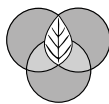


# Community Casebook on Mining and Environment



Centre *for*  
Environmental Rights

Advancing Environmental Rights in South Africa



The Department of Mineral Resources is not all powerful, it is not the only department within the government that has a say about whether mining should take place or not.



## Contents

|                                                                            |    |
|----------------------------------------------------------------------------|----|
| Introduction                                                               | 2  |
| The law of prospecting and mining in South Africa                          | 3  |
| The Bengwenyama Community's Story                                          | 6  |
| The Maccsand Story                                                         | 11 |
| The AmaDiba Community's Story                                              | 14 |
| The Bakgaga Ba-Kopa Community's Story                                      | 18 |
| Contact details of organisations that can assist with legal representation | 21 |
| Contact details of the Masters' Offices in South Africa                    | 22 |



# Introduction



This casebook has been developed to empower communities who are faced with applications for prospecting or mining on their land, or who may be interested in applying for such prospecting or mining rights themselves. Specifically, it aims to empower communities through knowledge of the law. First, it describes the most important law that applies to prospecting and mining in South Africa and what this law means from the community's perspective. Second, it shares the experience of four communities in South Africa who have successfully used law to challenge the way in which mining is taking place on their land or on land located close to where they live.

- The story of the **Bengwenyama community** shows how a community was successful in asking the Constitutional Court (the highest court in South Africa) to set aside a prospecting right on their land. This story is important for understanding the meaning of consultation and a community's preferent right to prospect or mine.
- The **Maccsand story** shows how a local authority, the City of Cape Town, successfully challenged a mining company and the Department of Mineral Resources in the Constitutional Court. This story is important for understanding how the law of mining works with other laws, such as laws about how land should be developed in an urban area.
- The story of the **AmaDiba community** shows how a community successfully appealed to the Minister of Mineral Resources against a mining right that had been granted to an Australian company on

their land. This story is important for understanding how appeals work and what problems a community might experience in submitting an appeal.

- The story of the **Bakgaga Ba-kopa community** is important for showing how a community challenged their own chief and tribal authority. This case shows how the community used the law relating to trusts to force the chief and tribal authority to be transparent about how they were using money they had obtained from a mining company in exchange for using a part of the community's land for mining purposes.

Although each of these stories is a success story in its own right, each case also shows that obtaining a legal victory is not always a complete victory. The law has its own limits because it depends on the willingness of government officials, tribal authorities and mining companies to abide by the law and the orders of the court. But if more and more people know what the law says and demand that people in powerful positions stick to the law, there is a greater chance that South Africa will be a country where the people use the law (rather than their own positions of power) to govern their behaviour. It is the hope that this casebook will contribute to this goal.

The casebook concludes with two resource lists: A list of contact details of organisations that can assist communities with legal representation, and a list of the contact details of the offices of the Masters of the High Courts in South Africa.

# The law of prospecting and mining in South Africa

---



To understand the stories about the communities in this book it is important to first understand some things about the law of mining in South Africa. No one is allowed to just show up with their mine equipment and start drilling or blasting or digging on a piece of land. They first need permission from the Department of Mineral Resources or the DMR for short. The rules that the DMR must use when it gives out permissions to prospect or mine are found in a piece of national legislation called the Mineral and Petroleum Resources Development Act (or MPRDA for short). When we say that the MPRDA is 'national legislation' it means it applies everywhere in South Africa, as opposed to provincial legislation or city by-laws.

## Different types of right

The DMR can give people who want to mine different types of permission. One type is called a **prospecting right**. When someone has a prospecting right it means they can come onto your land with their equipment, trucks and workers and look for minerals. This may involve drilling holes with heavy machinery that may generate significant noise and dust. This can be very disturbing for the communities whose land it is, because the company can use the machines twenty-four hours a day.

Another type of permission is called a **mining right**. When someone has a mining right it means they come onto your land with their equipment trucks and workers and actually take the minerals from the ground. Mining may include blasting the ground using explosives. This can make houses crack. Mining often includes rock crushing and the use of heavy diggers to dig the mineral out of the ground. This makes a lot of noise and dust. Heavy trucks will be used to carry the mineral ore away to be processed. The trucks also make a lot of noise and their fumes pollute the air. Because the trucks are very heavy they can damage the roads around the mining area.

A mining operation also uses a lot of water. Where mining takes place, there will always be some impact on water resources like rivers, streams or underground water. The mining company may take water from rivers or streams. They might also put polluted water back into the rivers or streams. To do this, they should have a water use licence which is an additional permission given by the Department of Water Affairs (many mining companies in South Africa, however, are operating illegally without a **water use licence**). Mining also generates a lot of waste in the form of huge piles of waste rock called 'slimes' or 'tailings dams'. Tailings dams change the way an area looks. If they cannot be replanted with plants or trees, they can be the source of serious dust pollution. If tailings dams are not properly managed, they can collapse or subside and tailings can start spreading everywhere. Chemicals from tailings dams can also pollute underground water.

A prospecting right is usually given for five years while a mining right is given for up to thirty years.

## The duty to consult

Because prospecting and mining can have such serious impacts, a person who wants to obtain a prospecting or mining right must first **consult** with the owner of the land or occupiers of the land. It is important to realise that the owner or occupiers of the land do not need to consent or to agree that prospecting or mining can take place. The MPRDA simply says that owners and occupiers should be consulted.

For the prospecting right, the person who wants to prospect has 30 days to carry out consultation. For the mining right the time available is 180 days. What consultation means is first that the owner or occupiers should be notified if a company wants to prospect or mine. Usually, a written notice is put up in the magistrates' court closest to the area where prospecting or mining may take place. The written notice tells you on which



farms the prospecting or mining may occur. Secondly, a consultant employed by the mining company may send the owner or occupier a letter by registered mail that asks for comments. Thirdly, the consultant may arrange a public meeting where all people who may be directly or indirectly affected by the mining or prospecting can hear about the project, raise questions and make their comments.

During consultation, there are a variety of things that members of a community should discuss with the mining company or their consultant. They should talk about the way that the mine will affect the land and plants and animals found on the land. They should talk about the way the mine will affect the water, air quality and noise levels. It is also very important to discuss whether the prospecting or mining will disturb graves or places of ancestral worship. A written discussion of all these issues, called an **environmental management plan or programme**, must be submitted to the DMR as part of the request for permission to prospect or mine.

During consultation it is also important to talk about the jobs the mine will create for members of the community. It is not enough to know the number of jobs a mine will create as the mining company can employ people from outside the community to fill those jobs. The mining company or their consultant should also provide facts on how many jobs will be taken away by the project, for instance, jobs in agriculture or tourism. Facts on how the mining company will promote economic and social development in the community should also be presented. The mining company can agree, for instance, to build clinics and schools or to support other economic activities. It is very important to think about whether the mining company's support for economic activities will help them to survive even when the mining company eventually leaves the area. Information on jobs and on local social and economic development must be discussed by the mining company in a document called the **social and labour plan**. This must also be submitted as part of the request for permission to prospect or mine. All interested and affected parties are entitled to see these documents and to comment on them.

