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**XOLOBENI - Urgent questions**

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Mon, Jun 3, 2019 at 10:58 AM

To: mark.caruso@simto.com.au, chris.hoult@simto.com.au, madiba@mineralcommodities.com,

Peter@torreccorporate.com.au

Cc: Sam Sole &lt;sams@amabhungane.org&gt;

Dear Mr Caruso/MRC and Mr Qunya,

My name is Sam Sole.

I am the managing partner of the amaBhungane Centre for Investigative Journalism.

We are preparing an article about the Xolobeni mining issue and Mineral Commodities (MRC). The article focuses on the role of special advisor Advocate Sandile Nogxina as well as minister Gwede Mantashe, but it does touch on the behaviour of MRC's corporate entities, associates and agents so we wish to give you an opportunity to respond to or comment on issues or questions raised.

- 1) There is some confusion about your empowerment partners. The Xolobeni Empowerment Company, which, according to disclosures by MRC, effectively owns 50% of Mineral Sands Resources (via 100% of Blue Bantry) and 26% of TEM (Xolobeni project - via 100% of Keysha Investments). Is this still the current shareholding structure? If not, please indicate the correct situation.
  
- 2) According to your disclosures, 18% of TEM is/was owned by SGF Secretaries. This is a secretarial company holding shares as a nominee. Who are/were the beneficial owners of the shares held by SGF and why is MRC so concerned to hide this interest behind a nominee?
  
- 3) We understand that the relevant parties have been refusing to disclose the share registers of Xolobeni Empowerment Company, Blue Bantry Investments 255, Transworld Energy and Minerals Resources (SA) Pty Ltd and Keysha Investments. This is a legal requirement under South African company law. Please comment and supply copies of the share registers.
  
- 4) The shareholding in the Xolobeni Empowerment Company (Xolco) is opaque. In its disclosures, MRC has claimed that the company is owned by five trusts established for the benefit of the community. What are the correct names, registration details and trustees of each trust?
  
- 5) This is important because of allegations that MRC and/or other entities that want mining to go ahead have pursued what is known as astroturfing: viz, setting up organisations that purport to be genuine popular movements, but are instead artificial creations with little real support.

For instance, it has been reported that two of the “trusts” referred to by Minister of Mineral Resources Gwede Mantashe in a 27 September media statement as being promoting – the Mdatya Trust and the Bekela Trust – have been found not to exist. Your Mr Zamile Qunya told Noseweek magazine that the two trusts were “new” and not yet registered. What is Mr Qunya’s role in the establishment of these trusts?

Please comment.

6) Your 2018 annual report discloses that:

the Company agreed to provide Blue Bantry access to an amount of funding to support the original Tormin Project objectives by advancing through a loan, certain benefits Blue Bantry would expect to receive from the Tormin Project. Blue Bantry will repay the ZAR8,250,000 loan from dividend distributions that it will receive in the future from MSR.

Further, a notice issued by you on 28 September 2012 indicated that a total of R14-million would be advanced to Blue Bantry. It is not clear whether this amount is additional or was amended and is the same advance referred to in the 2018 report. Please clarify.

The 2012 notice explicitly commits that this funding is aimed at “providing an immediate positive benefit to the amaDiba community.

Given that we understand Blue Bantry is 100% owned by Xolco, please detail the benefits the trusts and the amaDiba community have derived from these advances?

7) The meetings held by Mantashe have been characterized by a heavy-handed approach, both by the police and by the minister and 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”. Did you or Mr Qunya or any representative of yours meet with “Dineka” prior to the imbizo?

Please comment

8) We understand that since the imbizo Dineka/Matsheleza has was staying for an extended period at the home of Zamokwakhe Qunya (your Mr Qunya’s brother) in Port Edward.

Zamokwakhe (aka Basheen) was a director of the Xolobeni Empowerment Company (Xolco).

Please comment

9) There appears to have been a 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 Zamble 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.

10) The recent judgement regarding the rights of the community to consent to mining noted:

The divisions within the community is perpetuated by the allegations that iNkosi Lunga Baleni ("Baleni") who was once a staunch opponent of the proposed mine, now supports the proposed mining. He has, according to the papers, accepted a vehicle belonging to TEM and is a director of XolCo and TEM respectively. Baleni's subsequent turnabout has served to intensify conflict and dissatisfaction in the community.

