state otherwise, or where the contrary appears from the context, the facts herein stated fall within my personal knowledge and I believe them to be true and correct. Where I make legal submissions, I do so on the advice of the applicants' legal representatives, which advise I accept as correct.
4. The purpose of this affidavit is two-fold. Firstly, it confirms those aspects of **Mesheck Mandlenkosi Mbangula's** affidavit that pertain to me. This affidavit also provides information relating the impacts of the lack of engagement of women members of mining affected communities and WAMUA in the negotiations and the drafting of the 2017 Mining Charter.



9. WAMUA's messaging has been towards creating a space to have the right of refusal in mining, believing in free-prior and informed consent.
10. We have also challenged the fact that when there are benefits related to mining, women are not considered. It is often the case that men are at the forefront of processes to negotiate benefits and as WAMUA we believe in revenue share for women.
11. Since our establishment we have organised campaigns, marches, workshops, training, dialogues, roundtable discussions and various submissions to different panels.
12. As WAMUA we have attended two mining Lekgotla's where big mine bosses meet with the department to discuss mining. In 2014 we attended the first mining Lekgotla in Sandton estate whereas communities affected by mining we were not given the opportunity to raise our concerns. Our members were given accreditation to be in the meeting on the conditions that they will be silent in the meeting.
13. We refused the accreditation and handed our memorandum together with MACUA to the lekgotla. While the lekgotla was in progress as communities we demonstrated outside the venue.
14. In August 2014, WAMUA attended the mining lekgotla at Gallagher Estate. WAMUA's members marched at that lekgotla and handed a memorandum to DMR, Chamber of Mines and CEO's and management of mining companies. Whenever we have handed a memorandum we have received no responses

G.N.N.  


including from DMR. This once again has worked to exacerbate the exclusion of women and mining affected communities in decisions that are taken about mining.

15. In November 2016, WAMUA made submissions to the Motlante High level panel raising issues faced by women in mining affected communities including inheritance, land and socio-economic rights.

### **ENGAGEMENT WITH THE MINING CHARTER**

16. In June 2016, WAMUA furnished recommendation in the draft People's Mining Charter to include issues affecting women. WAMUA's recommendations sought to acknowledge and eradicate the gendered imbalances affecting women in mining. It further highlighted the recognition of all marginalised groups, on the basis of gender, sex, religion, race, ethnicity and disability. A copy of the People's Mining Charter with our comments is attached and marked "GNN1." The People's Mining Charter was presented at different panels and were adopted.

17. WAMUA learnt of the Mining Charter in July 2017. A member of WAMUA informed the membership of the publication of the Mining Charter. I am not aware of how she accessed the gazette. Copies of the Mining Charter was subsequently distributed to communities.

18. We were shocked to learn of the Mining Charter. There had been no consultation with the community organisations and its constituents on the finalisation of the document.

G.N.N.  
[Signature]

19. We were not invited to any meetings on consultation on the charter. We were not informed of the Mining Charter, not even through other organisations. We are not aware of any of our members in different communities who have been consulted on the mining charter.


## **EFFECTS OF THE EXCLUSION**

20. The exclusion of WAMUA in mining developments has been very painful to us. It has affected our dignity as human beings and we are treated as 'the unseen'. Female members of Parliament, are complicit in gender discrimination, as they too fail to highlight and consider women's lived realities.

21. It appears at times that exclusion is deliberate. This is contrary to the fact that in mining affected communities and society in general we are the majority. As much as women have power, women are disempowered. The complete disregard of women by the Minister is as though culture is used to deface women in issues affecting development.

22. Patriarchy manifests through the lack of consultation with women and it aids the mining processes.


## **DEVELOPING A CULTURE OF INCLUSION**

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23. WAMUA insists to be part of the decision making processes with regards to the Mining Charter. Our participation ought to be at all processes from the working paper, drafting and implementation.
24. Mining affected communities must also be included in these processes. When consulted mining affected communities must be consulted in their mother-tongue.
25. The Mining Charter process should also prioritise the needs of hosting communities and they are included in those process.
26. The notification of meetings must be clear and circulated in advance. The notification must reflect, dates, times, venues and cater for transport of community members or alternatively, the meeting must be held at a venue that is accessible to women.
27. DMR must be transparent in their information processes and should be strict with complying of access to information protocols.



**GLADYS NESTER NDEBELE**

Thus signed and sworn to at BENONI on this 23 day of OCTOBER 2017, the deponent having acknowledged that ~~he~~<sup>she</sup> knows and 



(“mmm3”)

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

CASE NO.

Application for intervention of as parties:

**MINING AFFECTED COMMUNITIES**

**UNITED IN ACTION**

First Applicant

**MINING AND ENVIRONMENTAL JUSTICE**

**COMMUNITY NETWORK OF SOUTH AFRICA**

Second Applicant

In the matter between:

**CHAMBER OF MINES**

First applicant

and

**MINISTER OF MINERAL RESOURCES**

First Respondent

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**SUPPORTING AFFIDAVIT**

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## INTRODUCTION

I, the undersigned

**THELMA THANDEKILE NKOSI**

hereby state under oath:

1. I am an adult person with full legal capacity, residing at Madadeni, Newcastle, KwaZulu-Natal, South Africa.
2. I am the Chairperson of Mining and Environmental Justice Community Network of South Africa (MEJCON), cited herein as the first applicant and I am duly authorised to depose to this affidavit and to bring this application on its behalf. I attach, marked "TTN1", a copy of the resolution signed by the members of the committee.
3. Save where I state otherwise, or where the contrary appears from the context, the facts herein stated fall within my personal knowledge and I believe them to be true and correct. Where I make legal submissions, I do so on the advice of the applicants' legal representatives, which advice I accept as correct.

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4. The purpose of this affidavit is two-fold. Firstly, it confirms those aspects of **Mesheck Mandlenkosi Mbangula's** affidavit that pertain to me. This affidavit also provides information relating to the activities undertaken by Mining and Environmental Justice Community Network of South Africa (MEJCON) and the effects it has had on MEJCON's constituents.

## **BACKGROUND**

5. MEJCON is a network of communities, community based organisations and community members whose environmental and human rights are affected, directly or indirectly, by mining and mining-related activities.
6. MEJCON was established in 2011. We decided to establish MEJCON to mitigate the distance between communities affected by mining. The purpose was to ensure that as mining affected communities and environmental degradation we had to link our struggles. The core of MEJCON'S objective are to:
- 6.1 promote and defend the environmental and human rights of communities both directly and indirectly affected by mining, and to ensure the sustainable use of mineral resources;
- 6.2 train, develop and capacitate community members;

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- 6.3 access information including information about mining, law, rights, processes and impacts and to share and distribute that information amongst affected communities;
- 6.4 support and assist community champions, community organisations and the members of both directly and indirectly affected communities; and
- 6.5 engage all relevant role players including government at local, provincial and national level, industry, civil society organisations, non-governmental organisations, traditional authorities and the institutions created in terms of chapter 9 of the Constitution of the Republic of South Africa Act 108 of 1996.
7. Since our establishment we have been involved with the capacitation of communities on the impact of mining. We have been workshoping communities where prospective mining would take place with information of mining in order for them to decide whether they want mining.
8. MEJCON has also been part of the Alternative Mining Indaba, where we would picket outside the Mining Indaba to raise our issues. Together with MACUA, MEJCON was part of forming the Peoples Mining Charter which was adopted in June 2016.

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9. MEJCON was not invited to attend the meeting on the Mining Charter in Pretoria in July 2016. MEJCON was informed of the meeting by the Centre for Environmental Rights.
10. At the meeting, MEJCON presented and was given approximately 20 minutes to present. MEJCON raised the lack of consultation with communities on the basis that communication is done through the medium of traditional leadership. Traditional leaders are the body consulted with on issues affecting communities. Traditional authorities have proved to be acting only in their interest and building relationships with mining companies and government. Traditional authorities have been custodians of mining on behalf of communities when the benefits of mining have only been for themselves.
11. Our presentation further emphasised the importance of consultation with communities in prospecting processes. We informed DMR that communities are interested parties that needed to be consulted. Finally, we reiterated that consultation must be conducted in languages that are understood by the people.
12. On 23 June 2017, a meeting was held in Middelburg. The meeting was disrupted by community members when they insisted that the Premier of Mpumalanga should address the gathering. The Minister was therefore unable to address the community on the Mining Charter.

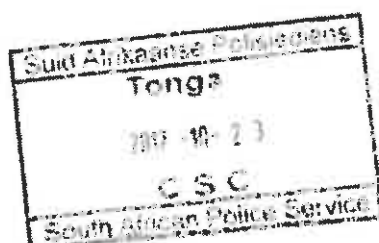
## EFFECTS OF EXCLUSION

13. The lack of consultation amounts to unfair administrative practices. Communities are an important stakeholder in the process yet their voices are not included in the Mining Charter.
14. The lack of consultation is further an infringement to rights of the community, and in particular our rights to equality.
15. The environment in which communities reside would not be protected. Mining further impacts people socially and the lack of meaningful engagement would adversely impact the social issues in our communities.

*Thelma Thandekile Nkosi*

THELMA THANDEKILE NKOSI

Thus signed and sworn to at Tonga on this 28 day of October 2017, the deponent having acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that he considers the oath to be binding on his conscience.



*[Signature]*

COMMISSIONER OF OATHS

(TTN1)

## RESOLUTION


We, the committee members of the **MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA ("MEJCON-SA")**, hereby resolve and confirm that the members of MEJCON-SA appoint the **CENTRE FOR APPLIED LEGAL STUDIES** as our attorneys of record, with full power of substitution to be our lawful attorney and agent in our name, place and stead, to act on our behalf and to take all steps necessary, including litigation to review the constitutionality of the Reviewed Broad-Based Black Economic Charter for the South African Mining and Minerals Industry, 2016 ("Mining Charter III").

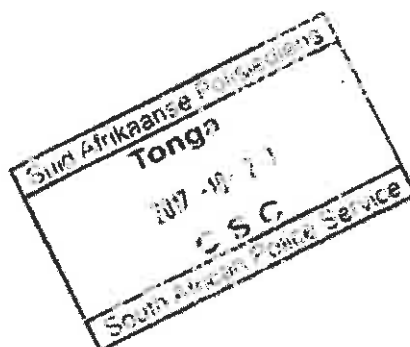
Further, the following members of the committee hereby resolve and confirm that:

1. Ms Thelma Nkosi is authorised to represent, and depose to affidavits on behalf of MEJCON-SA in this matter and in all related proceedings.
2. Ms Nkosi's deposition to affidavits on behalf of MEJCON-SA in the aforementioned proceedings to date is ratified.