## Compensation

As part of the consultation process, the mining company can offer to pay the owner of the land or the lawful occupiers of the land for loss or damage. This money is

called **compensation**. It is important for members of the community to understand whether the compensation a mining company agrees to pay is a once-off payment or whether it will be paid every month. It is also important to agree on the person to whom the compensation will be paid, and how members of the community will share the money. If the owner and lawful occupiers of the land cannot agree with the mining company on how much compensation should be paid, or if the owner or occupier refuses to allow the mining company to come onto the land, the owner and occupiers can go to the Regional Manager of the DMR to try and resolve the disagreement. (The DMR has a Regional Office in each province, and the Regional Manager is the official who heads up each of these offices.) At the end of this case-book you can find a list of contact names and numbers.

## Objecting to a prospecting or mining right

If the community does not want prospecting or mining on their land, they can write an **objection** and send this to the Regional Mining and Environment Development Committee or RMDEC. The objection must be given in at the relevant Regional Office of the DMR. The RMDEC is a special committee of officials from the DMR and other departments of government (such as water affairs and environment, tourism and agriculture). There is a RMDEC in each province. The RMDEC discusses the objection and then advises the Minister on whether the prospecting or mining right should be awarded or not.

## The award of the right

The MPRDA says that the Minister must decide whether to grant a prospecting or mining right. In practice she has handed over or delegated this power to the Director-General and Deputy Director-General of the DMR. The Director-General or his deputy will look at all the information and then decide the case. The Director-General must not grant a right if it will cause 'unacceptable' pollution or damage to the environment. What is 'unacceptable' to one person of course may not be unacceptable to another. There is no court case at the moment that helps us understand how to interpret the word 'unacceptable' in the law.

## Appeal

If an affected person, a community, landowner or occupier is unhappy about a prospecting or mining right



being awarded to a particular person or company or over a particular piece of land, they can **appeal** to the Minister to decide the case again. This should be done before 30 days have passed after the person or community becomes aware of the right that has been awarded. An appeal is different to an objection because it can only be made after a prospecting or mining right has been granted. In an appeal, community members explain their reasons for thinking a prospecting or mining right should *not* have been granted. Not any reason will do. They must be linked to the things that the Director-General or his Deputy considered when she or he granted the right in the first place. The following reasons are good reasons for an appeal:

- The person who was given the right does not have the money or technical ability to mine the land. (This should include their ability to fix up or rehabilitate the land when the mining operation comes to an end.)
- The mining will result in unacceptable pollution, ecological degradation or damage to the environment.
- The person who was given the right does not have the money or capacity to keep the promises they have made in the social and labour plan (for example, no money to build clinics, schools or support other economic activities).
- Granting a prospecting or mining right to this particular person will not help historically-disadvantaged people to benefit from mineral resources.
- Granting a prospecting or mining right to this particular person will not create and increase employment in the area.

The Minister must decide the appeal and notify the person or community who made the appeal of the outcome in writing. In the AmaDiba case, discussed in this case book, the Minister took nearly three years to decide the appeal. So in practice appeals can stretch on for years, even though this should not be the case according to the law.

## Judicial review

If the Minister disagrees with a person making an appeal, it is said she refuses the appeal. If the person or community who made the appeal is still unhappy, they can go to court to ask a judge to look at *how* the decision to grant the prospecting or mining right was

made. This is called **judicial review**. It is only possible to ask for a judicial review if the appeal process explained above has first been used. Judicial reviews are heard in the **High Court** (for instance the North Gauteng High Court in Tshwane, or the South Gauteng High Court in Johannesburg). A judicial review is different from an appeal because the court cannot actually give the right to prospect or mine to any person. They can only take away or 'set aside' the right and ask the Minister to once again consider the case. A judicial review must be started before six months have passed after finalisation of an appeal. If a community wants to ask for a judicial review they should find a partner or lawyer to help them with their case.

## A preferent right to prospect or mine

Section 104 of the MPRDA deals with the situation where a community would like to prospect or mine on its own land. The community must own the land or, if not, the land must be in the process of being registered in the community's name (for example, where a community has had a successful land claim). If this is the case, the community can apply to the Minister of Mineral Resources for a preferent right to prospect or mine on that land. This means the community may be given the first chance to carry out prospecting or mining on their land even if outsiders are interested as well.

In the application submitted to the Minister for a preferent right, a community needs to provide proof of three things:

- If they are granted the right, it will contribute to the development and social upliftment of the community.
- The benefits of the prospecting or mining will be enjoyed by the community itself.
- The community has access to technical and financial resources to carry out the prospecting or mining.

Although there is no set form for the community to complete, the section says that the community must submit a **development plan** that shows how the right will be exercised.

If the preferent right is granted it will initially be for five years, with the option to renew. Importantly, a preferent right cannot be granted to a community if a mining permission has already been granted to another person or company.



## The Bengwenyama Community's Story



The Bengwenyama community is a Swazi tribe that occupies four farms in Sekhukuneland. On two of these farms – Nooitverwacht and Eerstegeluk – there is believed to be platinum. Members of the Bengwenyama community have lived on Nooitverwacht for more than 100 years. They were removed by force from Eerstegeluk during the apartheid years quite a few times, but they put in a land claim to this farm in 1998. (The Land Claims Court is still considering this claim.) Some members of another community, the Roke Pashe who are Pedi people, also live on Eerstegeluk.

### **The community applies for a preferent prospecting right**

After the MPRDA became law, the Bengwenyama community was interested in applying to the Minister for a preferent right to prospect for platinum on Nooitverwacht and Eerstegeluk. In 2006 two members of the Bengwenyama community made contact with a company that provides project finance to help them with their application. In June 2006, the community started talking to the DMR Regional Manager about their application. The DMR was concerned about the shareholders' agreement between the community and the project financing company (the agreement which sets out how the profits would be split between the community and other shareholders). By September 2006 the DMR said it was happy with the shareholders agreement but then said that the community must provide R20 000 up front to pay for the costs of fixing up (or rehabilitating) the farms after the prospecting had taken place. The community provided the money and thought their application was still going ahead. But in December they got a nasty shock when they found out that a prospecting right had already been awarded to another applicant.

