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**Xolobeni: for attention Adv Nogxina**

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Wed, May 22, 2019 at 1:06 PM

To: njamikho@gmail.com, Ayanda.Shezi@dmr.gov.za

Cc: Sam Sole &lt;sams@amabhungane.org&gt;, Stefaans Brümmer &lt;stefaansb@amabhungane.org&gt;

Dear Advocate Nogxina,

We are preparing an article about your involvement in the Xolobeni mining issue.

At the outset it seems to us that you displayed bias when you were associated with this project during your tenure as director general and special advisor.

We will return to evidence of that bias.

It appears also that you laboured under a conflict of interest in respect of the Xolobeni project due to your personal and family interests in the area – and that this conflict has persisted to the present.

Despite this, as far as we are aware, you never recused yourself from official involvement in the Xolobeni mining process, neither during your tenure as DG, nor during your service as a special advisor to minister Susan Shabangu, nor during your recent service as a special advisor to minister Gwede Mantashe.

Indeed you were the person delegated the power to make the award of the mining license in 2008. You remained DG until the end of June 2011 and special advisor to Shabangu from July 2011 until March 2012.

1) Please confirm/comment

As far as we are aware you have also played an active role in Mantashe's attempts to persuade the Xolobeni community of the benefits of mining and to undermine the opposition to mining, which is spearheaded by the Amadiba Crisis Committee (ACC), including being present at the first "imbizo" of Mantashe on 23 September and attending the meeting on 8 January 2019 in Durban with community lawyers Richard Spoor and Johan Lorenzen at which they asked minister Mantashe not to organise a second "imbizo" on 16 January and also presented reasons for why the Xolobeni mining license cannot be granted.

2) Please confirm/comment

3) If you have recused yourself in relation to the Xolobeni mining issue during any period of official service, please indicate when and where?

The chaotic meetings held by Mantashe have been characterized by a heavy-handed approach, both by the police and by the minister. They have allegedly included efforts to set up puppet representatives purporting to speak in support of mining on behalf of the 'silent majority' of the community, like Mr Anita Dineka (who is said to be from the inland Dangeni village), who appeared under the assumed name "Simlindile Matsheleza" on 16 January 2016 ministerial imbizo to say that ACC supports mining but is "fooled by whites".

3) Please comment

4) Did you and/or minister Mantashe meet Anita Dineka aka Simlindile Matsheleza on 15 January, or any other ay prior to or after the imbizo? If so, when and what was the purpose of that meeting/s?

5) We understand that since the imbizo Dineka/Matsheleza has been staying at the home of Zamokwakhe Qunya in Port Edward.

Please comment

Zamokwakhe aka Basheen was a director of the Xolobeni Empowerment Company (Xolco) and is Zamile Qunya's brother. Zamile is one of the founders of Xolco.

Xolco is a local empowerment partner of rights holder Transworld Energy and Minerals Resources (TEM), the South African vehicle of Australian parent company Mineral Commodities (MRC).

Zamile is also a director of Mineral Sands Resources, MRC's Tormin mine on the Cape west coast, and he is a signatory to TEM's affidavits in some court matters.

**To expand on your interest and those of your broader family and associates:**

6) It is alleged your family is from the KwaMzizi-Redoubt area, which is approximately 30km inland from the proposed mining venture.

Please confirm and/or comment.

7) You personally have property at the Estuary Country Estate outside Port Edward, purchased in October 2016 and at Eden Wilds, purchased in 2003.

Your wife is 50% member with Musawonke Raymond Conco in a CC (HONEY COASTLINE INVESTMENTS 134) that purchased a R1.7-million farm in the Banners Rest area of Port Edward in 2006.

The same company purchased further adjacent plots in 2009 (for R735 000,00) and 2018 (for R2 300 000,00).

Port Edward is the largest nearby town and is likely to benefit significantly from industrial development at Xolobeni and the related N2 road construction.