DATED AT Johannesburg ON THIS 27<sup>th</sup> DAY OF Oct 2017.

SIGNED:

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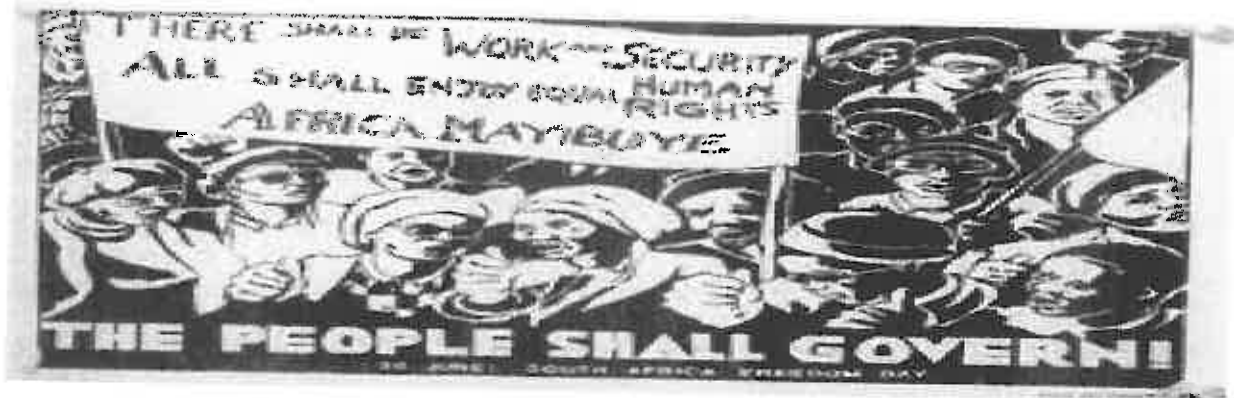
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# Mining Affected Communities United In Action MACUA

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Following a dialogue among mining affected communities, representing communities in 8 provinces across South Africa, during 2-5 December 2012, a coordinating committee was elected to begin the process of uniting communities in a broad movement aimed at presenting the voice of communities who have not been consulted in the process of allocating mining licenses, development of communities and the distribution of mining income and who bear the brunt of the health and environmental degradation and impact of mining.

A new expanded Coordinating Committee was elected in March 2014.

To this end the Coordinating Committee has embarked upon a process of consultation and collaboration with a range of mining stakeholders including workers, civil society organisations and communities, with a view to building a network of mining affected communities with a broad consensus on a campaign to gather a comprehensive mandate from mining affected communities, which will be formulated in a Peoples Mining Charter.

For many years now communities have been struggling to present a formidable opposition to the mining houses and the super exploitation of our natural resources, our land and our communities.

Our struggles have had questionable success in producing real change for communities but have been particularly effective in raising the awareness and consciousness of the communities affected by mining and last year saw arguably the biggest and most representative gathering of communities. This was by any standards a huge step forward and needs to not only be celebrated, but must be turned into a vehicle for real change.

The financial strength of the mining houses provides the owners and managers of capital in the industry with an almost untouchable financial might, imbuing it with the ability and freedom to operate and, invest when and how it deems fit without consulting communities.

All stakeholders in mining with the exception of shareholders and management are taking a smaller piece of the pie especially the communities affected by mining. The figures for communities are grim. Poverty levels have increased and unemployment has risen to epidemic levels.

M. M. [Signature]

Mining companies are determined to hold onto and increase their exorbitant profits and have proceeded to assert their dominance, through threats of retrenchments and its use of state apparatus to shoot and kill those who present a challenge to its strategy of accumulating profits at the expense of workers and communities.

The mobilization of communities and other organized forces such as labour has always been our most potent weapon, and one which has a long history within the South African context. It is this weapon that must form the backbone of our struggle to free our people from poverty and exploitation.

### **Mining Affected Communities are Fragmented**

All oppressive and exploitative regimes in history have always sort to fragment and divide their populations, that is to say, they have propagated an individualistic approach which isolates person from person and community from community. This makes it easier to control the population and to impose its own agenda. Even though individuals and single communities may take on heroic struggles with the mining houses and government, *isolated action, no matter how noble, is impotent.*

### **Mining Affected Communities must claim their Agency**

**Our starting point must be that mining affected communities have AGENCY and that they are willing and able to take up the fight around the issues that affect them.**

Oppressors and exploiters the world over have always existed because of the Internal Power Distribution. That is to say, they exist because they do not face a determined and committed people who are willing to assert their power within society.

### **Our tasks and Aims of MACUA:**

1. We seek to strengthen people living in poverty, especially women, and the communities affected by mining to build their determination, self confidence and resistance skills.
2. We seek to strengthen independent social groups, organisations and institutions of people living in poverty and affected by mining and build unity across the sector.
3. We seek to create a powerful internal movement of mining affected communities united around the concept of a Peoples Mining Charter and Economic and Social Justice.
4. We aim to develop a Strategy Plan to support and build a network of mining affected communities as a social movement for change.

### **Principles and core values to which affiliating organisations must subscribe:**

1. Economic and Social Justice
2. Participatory Democracy and inclusive decision making
3. Respect for Human Rights
4. Promotion and Respect for Women's Rights
5. Respect for Cultural Diversity

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6. **Equitable Sustainable Development**
7. **Solidarity with People living in Poverty**
8. **People Before Profits**
9. **Non Partisan**
10. **Non Sectarian**

### **Structure of MACUA**

MACUA is made up of over 50 organisations who work in mining affected communities across the country and has a Coordinating Committee made up of 2 representatives per province (One male and one female)

The Coordinating Committee has an elected secretariat made-up of a national organiser, Secretary, treasurer and Women's (WAMUA or Women Affected by Mining United in Action) delegate.

The Coordinating Committee members are also tasked with the responsibility of organising regions of mining affected communities as well as signing up individual community based organisations to MACUA.

The General Assembly of member organisations is the supreme decision making structure of MACUA.

Provincial Coordinators hold monthly meetings with member organisations in each province to plan activities, share information and obtain mandates for the National CC.

### **Membership:**

1. **Full Membership with full voting rights and eligibility to stand for elections, will apply only to those community organisations that have completed an application form and who subscribe to the Principles and Values of MACUA**
2. **Associate Membership (with observer status and no voting rights and no eligibility for elections) will apply to those non-partisan and non-profit organisations that have not formally affiliated to MACUA but who share and subscribe to its principles.**

A handwritten signature in black ink, appearing to be 'M. M. [unclear]'.



Mining and Environmental Justice Community Network of South Africa

**CONSTITUTION  
OF THE  
MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF  
SOUTH AFRICA  
(as amended in February 2017)**

**1. CONSTITUTION**

- 1.1. There shall be constituted a body known as the Mining and Environmental Justice Community Network of South Africa (“**MEJCON-SA**”).
- 1.2. The provisions herein contained shall be known as the Constitution of the MEJCON-SA, which provisions may be altered by a majority of those members present at a general meeting of members, save:
- 1.2.1. that the precise terms of any proposed alteration shall be set out in the notice convening the meeting; and
- 1.2.2. the purpose and objects of the MEJCON-SA shall not be altered without the consent of 75% of all the members.

**2. OBJECTIVES**

- 2.1. The objectives of the MEJCON-SA shall be:
- 2.1.1. To promote and defend the environmental and human rights of communities both directly and indirectly affected by mining; and to ensure the sustainable use of mineral resources;
- 2.1.2. to train, develop and capacitate community members;
- 2.1.3. to access information including information about mining, law, rights, processes and impacts and to share and distribute that information amongst affected communities;

2.1.4.to support and assist community champions, community organisations and the members of both directly and indirectly affected communities; and

2.1.5.to engage all relevant roleplayers including government at local, provincial and national level, industry, civil society organisations, non-governmental organisations, traditional authorities and the institutions created in terms of chapter 9 of the Constitution of the Republic of South Africa Act 108 of 1996.

### **3. SCOPE**

MEJCON-SA is open to all communities, community based organisations and individuals from different parts of South Africa whose environmental and human rights are affected, directly or indirectly, by mining and related activities.

### **4. MANAGEMENT AND STRUCTURE**

4.1. **MEJCON-SA** Shall consist of the following structures, all of which must, as far as possible, be representative of male and female membership of MEJCON-SA:

4.1.1. The National Steering Committee; and

4.1.2. Regional Committees

#### **4.2. National Steering Committee ("Committee")**

4.2.1. Committee membership shall consist of:

4.2.1.1.1. a Chairperson;

4.2.1.1.2. a Vice-Chairperson;

4.2.1.1.3. a Treasurer;

4.2.1.1.4. a Secretary; and

4.2.1.1.5. 3 (THREE) ordinary members.

4.2.2. The Committee may also elect to appoint an additional 3 (THREE) non-voting members who have specialist skills or qualifications that enable them to advise the Committee on matters

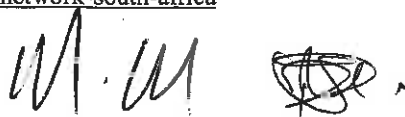
pertaining to law, environment or any other matters related to the rights and interests of

c/o Centre for Environmental Rights, Second Floor, Springfield Studios, 1 Scott Street, Observatory, Cape Town, 7925  
Tel: 021 447 1647; email: [mejcon-sa@gmail.com](mailto:mejcon-sa@gmail.com); web: <http://cer.org.za/programmes/mining/communities/mining-environmental-justice-community-network-south-africa>

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communities affected by mining ("**expert members**"). Expert members remain in office until they are removed from office by majority vote of the Committee.

