



Micah Reddy <micar@amabhungane.org>

Questions for amaBhungane article on Dithabeng mine

1 message

Micah Reddy <micar@amabhungane.org>

1 February 2019 at 14:49

To: nicqui@galaktiou.co.za

Cc: kameshni@galaktiou.co.za

Dear Nicqui,

I trust you are well.

I understand that you are the legal representative of Dithabeng Mining. Please see the request for comment below addressed to Dithabeng Mining's directors.

To the directors of Dithabeng Mining, Messrs Mazzotti, Reuben and Sayed,

My name is Micah Reddy and I'm a journalist from the amaBhungane Centre for Investigative Journalism. We are currently working on a story concerning the Dithabeng mine at Ga-Mphahlele in Limpopo, which appears to have riled community members.

We would like to afford the directors an opportunity to respond to the following:

1) Members of the community and the Royal Council charge that Dithabeng's directors have gone over the heads of the community and wider traditional leadership of Ga-Mphahlele in striking a deal with the acting regent, Sophia Phatudi-Mphahlele, whose legitimacy has been called into question, and her son, Malekutu.

They say there was no consultation with the community and no buy-in from the wider traditional leadership.

Recent court rulings concerning the Xolobeni and Lesethleng communities have established the precedent that mining companies must not simply tick the box of consulting communities, but must meaningfully engage and obtain their consent prior to mining, especially where those communities stand to be deprived of access to their land by mining activity.

It would appear, however, that Dithabeng did not receive consent from the community, nor did it consult community members, despite the fact that the land is communally-owned through the Mphahlele Community Development Trust. Please respond to this and, if the claim is contested, please provide proof of public consultations and/or buy-in from the wider traditional leadership.

2) It would appear that the traditional leadership is split between those loyal to Sophia Phatudi-Mphahlele and those loyal to the Royal Council, which has launched a legal challenge to the chieftainess' position.

Time and again in South Africa we see cases where mining companies exploit division among traditional leaders and their institutions, effectively buying off one faction of that leadership by striking a deal with them independently of the wider community. The result - ordinary residents do not benefit from the extraction of resources from their land, and the community is left deprived and divided.

It is alleged that Dithabeng is guilty of the above. How would the company and its directors respond?

3) When did Dithabeng Mining commence operations, and at which point, if at all, has it halted operations?

4) It is often charged that mining companies have a habit of promising the world communities while delivering little. What benefits has the community seen from the mine.

How many people has the mine employed? How many of them are local? And what jobs do locals fill?

5) We understand there is no local beneficiation of the ore. Where is the ore sent and to whom is it sold?

6) What measures has the mine taken to mitigate damage to the environment and the health and well-being of residents, some of whom live very close to the pits, and whose cattle graze in the immediate vicinity of the mine?

7) Further to the above, please provide copies of your environmental management and social and labour plans.

8) What mechanism is in place to ensure that the community realise some material benefit from the mine and the land they own, by means of royalties, rent, a profit sharing agreement, etc.?

9) Following from the above, how much has thus far been invested in the mine? What is are the mine's total earnings? And of that, how much has accrued to the community?

10) AmaBhungane understands that after opposition to Dithabeng mine from the community and a legal challenge, a September 2017 court order interdicted the company from further bulk prospecting or any future mining without consultation with the community.

The court then ruled on 17 Oct 2017 that the agreements entered into between the respondents (Dithabeng, Malekutu Phatudi-Mphahlele, Sophia Phatudi-Mphahlele, and the Mphahlele traditional authority) would have to be renegotiated by the successful party in a pending review application.

The court also declared that Dithabeng will comply with the prospecting permit and work programme, which only permits prospecting and does not even include bulk sampling. Yet, it is evident that full-scale open-cast mining is still being conducted at the mine.

AmaBhungane understands that Dithabeng acquired a mining permit *after* the court order was issued and was still in force, and then continued mining operations.

Opponents of the mine claim that the mine is therefore operating illegally and in bad faith. How could the mine acquire a mining permit and operate beyond the confined of the prospecting programme while the entire agreement that the mine entered into is under review? This would appear to be in breach of both the letter and the spirit of the court ruling.

Please acknowledge receipt of this email and respond COB Tuesday, 5 Feb.

Regards,
Micah

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Micah Reddy
amaBhungane investigative journalist
0832973444
@redmicah

[REDACTED]

■ [REDACTED]

■ [REDACTED]

6. Before our client responds to your lengthy and extensive questions our client requests that the following preamble be published:

“Dithabeng Mining is a black majority owned and managed company. It holds the community of Mphahlele in high regard and particularly focuses on social investment and environmental conservation within the region. Dithabeng’s corporate social responsibility and community development are prioritised as this plays a critical role in the company’s relationship with the community and its employees.”

7. We set out hereunder the answers by Dithabeng to your questions:

7.1. Members of the community and the Royal Council charge that Dithabeng's directors have gone over the heads of the community and wider traditional leadership of Ga-Mphahlele in striking a deal with the acting regent, Sophia Phatudi-Mphahlele, whose legitimacy has been called into question, and her son, Malekutu. They say there was no consultation with the community and no buy-in from the wider traditional leadership. Recent court rulings concerning the Xolobeni and Lesethleng communities have established the precedent that mining companies must not simply tick the box of consulting communities, but must

meaningfully engage and obtain their consent prior to mining, especially where those communities stand to be deprived of access to their land by mining activity. It would appear, however, that Dithabeng did not receive consent from the community, nor did it consult community members, despite the fact that the land is communally-owned through the Mphahlele Community Development Trust. Please respond to this and, if the claim is contested, please provide proof of public consultations and/or buy-in from the wider traditional leadership.

- (1) “The allegations contained in the statement are factually incorrect. Dithabeng Mining started discussions with the Mphahlele Community Development Trust in early 2016 followed by numerous meetings until the community consultation.**
- (2) On 11 February 2017, a community consultation, which was held at the Sefalaolo Primary School, was attended by over 800 members of the Mphahlele community. The meeting was chaired by Former Ward councillor Mr Ngwanaila Mashoene, in the presence of Mr Tshwaane Phatudi Mphahlele, Mr Matsimela Mphahlele (Headman), Mrs Sophia Phatudi-Mphahlele Ngwanamohube (Chieftainess) and Mr Malekutu Thabo Phatudi Mphahlele.**
- (3) The members of the community participated by raising many questions which were addressed, and consensus was reached to sign an agreement in public as a sign of a broader buy in.**
- (4) Before the aforementioned meeting and before the Royal House, Dithabeng introduced itself and its vision to the entire Mphahlele Traditional Council which was attended by approximately 65 Headmen.**
- (5) After continued negotiations and the conclusion of the agreement, a signing ceremony was held on the sports ground of the Sefalalo High School, which was attended by traditional council members and over 1200 members of the community. Photographs taken at the event are attached hereto marked “A”.**

7.2. It would appear that the traditional leadership is split between those loyal to Sophia Phatudi-Mphahlele and those loyal to the Royal Council, which has launched a legal

challenge to the chieftainess' position. Time and again in South Africa we see cases where mining companies exploit division among traditional leaders and their institutions, effectively buying off one faction of that leadership by striking a deal with them independently of the wider community. The result - ordinary residents do not benefit from the extraction of resources from their land, and the community is left deprived and divided. It is alleged that Dithabeng is guilty of the above. How would the company and its directors respond?