### **The right to prospect on Nooitverwacht and Eerstegeluk is given to Genorah Resources**

A representative of a black empowerment company, Genorah Resources, had visited the leader of the Bengwenyama in early February 2006. He wanted to consult with the leader about his company's intention to apply for a prospecting right on Nooitverwacht (nothing was said about Eerstegeluk). He had left a form with the leader that asked whether the community objected to a prospecting right being given to Genorah Resources. Neither the leader, nor any member of the traditional council, signed the form. A short while after this visit, however, the leader wrote to Genorah Resources. In this letter he explained that the community would sign the form if they could get to know Genorah Resources a little better. He also explained that the community was

planning to submit its own prospecting application. The leader received no reply to his letter and during September 2006 the Minister granted Genorah Resources a prospecting right over Nooitverwacht and Eerstegeluk.

### **The community appeals against the granting of the right**

After the community found out that a prospecting right over two of their farms had been awarded to Genorah Resources, they put together an appeal against the Minister's decision, which they sent to her on 13 February 2007. Although the community followed this up with other letters, they heard nothing from the Department. In the meantime the community started preparing to go to court about the issue. Some months later, a director of Bengwenyama Minerals phoned the Department and was told that it was the view of the Department that the matter should be decided by way of a review. At that point the community realised they were not going to get anywhere with the appeal, and they put their energies into a judicial review. This meant taking the fight against Genorah Resources as well as the Minister for Mineral Resources to court.

### **The community goes to the High Court and the Supreme Court of Appeal**

The first court that heard the community's case was the High Court in Tshwane. The community argued that the court should set aside the prospecting right to Genorah because it had failed to properly consult the community. The judge did not think this was a good enough reason to set aside the prospecting right and so the community lost the case. They then appealed to the Supreme Court of Appeal in Bloemfontein but they lost the case again. The reason for the community losing the case in the Supreme Court of Appeal was mainly procedural, having to do with the time in which a judicial review application must be started. As a last resort they decided to go to the Constitutional Court in Johannesburg.



## The community goes to the Constitutional Court

When a court decides an issue between two parties like the Bengwenyama Community and Genorah Resources, it does so by asking questions that break the issue up into smaller parts. The two most important sets of questions that the Constitutional Court needed to answer in this case were about the meaning of consultation and about the community's preferent right to prospect.

### *The meaning of consultation*

The court began by asking itself: When the MPRDA says that someone who wants a prospecting right must 'consult' with a community what does this mean practically? What is the 'standard' for consultation? And did Genorah Resources meet that standard or not?

When the law says there is a duty to consult, the court said, it shows that there is a serious concern for the interests of people who own or occupy the land on which the prospecting will take place. This is no surprise, said the court, because prospecting is a very serious invasion on other people's rights to use and enjoy land. So a duty to consult means:

- Firstly, that the landowner or occupier **must be informed** that there has been an application to prospect on the land concerned. The court did not say how this should take place but whatever method is used it is clear that it must result in the community actually knowing about the application. It would not be enough, for instance, to just show that a letter has been posted to the community.
- Secondly, the person who wants a prospecting right **must provide a community with enough information** about their plans for the community to be able to judge how it will affect them. It is not enough, for example, to just say to the community that an application for a prospecting right has been submitted to the offices of the DMR. The duty to provide enough information means that the applicant should inform the community about things like where holes will be drilled, how close to the houses the drilling machines will be located, whether the machines will operate twenty-four hours a day, whether rivers and streams used by the community will be polluted and so on.
- Finally, the court said, the person who wants the

prospecting right must consult with the community **in good faith**. The meaning of 'in good faith' relates to how the person who wants the prospecting right thinks and feels about the consultation process. If they are doing it just for the sake of doing it, like ticking off a box on a list of things to do, this is not good enough. No, the court said, they must take the process seriously. They must recognise that the prospecting operations will have a negative impact on the community. And they must try to reach an agreement with the community about how negative impacts can be managed. This does not mean that the community must give their permission for prospecting or mining to take place. But it does mean that where a person consults a community and does not discuss or try to reach agreement on how negative impacts can be managed, that the consultation will not be good enough.

The court looked at these three standards – that a community must be informed about the prospecting, that they must be informed about the prospecting *in sufficient detail*, and that the person who wants the prospecting right must consult *in good faith* – and they found that the way Genorah Resources had consulted the Bengwenyama fell far short from the standard required.

### *The community's preferent right to prospect*

The second important set of questions that the Constitutional Court had to ask related to the community's preferent right to prospect: was the application by the Bengwenyama meant to be this kind of application (and not just an application for an ordinary prospecting right)? If so, what did this mean for the procedure that the Department of Mineral Resources had to follow when granting a prospecting right to any other person? The court found firstly that the Bengwenyama's application for a prospecting right was not an ordinary application, but an application under section 104 of the MPRDA. More than that, they said that the Department of Mineral Resources had a duty to inform the community about the correct nature of their application, in other words, to advise them that they should be applying for a section 104 right. They also had a duty to inform the community about other prospecting applications relating to their land.

The court found it strange that the Department of Mineral Resources interacted with the Bengwenyama

for such a long time about their application without telling them that Genorah Resources had also submitted an application and that they had even awarded the right to Genorah! Because granting a right to any other person would take the community's preferent right to prospect away it was essential, the court said, for the community to be informed about other applications, and for the community to make representations about those applications to the Department of Mineral Resources. This means that the Department must make a time for members of the community to come and physically make a presentation and to talk to them about the applications on their land. In some cases, it may also be necessary for the Department to allow a community to make their own section 104 application, the court said.

Because the Department of Mineral Resources had treated the Bengwenyama community so badly in the way they had handled their application, and because of the way in which Genorah Resources had consulted with the community, the Court decided that the prospecting right given by the Minister to Genorah Resources had to be set aside. A victory for the community at last!

### **What happened after the Constitutional Court judgment?**

On the day that the Constitutional Court gave its judgment in this case, the Bengwenyama community submitted another section 104 prospecting right application to the Department of Mineral Resources. The Department knew that it had to give the community a hearing but seemed to make this as difficult as possible. For example, they first said that the community must come and make their presentation on 24 December 2010 and when the community protested they wanted to reschedule to 2 January 2011. Eventually they agreed that the community could come and make presentations on 19 January 2011. The community and its partners did so. At the hearing they heard that there were competing applications for both Nooitverwacht and Eerstegeluk. They wanted the Department to allow them to see these applications but the Department refused (thus going against the very first two rules about the meaning of consultation in the Constitutional Court judgment). The community had to use the access to information legislation to obtain some information about these applications.

The court found it strange that the Department of Mineral Resources interacted with the Bengwenyama for such a long time about their application without telling them that Genorah Resources had also submitted an application and that they had even awarded the right to Genorah!

The community received no word about its application until March 2011. They then learnt that their application for a preferent right had been refused. The prospecting rights to Nooitverwacht were instead given to two men who claim to be from the Bengwenyama community (the community however regards these two men as imposters). And the prospecting right to Eerstegeluk was once again granted to Genorah Resources. Despite their victory in the Constitutional Court, the Bengwenyama community therefore still struggled to obtain a prospecting right to the land it occupies.