- 4.2.3. Committee membership will expire after a 24 month period from the date of assumption of office.
- 4.2.4. Retiring committee members are eligible for re-election.
- 4.2.5. Only members of the MEJCON-SA, who are in good standing, are eligible for election as committee members, the only exception being the three expert members of the Committee.
- 4.2.6. Should a committee member wish to vacate his/her membership, she/he must do so on one calendar month's written notice.
- 4.2.7. The Committee must send out notice to MEJCON-SA in the event of a vacancy on the Committee. The Committee may co-opt a member to the Committee for the remaining period of the term of office.
- 4.2.8. The Committee may appoint sub-committees as it deems fit in its discretion.
- 4.2.9. Each sub-committee shall be chaired by a committee member and may consist of so many members as the Committee may decide from time to time.
- 4.2.10. A sub-committee may co-opt any member to such sub-committee.
- 4.2.11. Members of the Committee and any sub-committees must be in good standing: members must not have been convicted of fraud or any other crime involving dishonesty in the past ten years preceding their nomination for membership.
- 4.2.12. In the event that a Committee member conducts him or herself in a manner that is likely to bring MEJCON-SA into disrepute or which is dishonest, or which is an abuse of his or her position, the Committee may, by majority vote, vote to remove such person from the Committee.
- 4.2.13. Prior to a vote in accordance with 4.2.12, the Committee shall assess the alleged misconduct and shall provide the person concerned with an opportunity to make representations to the Committee.

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#### 4.3 Regional Committees

4.3.1 A list of the established Regional Committees appears in Addendum A, which will be updated by the National Steering Committee from time to time.

#### 4.3.2 Regional Committee membership:

4.3.2.1 Each Regional Committee will determine its own composition depending on the specific needs of that region.

#### 4.3.3 Reporting:

4.3.3.1 The Regional Coordinator for each region shall report to the National Steering Committee every six months.

### 5. MEMBERSHIP

5.1. Applications for membership shall be made in writing to the Committee who will decide whether to approve such application by way of a majority vote. The Committee may, but is not obliged to, give reasons for their decision to refuse an application for membership.

5.2. Membership is not transferable.

5.3. The Committee must keep a register with the names and addresses of all members.

5.4. Membership is terminated if a member is removed by a majority vote of the Committee, provided that the member has been given an opportunity to make written or verbal representations at a meeting of the Committee pertaining to the proposed termination. The Committee's decision to terminate membership must be confirmed by a majority vote at the next general meeting, otherwise it will lapse.

### 6. TERMINATION OF MEMBERSHIP

6.1. A member may resign from MEJCON-SA membership by giving 60 days' written notice to the Secretary of the Committee.

6.2. Membership of the Committee or a Regional Committee is terminated if a member is removed by a majority vote of the Committee or a relevant Regional Committee, as the case maybe, subject to 6.4 below.



6.3. Ordinary membership may be, subject to clause 6.4 below, be terminated under the following circumstances:

6.3.1. when a member contravenes a provision of this Constitution, or a policy adopted by Committee;

6.3.2. when the Committee deems a member to be inactive and/or unresponsive;

6.3.3. upon the death of a member; or

6.3.4. when a member no longer qualifies for MEJCON-SA membership.

6.4. Membership cannot be terminated unless the member has an opportunity to make written or verbal representations to the National Steering Committee before the decision is taken, unless such member cannot be contacted by the Committee.

## 7. MEETINGS

### 7.1. Annual General Meeting (AGM)

7.1.1. The annual general meeting will be held within fifteen months of the previous AGM.

7.1.2. All MEJCON-SA members will be notified at least 14 days before the date of the AGM.

7.1.3. At the annual general meeting, the Committee will present a report of MEJCON-SA's activities and the accounts of MEJCON-SA for the previous year.

7.1.4. A new Committee shall be elected at each AGM by majority vote. All members shall be given the opportunity to cast one vote for a nominee of his or her choice. Members unable to attend an AGM shall be permitted to vote prior to the AGM by SMS or otherwise.

7.1.5. A minimum of 10% (TEN PERCENT) or 7 (SEVEN) members (whichever is the greater number) will constitute a quorum.

7.1.6. All decisions shall be taken by a majority vote.

### 7.2. Committee meetings:

7.2.1. The Committee shall meet at least once every 2 (TWO) months.

M. M. [Signature]




- 7.2.2. Committee meetings shall be convened by the Secretary on the instructions of the Chairperson or Vice-chairperson or when half the members of the National Steering Committee jointly in writing or verbally request that such meeting be convened.
- 7.2.3. Committee decisions shall be made by majority voting. In the event of the voting being equal, the Chairperson shall have a casting vote.
- 7.2.4. A minimum of 75% (SEVENTY FIVE PERCENT) will constitute a quorum for the purposes of Committee decision-making.
- 7.2.5. Should a Committee member absent him/herself from two successive Committee meetings without valid reason, he/she shall forfeit his/her Committee membership on the decision of the Committee.

## 8. VOTING

- 8.1. Each registered member has one vote at meetings.
- 8.2. Any registered member may nominate any MEJCON-SA member for Committee membership either in writing, by SMS, or telephonically.
- 8.3. Any registered member may vote for nominees at AGMs by casting a vote at an AGM, or prior to an AGM in writing, by SMS, or telephonically.

## 9. INCORPORATION

- 9.1. The MEJCON-SA is not formed and does not exist for the purpose of carrying on any business that has for its object the acquisition of gain by the MEJCON-SA or its individual members. The income and assets of the MEJCON-SA shall be applied solely for investment and for the promotion of the objects for which it is established.
- 9.2. The MEJCON-SA is and shall continue to be a distinct and separate legal entity and shall be capable in its own name of suing and being sued and of purchasing or otherwise acquiring, holding or alienating property, whether movable or immovable, and/or any interest therein and open a banking account in its own name.
- 9.3. The MEJCON-SA will continue to exist even if the members change.

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- 9.4. If and where necessary it may appoint one or more of its members to hold any property in trust for it or to act for it in any matter including legal proceedings.

## **7 FINANCES**

- 7.1 All the income of the MEJCON-SA shall be deposited in an account at a bank and/or other approved financial institution. Any two members, consisting of the chairman, vice-chairman, secretary or treasurer, shall be empowered to withdraw funds for the use of the MEJCON-SA.
- 7.2 Proper accounts shall be kept of all finances of the MEJCON-SA as set out in the regulations published in terms of the Fundraising Act, 1978.
- 7.3 A financial report shall be produced by the treasurer at the annual general meeting or upon request from the Committee.
- 7.4 Financial contributions will be collected from all persons and/or organizations, worldwide, which support the objects of the organization.
- 7.5 No member shall be held responsible for any expense. Contributions, towards the expenses of the MEJCON-SA are on a strictly voluntary basis.
- 7.6 Authorization to withdraw or access funds from the MEJCON-SA account can only be done in writing.

## **10. DISPUTE RESOLUTION**

- 10.1. In the event of any disputes arising in regard to the interpretation of this Constitution or in regard to any other matter arising from this Constitution, the matter in dispute shall be decided by a majority decision of all the committee members.
- 10.2. Any MEJCON-SA member may dispute the decision of the Committee and shall have the right to refer the matter to arbitration.
- 10.3. The decision of the arbitrator in any such arbitration shall be final and binding upon each member of the MEJCON-SA.
- 10.4. The arbitrator shall be appointed by mutual agreement of the parties, and failing such agreement within 15 days, the arbitrator shall be appointed by the Arbitration Foundation of South Africa. The arbitration shall be held in accordance with the rules of the Arbitration Foundation of South Africa.



## 11. DISSOLUTION

11.1. MEJCON-SA may be dissolved, or merged with any other association with similar purposes and objects in each case only:

11.1.1. on a resolution passed by the majority of members present at a duly constituted general or special general meeting of members; or

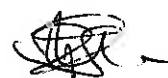
11.1.2. on an application to a court of law by any member on the ground that MEJCON-SA has become dormant or is unable to fulfill its purpose and objects.

11.2. On dissolution, the assets of MEJCON-SA shall be realized by a liquidator appointed by the general meeting or the court, as the case may be, and the proceeds shall be distributed equally amongst such Groups with similar objects as may be nominated by the last committee of MEJCON-SA.

## 12. MISCELLANEOUS

12.1. Every officer and member of MEJCON-SA shall be entitled at all reasonable times to inspect all books of account and other documents of MEJCON-SA which the custodian thereof shall accordingly be obliged to produce.

12.2. Every member of the Committee, or sub-committee, officer, member, agent or servant of MEJCON-SA shall be indemnified out of its funds against all costs, charges, expenses, losses and liabilities incurred by him/her in the conduct of MEJCON-SA's business, or in the discharge of his/her duties and no person shall be liable for the acts or omissions of any other such person by reason of his having joined in any receipt of money not received by him/her personally, or for any loss on account of his/her defect in title to any property acquired by MEJCON-SA, or on account of the insufficiency of any security in or upon which moneys of MEJCON-SA shall be invested, or for any loss incurred upon any ground whatever.



## **ADDENDUM A**

1. Regional Committees have been established in respect of the following regions:
  - a. Sekhukhune, Limpopo;
  - b. Mokopane, Limpopo;
  - c. Madadeni, Mpumalanga;
  - d. Mtubatuba, KwaZulu-Natal; and
  - e. West Rand, Gauteng.

14.11 

(cc MMR0001)

**GOITSEONA PILANE ATTORNEYS INC.**  
Mobile: +27 83 445 3437

Our Ref: Mr G Pilane/MMR0001

Your ref: CMI260/Mr A Vos/Ms K Kalan/Ms J Pinto

Date: 13 September 2017

NORTON ROSE FULBRIGHT SOUTH AFRICA Inc.

By email to: [andre.vos@nortonrosefulbright.com](mailto:andre.vos@nortonrosefulbright.com)

Dear Mr. Vos

**RE: CASE NUMBER 43621/17: HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION,  
PRETORIA – THE MINISTER’S UNDERTAKING**

1. The Minister gives the following undertaking:
  - 1.1. The Minister, including his delegates and other officials and functionaries of the Department of Mineral Resources, undertakes not to implement or apply the provisions of the 2017 Mining Charter in any way, directly or indirectly, pending the judgement in the review application set down for hearing on 13 and 14 December 2017 under case number 43621/17;
  - 1.2. If the Minister makes any reference in public to the 2017 Mining Charter, the Minister will simultaneously make reference to the undertaking given in paragraph 1.1 above and that the Chamber of Mines of South Africa has brought review proceedings in the High Court of South Africa, Gauteng Division, Pretoria to set aside the 2017 Mining Charter;
2. By agreement between the parties the undertaking will be noted by the High Court of South Africa, Gauteng Division, Pretoria on Thursday 14 September 2017.
3. The parties will also, by agreement, request that the High Court of South Africa, Gauteng Division, Pretoria reserve costs relating to the urgent Interdict application set down for 14 and 15 September 2017 under case number 43621/17.
4. The undertaking contained in paragraph 1 above, is given without any concessions made by the Minister or any admission of the merits by the Minister in respect of the Chamber's urgent Interdict application and / or the review application.
5. The Chamber has agreed to the Minister's request that the review be heard on an expedited basis by a full bench and to that end 13 and 14 December 2017 has been allocated for the hearing of the review.