Please confirm and/or comment.

8) It is alleged that you may have an interest of some kind in the PetroSA Integrated Energy Centre at Redoubt, which was initiated under your watch in 2008 by the Department of Energy with PetroSA as the strategic partner, together with the Alfred Nzo District and Mbizana Local municipalities. Alternatively that you or your family have an interest in another petrol station in the area (along the R61).

Please confirm or deny and/or comment.

9) Your relative Bongani Nogxina lists an Albert road, Port Edward address, (Lot 229), which is owned by HONEY COASTLINE INVESTMENTS 134.

Bongani Nogxina also had a transport business NOGXINA TRANSPORT AND PROJECTS registered in Port Edward in 2006.

He also was a 50% member of a CC called HIRSUGENIX with Ayanda Notshweleka in 2010.

Notshweleka is a major beneficiary of the N2 toll road contract through his company Masakhane Project Managers.

Incidentally, Notshweleka also owns or owned the Ku Bha service station on the R61 and, we understand, the Yaka service station at Sea View, closer to Port Edward.

It is commonly understood that the viability of the N2 toll-road and the mine are interlinked, given that Transworld Energy and Minerals (TEM) points to the N2 as its first choice for transporting the mineral from the Xolobeni mining area in its mining application and TEM's mother company Mineral Commodities (MRC) says in its 2017 Annual Report that "the project's viability has been further enhanced by the commencement of the construction of the N2 Toll highway".

In 2010, Bongani Nogxina worked at or ran a car-wash business in the Port Edward area, which we understand may have been the Red Desert car wash on the R61, just outside Port Edward.

We understand Bongani Nogxina is your nephew.

Please confirm and/or comment.

10) It is alleged that Bongani told someone from the community that he was concerned about your co-operation with Zamile Qunya "without any need for that and just getting a bad reputation".

It is further alleged that Qunya in 2008 tried to put you forward as a lawyer for the community at a meeting "instead of the white Mr Spoor".

Do you have any knowledge of or comment on these claims?

11) It is alleged that during your time as an underground operative in South Africa in the 1980s & 90s you became acquainted with Qunya.

Please explain the nature of your relationship with Zamide Qunya then and since then.

12) In addition, your principal, minister Mantashe, and his wife Nolwandle, have a connection with the Ntlemeza family.

Nolwandle and Amanda Ntlemeza, were co-directors of a Limpopo company, MKP Minerals, between January 2016 and April 2016.

Amanda Ntlemeza is the daughter of then DPCI commander Gen Berning Ntlemeza.

The potential significance of this is that it is claimed by trustworthy sources that Gen Ntlemeza sent a head-office squad from the Hawks to 'manage' the investigation into the murder of Bazooka Radebe, which took place in March 2016.

Amanda is also a director of a company registered in October 2017, MUOPIHA INVESTMENTS, which Minister Mantashe has declared an interest in via his parliamentary disclosures.

While this potential conflict cannot be laid at your feet, I put it to you for comment, given that no progress has been made in solving the Radebe murder and the understandable suspicion that this arouses.

13) Mantashe has also appeared to display bias in succession disputes and spoils which appear to play a role in the Xolobeni matter.

For instance, in May 2016, while still ANC SG, Mantashe stated publicly the view that the rightful heir to the AmaMpondo throne was King Zanozuko Tyelovuyo Sigcau. He made this statement while a court was still seized with the matter.

Mr Mantashe also appears to know Zanozuko's previous spokesman/proxy Ntsizakalo Ngalo, who is also the N2 Wild Coast Toll Road consultant for SANRAL up till now. Zanozuko has been an outspoken and documented supporter of both the N2 Toll Road and the mine – and appears to have been used by Mr Mantashe to create legitimacy for mining. He was brought forward by DMR to speak in favour of the mining project on both 23 September and 16 January ministerial imbizos in Xolobeni.