- (1) “At the commencement of the negotiations and at various meetings Dithabeng made enquiries with the Department of Cooperative Governance and Traditional Affairs (“COGTA”), who confirmed that the legal and recognised leadership of the Mphahlele Traditional Council was Sophia Phatudi-Mphahlele. A copy of a letter dated 1 August 2018, from the office of the Premier of Limpopo is attached hereto marked “B”, which was only confirmed a year later.**
- (2) The dispute between the Mphahlele Traditional Council and the Royal Council had begun long before Dithabeng began with its negotiations and consultation process.**
- (3) The Royal Council approached Dithabeng in April of 2017 when it began prospecting and sought that Dithabeng recognise it as the Traditional Council of Mphahlele and requested that payment be made for offices and related expenses. Dithabeng requested proof of the assertion made by the Traditional Council before it could proceed.**
- (4) Dithabeng once again undertook an investigation with COGTA and was advised yet again that the Royal Council was NOT the recognised Traditional leadership of Mphahlele. Dithabeng further consulted with COGTA at its national office to confirm the legitimacy of the Royal Council over the Traditional Council.**
- (5) Dithabeng was given the assurance that the Mphahlele Traditional Council was confirmed to be recognised and legitimate and that Ngwanamohube Sophie Phatudi Mphahlele is the recognised Senior Traditional Leader,**

dismissing claims that her certificate of chieftainness has expired. The Royal Council then began with a campaign of false accusations and false claims about Dithabeng.

- (6) The mine then began to experience acts of sabotage. Machines were damaged, hoses of the machines were cut and batteries were stolen.
- (7) Dithabeng refused to take sides with the two factions and refused to be drawn into the dispute between the two, which was on-going prior to Dithabeng's involvement. Dithabeng at all times dealt with the officially recognised representatives."

7.3. When did Dithabeng Mining commence operations, and at which point, if at all, has it halted operations?

"Dithabeng commenced with operations after the signing ceremony on 25 February 2017 and began prospecting and exploration during the latter part of March 2017. Dithabeng continues with prospecting and operations."

7.4. It is often charged that mining companies have a habit of promising the world communities while delivering little. What benefits has the community seen from the mine? How many people has the mine employed? How many of them are local? And what jobs do locals fill?

- (1) **"Dithabeng's vision is to work closely with the community. During the Community Consultation in February 2017, Dithabeng promised and delivered on its promise to dig 3 water boreholes before the signing ceremony. A photograph of the boreholes is attached hereto as annexure "C".**
- (2) **Dithabeng realises that there is a high unemployment rate in the community and has devised a volunteer initiative program where Dithabeng gets volunteers from the community to do security work and compensates them. Approximately 84 community volunteers are currently security guards. Dithabeng has paid for the training of about 14 Mphahlele community members for them to be up-skilled in the security industry and receive proper training.**

- (3) Dithabeng began negotiations with the affected Field Occupiers whose land was affected and came to an agreement with them and erected a fence to protect the livestock from wandering on the mine site.**
- (4) Dithabeng developed a volunteer system to use 60 volunteers from the Mphahlele community to erect the fence and remunerated them. This program was very successful. The remuneration that the volunteers received was a way Dithabeng could assist with the unemployment situation in the community.**
- (5) Dithabeng implemented a school feeding scheme to provide the students with nutrition to enable them to perform better at school. Dithabeng began this initiative at the Sefalaolo Primary School and Kgagatlou High school. This is the initial first phase of Dithabeng's comprehensive plan that will be implemented when the mining right is obtained. About 9 women from the community volunteer as food handlers to prepare the food for the school children. A photograph of this initiative is attached hereto as annexure "D".**
- (6) Dithabeng is currently mining with a mining permit. Dithabeng has trained 9 Mphahlele Local operators to operate the machinery required for mining. This training programme for community operators will increase when it obtains its mining right. Dithabeng has used 2 community water trucks for the site. Dithabeng has used 5 community trucks for the transport of ore. In December 2017 while still working on prospecting, Dithabeng provided Christmas hampers to the entire Mphahlele community of Sefalaolo, Lesedi and Makaepa. In December Dithabeng sponsored a youth football tournament for the entire Mphahlele Community. Photographs of the respective events are attached hereto as annexure "E".**

7.5. How many people has the mine employed? How many of them are local? And what jobs do local fill?

"Dithabeng is currently doing the exploration and mining on a mining permit. There is no need for a vast staff compliment at this stage as the exploration does not require many workers. The mining permit is therefore currently on a small scale.

Dithabeng uses 9 local machine operators. In total there are approximately 16 workers. When the mining right is obtained there will be many jobs that will become available.”

- 7.6. We understand there is no local beneficiation of the ore. Where is the ore sent and to whom is it sold?

“Dithabeng is currently prospecting and mining with a mining permit. Dithabeng has begun to construct a beneficiation wash plant that falls in line with its vision. All the necessary applications are in process and construction has started. This will yet again provide more jobs for the community of Mphahlele. The ore is transported to Steelpoort and sold to chrome traders at present.”

- 7.7. What measures has the mine taken to mitigate damage to the environment and the health and well-being of residents, some of whom live very close to the pits, and whose cattle graze in the immediate vicinity of the mine?

“Dithabeng has at all times adhered to Environmental Impact Assessment (“EIA”) presented for the prospecting right. On application for the mining permit, Dithabeng conducted and submitted a further EIA as per the requirement of the Department of Mineral Resources (“DMR”). The DMR has approved the EIA. Dithabeng has adhered to all requirements when it began prospecting and mining within the mining permit. Dithabeng has set up a committee for the field occupiers. The local security volunteers have been tasked to keep the roaming cattle away from the mining area. Dithabeng has erected a fence along the boundary where operations are taking place.”

- 7.8. Further to the above, please provide copies of your environmental management and social and labour plans.

“The EIA for prospecting right that was submitted to the DMR is attached hereto marked “F”. The EIA submitted for the Mining permit application is with the DMR. The EIA and Social Labour plans are being developed as Dithabeng is preparing for the mining right application. Since the company is mining with a mining permit,

the social labour plan is not mandatory. Dithabeng is using its best endeavours to assist the community to ease the unemployment situation.”

7.9. What mechanism is in place to ensure that the community realise some material benefit from the mine and the land they own, by means of royalties, rent, a profit-sharing agreement, etc.?

- (1) “The Dithabeng mining model is a ground-breaking model that pays profit/dividends forward in order to expedite the development of the communities in which it operates. From the abovementioned initiatives implemented even before it has obtained a mining right, is indicative that Dithabeng is working together with the community.**
- (2) The Joint Venture has been established with Dithabeng and the Mphahlele Community Development Trust and the company is called Dithabeng Mining Mphahlele. Dithabeng has agreed with the field occupiers to compensate them during this process.**
- (3) This program has started with agreements and payments already executed and on completion Dithabeng will enter into a lease agreement with the Mphahlele Traditional Council where fair rentals will be paid.**
- (4) Dithabeng strongly believes that the profits that accrue to the community MUST be used to implement the needs of the community for the development of the community.**
- (5) Dithabeng has already presented and engaged with the Mphahlele Traditional Council members and discussed potential community projects where it will assist in implementing a water treatment plant, a brick making plant and the construction and development of a shopping centre and a youth communal centre just to name a few.**
- (6) The Mphahlele Community Development Trust and Dithabeng Mining have formed a Joint Venture company called Dithabeng Mining Mphahlele (Pty) Ltd, where the Mphahlele Community Trust holding 51% and Dithabeng 49%. This comes after the community signing ceremony of 25 February 2017.”**

7.10. Following from the above, how much has thus far been invested in the mine? What is the mine's total earnings? And of that, how much has accrued to the community?

“Dithabeng has invested a lot of money into the prospecting and exploration of the mine. Once the mining right is granted with all the financial models, Dithabeng will have a capital amount that will be raised by it for the construction and development of the mine.”

7.11. AmaBhungane understands that after opposition to Dithabeng mine from the community and a legal challenge, a September 2017 court order interdicted the company from further bulk prospecting or any future mining without consultation with the community.