14.14

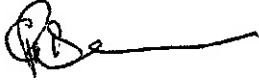


**GOITSEONA PILANE ATTORNEYS INC.**

Mobile: +27 83 445 3437

6. For ease of reference, we attach a schedule setting out the agreed procedural timetable for the exchange of the papers by the parties (including the National Union of Mine Workers) and the date of the hearing of the review application before a full bench.

Kind Regards



---

Goitse Pilane

Copied to: Mr Finger Phukubje, Director, Finger Phukubje Attorneys  
also copied to: Mr Modisane, Finger Phukubje Attorneys  
Attorneys for the Intervening Party



**The Chamber of Mines of South Africa v The Minister of Mineral Resources  
Case No. 43621/17  
The High Court of South Africa, Gauteng Division, Pretoria  
Review Application to be heard 13 and 14 December 2017**

	<b>Service / Filing / Activity</b>	
1.	Submission of the record	19 September 2017
2.	Filing of the Review Application	17 October 2017
3.	Filing of the Minister's and the National Union of Mine Workers' ("NUM") Answering Affidavit	10 November 2017
4.	Filing of the Chamber's Replying Affidavit	22 November 2017
5.	Filing of the Chamber's Heads of Argument	30 November 2017
6.	Filing of the Minister's and NUM's Heads of Argument	5 December 2017
7.	Review Application to be heard by a full bench	13 & 14 December 2017

M. M.





Centre for Applied  
Legal Studies

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Private Bag 3 Wits University 2050 South Africa  
Tel + 27 11 717-8600 Fax + 27 11 717 1702  
[www.law.wits.ac.za/cals](http://www.law.wits.ac.za/cals)

(COMM 71)

Ref: BHR/0069/WP  
11 October 2017

**ATT: THE REGISTRAR OF THE HONOURABLE  
DEPUTY JUDGE PRESIDENT**

Per email: [pvwyk@justice.gov.za](mailto:pvwyk@justice.gov.za)

**Copied to: NORTON ROSE FULBRIGHT  
Attorneys for the Applicant (Chamber of Mines)**

Attention: Mr Andre Vos; Ms Kirthi Kalyan

Per email: [andre.vos@nortonrosefulbright.com](mailto:andre.vos@nortonrosefulbright.com); [kirthi.kalyan@nortonrosefulbright.com](mailto:kirthi.kalyan@nortonrosefulbright.com)

Ref: CMI261/Mr AP Vos/Ms K Kalan

**Copied to: GOITSEONA PILANE ATTORNEYS INC.  
Attorneys for the Respondent (Minister of Mineral Resources)**

Attention: Mr Goitse Pilane

Per email: [goitse@pilaneinc.co.za](mailto:goitse@pilaneinc.co.za)

Ref: Mr G Pilane / MMR0001

**Copied to: FINGER PHUKUBJE ATTORNEYS  
Attorneys for the Intervening Party (NUM)**

Attention: Mr Phukubje, Mr Modisane

Email: [chris@fpinc.co.za](mailto:chris@fpinc.co.za)  
[mothusi@fpinc.co.za](mailto:mothusi@fpinc.co.za)

Dear Deputy Judge President

**RE: CHAMBER OF MINES // MINISTER OF MINERAL RESOURCES  
Case number: 51434/17**

1. We write to you on behalf the Mining and Environmental Justice Community Network of South Africa ("MEJCON") and the Mining Affected Communities United in Action ("MACUA"). MEJCON and MACUA are coalitions of mining affected communities who submit that they ought to have been consulted in the drafting of the 2017 Mining Charter as key stakeholders in the mining industry, as beneficiaries of the Mineral and

Faculty of Commerce, Law and Management  
University of the Witwatersrand



M. M.

[Signature]



Petroleum Resources Development Act and of the 2004, 2008 and 2017 Mining Charters.

2. We have recently learned that the above matter has been set down for hearing by special allocation on **13 and 14 December 2017**.

3. We wish to bring it to the Deputy Judge President's attention that MEJCON and MACUA intend filing an application to intervene in this matter as a party, on an expedited basis, due to their direct and substantial interest in its outcome:

- 3.1. The 2017 Mining Charter has direct implications for mining affected communities. The purported aim of the Charter is to substantially and meaningfully expand opportunities for Black Persons to enter the mining and minerals industry and to benefit from the exploitation of the country's mineral resources. Mining affected communities who are largely black persons should be included in the determination of how those opportunities are to be expanded.

- 3.2. The 2017 iteration of the Charter is specifically community-oriented with numerous references to the "Mine Community" as well as aligning more purposely with the Social and Labour Plan System which, along with the Mining Charter, is the core mechanism for worker and community benefit, development and transformation.

- 3.3. A participation process for a document regulating the mining sector that does not accord equal status to a social group fundamentally impacted by mining is, in itself, procedurally unfair and fatally flawed. The objectives and types of targets contained in the Mining Charter are of direct relevance to mine affected communities and directly affect their rights and interest.

4. MEJCON and MACUA seek leave to intervene to be admitted as a party, and to seek *inter alia* further relief:

- 4.1. Reviewing and setting aside the 2017 Mining Charter for lack of meaningful engagement in the drafting of the Charter with mining affected communities as key stakeholders;



- 4.2. Declaring that the mining affected communities are a key stakeholder in all negotiation and engagement on any further Charter.
5. We are cognizant of the hearing dates and time frames set by the Deputy Judge President, and intend to bring this application within those timeframes.
6. MEJCON and MACUA intend filing their Application to Intervene and Founding Affidavit by **24 October 2017**, and will seek the court's leave for this application to be heard and determined at the start of the hearing on 13 December 2017. Our clients do not intend to prejudice the dates of the hearing, and propose and undertake to meet the following timeframes for the filing of their pleadings, or as may be directed by the Deputy Judge President:
- 17 October: Chamber of Mines Supplementary Affidavit
- 24 October: **MEJCON & MACUA Intervention Application and Founding Affidavit**
- 10 November: Department of Mineral Resources Answering Affidavit;  
**Answering Affidavits to MEJCON & MACUA**
- 22 November: Chamber of Mines Replying Affidavit;  
**MEJCON & MACUA Replying Affidavits**
- 30 November: Chamber of Mines Heads of Argument
- 5 December: Department of Mineral Resources Heads of Argument;  
**MEJCON & MACUA Heads of Argument.**
7. We kindly request that we be notified should such timeframes change with further affidavits filed by the parties.
8. Please feel free to contact us at the contact details set out below.

Yours sincerely,



**Wandisa Phama**



Attorney: Centre for Applied Legal Studies

Telephone: +2711 717 8608

Mobile: +27 78 684 3140

Email: Wandisa.Phama@wits.ac.za

**Louis Snyman**

Attorney: Centre for Applied Legal Studies

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Reception: +2711 717 8600



(“MMM 8”)

**GOITSEONA PILANE ATTORNEYS INC.**

Mobile: +27 83 445 3437

Our Ref: Mr G Pilane/MMR0001

Your ref: The Judge President D Mlambo  
and Deputy Judge President A P Ledwaba

Date: 12 October 2017

The Honourable Justice D Mlambo and Justice A P Ledwaba  
Office of the Judge President & the Deputy Judge President  
High Court of South Africa  
Gauteng Provincial Division, Pretoria  
Cnr Madiba & Paul Kruger Streets  
Pretoria

By email to: [Ndungane@judiciary.org.za](mailto:Ndungane@judiciary.org.za)

Copied to: [KRamokoka@judiciary.org.za](mailto:KRamokoka@judiciary.org.za)

Dear Judge President Mlambo & Deputy Judge President Ledwaba

**RE: Judicial Review Application 2017 Mining Charter: Chamber of Mines of SA v Minister of Mineral Resources, case number 43621/17**

1. We act for the respondent, the Minister of Mineral Resources ("our client") in the above review application.
2. Norton Rose (per Mr Andre Vos) acts for the applicant, the Chamber of Mines of South Africa.
3. We refer to the correspondence from Mr Vos copied to yourself and dated 11 October 2017. We also refer to the various letters written by parties who seek leave to intervene in this review application.
4. We are instructed that our client will abide the decision of the court in relation to every application for intervention by any third party who seeks leave to intervene, provided that the following conditions are abided by:
  - 4.1. To the extent that any third party wishes to make any submission that might warrant a response from our client, their full application must be delivered on the same date as the founding papers of the chamber of mines', and strictly in accordance with the agreed upon timetable;
  - 4.2. No third party should be allowed to deliver any papers that might warrant a response from our client after the due date for delivery of the chamber of mines' founding papers; and
  - 4.3. The application for intervention and intervention of any third party should not in any way jeopardise the agreed upon timetable for the hearing of the matter.