This is significant because Zanozuko's present spokesperson, Prince Mzwandile Maraqana, is the sole director of KEYSHA INVESTMENTS 178, the company touted as empowerment partner for Transworld Energy and Minerals Resources (SA), the owner of the rights to the Xolobeni mineral sands project. He is also a director of the mining applicant TEM and Xolco, which is supposed to hold the community interest in the mine.

It appears likely that Maraqana is a proxy for the private interests of this branch of the royal family and this raises questions about the way King Sigcau has been used to promote support for the mining project.

Please comment.

14) There appears to have been further cynical manipulation of contestation within traditional structures on behalf of mining interests. We attach a copy of a 2014 affidavit by Chief Lunga Baleni.

He notes:

"In 2010 my late father's third wife instituted legal action against me to have the Chieftaincy removed from me with the financial assistance of Mr Zamilé Qunya and other members of the chieftaincy...

In 2012, before I knew that I was successful in defending my Chieftaincy, I was approached by Mr Qunya and other members of the Kwa-Madiba clan. They offered to withdraw the legal action against me in return for persuading the community to support the mining of titanium in Xolobeni by Transworld Mineral and Energy Resources SA (PTY) Ltd.

In particular, they asked me to appeal to those in the community who strongly opposed the mining to agree to it.

I was also informed by Mr Qunya that a "Royal Family Trust" bank account would be created and that the chieftaincy would be entitled to 4% of the profits obtained by the titanium mining. I later discovered that they had been aware of my successful defence of the Chieftaincy and had therefore created the above proposal with this knowledge and with the hopes of securing my support for the abovementioned mining ventures.

In order to avoid conflict within the chieftaincy I agreed to the proposal. Furthermore, the chance of retaining my chieftaincy as well as the additional profit to be gained by the titanium mining appealed to me. However, I did have reservations about persuading the community to support the mining as it involved putting the needs of the chieftaincy above those of the community."

Is it appropriate for the representative of a mining company to behave in this way?

Please comment.

### **Your interventions/interactions with Mr Radebe**

Mr Radebe was of course murdered in March 2016, but there are a number of independent records of his allegations against you, notably an interview in 2011 with journalist Ingi Salgado, which was videotaped by social-worker John Clarke.

In the interview, Radebe claims to have met you on three different occasions in 2010, during which you lobbied him to persuade the community to accept the proposed mining at Xolobeni. He said: "The first time round we met at a hotel, the second meeting was at his place and the third one was at the car wash."

15) Please comment.

16) How many times, according to you, did you meet Mr Radebe in 2010?

17) Who, according to you, initiated these meetings?

18) What was their purpose?

19) Did you on any of these occasions or at any other time lobby him to persuade the community to accept the proposed mining at Xolobeni?

20) Did you on any of these occasions or at any other time indicate to him that he would be rewarded should the community accept the proposed mining at Xolobeni?

Mr Radebe was quite explicit about details of these meetings.

He said the first meeting was set up via Bongani Nogxina, whom e met at the car wash and who, referring to you, informed him that “my father” wanted to meet with him. You subsequently called to Radebe and arranged a meeting with him at the Estuary hotel.

21) Please confirm/comment.

Radebe describes the first encounter as follows:

“After a few drinks he told me there was wealth for me to acquire if I got the community to change their minds because they listen to me. He told me we would be rich if the community agreed to this...

“He said we are going to be very rich as AmaMpondo in this thing, so I must stop listening to these children that are friends with ‘mlungu’, which are all these white outsiders ... so you must talk to the people so they will accept the mining... there is a lot of money to be made...”

“I told him that I would organize a meeting for him with the community and he can try and convince them himself.”

22) Please comment.

Radebe said the next meeting was at “Nogxina’s house”, though it is not clear where he means as you and your family have a number of properties in the area. He estimates this was about 2 months after the first meeting. He says his brother Wisemen came with him and that two other people that he didn’t know were with you.