The Bengwenyama community started judicial reviews of the granting of both of these rights in the High Court. This second-round challenge was heard in the High Court in 2012. In June 2013 Makgoka J handed down judgment in the matter. The community's challenges to the right granted to Genorah Resources in respect of the farm Eerstegeluk were set aside and the court provided some welcome clarity on the community's rights to their land and the precedence of their rights over those of the Roka Pashe. The court refused to grant the right to the community, as they had requested, maintaining that while the DMR had granted the right 'perfunctorily' to Genorah, there were not sufficient grounds to prove bias. The challenge of the right granted to Nooitverwacht failed because, the judge held, the traditional council had failed to establish that it was the sole representative of the community. The court also appeared to expect a higher threshold for community involvement in the right (i.e. higher than BEE requirements) for purposes of granting a section 104 right.



## WHAT CAN OTHER COMMUNITIES LEARN?

The rules and principles that the Constitutional Court highlighted in the Bengwenyama case apply to all communities in a similar situation. They still apply even if the Department of Mineral Resources does not stick to them. Communities should insist on these rules and principles in situations where someone else wants to prospect or mine on land owned or occupied by the community. These rules are as follows:

1. Consultation requires that communities be informed about prospecting or mining applications on their land.
2. Consultation requires that communities be informed about prospecting and mining applications on their land in enough detail for the community to judge how it will impact them.
3. Consultation requires that the person who wants the prospecting or mining right must consult with the community in good faith – that is, to try and reach agreement on how negative impacts on the community's use and enjoyment of the land can be managed.
4. The Department of Mineral Resources has a duty to inform communities about an opportunity to submit a section 104 application to prospect or mine.
5. If someone else submits an application to prospect or mine on land owned or occupied by a community, the Department of Mineral Resources must inform the community and allow the community to make representations on the granting of the right. However, this is not a guarantee that the Department of Mineral Resources will grant a prospecting or mining right to the community.

The Bengwenyama's partnership with a project financing company is what has enabled it to challenge the prospecting rights awarded to Genorah Resources in court.



## The Maccsand Story





The area of Mitchells Plain on the Cape Flats is an area where there are high levels of poverty and unemployment. The dunes that are found in this area are an excellent source of sand for use in the building industry. In 2007 and 2008 the DMR gave the right to mine this sand to a company by the name of Maccsand. The company was based in Somerset West and supplied sand and stone to the building industry. The area on the dunes where Maccsand was allowed to mine was very close to a school and to private houses. This created a problem because the heavy machinery used to load the sand and transport it away from the dunes was a nuisance. The mining also destroyed all the plants that kept the dunes in place as part of an ecosystem. The City of Cape Town was opposed to the mining and decided to challenge Maccsand and the Department of Mineral Resources. The City of Cape Town, like the municipal councils in all cities and towns of South Africa, is known as a municipal or local authority. This means that it is a level of government recognised by both the Constitution and legislation (this is why there are local government elections as well as elections for the national and provincial levels of government).

---

### **Why was the City of Cape Town opposed to the mining?**

The reason the City of Cape Town was so opposed to the mining on the dunes in Mitchells Plain was that it went against a law that laid down rules about how land must be used and developed in an urban area. The law in question is known as the Land Use Planning Ordinance or LUPO for short. The LUPO allows for all the land in Cape Town (and other local authorities in the old Cape Province) to be classified into different zones. The basic idea behind having a zoning scheme is to make sure that mining or industrial activities take place in specific areas, usually areas that are not close to where people live.

A zoning scheme is therefore important to ensure that there is environmental justice and that people who live in poor areas do not have to experience more environmental degradation than people who live in richer areas. The City of Cape Town was unhappy because the zoning for the dunes on Mitchells Plain did not allow for mining to take place there. So they were insisting that either the area had to be 'rezoned' to allow mining to take place, or Maccsand had to apply for special permission from them to carry out its mining activities. The department responsible for the environment in the Western Cape was also unhappy because Maccsand had not obtained permission from them to destroy the plants on the dunes, so they joined the City of Cape Town in the fight.

### **What was the view of Maccsand and the Department of Mineral Resources?**

Maccsand and the Department of Mineral Resources did not think that the zoning of the area was a problem.

Their opinion was that when the Department of Mineral Resources gave someone the right to mine on a particular piece of land, the permission given by the Department was enough. In other words, it was not necessary for the person who obtained the right to get permission from any other government department to start mining. Their view was that the law that allows for mining authorisations to be granted (the Mineral and Petroleum Resources Development Act or MPRDA for short) was more important than other legislation because it was a law about the national government's strategies and priorities. Their argument was that because mining is so important to South Africa as a whole, no other law should be allowed to stop mining from taking place on a particular piece of land.

### **The City of Cape Town in the High Court and Supreme Court of Appeal**

Because the City of Cape Town and the Department of Mineral Resources and Maccsand could not reach agreement on this issue (and because they had in fact been arguing about this type of issue for a long time – almost twelve years!) the City went to the Western Cape High Court to ask them for an order stopping Maccsand from mining on the dunes until they had also obtained permissions under the LUPO and environmental legislation.

When the matter was decided, the Western Cape High Court agreed with the City of Cape Town that simply having a mining right did not exempt a person from also needing to get permission in terms of the LUPO. The function of municipal planning is a function that the Constitution mainly gives to local authorities. Nothing would be left of this function, the judges in the case

pointed out, if the legislation on mining could always override the LUPO.

Maccsand and the Department of Mineral Resources were not happy with this judgment so they appealed to the Supreme Court of Appeal. But they lost the case again. The Supreme Court of Appeal said that the different levels of government in South Africa (for instance, the national level and the local level) must work alongside and together with each other. It was possible for mining legislation to regulate mining and for LUPO to regulate land use at the same time. The Constitution of the Republic of South Africa allowed for a situation where mining could be stopped because of a failure to get permission under LUPO.

### The City of Cape Town in the Constitutional Court

Because they were unhappy with the decision of the Supreme Court of Appeal, Maccsand and the Department of Mineral Resources then appealed to the Constitutional Court. Once again, they argued that because mining is a function that only the national level of government can exercise, mining legislation should always override legislation such as the LUPO.



Because they know more about local conditions and because they are also accountable to the people who elect them, local authorities should have a say on whether mining should take place in their areas or not.

But the Constitutional Court did not agree. Taking the position of the City of Cape Town, the Western Cape High Court and the Supreme Court of Appeal, they also decided that there was nothing wrong with Maccsand needing to rezone the land on which it was mining in terms of the LUPO. It was wrong to think that the Department of Mineral Resources had all the power so that when it exercised its power this cancelled out the power of the City of Cape Town. The MPRDA deals with mining while LUPO deals with land use. The two laws must be used alongside each other, even if this meant that in some cases mining was delayed or stopped.