**GOITSEONA PILANE ATTORNEYS INC.**

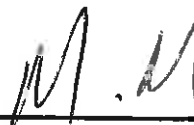
Mobile: +27 83 445 3437

**Copied to:**

Michael Clements and Louise Du Plessis, Lawyers for Human Rights

Michael@lhr.org.za & Louise@lhr.org.za

Attorneys for the Intervening Parties (Lesetheng Community, Sifikile Community, Babina Phuthi-Ba-Ga-Makola Community and Kgatlu Community)



(11MM911)

13 October 2017

By Email: [Wandisa.Phama@wits.ac.za](mailto:Wandisa.Phama@wits.ac.za)

Centre for Applied Legal Studies

## NORTON ROSE FULBRIGHT

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Your reference      Our reference  
BHR/0069/WP      CMI259/Mr AP Vos

Dear Sirs

### The Chamber of Mines of South Africa / Minister of Mineral Resources – High Court of South Africa, Gauteng Division, Pretoria – judicial review application in respect of Reviewed Mining Charter, 2017

- 1 We refer to your letter of 11 October 2017 addressed to the Honourable Deputy Judge President of the Gauteng Division, Pretoria, of the High Court of South Africa. We are instructed to respond to your letter as set out below.
- 2 You cited in the heading of your letter the matter under case number 51434/17. That matter related to a notice which the Minister purported to issue in terms of s49 of the *Mineral and Petroleum Resources Development Act, 2002 (MPRDA)*. The application was disposed of on 4 August 2017, by agreement between the parties, and a court order issued on that date. We **attach** a copy of the court order.
- 3 To the extent that your letter expresses your clients' intention to intervene in the judicial review application, to be instituted by our client, the Chamber of Mines of South Africa, against the Minister, this review application has not yet been instituted. In accordance with the directions of the Judge President (not the Deputy Judge President, to whom you addressed your letter), the review application has to be instituted by 17 October 2017. Accordingly, there is presently no application in which your clients can apply to intervene.
- 4 We are instructed that our client does not consent to your clients' irregular "request" for intervention in the Chamber's intended review application, including for the following reasons:
  - 4.1 The process you propose in paragraph 6 of your letter is irregular, does not accord with the court rules and practice and will, if implemented, prejudice the Chamber.
  - 4.2 It was improper of you to have addressed a letter to the Honourable Deputy Judge President, without first engaging with the parties. Your clients have disclosed no basis to justify a deviation from the normal rules of court for the hearing of your clients' proposed application. We specifically record that our client disputes that there is any basis for your clients' proposed intervention application to be determined as a matter of urgency, either on the dates proposed in paragraph 6 of your letter or at all. Our client specifically reserves the right to oppose the application foreshadowed in paragraph 6 of your letter on the basis of lack of urgency.

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Norton Rose Fulbright South Africa Inc (Rz) No 1994/003305/21. Directors: SWM Gule (chairman) O Dineke (chief executive officer) K Akele M Alexander G Anthony LA Aetebok BH Samati H Bhebe BE Sedha GG Seuser FA Brochner BR Braker AJ Chaguel M Chetsoos St Chammy C Coates KR Cron MO Dale V David BM Denny AGS Dixon L Fane BB Harber MJ Hart MC Harwood RB Jansen HJ Jansen van Rensburg J Jones GCB Kania De Kouske ZS Khabitsa AP Koller BJ Konye-Good DS Kuzile L Kwa JM Kwan HY Lister IS Luter RJP Lake PE Lembe WP Jo Rone RDB Lomas LN Louw LL Masegula RL Mawani EJ McCord DL McDermid K Mergal JE Midlane RA Morasa AA Moselele PH Ntshane HO Nkomo GA Ntshale L Oberholzer MJ Osborn RP Polarsen M Phipps DR Pitya CJ Pretorius GJ Rastoweyer L Rach D Reddy V Reddy APM Robinson CD Rodriguez Y Rungani-Lumy AP Sabhase A Singh S Silhele AK Strachan CK Theodosiou R Thabani M van der Westhuizen JG van Dijk C van Vuuren AP Vos M Wagener AP Welland JJ Whyte LE Williams G Woolley

Consultant: JNR Coldroy PM Christie MR Gibson RJ Hovell AP Williams

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13 October 2017

 NORTON ROSE FULBRIGHT

- 4.3 None of the allegations which you advance in your letter supports the contention that your clients are entitled to intervene as parties in the Chamber's prospective review application.
- 4.4 The issues you mention in paragraph 4 of your letter will raise questions of law and fact which are not substantially the same than those which will arise in the review application to be brought by the Chamber.
- 4.5 In paragraph 2 of your letter you state that you have recently learnt that "the above matter" is set down for hearing on 13 and 14 December 2017. As we have indicated above, it is not "the above matter", but the review application to be instituted which will be heard on those dates.
- 4.6 It has been well-known in the public domain since the publication on 15 June 2017 in the Government Gazette that the Chamber intended to apply to have the 2017 Charter judicially reviewed and set aside. Yet, your clients express an "interest" in the matter for the first time four months later, after the commencement of the process sanctioned by the Judge President and agreed between the parties. It will not be in the interest of justice or the national interest to allow your clients, who for unexplained reasons failed to bring its own proceedings, at this late stage in an agreed process to potentially derail the Chamber's application, as is a necessary implication of the steps proposed in your letter.
- 5 In the circumstances, your clients ought to bring their own judicial review application, and not seek to intervene in the Chamber's application. The outcome of the Chamber's application will not prejudice your clients' rights or interests and you have not identified in your letter facts which would entitle your clients to join in the review application when it is brought.
- 6 We will send a copy of your letter and our reply to the Judge President.
- 7 We copy the Minister's attorney in this letter.
- 8 All our client's rights are reserved.

Yours faithfully



Andre Vos  
Director  
Norton Rose Fulbright South Africa Inc

Copies to :     The Honourable Justice D Mlambo  
                    Office of the Judge President  
                    High Court of South Africa, Gauteng Division, Pretoria  
                    [Ndungane@judiciary.org.za](mailto:Ndungane@judiciary.org.za)

                    The Honourable Justice AP Ledwaba  
                    Office of the Deputy Judge President  
                    High Court of South Africa, Gauteng Division, Pretoria  
                    [KRamokoka@judiciary.org.za](mailto:KRamokoka@judiciary.org.za)

                    Mr Goitse Pilane, Goitseona Pilane Inc Attorneys  
                    Attorneys for respondent  
                    [goitse@pilaneinc.co.za](mailto:goitse@pilaneinc.co.za)



"X"

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Before Judge: Monama  
4 August 2017

Case No: 51434/17

In the matter between:

The Chamber of Mines of South Africa

Applicant

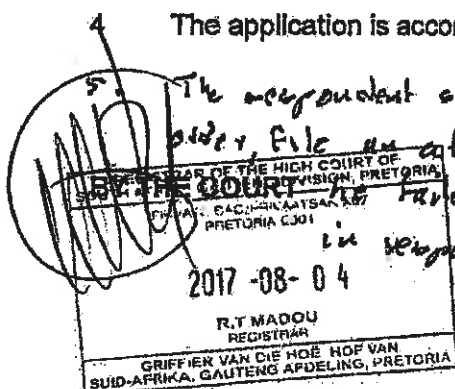
and

Minister of Mineral Resources

Respondent

DRAFT ORDER

- 1 The parties record that the respondent, the Minister of Mineral Resources, has formally stated that he does not intend taking any of the steps contemplated in Notice 692 published on 19 July 2017 in Government Gazette No. 40989.
- 2 In the circumstances the parties are agreed that the application be postponed *sine die* and that the costs be reserved.
- 3 The parties are desirous that the above recordal and agreement be made an order of court.
- 4 The application is accordingly postponed *sine die*, costs reserved.



4/56



(11 MMM 10<sup>11</sup>)

Mining Affected Communities United in Action

MACUA

Meshack Mbangula – National Organiser

[mbangulam@gmail.com](mailto:mbangulam@gmail.com)

C/O: [Christopher.Rutledge@actionaid.org](mailto:Christopher.Rutledge@actionaid.org)

Minister S. Shabangu

C/O: [patandeka.ngaagelizwe@dmr.gov.za](mailto:patandeka.ngaagelizwe@dmr.gov.za)

With Reference to: **Minerals and Petroleum Resources Amendment Bill B15B-2013**

Greetings, Minister Shabangu

**We write to you as a matter of urgency to request a meeting with you on Wednesday 16<sup>th</sup> April 2014 at your offices, namely UCS Building, Cnr of Smit and Rissik Street, BRAAMFONTEIN, 2017**

We attach to this email the letter sent to the President of the Republic by our legal representatives, requesting that the Bill be referred back to Parliament, due to a lack of Public Participation.

We also attach a letter sent to the Deputy President and yourself as well as the notes from the meeting with the Office of the Presidency attended by Deputy President: K Mothlante, Minister of State Security: S. Cwele, Minister of Labour: M Oliphant, Lt General Police Services: Mawela, Director General of Department Social Development, Deputy Director General : Department of Minerals, Department of Human Settlements, Deputy Minister of Cooperative Governance, and the Deputy Minister of Department of Social Development among others.

At this meeting held on the 19<sup>th</sup> November 2013 at the Union Buildings it was agreed by all Parties that:

- There is a need for follow up meetings with different Departments including DMR, Human Settlements and Department of Water Affairs.
- The DMR was tasked with engaging with the delegation to facilitate our inputs into the current legislative process. The office of the Presidency has undertaken to expedite our submissions and facilitates a process with the DMR and other relevant departments.
- The DP will write to the Presiding Officers of Parliament and the other legislative bodies to ensure that the process of public participation and hearings are extended and include our delegation and the organisations we represent.

M. M. [Signature]

- A discussion with the department of Housing must consider what consultations were done in the Bojanelo housing programme and how these consultations can be done at community level.
- The DP committed to table the issues raised by the delegation at the next Inter-Ministerial meeting and that each ministry will report back on progress on the issues which will be sent to the DP's office by AASA. This will form part of discussions at the next meeting between the parties.
- The DP suggested that the time was not right for a summit of community and government but that we should work towards such an event.
- A follow up meeting with the Presidency will be arranged with AASA at which we will discuss practical interventions by the Departments as well as a more substantive discussion on community inclusion in platforms and policy.

None of the commitments made at this meeting came to fruition and the MPRDA Amendment Bill was rushed through Parliament without allowing for consultations, even at a provincial level.

We believe that the manner in which the Bill was rushed through Parliament has directly impacted on our right to participate in the legislative process.

We call on you to:

1. Meet with us on the 16<sup>th</sup> of April 2014
2. To immediately withdraw the Amendment Bill from the legislative Process or to call on the President to refer the Bill back to Parliament.
3. To agree to engage in a participatory process that includes mining affected communities.
4. To include the Mining Affected Communities in all stakeholder platforms sponsored or funded by the DMR
5. To include further protections for communities in the MPRDA as per the submissions made to the Parliamentary Portfolio Committee.
6. To agree to work with MACUA to develop a Peoples Mining Charter which gives greater emphasis to the rights of Communities as enshrined in the constitution.

Sincerely Yours.