23) Please confirm/comment.

Radebe describes the second encounter as follows:

“He told me to fight with all my might and change the mind of the community...

He told me to convince them to agree with the mining.

He told me that I would be able to build something huge in Xolobeni. He told me that I would be rewarded if the community changed their mind.

That is when they brought up the issue of the R150,000, promising me that amount if I managed to get the community to change their mind. There was money set aside for the crisis committee and Xolco as well...

He told me that we were going to be rich and he didn’t want his term to end without him having done something big for his community. He said he wanted to make money before he retired.”

24) Please confirm/comment.

Radebe describes the third encounter, where the alleged payoff was increased to R200,000 as follows:

“On the day that he called me asking where I am, I think he heard I was at the car wash because his son [Bongani] was there. He then joined me at the car wash.

That is when he told me that he was leaving for Joburg. I told him that I had spoken to the people but they were still confused. I would let him know when they are ready to meet with him.

He said that he would come and that I shouldn't forget that there was financial gain in this for me. That is when he promised me the R200,000.”

25) Please comment.

### **The journalist's questions and your response**

As you are aware, some time before these alleged interventions then minister Buyelwa Sonjica had as of October 2008 put on hold a licence awarded to Transworld to mine titanium at Xolobeni. This was as a result of significant resistance to the award, demonstrated to her at an official function in Xolobeni and after that at a meeting at the community's traditional meeting place.

By the time the interview with Radebe took place in June 2011, Sonjica's successor, Susan Shabangu, had recently withdrawn the granting of the licence, noting that it had been awarded at a time when several environmental issues were still outstanding as per a directive from the Regional Manager Eastern Cape Region to Transworld Energy and Mineral Resources SA (Pty) Ltd dated 4 June 2008.

It had also been announced that you would retire at the end of June.

I should inform you that lawyers acting on behalf of the members of the affected community have procured evidence of your 2011 interactions with Ms Salgado and one of their clients provided the material to me.

This includes her records of her contemporary interviews with relevant persons, including yourself.

This is important because of her questions posed to you that were drawn from the Radebe interview – and the way in which you responded to those questions, which again raises doubt about your bona fides in this matter.

On Tuesday 12 July 2011, Salgado directed a list of 24 questions to you via DMR's spokesperson Bheki Khumalo. The only other people to receive the questions were her editor and Business Report's lawyer.

26) According to the notes of a subsequent interview with Salgado, Radebe told her that you called him on the Tuesday night to ask Radebe for a meeting about a list of questions. Then in the morning (of 13 July) you called again to say Radebe must come to see you.

Please confirm/comment

According to Salgado's notes, Radebe described the events as follows:

"I agreed to meet him because he said he wants to show what was sent to him, things the journalist said about him. He asked where I am, then he said he must come to his house in Port Edward [a different house to the previous meeting].

"I arrived about 10-ish. I was met my Bongani at the garage [because Radebe did not know this other house]. When I got there, Nogxina asked why I wrote about him, mentioning he was drinking Viceroy. Why make all these allegations? I had to say, 'I do not know about that.' I denied it."

27) Please comment and set out your own version of what transpired.

Salgado's notes continue:

"He (Nogxina) was actually very, very angry, especially with the fact it was even alleged he was drinking Viceroy. The DG said Questions 4–12 were a big embarrassment to him. Otherwise, his lawyer is going to sue the newspaper or this. If I don't want to be part of the suing, I must sign the affidavit."

28) Please comment and set out your own version of what transpired.

Radebe's account, given to Salgado on or about 14 July, is corroborated by the affidavit provided by social worker John Clarke in his complaint to the Public Protector.