### WHAT CAN OTHER COMMUNITIES LEARN?

The most important lesson to take away from this case is that the Department of Mineral Resources is not all-powerful, it is not the only department within the government that has a say about whether mining should take place or not. Because they know more about local conditions and because they are also accountable to the people who elect them, local authorities should have a say on whether mining should take place in their areas or not. They exercise this power through, for example, granting permissions for an area to be rezoned or giving special permission to depart from a zoning scheme. Based on the decision in the Maccsand case, it is also possible that they could go to court for an order to stop mining happening in an area if it is not properly zoned. Because local authorities have this power, communities should establish lines of communication and partnerships with their local government officials. They should also be watchful of such officials having unhealthy interests in the mining that does take place in their areas.



# The AmaDiba Community's Story





The AmaDiba people live on the Wild Coast. Their land – the Xolobeni tenement area – lies along 22 km of spectacularly beautiful coastline. It has an incredibly rich variety of plant and animals. The area forms part of the Pondoland Marine Protected Area and it is also a protected area in terms of the laws of the old Transkei. The tenement area is held as communal land in terms of the Communal Land Rights Act, 2004.

In March 2007 a company listed on the Australian stock exchange, Transworld Energy and Mineral Resources (TEM) applied to the Department of Minerals and Energy for a mining right over certain portions of the tenement area (it already held a prospecting right over the whole area). TEM's empowerment partner was a company by the name of XolCo but the AmaDiba community argued that this company did not represent their interests. TEM and XolCo were interested in mining titanium-bearing minerals on the dunes of this area (titanium is a chemical element that, when combined with other elements, can be used in a wide variety of things, including metals made for use in jet engines, missiles, spacecraft, desalination plants, medical implants, dental implants, sporting goods, mobile phones and jewelry, amongst others).

### How did the AmaDiba community respond at first?

In 2006, the AmaDiba Tribal Authority contacted a consultant social worker, development facilitator and writer, John G. I. Clarke, who in turn introduced them to the well-known activist lawyer Richard Spoor. Clarke and Spoor assisted the community in developing their local structures to channel opposition and contain conflict between 2006 and 2008. In June 2007, for instance, the tribal authority formed the AmaDiba Crisis Committee to deal with the permanent and significant changes they saw could take place to their traditional way of life as a result of the mining project. They found that the public consultation process that TEM was required to do in order to obtain the mining right was highly problematic for the following reasons:

- Members of the tribal authority and community were not properly consulted.
- The notices of the public meetings that were held at various places were inadequate.
- The information given to the community was inaccurate and incomplete. For instance, the consultants did not talk about how many people

would need to be relocated as a result of the project. They also did not reveal that in order to get a job on the project it was necessary to have a certain level of literacy (thus excluding many community members from the jobs).

- The issue of compensation was not adequately addressed.

Although the AmaDiba owned the land as communal property (and thus they could theoretically have applied for a preferent right to prospect or mine), the Department of Minerals and Energy did not give them a hearing. Despite these concerns, the Department granted a mining right to TEM on 14 July 2008.

Amazingly, the community itself was not notified about the granting of the right. The first time they heard about it was when a notice was published on the Australian stock exchange – almost three weeks after the right had been granted! The AmaDiba Crisis Committee contacted the Department of Minerals and Energy to try and obtain more information but they received no help. For instance, they were refused a copy of the record of decision so it was difficult for them to know what exactly TEM had been authorised to do.

### The AmaDiba community appeals against the mining right

Building on the work already undertaken by the community working together with Clarke and Spoor, in mid-2008 the Legal Resources Centre in Grahamstown approached the AmaDiba Crisis Committee, offering to assist them with the legal dimensions of the challenge to the mining right. On 2 September 2008 they sent an appeal against the granting of the mining right to the Department. In their appeal they listed all the reasons why they thought the right should be set aside. These included the problem raised by the area being protected as a conservation area by a number of laws, the problems with the consultation process, the failure to give the AmaDiba a hearing and the



The people in the community also began to fight amongst themselves because some felt that eco-tourism was the best way to develop the area while others felt that mining was better.

weaknesses and gaps in TEM's environmental management reports, amongst others. They also asked the Minister to suspend the right until the appeal was decided. Suspending the right would mean that TEM was not allowed to start with mining operations. They argued that if mining was allowed to go ahead it would make the appeal worthless because the special environmental features of the land would be destroyed.

### The long wait ... and a complaint to the Public Protector

Because the MPRDA says that an appeal should be finalised before someone can go to court for a judicial review, the AmaDiba Crisis Committee had to wait for the Minister to respond to their appeal. And so they waited. And waited. And waited. Almost 18 months later, in February 2010, the Minerals and Mining Development Board (a committee that advises the Minister) decided to appoint a committee to receive documents from the relevant parties and compile a report. Someone by the name of Phatekile Holomisa headed this committee. Although the Holomisa Committee compiled a report, it was not given to either the AmaDiba Crisis Committee or TEM as the Department said it was an interim report. Still, nothing happened. About a year later, the Minister announced that she was appointing a special task team to conduct oral hearings on the proposed mine. This meant that members of the community and other interested parties could go in person to talk to the task team about their grievances. The hearings were supposed to take place but were postponed, and still no announcement was made on the community's appeal.

The AmaDiba Crisis Committee was now fed up and instructed Clarke to lodge a complaint with the South African Human Rights Commission and the Public Protector. He was also tasked with ensuring the case received high profile media attention.

### The Minister decides the appeal

On 6 June 2011 (nearly three years after the AmaDiba Crisis Committee sent their appeal) the Minister announced that she had upheld the appeal. This meant that she found a reason in the community's appeal to set aside the decision to grant the right to TEM. But her reason for upholding the appeal was not the best one the community could hope for. For instance, she said that the public consultation process that TEM had conducted was fine, even though the community found it problematic. Instead the reason she gave for upholding the appeal was that the Eastern Cape department responsible for the environment and the national Department of Environmental Affairs and Tourism had raised issues in letters written to TEM and these issues had not been addressed. So instead of setting aside the right given to TEM completely, she gave them a chance to respond to these issues. When they did that she would make a final decision about whether to set aside the right or not.

So while the community seemed to have won the appeal, the way the Minister allowed TEM to come back to respond to the issues raised by the environmental departments makes it similar to a boxing match in which they have won a round, but it is not yet clear who has won the match. This is born out by the fact that a new prospecting rights application over the area was lodged in May 2012. As Clarke notes, "be prepared for a very long haul, because as flaws are exposed, the mining company will simply correct them, and for as long as the minerals are still in the ground and for as long as the Government is more concerned about pleasing the mining industry than serving rural communities, the struggle will not be over."