- (1) **“The matter between the Mphahlele Traditional Council and the Royal Council began even before Dithabeng got involved. After the community signing ceremony, Dithabeng started the prospecting and exploration program. In order to understand the ore, Dithabeng decided that a bulk sampling was required.**
- (2) **After further consultation with the exploration team of geologists, it was decided to apply for a mining permit. Dithabeng then engaged the Mphahlele Community Trust, the Mphahlele Traditional Council and the Mphahlele Community on 14 March 2017. Presentations were made and numerous questions were raised by the community which Dithabeng addressed.**
- (3) **The resolution from the Mphahlele Community Trust and the Mphahlele Traditional Council was taken on 19 March 2017. The process for the application of a mining permit had begun in May 2017. The company has not amended the prospecting right to include bulk sampling, and DMR has not approved any amendment involving bulk sampling, as falsely alleged in court papers.**
- (4) **The Royal Council then became aware of Dithabeng’s consultations and resolutions taken with the Mphahlele community. From as early as April 2017 members of the Royal Council began interfering with the operations at the mine and would intimidate and harass workers and would go so far as to enter the site at night and damage the machines.**

- (5) The Royal Council requested that Dithabeng attend a meeting on 29 August 2017. Dithabeng requested that the Royal Council produce evidence proving that they were the legal representatives of the community. They did not provide the proof as requested. The Nkopodi and the Royal Council then instituted legal proceedings against Dithabeng with false allegations about the prospecting operations. Dithabeng opposed the matter in October 2017 under case No: 6624/2017. A Court Order was granted granting Dithabeng to continue with prospecting. A copy of the Court Order is attached hereto marked "G". The terms of the Court Order are set out hereunder:
- 5.1. A Rule Nisi granted against the Fourth Respondent in favour of the Applicants is discharged;
 - 5.2. ...;
 - 5.3. Whatever agreements were entered into between Fourth Respondent and First, Second and Third Respondent will be negotiated by the successful party in the Review Application;
 - 5.4. The Fourth Respondent will comply with the terms of the prospecting permit and work programme;
 - 5.5. Applicants will form a committee of five members who in conjunction With DMR will monitor the operations of Fourth Respondent, pending the Finalisation of the Review Application; and
 - 5.6. The costs of the application are costs in the cause of the Review application.
- (6) Pending the final review of the matter between the Royal Council and Sophia Phatude-Mphahlele, the successful party will have to review the agreement signed with Dithabeng.
- (7) A committee was to be formed with the Mphahlele Community Trust, the Royal Council and Dithabeng with the DMR being aware of the operations.

- (8) Dithabeng set out up a meeting with the Royal Council to be introduced to their representatives for the committee.**
- (9) Dithabeng agreed as per the Court Order that the agreement will be reviewed with the successful party and the Royal Council cannot be recognised before the outcome of the Court proceedings. It is known that certain individuals have spread false allegations about Dithabeng in an attempt to damage its name and reputation.**
- (10) Dithabeng was not interdicted and the Court Order allowed it to continue prospecting. Costs were granted in Dithabeng's favour."**

7.12. The court then ruled on 17 Oct 2017 that the agreements entered into between the respondents (Dithabeng, Malekutu Phatudi-Mphahlele, Sophia Phatudi-Mphahlele, and the Mphahlele traditional authority) would have to be renegotiated by the successful party in a pending review application.

- (1) "Dithabeng adhered to this agreement and the Royal Council as well as the Trust have been updated with the operations of the mine.**
- (2) On 1 August 2018, the office of the Premier issued a letter confirming the review of recognition/appointment as acting senior traditional leader to Phatudi Mphahlele Ngwanamohube Sophie, fulfilling the part B of the review application before court.**
- (3) On 28 September 2018 under Case No: 6624/2017 an application was brought by the Royal Council before Judge President Makgoba, again with false allegations and the matter was struck off the roll due to lack of urgency and the applicants were ordered to pay the costs of the urgent application. A copy of this Court Order is attached hereto as annexure "H".**
- (4) The Royal Council then under Case No: 6624/2017 enrolled the matter in the ordinary cause and the matter was heard on 10 December 2018 before Judge Muller and was struck off the roll with costs. A copy of the Court Order is attached hereto marked "I".**

- 7.13. The court also declared that Dithabeng will comply with the prospecting permit and work programme, which only permits prospecting and does not even include bulk sampling. Yet, it is evident that full-scale open-cast mining is still being conducted at the mine.

“Dithabeng mining has complied with the Court Order at all times and the representatives of the Royal Council and the Mphahlele Trust are updated in respect of the operations at the mine. The false claims by the Royal Council against Dithabeng are due to Dithabeng’s refusal to recognise them and their demands for money.”

- 7.14. AmaBhungane understands that Dithabeng acquired a mining permit after the court order was issued and was still in force, and then continued mining operations.

“The application process had started prior to the court hearing and the representatives of the Royal Council were informed thereof. There was also a community consultation process held at the Mphahlele community Hall with all the members of the Mphahlele Traditional Council, the Trust and the community of Mphahlele.”

- 7.15. Opponents of the mine claim that the mine is therefore operating illegally and in bad faith. How could the mine acquire a mining permit and operate beyond the confined of the prospecting programme while the entire agreement that the mine entered into is under review? This would appear to be in breach of both the letter and the spirit of the court ruling.

“This is factually incorrect. The Royal Council is embarking on a smear campaign against Dithabeng and disseminating false allegations and are attempting to extort money from Dithabeng which Dithabeng refuses to pay. The application was taken on review and Sophia is the leader of the Mphahlele Traditional Council and the leader of the Mphahlele Community. The majority of the Mphahlele community supports Dithabeng however there are a few members who have hidden agendas and are spreading unfounded, untrue and baseless allegations and clearly relying on the media to continue to advance their personal motives.”

8. Please ensure that Dithabeng is fairly reflected in the article and there are no negative connotations attributed to Dithabeng. The questions which you have posed to Dithabeng seem to be reasonable and are questions which do not indicate anything negative that could be written about Dithabeng.
9. If the article is in any way misleading or reflects Dithabeng in a negative light, Dithabeng reserves its right to proceed with lodging a complaint with the South African Press Council and/or any other legal remedies available to it.
10. Please confirm when you intend publishing, if at all, and if so in which publication.

Sincerely,



KAMESHNI NAIDOO

Senior Associate

[Redacted]
[Redacted]
[Redacted]

Email: kameshni@galaktiou.co.za



NICQUI GALAKTIOU INC.



Micah Reddy <micar@amabhungane.org>

Questions Re: Dithabeng Mine

7 messages

Micah Reddy <micar@amabhungane.org>

20 May 2019 at 15:58

To: Kameshni Naidoo <kameshni@galaktiou.co.za>, Nicqui Galaktiou <nicqui@galaktiou.co.za>

Dear Kameshni,

I trust you are well. I've been following up on our story on Dithabeng Mining and have some further questions for your clients. Please see the questions below:

1) In your previous response to us of 11 Feb you laid out the public participation process that Dithabeng embarked on, and referred to "numerous meetings". Could you please provide details of those meetings? How many meetings and with whom? Who called those meetings?

2) Could you kindly provide the specifics of what was presented at the meetings with the community? It would appear from our sources that the plans presented to the community were ambiguous, and that community members were told about prospecting, but were not given detailed information about mining and the agreement with the traditional authority, including the joint venture. Moreover, the owners of the land on which the mine is located come from dozens of villages in the surrounding area. The mine would have needed to consult broadly across those villages, and would have to demonstrate to the DMR that it had done so.

If you contest the above claims, it would be most helpful if you could provide us with detailed evidence to show that the community was presented with specific plans for the mining activity. It would also help if you could indicate exactly where and when those consultations took place, and who attended. It is inadequate for the purposes of this article to simply state that "numerous meetings" were held "until the community consultation." A key point here is that the onus is on the mining company, in terms of the law and legal precedent, to show that it has *meaningfully* consulted with the community before arriving at a clear majority consensus.

3) Could you also kindly provide copies of the advertisements that were published for each and every community meeting?

4) We have seen an affidavit by one of the individuals you mention as having been present at the 11 Feb community consultation. The affidavit appears to list a number of concerns with the management of the tribe's affairs. Point 6 reads as follows: "Dithabeng Mining: I signed for funders, who would be prospecting, not illegally mining, who were organised and led by tribal council under mining (/undermining?) committee chair - I was shocked to discover that the whole event was organised by one man, viz. Malekutu Phatudi-Mphahlele. At council meeting Malekutu said 'noted' after tribal council members showed their dissatisfaction (sic)."

This would appear to cast some doubt on the assertion that there was a meaningful public participation process in which a consensus was reached. Your response please.