In his affidavit signed on 14 July 2011, Clarke states the following:

"I received an anxious call at 11.43 am on 13th July from my client [Radebe] pleading with me to please inform Ms Salgado that he had been called by the Advocate Nogxina to immediately come to his house in Port Edward. Upon his arrival he was surrounded with a number of people who, with Advocate Nogxina, questioned him. Two police vehicles arrived from Port Edward Police Station. It was clear that my client was actually going to be arrested if he refused to sign the affidavit. At the same time my client received a call from an officer from the Mzamba police station and Advocate Nogxina told my client to let them know he had arrived to DG's house. My client was faced with only two options: to either sign the affidavit to deny what he disclosed or get arrested on the spot.

The affidavit he signed says he recants the allegations as stated in lines 4 to 12 of the questions, which had been sent by Ms Salgado to Advocate Nogxina."

29) Please comment and set out your own version of what transpired.

It is worth noting that the affidavit (which I attach for your convenience) is very strange.

It merely states: "I have been shown the contents of the document hereto attached as annexure 'A'. I dispute all the allegations attributed to me from paras 4 to 12 of the said document."

It purports to have been attested at 11.00 at the SAPS community service centre at Port Edward.

30) How did annexure 'A' come to be provided? Who did you give it to and when?

Radebe's account is also corroborated by Salgado's contemporary notes of conversations on the 13th.

She records:

"At 11.48 I received a call from John Clarke to inform me that "thugs" had arrived at Bazooka's house to escort him to an unidentified police station, in an attempt to get him to sign an affidavit denying the allegations.

"I called Bazooka, the number was engaged, and I got through at 11:53. It was difficult to understand everything he said, because of our language barrier. Nevertheless, having spent hours interviewing him and knowing the sound of his voice, I could detect his adrenaline was pumping. I understood that there were 14 men with him at the police station... He told me there were 24 questions, and read word for word the last question (I was sitting in front of my computer and able to check). He then read verbatim the first, second and parts of the third question to me, by which stage I had verified without a doubt that they were the same questions. I suggested he not sign anything until he had spoken to his lawyer."

31) Please confirm/comment

Salgado records further:

"After consulting with my editors, I called Sandile Nogxina at 12:25 to ask whether he was behind sending the men to intimidate Bazooka. Nogxina denied it. I told him that Bazooka had the list of questions I had sent him (Nogxina), via Khumalo, which was the only such list of questions I had sent (to anybody apart from my editor and our lawyers). Nogxina said: 'No, no, no, I don't know anything about that.' I said: 'So you haven't sent those people?' He said: 'No I can't do that, please Ingi. I mean I can't do that. Let alone some of those questions, really. But I really can't do that.' I asked: 'What about those questions?' He said: 'I think they are so spurious. Some of the allegations that are made there. Jesus! But okay, that's fine you'll get my response.' We said goodbye."

32) Please confirm/comment

Salgado's notes record that Radebe told her: "Please just don't write all the story for the newspaper now. I am afraid now. I want to meet and explain nicely. I want to withdraw the statement. Please, Ingi."

As a result the paper did not run the story but Salgado conducted a follow-up interview with Radebe on or about 14 July.

It is clear from her notes that Radebe did not recant the allegations, but was now worried about putting them in the public domain and being sued by you.

Her notes record him saying through an interpreter:

"There were many men. It's one of those things I'd love to get advice on because I myself feel it was actually to intimidate me..."

"Now that Nogxina's lawyers are involved, I need lawyer's advice. I want to know if there's any possibility of being sued, like Nogxina told him. He said he doesn't want that. If you have properties in your name and somebody is telling you something to be sued, then it's not advisable to be taken to (court). He's worried. If it happened last year, (he might be asked) why not report it then? He'd be asked why he's reporting it only months after it happened..."

“My intention giving you all the information is not to embarrass Nogxina. I have nothing against Nogxina as a person... I want to ensure that what I say stops the mining. When I wrote (said) things which are not necessarily going to help us, e.g., drinking, he himself doesn't see how that helps ... Also (about the money in the account)... The DG himself did not ask for my account [number]... It's embarrassing for the DG. (Wants to check with lawyer first).”