Fighting the mining right has also been costly to the community in a number of ways. During the long time that it took the Minister to decide the appeal they could not use the land that was the subject of the right. An eco-tourism project had been planned for this land. Because of the uncertainty surrounding the mining right no steps were taken on the eco-tourism project. The people in the community also began to fight amongst themselves because some people felt that eco-tourism was the best way to develop the area while others felt that mining was better. This has had a bad effect on the harmony of the community.

## WHAT CAN OTHER COMMUNITIES LEARN?

There are at least three lessons that other communities can learn from the AmaDiba community's struggle. This case illustrates the need for the involvement and the resourcing of a variety of professionals (not only lawyers). In particular, social workers can play a critical role in assisting communities to establish the institutions that enable them to define their priorities, decide upon action and channel consensus and conflict, and this social work role should not be underestimated by lawyers or the funding community at large. Furthermore, the case illustrates the need to rely on a variety of strategies including use of the media, the South African Human Rights Commission and the Public Protector. Finally, it highlights the need to be prepared for a long haul.

John Clarke has been busy writing a book that fully documents the AmaDiba Community Struggle, entitled *Wild Coast Awakening: Truth Telling and Peace Building amid the Development Conflicts of the Pondoland Wild Coast*. It can be ordered from Brevitas Publishers, email [dennison2@telkomsa.net](mailto:dennison2@telkomsa.net).



## The Bakgaga Ba-Kopa Community's Story





The Bakgaga Ba-Kopa community (also known as the Tafelkop community) lives on a farm in the area of Thabantsho in the Limpopo Province (this area used to be known as Groblersdal). The apartheid government removed them from this land in 1962. Because of the Restitution of Land Act, the community could apply for the land to be returned to them and in 2004 they were indeed awarded the farm.

---

The traditional authority representing the community is known as the Bakgaga Ba-kopa Traditional Authority under the chiefstanship of Harry Boleu Rammupudu II. The Bakgaga Ba-kopa Traditional Authority signed a Memorandum of Understanding with the Department of Land Affairs and other state departments that said that the land would be transferred to an entity (for example, a communal property association) that would administer the land on behalf of and for the benefit of the Bakgaga Ba-kopa community. In the meantime the control of the land was with the chief.

### **Why did the community become unhappy about the chief's control over their land?**

By 2006 the land had still not been transferred to another entity that would administer it on behalf of and for the benefit of the Bakgaga Ba-Kopa community. Community members also started complaining about the way in which the chief was managing the affairs of the community. It seemed as if the chief and the traditional authority thought of the land as their own, rather than the property of all the people.

In September 2007 the chief, acting as a representative of the traditional authority, signed an agreement with a mining company by the name of Blue Ridge Platinum (Pty) Ltd. This agreement gave Blue Ridge the permission to mine on a portion of the land in exchange for a rental of R116 000 per month. After the lease was concluded Blue Ridge paid these monthly rentals into the ABSA bank account of the traditional authority.

Members of the community started asking questions about the money the traditional authority was getting from Blue Ridge and how this money was being spent. They then formed a committee, the Thabantsho Beneficiaries' Association, as the group that would demand the chief and the traditional authority to account to them how the finances of the community were being managed, especially the rentals received from Blue Ridge.

In April 2008, the chief then founded a trust. A trust is a type of legally recognised institution (like a company or a partnership) that allows for particular people to be appointed to look after money or other assets for other people. The people who look after the money are known as the trustees. The object (or reason) for the trust established by the chief was to hold the land that had been awarded to the community. This gave the trustees control over the land of which members of the community were ultimately the beneficiaries. The chief appointed himself and four other members of the tribal authority as the trustees of the trust. The problem with this arrangement was that community members were not informed about the chief's plans to establish the trust, they had no influence over who was appointed as a trustee, and they were given no information about what money was going into the trust and how it was being spent.

When they found out about the trust, the Thabantsho Beneficiaries' Association started demanding that the trustees account to them for the monies of the trust, but they received no response.

### **The Thabantsho Beneficiaries' Association approaches the Master of the High Court to help them**

In South Africa, the Trust Property Control Act is the law that sets out how trusts should be managed. The purpose of this law is to make sure that the trustees do their job properly to protect and advance the interests of the trust beneficiaries. One of the types of roleplayer who is responsible for making sure that the Trust Property Control Act is enforced is the Master of the High Court. Each of the High Courts in South Africa has a Master. Basically this is a type of job that involves legal administration relating to trusts as well as to making sure that a person's property is properly managed when they die.



So after their attempts to engage with the trustees met with no response, the Thabantsho Beneficiaries' Association sent a complaint to the Master of the High Court in Tshwane.

### The Master of the Court acts

The community found the Master of the Court to be quite helpful. Using rule 16 of the Trust Property Control Act, the Master wrote to the chief and the four trustees of the trust on 30 March 2009 telling them to bring all books, records or accounts relating to the administration of the trust to the Master's office in Tshwane within 30 days.

The chief and the trustees simply didn't respond, so the Master wrote to them again on 24 June 2009 demanding again that they should bring all books, records or accounts relating to the trust's administration to the Master's Tshwane office, this time within 14 days.

Following this letter there was some talk between the legal representatives of the Thabantsho Beneficiaries' Association, the chief and trustees and the Master about organising a meeting to iron out the differences between the parties, but the meeting did not take place.

### The Thabantsho Beneficiaries' Association approaches the High Court for an interdict

It was necessary for the community to first approach the Master to try and assist them. But because the chief and the trustees were not complying with the Master's instructions, the Thabantsho Beneficiaries' Association decided to go to the High Court to ask it for an interdict. An interdict is a type of legal order from the court that instructs someone to do something or to stop doing something. It is a serious thing because if the person then fails to listen to the order, they will be guilty of contempt of court and can then be fined or go to jail.

The Association asked the court to grant them an order instructing the chief and the other trustees to submit all books, records or accounts concerning the administration of the Trust to the Master, and prohibiting them from using the monies of the trust until they had carried out this task.

The judge who heard the case found no problem in granting the community's request. Calling the trustees to account for what trust monies were being received and how they were being used was a perfectly reasonable request.

### WHAT CAN OTHER COMMUNITIES LEARN?

This case is different from the stories of the Bengwenyama and AmaDiba communities discussed in this case book because instead of a community challenging a mining company directly, in this case the community challenged their own chief and tribal authority over money received from a mining company. This case shows that communities want their authorities to be accountable and to manage communal land in a way that benefits everybody in the community and not just the chief and his friends. Again, one of the first steps taken by the community was to form a committee that could specifically deal with the problem. Next, the community learned about the rules of trusts as set out in the Trust Property Control Act and it exercised its rights in that Act by sending a complaint to the Master's office. In the same way, other communities can use this strategy if any type of trust has been established for their benefit, either by the tribal authority or by the mining company. Finally, when the community realised that the chief and the trustees were not listening to the Master they escalated the issue by taking it to court.