Please comment

11) Your 2018 annual report stated:

The Company's Broad-Based Black Economic Empowerment ("BBBEE") preferential procurement with Historically Disadvantaged South Africans ("HDSA") in 2018 was approximately ZAR398 million (2017: ZAR336 million), exceeding all targets set in this regard.

Please provide a detailed breakdown or at least name the top three companies to whom this procurement spend was directed.

12) Your report also discloses:

With effect from 15th September 2016, MSR has provided a surety to FirstRand Bank Limited of ZAR4,614,788 (US\$ 320,561) (2017: ZAR4,614,788 (US\$372,676)) for the

due payment by Z Square M.P. Empowerment Company (Pty) Ltd of all monies owed to FirstRand Bank Limited.

You do not disclose that Z.Square is a related party, given that it is controlled by the Qunya brothers. We note that in photographs illustrating the annual report it is apparent that Z.Square provides security services to the company or its South African associates.

Please disclose the nature of the contractual relationship with Z.Square, the full ranges of services that it provides and the annual value of those services.

13) While you and the company maybe understandably frustrated by the resistance you have encountered in South Africa, there seem to be a number of instances where your approach might be construed as heavy-handed and intemperate, especially given South Africa's history.

Please comment

14) For example, in November 2011 John Clarke called Mr Caruso in Perth to offer him the opportunity to contribute his narrative to the book that Clarke was writing.

Clarke recorded the conversation which is quite hard to follow, but contains numerous expletives. I reproduce a transcript here:

MC: "the fundamental basis of the (inaudible. social and labour plan???) to create fuckin jobs (inaudible) for economic d??? for fuckin players.. If you fucking don't know what that is go back to fuckin Darwin. Charles Darwins fucking brother, fuckin Erasmus went on a voyage in 1846 called the Voyage of the Beagle. Did you know that? Do you know what he fuckin ascertained after all that? Guess what? Do know what he wrote? Do you know the book?"

JC. I have read it. I have a copy on my shelf.

MC. Well go and fuckin refer to it.

JC. I do. In fact I quote it in my book.

MC. Survival of the fucking species mate. It's all there. Is there anything else you need to talk to me about John, because I gotta go, cause I wanna go and get drunk after speaking to you.

JC. Ah No Mark!

MC. I am going to seek solace in the bottle. Because there are no jobs for them. OK?

JC. OK.

MC. Take care. All the best.

Please comment

15) On another occasion, in response to Clarke's further probing as to whether Mr Caruso had any information about corruption at the DMR, his response was allegedly:

“The whole of Africa is fucking corrupt. Whatever the current Director General hasn’t stolen his successor will steal”.

Please comment

16) Your response to an alleged death threat of 16 January 2019 also raises questions. We have been forwarded a copy of your email to Mr Qunya in which you state:

“This is the first press!

I fully understand the Genesis of this threat

It is the last dying kicking of a broken horse. The party is over for the The white environment to extremists who have milked the European NGOs and environmental support funding for over 20 years.

They are now trying to perpetrate violence to assist their cause as it will show that there is still anti-mining support...”

The threat is extremely crude and comes from an email address that discloses the real name of the ‘sender’, Greg Solomon.

Did you ever report this to the authorities? If so, please supply the case number?

Mr Solomon claims his email account was hacked after he posted some angry comments on Facebook about the police breakup of the meeting with Mr Mantashe.

The email threat was circulated by people acting on behalf of Mr Qunya to journalists to present the Amadiba Crisis Committee as being behind the threat of violence.

This suggests that perhaps the threat was manufactured?

Please comment

17) The so-called SLAPP suits that you have launched against a range of individuals might also be seen in the same light – as a heavy-handed attempt to stifle or punish legitimate criticism of mining per se – and of your company’s operational record.

Please comment

18) The recent shareholder Spill vote could be read as a vote of no confidence in your style of leadership?

Please comment

19) In a taped interview, the late Bazooka Radebe claims that former DMR DG Adv Sandile Nogxina in 2010 offered him a R150,000 inducement to swing the community support in favour of mining. Mr Nogxina denies making such an offer. Radebe states that he was of the impression that this money would come from the mining company, not from Adv. Nogxina.

Do you have any knowledge of or comment on this allegation?

6/27/2019

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Please come back to us by no later than CoB Australian time on Wed 5 June 2019.

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