MACUA

(COMM 11)



LEGAL RESOURCES CENTRE

NPO No. 023-004 VAT No. 405 018 4078 PBO No. 930003292

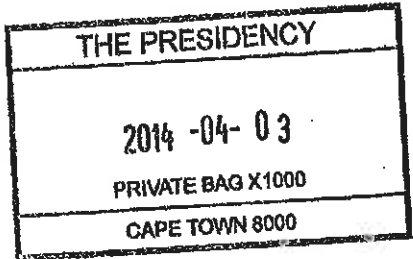
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PO Box 5227 • Cape Town 8000 • South Africa • Tel: (021) 481 3000 • Fax: (021) 423 0935

Your Ref:  
Our Ref: HS

The President  
The Honourable Zuma

Office of the President  
Tuynhuis  
Parliament  
Cape Town



2 April 2014

Dear President

RE: MINERALS AND PETROLEUM RESOURCES AMENDMENT BILL B15B-2013  
RESTITUTION OF LAND RIGHTS AMENDMENT BILL B35B-2013

- 1 We write to you on behalf of our clients, MACUA (Mining Affected Communities United in Action), LAMOSA (Land Access Movement of South Africa) and ARD (Association for Rural Development) about the constitutionality of the bills, the Minerals and Petroleum Resources Amendment Bill B15B-2013 ("MPRDA Bill") and the Restitution of Land Rights Amendment Bill B35B-2013 ("Restitution Bill").
- 2 Our clients request that you refer the bills back to Parliament in terms of your powers under section 79(1) and (3) of the Constitution because the National Council of Provinces and the Provincial Legislatures failed to take reasonable steps to facilitate public involvement when passing the bills. As a result, they failed to comply with their duties under ss 72 and 118 of the Constitution.
- 3 As a result of the rushed manner in which both the bills were processed, the provincial legislatures and the NCOP had insufficient time to organise and hold public hearings on the bills. This happened despite the NCOP having been requested to call public hearings on the bills (and amendments to bill 15 and bill 35 by the National Assembly). The bills impact directly on our clients, their member community organisations and rural communities generally. The MPRDA bill restricts community participation in mining, and eliminates the requirement that socio economic conditions of host communities be addressed and the requirement for public participation in the granting of prospecting rights, while the Restitution Bill re-opens restitution claims without adequate protection for those who have

*M. M.*

National Office:  
Cape Town:  
Durban:  
Grahamstown:  
Johannesburg:  
Constitutional Litigation Unit:

J Love (National Director), K Reinecke (Director: Finance), E J Broster  
S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudarikwa, HJ Smith  
MR Chetty (Director), FB Mahomed, A Turpin  
S Sephton (Director), C McConachle  
N Fakir (Director), T Mhense, C van der Unde  
J Brickhill (Head of CLU), N Bishop, G Bizos SC, T Ngcukakobi, S Nindi, B Sibya, W Wilcomb

already lodged their claims. The NCOP's failure to consider or comply with the provisions of section 72, denied them the opportunity to meaningfully participate in the legislative process.

**Our clients and their participation in the legislative process of the bills:**

1. Our clients are involved and have long been involved in representing poor rural communities in law reform by the Legislature and representations to the executive.
2. MACUA (Mining Affected Communities United in Action) was formed in 2012 following a dialogue among mining affected communities from eight provinces. It aims to present the voice of communities who have not been consulted in the process of allocating mining rights, do not receive benefits from mining on their own land and who bear the brunt of the health and environmental degradation and impact of mining.
3. The Land Access Movement of South Africa (LAMOSA) is an independent community based organisation advocating for land and agrarian rights, and substantive democracy. LAMOSA was formed by 48 dispossessed communities in 1991. In 1991 most of the LAMOSA affiliates who were forcefully removed from their ancestral lands returned to their lands in defiance. Now LAMOSA works with government and civil society organisations to support community development and land reform in four provinces.
4. The Alliance for Rural Democracy and its member organisations have been at the forefront of supporting rural communities and rural women in making representation to Parliament about, for example, the Traditional Courts Bill ("TCB") of 2008, later reintroduced in 2012. Our clients made submissions relating to the TCB's constitutionality, legality and potential impact on human rights and community agency. The TCB lapsed when the Fourth Parliament did not reinstate it this year.
5. Our clients participate in the legislative processes of our Parliament in a constructive manner, supporting new laws and provisions that promote the social and economic rights of rural communities, and engaging in a constructive manner on legislative matter that would undermine the rights and interests of communities. In addition our clients attempt where possible to support members of rural communities to themselves attend at the legislatures to participate in proceedings.
6. Our clients or their member organisations, and we on behalf of our clients, made written inputs to the National Assembly, the NCOP and the provincial legislatures with regard to both the MPRDA Bill and the Restitution Bill. We and a number of the member organisations of our clients participated in the public hearings of the Portfolio Committees of the National Assembly and the relevant committees of the

provincial legislatures where possible. The deliberations of the NCOP Portfolio Committees were also attended.

7. Our clients hold the view that both bills, as they were introduced and amended,
  - (a) undermine the socio economic position of many rural communities; and
  - (b) fail to promote the rights and interests of rural communities.

The substantive merits or limitations of the bills is not the subject matter of this submission.

8. We requested the NCOP and the relevant select committees to consider and hold hearings in terms of section 72. The requests were denied and the bills were passed by the NCOP in plenary on 27 March 2013.
9. The bills were and remain of intense public interest and have far-reaching consequences for rural communities in respect of matters that are of substantial concern to them.

#### **The process in the NCOP**

##### **The MPRDA Bill**

10. The MPRDA Bill was on the agenda of the Select Committee on Economic Development of the NCOP on two occasions: 25 March 2013 on negotiating mandates and on 26 March for final mandates and adoption. The committee did not have a briefing session with the department beforehand. The committee did not consider holding public hearings on the MPRDA, and it did nothing else to involve public involvement in the legislative process.
11. With regard to public hearings held by the provincial legislatures, our instructions are that the Northwest Province Legislature held a public hearing on 24 March at the Madibeng Town Hall. The negotiating mandate report of the Northern Cape states that it held a hearing on 19 March. The Gauteng Economic Development Portfolio Committee reported that on 20 March its committee invited written comment from the public through the media. It deliberated on its negotiating mandate on 25 March. The Western Cape reported that "provinces had four working days to attempt to engage with the public in order to formulate negotiating mandates" and that "it is not possible for the Province to fulfill its constitutional duty to facilitate public involvement..."
12. On 25 March the committee considered the seven negotiating mandates received from the provincial legislatures. At least two provinces formally expressed concern about the timeframe to consider the Bill.

M. M. 

13. On 25 March 2013 after seeing the negotiating mandates we wrote to the NCOP Chair and the Select Committee Chairperson requesting that in terms of section 72 a public hearing be held to address concerns.
14. On 26 March, in the afternoon, the committee considered the final mandates before it. Limpopo Legislature's final mandate form reflects that it "was very much concerned with the fast tracking of the Bill" and recommended that the bill "be deferred to the Fifth Parliament." Nonetheless, it instructed its permanent delegates in the NCOP to vote in favour of the bill. North West instructed its delegates to vote in favour with proposed amendments.
15. On 27 March 2013 the NCOP adopted the MPRDA Bill.

#### The Restitution Bill

16. The Restitution Bill was on the agenda of the NCOP's Select Committee on Land and Environmental Affairs on three occasions: 28 February 2013 when the committee was briefed by the Land Claims Commission, 18 March when it considered the negotiating mandates and 25 March when it dealt with the final mandates. The committee did not consider holding public hearings on the Restitution Bill, and it did nothing else to involve public involvement in the legislative process.
17. The commission in its presentation to the select committee on 28 February emphasised the broad reach of the public consultation process by the department on the draft bill and the portfolio committee on the Bill. WE wrote a letter to the chairperson of the Select Committee on 6 March 2014 where we pointed out that the select committee itself and the provincial legislatures are required to independently consider their obligation to facilitate public involvement in their legislative processes under section 72 and section 118 of the constitution. We contended that public hearings on the Restitution Bill were appropriate for the following reasons:
  - (a) The version of the Bill differed in material from the draft bill and Bill 35 that were the subject of earlier rounds of consultation;
  - (b) The portfolio committee in its report on the public hearings concluded that it faced three options regarding the treatment of prior claims in relation to later claims namely, a) ring-fencing, b) prioritisation of prior claims or c) leaving the issue open. The amendment to section 6(1) and the insertion of sub-clause (g) fails to effectively prioritise or ring-fence. The select committee and provincial legislatures should therefore, with public input, consider the merits of clear and unambiguous statutory ring-fencing of prior claims;

- (c) The fact that the legislative timeframe of the select committee and the provincial legislatures is truncated due to the imminent rise of the fourth parliament, should not have stood in the way of public hearings.
18. On 18 March at the time of the consideration of the negotiating mandates, the Parliamentary Legal Advisor stated that the public hearings by the provincial legislatures may be relevant to the NCOP when it considered its own role in facilitating public participation. However the select committee itself failed to consider or decide on the facilitation of public involvement as required in terms of section 72 despite it having received written inputs with regard to the Restitution Bill and the legislative process followed in respect of it.
19. The NCOP and the Select Committees did not invite submissions, oral or written, from the public nor did they hold any public hearings in respect of either the MPRDA Bill or the Restitution Bill. Nor was there any considered discussion by the Select Committee in terms of section 72(1)(a) about whether public participation was appropriate in the circumstances.
20. The only input received by the Select Committees were:
- (a) a briefing by the Land Claims Commission in the case of the Restitution Bill; and
  - (b) a single contribution in the negotiating mandate meeting by the Department of Mineral Resources.
21. Without suggesting that this would in any way have been adequate, the meetings of the Select Committees reflect no attempt to place before them or to discuss or debate either the written or the oral submissions made to the Portfolio Committees or the content of any of those Committees' deliberations. All that was provided was a very brief summary of the preceding consultation processes in the presentation by the Commission in relation to the Restitution Bill on 28 February 2014.
22. The legislative timetable in the NCOP was about 2 weeks in the case of the MPRDA Bill. The Bill was adopted by the Portfolio Committee on Mining of the National Assembly on 6 March 2014. Reportedly, the Bill was referred to the provinces on 14 March, and negotiating mandates were required by 20 March.
23. In respect of the Restitution Bill the time available was about 6 weeks. The Bill was adopted by the Portfolio Committee on Rural Development and Land Reform on 5 February 2014.