5) The widespread protests against the mine, coupled with the fact that a long list of field occupiers ('moshemo owners') have signed onto a petition against the mine, would further suggest that there was a lack of engagement and consensus-building on the part of the mine and the traditional authority. All the more so given that legal precedent now demands meaningful engagement and consensus among all those whose lands stand to be affected, prior to any mining taking place. We have spoken to numerous people whose customary right to land would be affected, who say that they were not adequately consulted by the mine. Ordinary members of the community also say that the mine has made promises it has shown no sign of delivering on. Please respond.

6) In your previous response you claim that the mine negotiated compensation for the field owners. How much did the mine agree to compensate the field occupiers? Where and when was the decision to do so taken? And how many field occupiers would be beneficiaries of this agreement? Kindly supply proof of said agreement.

7) How much in total has the mine paid out thus far and to whom exactly? Again, kindly supply evidence to support any claims.

8) What is the total sum of Dithabeng's investment in the Sefalaolo project to date?

9) How much rent is Dithabeng paying the community for the land and how much has thus far been paid to the community trust?

10) On what date did the company submit its application for the mining permit?

11) The evidence we have shows that the company commenced mining (not just prospecting and exploration, but actual open-cast mining) in May. Satellite imagery shows excavators digging what appear to be large pits. However, nowhere in the prospecting programme does it allow for that type of activity. Moreover, the mining activity was taking place several months before the company obtained its mining permit in Nov 2017. Community members claim that this meant Dithabeng was operating its mine illegally. Please respond to the allegation, including any updates to the prospecting programme or other relevant documents that we may have missed.

12) You mentioned in your previous response that Dithabeng has taken on 84 "community volunteers" to work as security guards. This would appear to fly in the face of the BCEA and LRA. On what basis should these "volunteers" not be considered employees?

13) We have heard from some of these "volunteers", who now appear to have grown extremely frustrated with the company and have voiced their concerns at numerous protests, some of which appear to have turned violent. They claim that the mine exploited them for a pittance and would not provide them with any written contract or agreement. Furthermore, sources in the community, including some "volunteers" themselves, say that they, the "volunteers", were treated by the mine as thugs for hire, and that they were made to assault and intimidate community members who were protesting against the mine. How would the company respond?

14) It has been alleged that the mine is undermining labour rights by using "volunteers" instead of meaningfully employing people. In this way the company avoids having to comply with labour standards and minimum wages. The company's response please.

15) There are a number of red flags around the community trust and Dithabeng's involvement with it. Firstly, why in the agreement with Dithabeng is the trust number (IT 22/09) different from the registered number on the trust deeds and letters of authority (IT 252/09)?

16) Secondly, it would appear that the trust was not on firm legal ground in signing its agreement with Dithabeng. We have spoken to current and former trustees who say that they were kept entirely in the dark about the trust's dealings, especially where Dithabeng is concerned. They say that when they do request information they are invariably ignored or stonewalled and that there is no financial transparency. Your response?

17) The Trust, as the holder of the community's assets and the preferential prospecting right, could only have entered into an agreement with Dithabeng, where mining and land matters are at stake, through a formal resolution by the trustees, forming a quorum, and acting in terms of the deed of trust. When the Trust entered into its agreement with Dithabeng, it was not properly constituted in terms of the law as the cession of office had passed. The agreement with Dithabeng was nevertheless signed unilaterally by Malekutu Phatudi-Mphahlele, purportedly on behalf of the Trust, despite there being no resolution to resolution from the Trust to that effect.

Current and former trustees are adamant that no valid resolutions were taken to authorise the Trust to enter into an agreement with Dithabeng, or to give Malekutu Phatudi-Mphahlele control over Trust decisions.

Dithabeng, therefore, signed its agreement with a community Trust that was "hijacked" by the royal family, making the agreement itself legally questionable and also calling into question Dithabeng's due diligence. Indeed, it has already been alleged that Dithabeng is playing different groups within the community against each other, and matters around control of the Trust do seem to back up that allegation. Please respond to these claims. If you dispute these claims, please provide evidence in the form of signed Trust resolutions.

17) The annexures of the agreement between Dithabeng and the community contain a resolution of a traditional council meeting from 27 Nov 2016 authorising Malekutu Phatudi Mphahlele to sign an agreement with Dithabeng on behalf of the trust. The resolution notes that Mr Matsimele Mphahlele would act as witness. This is in spite of the fact that Mr Matsimeme Mphahlele died in September 2016, two months before the resolution. This appears to lend credence to the view that the trust and the deal with Dithabeng are subject to foul play and manipulation. Your response?

18) Evidence before us suggests that in 2017 a community meeting was held with Dithabeng representatives, which a local EFF delegation was due to attend as a show of solidarity with the those opposed to the mine, and to ask difficult questions and even potentially protest against the mine's activities in the area. Mr Mazzotti then contacted EFF leader Julius Malema, who in turn spoke to the organiser of the EFF group and instructed the group to leave the meeting and to not voice any opposition to the mine. Could Mr Mazzotti please respond?

Thank you for your time. If you could respond by COB Thursday that would be appreciated.

Regards,

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Micah Reddy
amaBhungane investigative journalist
0832973444
@redmicah

Micah Reddy <micar@amabhungane.org>

20 May 2019 at 23:29

To: Kameshni Naidoo <kameshni@galaktiou.co.za>, Nicqui Galaktiou <nicqui@galaktiou.co.za>

Dear Kameshni,

Forgive me, but if I may add a few further questions to the list:

19) Some deeper background could be very helpful here. Could you kindly explain in detail how Dithabeng came to be involved in the community? How did it all begin and who introduced the individuals behind Dithabeng to the traditional authority and Ga-Mphahlele?

20) I notice that Thabo Malekutu Phatudi-Mphahlele is a director in one of the Dithabeng companies. Does he receive any financial benefit for this? Does he, his mother, or any of his immediate family hold shares, directly or indirectly, or have any personal financial stake in Dithabeng or any company linked to Dithabeng or its directors? And does he, his mother, or any of his immediate family have any interest in any company/companies that do business with Dithabeng or its owners and directors?

21) Lastly, the number of apparently related Dithabeng companies, with shared/related directors, all set up in quick succession, might raise some eyebrows. Some might speculate that the aim here is to set up a complex structure with the view to concealing money from the community through related party transactions - hardly an unusual practice. There may, of course, be a far more innocent explanation for this. Could you kindly provide a reason for the numerous Dithabeng companies.

Many thanks. Do let me know if you require more time.

Regards,

Micah

[Quoted text hidden]

■ [REDACTED]
[REDACTED]
[REDACTED]

7. We set out hereunder the answers by Dithabeng to your questions:

7.1. In your previous response to us of 11 Feb you laid out the public participation process that Dithabeng embarked on and referred to "numerous meetings". Could you please provide details of those meetings? How many meetings and with whom? Who called those meetings?

- 1) **“The first meeting took place with the Prince during or about June 2016 where the opportunity to prospect was first discussed. It was at this meeting that Dithabeng became interested in the Mphahlele Community project. Dithabeng then began with the initial desktop due diligence on the geology of the farm. Dithabeng considered the opportunity and formulated a proposal that was presented to some of the members of the Mphahlele Trust, the Traditional Council and the Royal Family. This culminated in a formal presentation being made to the entire Trust, the Traditional Council which consists of sixty-four Headmen and members of the Mphahlele Community.**
- 2) **The Mphahlele Trust had applied for a prospecting right more than six years before Dithabeng became involved. When the application for a prospecting right was made by the Mphahlele Trust, the Trustees convened a consultation process with the community at large together with the affected farms. The consultation process was made known to the DMR, the completion of which was ultimately confirmed by the DMR.**
- 3) **The directors of Dithabeng had first met with the Prince in 2016, where they were informed by the Prince that the community was looking for a partner in the project to develop the prospecting right. Dithabeng conducted its own research and commenced discussions regarding a model that would benefit everyone concerned. Thereafter the directors of Dithabeng met again with the Prince as well as some of the Trustees,**

members of the Traditional Council and Headmen in order to lobby its model as there were numerous other companies also submitting proposals. As stated above, the initial consultations for the prospecting of the farm had already been held by the Mphahlele Trust and Traditional Council years prior to Dithabeng becoming involved.”