33) Please comment

In his affidavit Clarke states: “It is clear that he [Radebe] signed the affidavit under duress. Given the circumstances I believe the document constitutes evidence that is in fact more incriminating to Advocate Nogxina than to my client, because given the sequence of events, and the fact that questions were only in the possession of four persons, it appears that Advocate Nogxina has resorted to desperate measures to suppress the information at source, knowing that he simply has no credible answer to the allegations.”

34) Please comment

There are several issues raised by your 2011 responses, including the written ones provided on your behalf by Mr Khumalo, which I attach for your convenience.

35) Where were you when you received a copy of or information about Salgado's questions – were you in Gauteng/Cape Town or already in the Port Edward area? Our information is that you were not in Port Edward but travelled there after receiving the questions.

Please confirm/comment

36) Your verbal response to Salgado suggests that you did not summon Radebe on the 13th and had nothing to do with him being in possession of the questions and being persuaded to make the affidavit of 13th July.

Please explain why should we not conclude that this was deliberately misleading, at best?

37) Were Mr Khumalo's written responses checked with you for accuracy before they were sent?

38) Mr Khumalo appears to have knowledge of the July 13 affidavit procured from Mr Radebe but does not disclose it to Salgado. Instead he makes a veiled reference: “We have information which suggests that Mr Radebe did not make the purported allegations regarding the meeting he had with the former DG.”

What did you tell Mr Khumalo about your interaction with Mr Radebe on the 12th and 13th?

39) We put it to you that your responses to Salgado's questions 2 and 3 are evasive. You fail to explain why you called Mr Radebe and why you met him on the one occasion that you confirm you did meet him at the Estuary Hotel.

40) We put it to you that your response to question 7 is also evasive. Clearly the assumption that a particular house in Port Edward was your home, may be mistaken, but is not the crux of the question. Given that Wiseman Radebe has confirmed such a meeting please explain why we should not conclude that this answer is deliberately misleading?

41) In the light of the description of the relationship to Bongani described above, please explain why we should not regard your response to Salgado's question 12 as deliberately misleading?

42) Please explain why we should not conclude that your reaction to Salgado's questions betrays a guilty mind.

It seems excessive if it was based on "spurious" allegations. You knew Salgado to be a diligent reporter, not given to publishing mere allegations. Yet you abandoned your post and travelled to Port Edward to confront your accuser and marshalled supporters and police to assist you in persuading Mr Radebe to 'recant' in this rather crude fashion.

43) We put to you the following proposition:

Whatever the true details of your interaction with Mr Radebe in 2010, the fact of the allegations of 2011 coupled with the fact of your highly emotional response thereto as evidenced in the communications of July 13, coupled with your deep connections in the area, should have led you to conclude that you were too closely invested in the issue of Xolobeni to involve yourself further in the matter as an official, even as a ministerial advisor.

This sense of a conflict of interest should only have been re-enforced by the murder of Radebe in 2016, which common sense suggests was directly connected to his opposition to mining.

Instead you engaged deeply in promoting the mining campaign when you returned to the issue under minister Mantashe.

Please comment

44) Finally, we put it to you that the actions of the department in relation to Xolobeni betray an entrenched executive-minded approach that is dismissive of the interests of the affected communities. This is especially worrying given the evidence that has accrued about the damage to community cohesion and sustainable resources flowing from 'development' based on mining – not only at Xolobeni, but elsewhere.

As the recent court judgement in Baleni and Others v Minister of Mineral Resources and Others has shown, this approach is out of step with our constitutional order – and with the global crisis of environmental breakdown.

Please comment.

Please come back to us by no later than CoB Tuesday, 28 May 2019.

6/27/2019

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**2 attachments**



**Sandile Nogxina\_responses.pdf**  
43K



**Sworn Statement - Mr Radebe (13 July 2011).pdf**  
384K