24. By contrast the National Assembly dealt with the bills over periods of months. The Portfolio Committee was briefed on Bill 35 on 15 October 2013. Bill 15 was presented to the Portfolio Committee on Mining on 30 July 2013.
25. The draft Minerals and Petroleum Resources Amendment Bill was published by the Minister of Mineral Resources for public comment on 23 December 2012. The draft restitution amendment bill was published for comment by the department on 23 May 2013. We submit that the executive and Parliament had adequate time to ensure that each of the legislatures had adequate time for public participation and hearings by each legislature.

#### The importance of public participation

26. In *Doctors for Life International v Speaker of the National Assembly and Others* [2006] ZACC 11; 2006 (6) SA 416 (CC) the Constitutional Court held that legislation that was passed without reasonable efforts to facilitate public involvement in the legislative process was invalid. Ours is not a purely representative democracy, but a fusion of representative, participatory and deliberative democracy. Participation is not a detraction from the democratic process, but an essential element of it. In the Court's words:

*"The participation by the public on a continuous basis provides vitality to the functioning of representative democracy. It encourages citizens of the country to be actively involved in public affairs, ... It enhances the civic dignity of those who participate by enabling their voices to be heard and taken account of. It promotes a spirit of democratic and pluralistic accommodation calculated to produce laws that are likely to be widely accepted and effective in practice. It strengthens the legitimacy of legislation in the eyes of the people. Finally, because of its open and public character it acts as a counterweight to secret lobbying and influence peddling. Participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist."* (para 115)

27. The Court stressed that there must be public involvement before both the National Assembly and the National Council of Provinces. In some instances the NCOP could fulfil its duty by relying on public participation in the provincial legislatures.
28. The Constitutional Court held that the NCOP and/or the provincial legislatures must act reasonably and must *"provide meaningful opportunities for public participation in the law-making process."* What is reasonable will depend on the nature of the legislation at issue and the intensity of its impact on the public.
29. Vitally, the Court held that legislative timetables are not an excuse for truncating the process of participation. It wrote: *"When it comes to establishing legislative timetables, the temptation to cut down on public involvement must be resisted."*

M.M





*Problems encountered in speeding up a sluggish timetable do not ordinarily constitute a basis for inferring that inroads into the appropriate degree of public involvement are reasonable. The timetable must be subordinated to the rights guaranteed in the Constitution, and not the rights to the timetable." (para 194) The desire to pass the Bills before the end of the Fourth Parliament is not a reason for reducing the degree of public participation.*

30. The process followed with regard to both bills fell far short of the standard set in *Doctors for Life*. The steps taken in the NCOP and the provincial legislatures failed to afford people a meaningful opportunity to participate in the legislative process. The timetable made adequate participation impossible.
31. Accordingly, both bills were unconstitutionally passed.
32. Please let us know when you will refer the Bills back to the National Assembly for it to deal, with the participation of the Council as required in terms of section 79(3)(b), with the Council's non-compliance with the provisions of section 72(1)(a). Please note that we do not necessarily concede that there was compliance with the provisions of ss 59(1)(a) and 118(1)(a).

We look forward to hearing from you.

Yours faithfully  
LEGAL RESOURCES CENTRE  
Per:

  
PP HENK SMITH

**DELIVERED TO:**

Private Office of the President  
Ms Lakela Kaunda  
Per email: [lakela@po.gov.za](mailto:lakela@po.gov.za); [charmaine@po.gov.za](mailto:charmaine@po.gov.za)  
and fax: (Union Buildings) 012 323 3231

Private Secretary  
Mr Ntoeng Simphiwe Sekhoto  
Per email: [presidentrsa@po.gov.za](mailto:presidentrsa@po.gov.za)

Assistant Private Secretary  
Milka Bosoga & Ms Nonhlanhla Majake  
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# Media Release for Immediate Distribution- MACUA

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Whose Side is the Government on?

## The MINE OWNERS or THE PEOPLE

Mining Affected Communities United In Action (MACUA) an organization of 50 community based organizations in communities affected by mining will hold pickets on Wednesday 16 April 2014, at the Provincial Offices of the Department of Mineral Resources (DMR) in Gauteng, Northwest (Klerksdorp and the Provincial Legislature in Rustenburg), Mpumalanga, Limpopo, Kimberly(Northern Cape) and the Free State to call on the President to send the MPRDA Bill, which was passed in a period of 3 days though the National Council of Provinces(NCOP) in March this year, back to Parliament for proper community participation.

The government has allowed two laws on mining and land rights to be rushed through the National Council of Provinces (NCOP). This is **completely unacceptable** for a number of reasons.

- When the Minerals and Petroleum Resources Amendment Bill (MPRDA) and the Restitution of Land Rights (RLR) was first introduced to parliament we expected that when we told Parliament to include communities that they would listen to the communities.
- Instead they treated communities who went to parliament very badly, questioning the mandates and ridiculing their language use.
- The Department of Mineral Resources (DMR) then met separately with the Mining companies and included the things that business wanted, into the (MPRDA) law.
- Only two hearings were held in the provinces with no time for communities to have their say.
- Even though 5 provinces said there must be more community participation in the mining laws, this was not included in the Bill
- The Bill was rushed through The NCOP in 3 Days
- No recommendations made by communities were included in the Bill

People's participation in law making and decisions that have huge impacts on our lives is a central part of democracy and yet despite our constitution, companies are treated as more important than people.

M. M.



**MACUA will embark on a Campaign for Community Participation** and We call on all communities and supporting organisations to join us in our campaign to demand **Nothing About Us Without Us**. We have written to the Minister of Mineral Resources urgently requesting a meeting. We have written to the Presidency formally requesting they withdraw this Bill as the NCOP failed to comply with their duties to ensure participation under sections 72 and 118 of the Constitution.

**MACUA SAYS Nothing About Us Without Us**

**Statement Ends.**

**Contact:**

**Kwazulu Natal**

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**Northern Cape**

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**North West**

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- **Mpho Makgene. Cell: 0787255635, Email: mpho.macua@gmail.com**

**Gauteng**

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**Mpumalanga**

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- **Nomacebo Mbayo. Cell: 0793002331, Email: nomacebo.macua@gmail.com**

**Limpopo**

- **Sello Kekana. Cell: 0796319803, Email: sello.macua@gmail.com**
- **Betty Laka. Cell: 0730037144, Email: betty.macua@gmail.com**

**Free State**

- **Mothobi Tshabalala. Cell: 0789278775, Email: mothobi.macua@gmail.com**
- **Mpai Nkali. Cell: 0825359543, Email: mpai.macua@gmail.com**



Please find attached a letter from the LRC sent to the President on our behalf as well as a letter to the Minister of Mineral Resources, calling for an urgent Meeting.

#### **About MACUA:**

Following a dialogue among mining affected communities, representing communities in 8 provinces across South Africa, during 2-5 December 2012, a coordinating committee was elected to begin the process of uniting communities in a broad movement aimed at presenting the voice of communities who have not been consulted in the process of allocating mining licenses, development of communities and the distribution of mining income and who bear the brunt of the health and environmental degradation and impact of mining.

A new expanded Coordinating Committee was elected in March 2014.

To this end the Coordinating Committee has embarked upon a process of consultation and collaboration with a range of mining stakeholders including workers, civil society organisations and communities, with a view to building a network of mining affected communities with a broad consensus on a campaign to gather a comprehensive mandate from mining affected communities, which will be formulated in a Peoples Mining Charter.

For many years now communities have been struggling to present a formidable opposition to the mining houses and the super exploitation of our natural resources, our land and our communities.

Our struggles have had questionable success in producing real change for communities but have been particularly effective in raising the awareness and consciousness of the communities affected by mining and last year saw arguably the biggest and most representative gathering of communities. This was by any standards a huge step forward and needs to not only be celebrated, but must be turned into a vehicle for real change.

The financial strength of the mining houses provides the owners and managers of capital in the industry with an almost untouchable financial might, imbuing it with the ability and freedom to operate and, invest when and how it deems fit without consulting communities.

All stakeholders in mining with the exception of shareholders and management are taking a smaller piece of the pie especially the communities affected by mining. The figures for communities are grim. Poverty levels have increased and unemployment has risen to epidemic levels.

Mining companies are determined to hold onto and increase their exorbitant profits and have proceeded to assert their dominance, through threats of retrenchments and its use of state apparatus to shoot and kill those who present a challenge to its strategy of accumulating profits at the expense of workers and communities.

The mobilization of communities and other organized forces such as labour has always been our most potent weapon, and one which has a long history within the South African context. It is this weapon that must form the backbone of our struggle to free our people from poverty and exploitation.

( "MIMM 13" )

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## MACUJA NATIONAL MARCH (13th AUGUST 2014) and MEMORANDUM

🕒 August 29, 2014

M M





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Oct 18, 2017

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EarthLore Foundation is looking to appoint a full-time Bookkeeper to join the team, based in Johannesburg, Gauteng  
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Oct 18, 2017

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By Sifiso Dladla

MACUA MARCH PLANNING MEETING (30 July 2014)



The MACUA (*Mining affected communities united in action*) meeting at the end of July was to discuss the annual Mining Lekgotla scheduled to take place at Gallagher Estate in Midrand, Gauteng from the 11th to 15th of August. The Mining Lekgotla is made of three spheres of mining. Mining Houses (Chamber of Mines), Government and Trade Unions (not all but only National Union of Mineworkers). The delegation of this meeting is around 1500 individuals. MACUA had engaged with the Chamber of Mines and tried to secure a meeting to discuss several things that affect communities living closer to mines but no meeting ever took place and so we notified them of our intention of marching at the Lekgotla. It is this idea that got them shaken and they offered us an opportunity to send a delegation of 25 people to their meeting and they were promised a 5 minute slot. To us that was an insult. Our struggle with mining houses can never be talked about in 5 minutes.

Well, it was at the July planning meeting that MACUA took a decision not to send the 25 person delegation because we had also been told that if we honour their proposal then we shouldn't march and that our delegates must be in formal clothing. We saw the delegation invitation as a strategy to suppress our proposed action and that fueled mass mobilization.

At the July meeting we developed a Memorandum of Demands and took a decision not to be part of the Lekgotla but continue with our intended action.