7.2. Could you kindly provide the specifics of what was presented at the meetings with the community? It would appear from our sources that the plans presented to the community were ambiguous, and that community members were told about prospecting, but were not given detailed information about mining and the agreement with the traditional authority, including the joint venture. Moreover, the owners of the land on which the mine is located come from dozens of villages in the surrounding area. The mine would have needed to consult broadly across those villages and would have to demonstrate to the DMR that it had done so. If you contest the above claims, it would be most helpful if you could provide us with detailed evidence to show that the community was presented with specific plans for the mining activity. It would also help if you could indicate exactly where and when those consultations took place, and who attended. It is inadequate for the purposes of this article to simply state that "numerous meetings" were held "until the community consultation." A key point here is that the onus is on the mining company, in terms of the law and legal precedent, to show that it has meaningfully consulted with the community before arriving at a clear majority consensus.

- 1) **“There were many other companies that submitted proposals to the Mphahlele Trust. However, the Mphahlele Trust required a strategic, financial and operational partner to prospect and mine the farm Mphahlele 457.**
- 2) **Dithabeng’s proposal to the Mphahlele Trust was that it would be the strategic partner in financing and implementation of the prospecting process which would include all the explorations required by the prospecting right. The proposal was clear and informative.**

- 3) Dithabeng was the only company that proposed a 51%- 49% partnership in favour of the community. Dithabeng's proposal was to provide an all-inclusive solution for the exploration and development of the prospecting right. That meant that it would attend to the finance, exploration, environmental studies, feasibility study and the application for the mining right. Thereafter Dithabeng would develop, operate the mine and market the products of the mine.**

- 4) In its proposal Dithabeng set out the initiatives to which it was committed in order to assist the community. These initiatives were presented to the community, the Trustees and the members of the Traditional Council; These initiatives were the following (some of which have already been implemented):**

 - a) Drilling of 5 water boreholes for the community, which was done even before Dithabeng was the chosen partner;**
 - b) Introducing a school feeding scheme for some 2300 school pupils at the Sefalaolo Primary School and the Kgagatlou High School;**
 - c) Providing two containers to the community for the preparation of the meals;**
 - d) Assisting with the dire unemployment in the community which resulted in the volunteer program;**
 - e) Providing financial assistance for the training of approximately fourteen community members for them to be upskilled in the security industry;**
 - f) Implementing the security volunteer program to prevent the goats from wandering off onto the prospecting area;**
 - g) Sponsoring of a winter school program;**

- h) **Developing a water treatment plant for the community in partnership with Lepelle Northern Water once the mining right is granted. These discussions are at an advance stage;**
 - i) **Building a brick making plant for the community. The desk top study has already begun; and**
 - j) **The establishment of a community soccer tournament.**
- 5) **Regard must be had to the prospecting right which the Mphahlele Trust has possessed for over 4 years. The consultations for the current prospecting right that affected the villagers and community were conducted by the Mphahlele Trust many years ago when it first applied for the prospecting right. Dithabeng received confirmation from the Traditional Council, the Mphahlele Trust as well as the DMR that the consultations were satisfactorily conducted, hence the granting of the prospecting right.**
- 6) **Upon signature of the agreement between Dithabeng and the Mphahlele Trust, Dithabeng embarked on a consultation process with the landowners that were affected at the early stages of the exploration.”**

7.3. Could you also kindly provide copies of the advertisements that were published for each and every community meeting?

- 1) **“The Traditional Council and the Mphahlele Trust had published notices through their normal traditional channels of communication, which is through the sixty-four Headmen and the Traditional Council’s office. Dithabeng was not involved in, nor was it expected to attend to the publication of advertisements of the community meetings.”**

7.4. We have seen an affidavit by one of the individuals you mention as having been present at the 11 Feb community consultation. The affidavit appears to list a number of concerns with the management of the tribe's affairs. Point 6 reads as follows:

"Dithabeng Mining: I signed for funders, who would be prospecting, not illegally mining, who were organised and led by tribal council under mining (/undermining?) committee chair - I was shocked to discover that the whole event was organised by one man, viz. Malekutu Phatudi-Mphahlele. At council meeting Malekutu said 'noted' after tribal council members showed their unsatisfaction (sic)." This would appear to cast some doubt on the assertion that there was a meaningful public participation process in which a consensus was reached. Your response please.

- 1) **“The allegations made by the individual are false and misleading, which is tantamount to perjury. This individual is identified as being [REDACTED]. The entire process was explained and presented in detail to the community members. This individual who is making such unfounded and vexatious allegations is well aware that Dithabeng is prospecting and mining in accordance with a small-scale permit, which it is entitled to do. This same individual was present at a meeting between Dithabeng and the Mphahlele Trust long after Dithabeng begun prospecting on the farm. He is attempting to defame Dithabeng and advance his own agenda. Dithabeng is unaware of the concerns listed in the affidavit, as alleged, and has never received a list of concerns.**

- 2) **The allegations made are a misrepresentation of the entire process. Dithabeng has never had sight of the affidavit to which you refer, and it is unfair and prejudicial to Dithabeng to expect it to respond to portions of an affidavit in a vacuum. Should you rely on this affidavit, regardless of Dithabeng informing you that these allegations are false, this will amount to distorted and sensationalistic reporting. Please provide us with a copy of this affidavit so that Dithabeng can carefully consider the contents thereof fully in order to comment thereon. Dithabeng is committed to protecting its reputation and it takes the allegations supposedly contained in this affidavit very seriously.**

- 3) **The representatives of Dithabeng met with the Trustees and [REDACTED] on more than four occasions. Two shareholder meetings were convened where all the Trustees were present together with the representatives of Dithabeng, where discussions took place in detail regarding the**

operations and business of Dithabeng Mining Mphahlele. [REDACTED] even mentioned to Mr Reuben that he was interested in being a director In the joint venture company. To the best of Dithabeng's knowledge [REDACTED] [REDACTED] has aligned himself with the Royal Council and promotes its agenda.

- 4) **At the commencement of the consultation process, Dithabeng was presented as a strategic, financial and technical partner to the Mphahlele Trust, with a 49% to 51% shareholding in favour of the Trust."**

7.5. The widespread protests against the mine, coupled with the fact that a long list of field occupiers ('moshemo owners') have signed onto a petition against the mine, would further suggest that there was a lack of engagement and consensus-building on the part of the mine and the traditional authority. All the more so given that legal precedent now demands meaningful engagement and consensus among all those whose lands stand to be affected, prior to any mining taking place. We have spoken to numerous people whose customary right to land would be affected, who say that they were not adequately consulted by the mine. Ordinary members of the community also say that the mine has made promises it has shown no sign of delivering on. Please respond.

- 1) **"Your questions seem to be intentionally vague. You rely on allegations that certain people were not 'adequately consulted' by Dithabeng. Please expand on your proposed question and explain what constitutes an adequate consultation as you have failed to identify how the consultations were allegedly inadequate. You go on to say that 'the mine has made promises that it has shown no sign of delivering on'. It is impossible for Dithabeng to respond to such a vague statement, and should you require a meaningful response thereto you are invited to elaborate on what promises were made that were allegedly not delivered.**
- 2) **It must be understood that currently there is only a prospecting right and when the mining right is granted more substantial projects will be developed by the community and for the benefit of the community.**
- 3) **It is evident that the agenda of the Royal Council is being advanced as appears from the types of questions addressed to Dithabeng.**

- 4) **Seventy-nine affected Field Occupiers of the Sefalaolo Masemo Owners had been negotiating and engaging with Dithabeng from 29 March 2017 until April 2018. On 16 April 2018 the Sefalaolo Masemo Owners agreed to the payment of R11 000 per hectare. A copy of a letter from the Sefalaolo Masemo Owners is attached hereto marked “A”.**
- 5) **In 2017 the Moshemo Owners joined in a High Court application where it was alleged that Dithabeng was prospecting illegally. The 79 Sefalaola Mashemo Owners distanced themselves from the Moshemo Owners as the allegations that had been made were false. In this regard a document titled “Avidavit (sic) from Field Occupiers, Sefalaolo” from the Chairperson of the Sefalaola Owners is attached hereto marked “B”.**
- 6) **The consultation process in this regard was extensive in that the identification of the Field Occupiers was a long and timeous process in itself. Dithabeng has spent countless hours attending to the due diligence on the ownership and making sure that the Field Occupiers’ families were involved so that all affected parties were consulted and aware of the progress.**
- 7) **It appears that your reference is only to ordinary community members whilst no reference is made to the Prince, the Mphahlele Trust, the Traditional Council or the Headmen. Is this an intentional omission?”**

7.6. In your previous response you claim that the mine negotiated compensation for the field owners. How much did the mine agree to compensate the field occupiers? Where and when was the decision to do so taken? And how many field occupiers would be beneficiaries of this agreement? Kindly supply proof of said agreement.