# Contact details of organisations that can assist with legal representation

---



## **Centre for Applied Legal Studies**

DJ du Plessis Building, West Campus  
University of the Witwatersrand  
Braamfontein, Johannesburg  
Tel: 011 717 8600  
Fax: 011 717 1702  
Email: Duduzile.Mlambo@wits.ac.za  
[www.wits.ac.za/academic/clm/law/cals/11159/cals\\_home.html](http://www.wits.ac.za/academic/clm/law/cals/11159/cals_home.html)

## **Centre for Environmental Rights**

223 Lower Main Road, Observatory, 7925  
Cape Town, South Africa  
Tel: 021 447 1647  
Fax: 086 730 9098  
Email: [info@cer.org.za](mailto:info@cer.org.za)  
[www.cer.org.za](http://www.cer.org.za)

## **Lawyers for Human Rights**

*Cape Town office*  
4th Floor Poyntons Building  
24 Burg Street, Stellenbosch, Cape Town  
Tel: 021 424 8561  
Fax: 021 424 7135  
[www.lhr.org.za](http://www.lhr.org.za)

## *Durban office and Law Clinic*

Room S104, Diakonia Centre  
20 Diakonia Avenue (formerly St. Andrews Street),  
Durban, 4001  
Tel: 031 301 0531  
Fax: 031 301 0538

## *Johannesburg office and Law Clinic*

4th Floor Heerengracht Building  
87 De Korte Street corner Melle Street  
Braamfontein  
Tel: 011 339 1960  
Fax: 011 339 2665

## *Musina office*

18 Watson Avenue  
Musina, 0900  
Tel: 015 534 2203  
Fax: 015 534 3437

## *Pretoria office and Law Clinic*

Kutlwanong Democracy Centre  
357 Visagie Street, Pretoria 0002  
Tel: 012 320 2943  
Fax: 012 320 2949 / 012 320 7681

## *Upington office*

Room 110 & 111, Rivercity Centre  
Corner Scott and Hill Streets, Upington  
Tel: 054 331 2200  
Fax: 054 331 2220

## **Legal Resources Centre**

*National/Johannesburg office*  
15th and 16th Floor, Bram Fischer Towers  
20 Albert Street, Marshalltown  
Tel: 011 836 9831  
Fax: 011 834 4273  
[www.lrc.org.za](http://www.lrc.org.za)

## *Cape Town office*

3rd Floor, Greenmarket Place  
54 Shortmarket Street, Cape Town, 8001  
Tel: 021 481 3000  
Fax: 021 423 0935

## *Durban office*

N240 Diakonia Centre  
20 Diakonia Avenue, Durban, 4001  
Tel: 031 301 7572  
Fax: 031 304 2823

## *Grahamstown office*

116 High Street  
Grahamstown, 6139  
Tel: 046 622 9230  
Fax: 046 622 3933



# Contact details of the Masters' Offices in South Africa



The contact details for the fourteen Masters' offices in South Africa can be found on the website of the Department of Justice at <http://www.justice.gov.za/master/contacts.htm>. The contact details are reproduced here for the sake of convenience and for communities who do not have access to the Internet. However, where possible communities should check the website for updates from time to time.

## Enquiries/Customer Care

Tel: 012 406 4805

Fax: 086 5444 893

Email: [chiefmaster@justice.gov.za](mailto:chiefmaster@justice.gov.za)

## Master of the Free State High Court, Bloemfontein

**Master: Mr Jan du Plessis**

Tel: 051 411 5500

Fax: 051 448 6182, 051 447 6575, 051 448 8507

(Insolvency)

### Postal address

Private Bag X20584, Bloemfontein, 9300

### Physical address

Southern Life Building

Cnr Aliwal and Maitland Streets, Bloemfontein, 9301

### Office hours for the public

07h45 to 13h00 and 13h45 to 16h15

**Note:** No visits or telephone enquiries will be handled after 13h00. Members of the public from other towns must please make arrangements prior to their visit with the Masters Office, should they need to be assisted in the afternoon.

## Master of the Eastern Cape High Court, Bisho

**Master: Mrs Nothemba Mpongoshe**

Tel: 040 639 2087/2079

Fax: 040 639 2100/635 1757

### Postal address

Private Bag X0002, Bisho, 5605

### Physical address

1st Floor, SITA Building

Cnr Phalo and Rharhabe Avenues, Bisho

### Office hours for the public

08h00 to 16h00

## Master of the Western Cape High Court, Cape Town

**Master: Ms Z Agulhas**

Tel: 021 410 8300

Fax: 021 465 2574

### Postal address

Private Bag X9018, Cape Town, 8000

### Physical address

High Court, Parade Street, Cape Town, 8001

### Office hours for the public

08h00 to 13h00

**Note:** Information available from 1951; all information before that can be found at the Archive, Old Roeland Prison; Tel: 021 462 4050

## Master of the KwaZulu-Natal High Court, Durban

**Master: Ms Varsha Sewlal**

Tel: 031 306 0123

Fax: 031 306 0126

### Docex address

Master of the KwaZulu-Natal High Court

DOCEX 218, Durban

### Postal address

Private Bag x 54325, Durban, 4000

### Physical address

2 Devonshire Place, 2nd Floor, Durban, 4001

### Office hours for the public

07h45 to 13h00

## Master of the Eastern Cape High Court, Grahamstown

**Master: Mr SS Moodley**

Tel: 046 603 4000

Fax: 046 622 9990

Guardians Fund enquiries: 046 603 4004

### Postal address

Private Bag X1010, Grahamstown, 6140

*Physical address*

5 Bathurst Street, Grahamstown, 6139

*Docex address*

Master of the High Court, Docex 7, Grahamstown, 6140

*Office hours for the public*

07h45 to 12h00

**Note:** Afternoon visits confined to urgent matters only, to allow staff sufficient time to process workflow efficiently

**Master of the South Gauteng High Court, Johannesburg**

**Master: Mr L Pule**

Tel: 011 429 8000/8001/8002/8003

Fax: 011 492 3531 and 011 429 8035

*Postal address*

Private Bag X5, Marshalltown, 2107

*Physical address*

No 66 Marshall Street, Hollard Building  
Cnr Sauer and Marshall Streets, JHB

**Master of the Northern Cape High Court, Kimberley**

**Master: Mr Craig Davids**

Tel: 053 831 1942

Fax: 053 833 1586 (General)

053 832 9559 (Guardian's Fund)

*Postal address*

Private Bag X5015, Kimberley, 8300

*Physical address*

Civic Centre, Sol Plaatje Drive, Kimberley, 8300

*Office hours for the public*

07h45 to 13h00 and 13h45 to 16h00

**Master of the North West High Court, Mafikeng (Mmabatho)**

**Master: Mr M Modibela**

Tel: 018 381 8585/4122/0005

Fax: 018 381 3617

*Postal address*

Private Bag X42, Mmabatho, 2735

*Physical address*

Justice Chambers  
44 Shippard Street, Mahikeng, 2745

*Office hours for the public*

07h45 to 13h00 and 14h00 to 16h15 (Note that only members of public travelling from far and remote areas are assisted after 14h00).