#### MACUA NATIONAL MARCH (13<sup>th</sup> AUGUST 2014)

The aim of the march was to attract the attention of all the role players in the mining sector who had been disregarding communities they impoverish whilst enriching themselves. As KZN, we brought people from Somkhale (1 taxi), Fuleni (1 taxi), Nseleni (2 taxis) and eMpangeni (2 taxis). Part of this was to show the people of the province that they are not the only communities that are subjected to unjust mining and also use this chance to identify community champions. The march was broadcasted by SABC and ETV. Several print media houses published the story. Here is the memorandum that was submitted by the organizers:

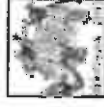
13 August 2014

To: The Chamber of Mines

To: The Department Of Mineral Resources



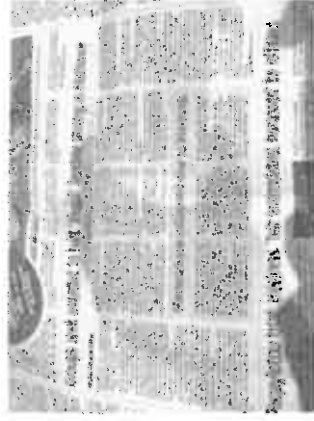
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Save our Imfolozi...

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Save our Imfolozi  
Wildness  
on Wednesday

Thank you #TheWitness for sharing this news!  
You are playing a vital part in keeping our Imfolozi Hluhluwe Park alive and safe!!

21 2 Share



To: Minister Ngoako Ramathlodi

To: The Parliament of South Africa

To: The President of South Africa

RE: MEMORANDUM OF DEMANDS

Communities will not accept the scraps from the table of the masters. We refuse to be "drawers of water and hewers of wood" We demand our rightful place within a democratic South Africa for which our forefathers died and for which we continue to struggle so that our children are not cursed with the colonial heritage of poverty while they live in a wealthy country.

The historical and continued exclusion of communities affected by mining from discussion on "economic and social development" which seeks "real change" does not advance stability in the sector and reinforces the alienation of communities which will inevitably lead to further conflict in the sector. Communities have been systematically excluded from the adoption of the Mining Charter, the development of policy and development and passing of legislation, in which only the interests of Business, Government and Labour have been addressed and the continued exclusion of these communities is not only a serious omission, it also runs contrary to government's own commitment to "economic and social development which would transform the mining sector through real change, and to the constitution of South Africa which compels our law makers to consult widely with affected communities. According to the constitutional court this process is not only necessary to curb "secret lobbying and influence peddling" by big business but also because "participatory democracy is of special importance to those who are relatively disempowered in a country like ours where great disparities of wealth and influence exist."

As Mining Affected Communities United in Action, we Demand the following:

1. Scrapping of the MPRDA in its entirety and for the President to return the current bill B15B- 2013 back to Parliament for proper consultations with communities affected by mining.



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2. That Parliament, Government, The Chamber of Mines and organised labour recognize communities affected by mining as legitimate stakeholders and that legislation is passed to that effect.
3. That the Chamber of Mines and Government provide resources and facilities for proper consultation with affected communities and that Parliamentary and Provincial legislature hearings are held where people affected by mining stay and not in fancy cities far from the people affected most and where communities affected cannot afford to travel to these hearings.
4. That Land illegally and without proper consultation stolen from communities be returned to their legitimate owners immediately.
5. An End to all new licensing processes and community displacements until a new law which accords with the constitution of this country and which recognizes affected communities as legitimate stakeholders, is in place.
6. That all mining companies who have been identified as polluters and who blast in close proximity to communities (like the community of Madithlokwe) are immediately brought to book and their operations suspended until the community has been properly consulted.
7. That Mines who have neglected to rehabilitate the land used for mining are immediately denied operator's license to continue mining until past and current pollution and degradation of land has been rehabilitated.
8. That communities be granted immediate access to Social Labour Plans so that they may be given the right to ensure that the SLP's benefit the community directly.
9. That government immediately end transfer pricing by mining companies and that a fair and just tax system be implemented which ensures that communities benefit from the wealth of mining.
10. That all charges against community activists are dropped immediately and an end to police and mine security harassment, intimidation and arrests.



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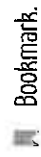
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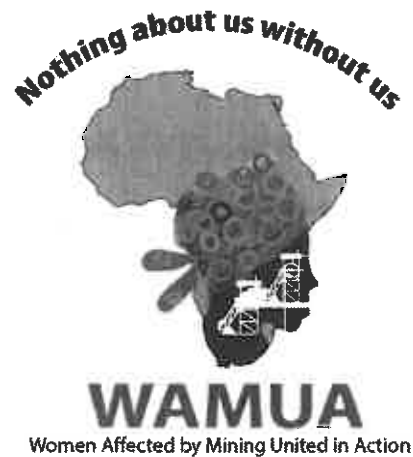
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## THE PEOPLES MINING CHARTER

We the mining communities here gathered reiterate our fundamental inalienable human rights and as such are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all our fundamental human freedoms and rights can be fully realized.

We affirm that Democracy is premised on the following:

That affected people must determine their own destinies. For us this means choosing for our-selves both our own developmental paths, and to participate in all decision making and manage or co-manage the utilisation of our resources if we so choose.

In all our struggles against colonialism and Apartheid we have struggled for these, and have insisted that no authority is greater than the will of the people. We have consistently told all the past rulers, that there can be nothing about us, without us.

### MPRDA/Mining Legislation

Noting that the current mining laws as legislated in the MPRDA limits our democratic and inalienable right to self-determination, that amendments currently proposed to the Bill seeks to further reduce our right to self-determination and that in addition, many customary communities own their ancestral land although their ownership has not been formally recognized with title deeds of their mining and mineral rights, we reaffirm that it is the peoples, specifically occupiers of the land's, fundamental right to decide if any extractives / mining can take place on their land or not.

M. M.



**We reiterate that it must be the directly impacted and affected local community, who must have the greatest weight in determining whether extractives happen on their land and not only outside interests. The values and principles of our shared humanity, our aspirations of collective prosperity and our legitimate concerns about future losses such as the erosion of our connection to ancestral lands, our heritage and livelihoods -govern our decision making.**

**We believe in self-reliance of communities and accordingly call on our democratic government to respect and support, with revenue from our taxes, the decisions made by communities for a non-fossil fuel and non-extractive driven path of development.**

**Our historical and recent experiences have taught us that whenever corporations and their allies seek to mine on our lands they will adopt "divide and rule" strategies which only serves to benefit them.**

**To resist these initiatives we commit to mobilise and build movements, coalitions and networks that will pool our resources and protect our integrity as people of the soil. These peoples formation will be governed by clear principles that leaders are accountable to a community and cannot take decisions outside a legitimate, representative community decision making bodies of all the affected people. When powerful groups seek to co-opt our leaders, who act on their own, we will disown them, and inform the world of their treachery. It follows that those decisions will not be binding on the community.**

**We note that the mining industry is cloaked in secrecy which runs contrary to our constitutional values and insist that both government and corporations have a duty to provide affected communities with transparent information and processes. We affirm that we will be guided by:**

- **Informed knowledge. The government as our elected representatives must ensure that an independent capacity development fund is accessible to such communities to source diverse sources of knowledge, geoscience, legal, psycho-social etc. which will help communities to make informed decisions**
- **Government departments responsible for various aspects of environmental protection must come to the communities immediately when an application for mining rights and water use licenses and the like are made to obtain directly our informed consent.**
- **Similarly, the same must apply to any authority responsible for extractives in particular mining and land**
- **We believe we are the owners of the land and not governments, and real reparations and compensation, which should be both individual and collective, must start with those living around the mines and who work in the mines who were relocated by mining activities, - as we feel the collective negative impacts of mining more directly than others.**
- **We Believe that the MPRDA must include provisions that direct no less than 50% of Royalties and tax allocations from mining activities, for development of directly affected communities, to counteract the disproportionate losses suffered by mining communities and labour sending areas**

*M.M*

*[Signature]*

These disproportionate losses must be recognized in terms of gender, environmental, health, spiritual and land use losses, which are in violation of basic international and national human rights law.

We, as united communities, call on all other mining communities not to entertain any corporation that has a track record of violating labour, human and environmental rights anywhere in the world.

In addition, we will refuse to give consent to any company that does not have a transparent community driven process of negotiation which has at its core the principles of Free Prior and Informed Consent.

We call for the inclusion in the MPRDA of an independent, accessible, speedy and effective grievance or redress policy and mechanism to address community concerns throughout the mining /extractive processes.

We insist that the exclusion of mining affected communities in having a direct say in the governance of their lives is unconstitutional and we commit to ending this colonial project of dispossession in our lifetime.

The Mining Communities gathered here commit to undertake a democratic process of collecting demands from mining affected communities across South Africa to bring all their demands together in a Peoples Mining Charter that should be included in the MPRDA.

The key declaration is based on the following

**Principles:**

1. Community Voice in Decision Making through negotiation based on right of consent to determine what activities occur on one's land.
2. Democratic Community representation and customary decision making processes that are community based and not based on undemocratic traditional Authority.
3. Benefits from mining activities (profits, employment, procurement, and local economic development) should be shared equitably distributed to directly affected communities, near mining communities, workers and the public through a democratic process.
4. The public, specifically mining affected communities must have the right to Free and accessible access to information regarding all operations that affect the economic, social and environmental well-being of communities.
5. Communities bear a disproportionate burden of the costs of mining and there should be independent, accessible, speedy, and effective recourse mechanisms, before during and after mining.
6. Rehabilitation standards should ensure that the land is no worse than when mining started.

M.14



**7. Restitution and Reparations should correct historical wrongs and should include environmental, social, cultural and heritage rights including spiritual connections to land, people and nature.**

**8. Compensation for loss of livelihoods and economic social, environmental, cultural and heritage resources should be based on full cost accounting including future losses of alternative development paths and value loss of minerals.**

**9. Women must have the right to Inherit Land and should be consulted on all issues affecting their bodies, families, land and lives in both customary traditional structures and community, local, provincial and national structures.**

*Adopted on 26 June 2016 in Berea*

A handwritten signature consisting of stylized, overlapping letters, possibly 'M' and 'M'.A handwritten signature consisting of a circular scribble followed by a dot.