- 1) **“A meeting was convened on 1 August 2018 at the mining site (under the marula tree) whereby an agreement was reached with the Sefalaolo Mashemo Owners. This was recorded in a letter dated 20 August 2018, a copy of which is attached hereto marked annexure “C”.**

2) There are eight-four Field occupiers and their families that would be affected by the mine.

3) It was agreed that the amount of R11 000 would be paid per hectare as compensation to the field owners.”

7.7. How much in total has the mine paid out thus far and to whom exactly? Again, kindly supply evidence to support any claims.

1) “Dithabeng is not obliged to disclose this information which is of a confidential nature. The individuals’ consent must be sought before such information can be divulged.”

7.8. What is the total sum of Dithabeng's investment in the Sefalaolo project to date?

1) “Dithabeng has invested in excess of a hundred million rands.”

7.9. How much rent is Dithabeng paying the community for the land and how much has thus far been paid to the community trust?

1) “Dithabeng has started and is in the process of consulting with the affected field occupiers and negotiations have also begun with the Traditional Council. Furthermore, an arrangement has been made for payment of rental in this regard, which is of a confidential nature and therefore the amount cannot be disclosed.

2) A notarial deed of lease will also be concluded with the Department of Rural Development and Land Reform as the term of the lease is for a period of thirty years.”

7.10. On what date did the company submit its application for the mining permit?

1) “Dithabeng submitted its application on or about August 2017.”

7.11. The evidence we have shows that the company commenced mining (not just prospecting and exploration, but actual open-cast mining) in May. Satellite imagery shows excavators digging what appear to be large pits. However, nowhere in the prospecting programme does it allow for that type of activity. Moreover, the mining activity was taking place several months before the company obtained its mining permit in Nov 2017. Community members claim that this meant Dithabeng was operating its mine illegally. Please respond to the allegation, including any updates to the prospecting programme or other relevant documents that we may have missed.

1) **“This is a false allegation. Dithabeng refers to the High Court Application of 2017. Dithabeng has never mined illegally and considers these allegations to be vexatious and false. The Court handed down a judgment which recorded that Dithabeng was prospecting within the framework of a prospecting work programme. This is a battle over leadership and not the mine. Please provide us with the evidence on which you rely. It seems that there is a failure by you to take cognisance of the import of the High Court Order which was referred to by Dithabeng in its 11 February 2019 response. This Court Order is significant, but you seem to ignore it.”**

7.12. You mentioned in your previous response that Dithabeng has taken on 84 "community volunteers" to work as security guards. This would appear to fly in the face of the BCEA and LRA. On what basis should these "volunteers" not be considered employees?

1) **“As previously stated, before the exploration and prospecting phase there were very few jobs available. Dithabeng started an initiative to assist with the unemployment situation. Dithabeng required security to protect the goats from wandering off to the area where work was being done. Dithabeng only required about 6 security guards just for this purpose until the fence was erected. Dithabeng found a way to help more members of the community than just the 6 that were required.**

- 2) **Dithabeng decided to use 6 members per week as it would help approximately twenty-four members who would earn a stipend to volunteer. This concept was canvassed with the Headman and the members of his kraal and was accepted with gratitude. In no time there were around eighty-four volunteers volunteering one week per month. The only work that was required was to make sure that the goats would not wander off. At all times the volunteers were aware that the initiative taken was to help the community members. All the volunteers signed a volunteering agreement with the Headman, the Trust and Dithabeng.**

- 3) **Dithabeng is endeavouring to assist with the poverty and unemployment within the community. The community members participated in a voluntary process. The volunteers were at all times aware that the relationship was not premised on an employment relationship.”**

7.13. We have heard from some of these "volunteers", who now appear to have grown extremely frustrated with the company and have voiced their concerns at numerous protests, some of which appear to have turned violent. They claim that the mine exploited them for a pittance and would not provide them with any written contract or agreement. Furthermore, sources in the community, including some "volunteers" themselves, say that they, the "volunteers", were treated by the mine as thugs for hire, and that they were made to assault and intimidate community members who were protesting against the mine. How would the company respond?

- 1) **“These allegations are untrue and malicious. Dithabeng is currently undertaking exploration work and small-scale mining under a mining permit and there are very few jobs available.**

- 2) **Dithabeng began the initiative of a volunteer programme to assist with the dire unemployment situation in Mphahlele, as explained above. These claims are malicious and false. This volunteer initiative was to assist the community, although Dithabeng found that the volunteer initiative was not sustainable.**

- 3) **During consultations with the Headman and the community committee members it was agreed to regulate the situation. Meetings were held and all the volunteers signed a volunteer agreement that would end in December 2018. At the end of the year some volunteers became violent and threatened workers on the mine to pay them a bonus failing which they would be assaulted and the machines set on fire. The mine manager had no choice and in fear of his life paid the bonuses.**

- 4) **In January 2019 these disgruntled “volunteers” came to the mine and started to demand employment failing which they would burn all the equipment. This resulted in Dithabeng having to lay criminal charges against some of these unruly members of the community and SAPS had become involved. These few members of the community that are making these unfounded claims are the instigators that are causing the disturbance in the community. Have you investigated these criminal charges?”**

7.14. It has been alleged that the mine is undermining labour rights by using "volunteers" instead of meaningfully employing people. In this way the company avoids having to comply with labour standards and minimum wages. The company's response please.

- 1) **“As explained earlier this initiative was developed to assist with the unemployment in the community. During the prospecting phase and with the small mining that was taking place there were very few jobs available. The volunteer programme was an initiative to assist the community members who were unemployed. This allegation is untrue.”**

7.15. There are a number of red flags around the community trust and Dithabeng's involvement with it. Firstly, why in the agreement with Dithabeng is the trust number (IT 22/09) different from the registered number on the trust deeds and letters of authority (IT 252/09)?

- 1) **“This was merely an oversight and a typographical error.”**

7.16. Secondly, it would appear that the trust was not on firm legal ground in signing its agreement with Dithabeng. We have spoken to current and former Trustees who say that they were kept entirely in the dark about the trust's dealings, especially where Dithabeng is concerned. They say that when they do request information they are invariably ignored or stonewalled and that there is no financial transparency. Your response?