**Master of the Eastern Cape High Court, Mthatha (Umtata)**

**Master: Mr SC Jozana**

Tel: 047 531 2361 or 047 532 3201 or 047 531 2120

Fax: 047 531 0980 or 047 532 2040

*Postal address*

Private Bag X6057, Mthatha, 5099

*Physical address*

Holy Cross Building, No 7 Craister Street, Mthatha, 5099

*Office hours for the public*

07h45 to 13h00 and 13h45 to 16h00

**Master of the North Gauteng High Court, Pretoria**

**Master (Acting): Ms M Mahole**

Tel: 012 339 7700 / 7808

Fax: 012 326 1977

*Postal address*

Private Bag X60, Pretoria, 0001

*Physical address*

SALU Building, 316 Thabo Sehume\* Street, Pretoria

\*Andries Street was renamed Thabo Sehume Street by Tswane Council in March 2012

*Office hours for the public*

07h45 to 13h00

**Master of the KwaZulu-Natal High Court, Pietermaritzburg**

**Master: Ms Seetarani Gangai**

Tel: 033 264 7000 (General)

033 264 7054/7029 (Guardian's Fund Helpdesk)

*Insolvencies, Trusts and Curatorships, Deceased Estates*

Tel: 033 264 7000

Fax: 033 264 7106

033 264 7057 (General: Guardian's Fund)

*Postal address*

Private Bag X9010, Pietermaritzburg, 3200

*Physical address*

241 Church Street, Colonial Building  
Pietermaritzburg

*Office hours for the public*

07h45 to 16h00

**Master of the North Gauteng High Court, Polokwane**

**Master: Ms FP Mugivhi**

Tel: 015 291 4300

Fax: 015 291 4320

*Postal address*

Private Bag X9670, Polokwane, 0700

*Physical address*

1st floor, Office 105  
Cnr Grobler and Hans van Rensburg Library Garden,  
Polokwane

*Office hours for the public*

08h00 to 15h00

**Master of the Eastern Cape High Court, Port Elizabeth****Master: Ms EA Daniels**

Tel: 041 403 5100

Fax: 041 487 1148

*Postal address*

Private Bag X 2, Port Elizabeth, 6000

*Physical address*

523 Govan Mbeki Avenue (Cnr Crawford and Govan Mbeki Avenue), North End, Port Elizabeth

*Office hours for the public*

07h45 to 13h00 and 13h45 to 15h00

**Master of the Limpopo High Court, Thohoyandou****Master: Mr TC Rambauli**

Tel: 015 962 1032

Fax: 015 962 1033

*Postal address*

Private Bag X5015, Thohoyandou, Venda, 0950

*Physical address*Venda Government Building Complex  
Thohoyandou, Venda, 0950*Office hours for the public*

07h45 to 13h00 and 14h00 to 16h15

**National office****Chief Master: Adv L Basson**

Tel: 012 406 4796

Fax: 086 544 4893

*Postal address*

Private Bag X81, Pretoria, 0001

*Physical address*22nd Floor, SALU Building  
316 Thabo Sehume\* Street, Pretoria*\*Andries Street was renamed Thabo Sehume Street  
by Tswane Council in March 2012***Chief Director: Mrs T Bezuidenhout**

Tel: 012 406 4807

Fax: 086 629 2434/086 629 2336

*Postal address*

Private Bag X81, Pretoria, 0001

*Physical address*SALU Building  
316 Thabo Sehume\* Street, Pretoria*\*Andries Street was renamed Thabo Sehume Street  
by Tswane Council in March 2012***Chief Director: Adv. M Mafojane**

Tel: 012 406 4806

*Postal address*

Private Bag X81, Pretoria, 0001

*Physical address*

SALU Building, 316 Thabo Sehume\* Street, Pretoria

*\*Andries Street was renamed Thabo Sehume Street  
by Tswane Council in March 2012***Director: Mr B Mashego (Guardian's Fund)**

Tel: 012 315 1698

Fax: 012 315 1901

*Postal address*

Private Bag X81, Pretoria, 0001

*Physical address*3rd Floor, South Tower, Momentum Centre  
329 Pretorius Street, Cnr of Pretorius and  
Sisulu\* Streets, Pretoria*\*Prinsloo Street was renamed Sisulu Street  
by Tswane Council in March 2012***Director: Ms N Sigcau (Projects)**

Tel: 012 315 1698

Fax: 012 315 1901

*Postal address*

Private Bag X81, Pretoria, 0001

*Physical address*3rd Floor, South Tower, Momentum Centre  
329 Pretorius Street, Cnr of Pretorius and  
Sisulu\* Streets, Pretoria*\*Prinsloo Street was renamed Sisulu Street  
by Tswane Council in March 2012***Customer Care: Ms Wendy Sithole**

Tel: 012 406 4805

Fax: 086 5444 893

Email: Chiefmaster@justice.gov.za

*Postal address*

Private Bag X81, Pretoria, 0001

*Physical address*22nd Floor, SALU Building  
316 Thabo Sehume\* Street, Pretoria*\*Andries Street was renamed Thabo Sehume Street  
by Tswane Council in March 2012*

## CENTRE FOR ENVIRONMENTAL RIGHTS NPC

223 Lower Main Road  
Observatory, 7925  
Cape Town, South Africa  
Tel 021 447 1647  
Fax 086 730 9098  
Email [info@cer.org.za](mailto:info@cer.org.za)  
[www.cer.org.za](http://www.cer.org.za)

A non-profit company with registration number  
2009/020736/08, PBO No. 930032226,  
NPO No. 075-863  
and a Law Clinic registered with the Law Society  
of the Cape of Good Hope

|             |                                                                                                      |
|-------------|------------------------------------------------------------------------------------------------------|
| Production  | Aletta Jordaan                                                                                       |
| Photographs | Centre for Environmental Rights<br>Lawyers for Human Rights<br>Beeld<br>Jacob Sehloho<br>Dale Morris |
| Text        | Associate Professor Tracy Humby                                                                      |

This publication was made possible with funding from the Ford Foundation  
and The Raith Foundation



**FORDFOUNDATION**

*Working with Visionaries on the  
Frontlines of Social Change Worldwide*

**THE RAITH  
FOUNDATION**



Tel 021 447 1647 | Fax 086 730 9098 | [info@cer.org.za](mailto:info@cer.org.za) | [www.cer.org.za](http://www.cer.org.za)