- 1) **“The Mphahlele Trust is a legal entity and has its own internal structures regarding Trustees. Dithabeng had numerous meetings with the Trustees and the Royal Council and information was shared and discussed with them as partners.**
- 2) **In the beginning when Dithabeng engaged with the Trustees of the Mphahlele Trust and the Traditional Council these meetings were held with everybody being present. Dithabeng was advised that these meetings were being held concurrently with the Traditional Council meetings where everything was discussed. All the presentations made by Dithabeng were to the Trustees of the Mphahlele Trust and the Traditional Council. The signing of the agreement was done legitimately with all the Trustees (old and new), the sixty-four Traditional Council members and the Mphahlele community members.**
- 3) **Dithabeng is aware that a trustee of the Mphahlele Trust has made certain allegations however, when the meetings were convened with representatives of Dithabeng together with all the Trustees present, all the matters were ventilated. Dithabeng is not privy to the internal Trustee meetings that took place. The Trustees of the Mphahlele Trust have held numerous meetings with the directors of Dithabeng at the Royal House to discuss the issues of the mine and the operational issues of Dithabeng. Dithabeng denies that information was not provided on request and that there was no transparency. We have no doubt that should you wish to make these allegations that these individuals will be identified and not reflected as anonymous sources given the serious and untrue allegations.”**

7.17. The Trust, as the holder of the community's assets and the preferential prospecting right, could only have entered into an agreement with Dithabeng, where mining and land matters are at stake, through a formal resolution by the trustees, forming a quorum, and acting in terms of the deed of trust. When the Trust entered into its agreement with Dithabeng, it was not properly constituted in terms of the law as the cession of office had passed. The agreement with Dithabeng was nevertheless signed unilaterally by Malekutu Phatudi-Mphahlele, purportedly on behalf of the Trust, despite there being no resolution to resolution from the Trust to that effect. Current and former trustees are adamant that no valid resolutions were taken to authorise the Trust to enter into an agreement with Dithabeng, or to give Malekutu Phatudi-Mphahele control over Trust decisions. Dithabeng, therefore, signed its agreement with a community Trust that was "hijacked" by the royal family, making the agreement itself legally questionable and also calling into question Dithabeng's due diligence. Indeed, it has already been alleged that Dithabeng is playing different groups within the community against each other and matters around control of the Trust do seem to back up that allegation. Please respond to these claims. If you dispute these claims, please provide evidence in the form of signed Trust resolutions.

- 1) **“The head of the Mphahlele Traditional Council and the council of sixty-four Headmen agreed and approved the agreement between Dithabeng and the Mphahlele Trust. The Mphahlele Trust had appointed or was in the process of appointing new Trustees and was awaiting the new letter of authority. According to the Mphahlele Trust’s deed the Chairperson has the power of attorney to sign on behalf of the Mphahlele Trust. The new Trustees have resolved to support and accept the transaction with Dithabeng. Dithabeng has since had more than six shareholder meetings which the Trustees attended. There are minutes and resolutions that were passed which disproves these allegations. This issue was argued in the Polokwane High Court in 2017 where the Royal Council had made these false allegations. The Judge considered the arguments before him and ruled that the agreement was valid and proper and commented that Dithabeng is being drawn into a battle between the leadership of the community. The Court held that whichever party is successful in the Review application must renegotiate the terms of the agreement with Dithabeng.**

- 2) **There are issues which are on-going within the community between the two factions and false allegations are being made. Dithabeng's representatives have met the new Trustees on numerous occasions and the agreement has been accepted.**
- 3) **At the time of the signing of the agreement the Traditional Council was in charge of the Trust as they were awaiting the new letter of authority from the Master's office. When the letter of authority was received by the Trust, a number of resolutions were passed.**
- 4) **The leadership of the Traditional Council is being challenged, which ultimately controls the Mphahlele Trust. There are some community members that are disseminating fake news and using whatever illegal methods to advance their cause.**
- 5) **Dithabeng disputes these claims and the individual that is making such allegations is trying to advance his own personal agenda. Dithabeng has no knowledge that the Royal Family 'hijacked' this agreement and that it was signed without proper authority and resolutions. To the best of Dithabeng's knowledge the agreement was signed lawfully. Any allegation to the contrary must be supported with relevant evidence."**

7.18. The annexures of the agreement between Dithabeng and the community contain a resolution of a traditional council meeting from 27 Nov 2016 authorising Malekutu Phatudi Mphahlele to sign an agreement with Dithabeng on behalf of the trust. The resolution notes that Mr Matsimele Mphahlele would act as witness. This is in spite of the fact that Mr Matsimeme Mphahlele died in September 2016, two months before the resolution. This appears to lend credence to the view that the trust and the deal with Dithabeng are subject to foul play and manipulation. Your response?

- 1) **"The Headman is still alive which lends credence to the fact the Royal Council and some of the members are making whatever false allegations to advance their own unlawful agendas. The statement is misleading and mischievous. Mr Matsimele Mphahlele, who is referred to in the agreement, refers to the Headman of the Sefalaolo village, who signed as**

a witness. Had you investigated this matter properly and thoroughly relying on unsubstantiated allegations you would have determined that Mr Matsimele Mphahlele did not die. Surely this makes your sources questionable.”

7.19. Evidence before us suggests that in 2017 a community meeting was held with Dithabeng representatives, which a local EFF delegation was due to attend as a show of solidarity with the those opposed to the mine, and to ask difficult questions and even potentially protest against the mine's activities in the area. Mr Mazzotti then contacted EFF leader Julius Malema, who in turn spoke to the organiser of the EFF group and instructed the group to leave the meeting and to not voice any opposition to the mine.

Could Mr Mazzotti please respond?

1) **“This is yet again another false allegation. At the signing ceremony, on 25 February 2017, members of the EFF came to the ceremony with incorrect information and a clear misunderstanding. The Master of Ceremony was an ANC Councillor who was serving as Director of the community services at Lepelle Nkumpi municipality. The EFF had enquired as to why they were not invited when the ANC was clearly involved. The purpose of the ceremony was explained and clarified to the EFF representatives, who thereafter left.”**

7.20. Some deeper background could be very helpful here. Could you kindly explain in detail how Dithabeng came to be involved in the community? How did it all begin and who introduced the individuals behind Dithabeng to the traditional authority and Ga-Mphahlele?

1) **“The introduction took place in Pretoria through a colleague of the Prince who was aware that Mr Reuben was involved in mining. Mr Reuben continued this dialogue which ended up being an idea that could be presented to the Mphahlele Trust and the Traditional Council. Dithabeng then formulated its proposal and went to present it to the Traditional Council, the Mphahlele Trust as well as to the Queen Mother. The Trustees**

of the Mphahlele Trust as well as members of the Traditional Council were interested in the proposal and suggested that the proposal be presented to the community. Dithabeng made formal representations which led to the decision being made that it should be the chosen partner for the Mphahlele Trust. A public consultation took place with the Mphahlele community at large for the entire buy in, this was the meeting of 11 February 2017. After many hours of questions, the community supported the proposal that Dithabeng partner with the Mphahlele Trust.”

7.21. I notice that Thabo Malekutu Phatudi-Mphahlele is a director in one of the Dithabeng companies. Does he receive any financial benefit for this? Does he, his mother, or any of his immediate family hold shares, directly or indirectly, or have any personal financial stake in Dithabeng or any company linked to Dithabeng or its directors? And does he, his mother, or any of his immediate family have any interest in any company/companies that do business with Dithabeng or its owners and directors?

1) “No, Thabo Malekutu Phatudi-Mphahlele does not receive any financial benefit. Furthermore, none of the members of the Royal Family hold nor receive any financial benefit from Dithabeng or its directors.”

7.22. Lastly, the number of apparently related Dithabeng companies, with shared/related directors, all set up in quick succession, might raise some eyebrows. Some might speculate that the aim here is to set up a complex structure with the view to concealing money from the community through related party transactions - hardly an unusual practice. There may, of course, be a far more innocent explanation for this. Could you kindly provide a reason for the numerous Dithabeng companies.

1) “There is nothing untoward nor sinister about this. The reason for the various Dithabeng companies being registered was to preserve the name ‘Dithabeng’ and nothing more. This is normal conduct in a corporate environment and any allegation to the contrary will be challenged.”

8. If anything contained herein is at all unclear, please request clarification thereon as opposed to publishing facts that are misleading and/or untrue.

9. Please confirm when you intend publishing the article if at all, and if so in which publication.

10. Lastly, all our client's rights remain expressly reserved including its rights to take any legal and/or appropriate steps to challenge any defamatory allegations. Our client trusts that you have every intention of publishing a balanced and fair article which will no doubt include the process implemented, its contribution to the community and on-going commitment.

Sincerely,



KAMESHNI NAIDOO

Senior Associate

[Redacted]
[Redacted]
[Redacted]

Email: kameshni@galaktiou.co.za



NICQUI GALAKTIOU INC.



Micah Reddy <micar@amabhungane.org>

Clarity on Dithabeng article

7 messages

Micah Reddy <micar@amabhungane.org>

18 June 2019 at 12:29

To: Kameshni Naidoo <kameshni@galaktiou.co.za>, Nicqui Galaktiou <nicqui@galaktiou.co.za>

Dear Kameshni,

There are a few quick points that need some clarity. Some are straightforward questions we would like you to answer. Others are points you may choose to comment on. Please see below:

1) As the company applied for a mining permit it would have been required again to undertake further consultations - new process means new consultations. What consultations were undertaken for the new phase, as the company moved from prospecting to mining?

2) I refer to your last response, point 7.19(1). Two questions: a) During the meeting in question, did Mr Mazzotti or any Dithabeng director have any contact with Mr Malema or any senior EFF leader? b) Did Mr Malema speak, either directly or through Mr Mazzotti, to any EFF member at the meeting? c) You may also want to elaborate on the 'misunderstanding' you refer to with regards to EFF members.

3) You stress the importance of the court order. While the urgency of the application was denied, the matter was only struck from the role due to technicalities (the lawyer for the applicants simply failed to appear in court and we understand that he has been disbarred). The merits of the case were never properly tested.

4) You have reiterated that the traditional council resolved that the trust enter into the agreement with Dithabeng, yet we can find no mention of mining or Dithabeng in the traditional council minutes of 27 Nov, 2016, the day of the ostensible trust resolution to sign with Dithabeng.

5) You mention that the trust's chair has power of attorney in terms of the trust deed. Nowhere in the deed is that stated.

As this is a short request for comment we would be grateful if you could respond by close of business tomorrow. Kindly acknowledge receipt of this email.

Regards,

--

Micah Reddy
amaBhungane investigative journalist
0832973444
@redmicah

Kameshni Naidoo <kameshni@galaktiou.co.za>

19 June 2019 at 10:31

To: Micah Reddy <micar@amabhungane.org>

Cc: Nicqui Galaktiou <nicqui@galaktiou.co.za>

Dear Micah,

We acknowledge receipt of your email.

We will endeavour to deliver our client's response by the close of business today failing which it will be delivered by the close of business tomorrow.

Kindly acknowledge receipt.

Regards

KAMESHNI NAIDOO

[Quoted text hidden]

Micah Reddy <micar@amabhungane.org>
To: Kameshni Naidoo <kameshni@galaktiou.co.za>
Cc: Nicqui Galaktiou <nicqui@galaktiou.co.za>

19 June 2019 at 10:32

Okay, thanks. That's fine

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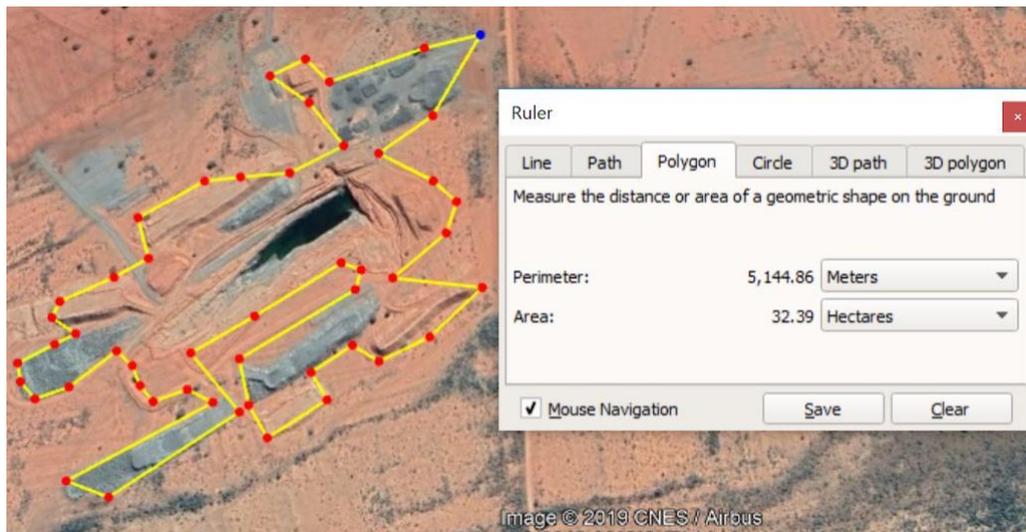
Micah Reddy <micar@amabhungane.org>
To: Kameshni Naidoo <kameshni@galaktiou.co.za>
Cc: Nicqui Galaktiou <nicqui@galaktiou.co.za>

19 June 2019 at 14:08

Apologies, but one other matter you may wish to comment on. See below:

The mining permit only allows Dithabeng to mine on 3.9hectares according to the DMR

Here is a recent satellite image (pasted below) showing that it is mining on an area well over that limit:



x

[Quoted text hidden]

Kameshni Naidoo <kameshni@galaktiou.co.za>
To: Micah Reddy <micar@amabhungane.org>
Cc: Nicqui Galaktiou <nicqui@galaktiou.co.za>

19 June 2019 at 15:29

Dear Micah,

Micah Reddy <micar@amabhungane.org>
To: Kameshni Naidoo <kameshni@galaktiou.co.za>
Cc: Nicqui Galaktiou <nicqui@galaktiou.co.za>

19 June 2019 at 16:16

Apologies once again, but I need to correct point number 3:

The matter was struck from the role not because lawyers failed to attend a court hearing, but because they failed to provide practice notes due to a miscommunication (the lawyers in this instance were not associated with the attorney who was disbarred). Nevertheless, the merits of the case were never properly tested.

[Quoted text hidden]

4. For the sake of convenience and to demonstrate its willingness to co-operate our client has agreed to respond to your latest comments, which are set out hereunder:

4.1. As the company applied for a mining permit it would have been required again to undertake further consultations - new process means new consultations. What consultations were undertaken for the new phase, as the company moved from prospecting to mining?

“As per the requirements of the DMR, Dithabeng has undertaken the necessary further consultations as is required. Dithabeng consulted with the relevant stakeholders which information was attached to its application for the mining permit.”

4.2. I refer to your last response, point 7.19(1). Two questions: a) During the meeting in question, did Mr Mazzotti or any Dithabeng director have any contact with Mr Malema or any senior EFF leader? b) Did Mr Malema speak, either directly or through Mr Mazzotti, to any EFF member at the meeting? c) You may also want to elaborate on the 'misunderstanding' you refer to with regards to EFF members.

“Mr Mazzotti nor any of the directors of Dithabeng did not contact Mr Malema nor would they have done so. Mr Mazzotti’s friendship with Mr Malema is not abused for personal gain. The meeting was chaired by a member of the Lepelle Municipality, who is not only a member of the Mphahlele Community but is also an ANC Councillor. The misunderstanding arose as a result of rumours surfacing that the meeting was being chaired by the ANC, which was incorrect. You seem intent, one way or another, to bring the EFF and/or Mr Malema into the article regardless as to the veracity of the allegations as reference to them would no doubt sensationalise the story.”

4.3. You stress the importance of the court order. The matter was struck from the role not because lawyers failed to attend a court hearing, but because they failed to provide practice notes due to a miscommunication (the lawyers in this instance were not associated with the attorney who was disbarred). Nevertheless, the merits of the case were never properly tested.

“This matter is *sub-judice* and the necessary supporting documents have been filed at court. The matter is still pending and has not been finally resolved. As the court documents are available to the public you are entitled to uplift the court file and consider the court documents.”

- 4.4. You have reiterated that the traditional council resolved that the trust enter into the agreement with Dithabeng, yet we can find no mention of mining or Dithabeng in the traditional council minutes of 27 November 2016, the day of the ostensible trust resolution to sign with Dithabeng.

“Dithabeng has not had sight of the resolution however can confirm that the necessary resolution was passed as Mr Reuben has had sight thereof. A number of meetings took place with Dithabeng, the Trustees and members of the Traditional Council where all matters were discussed, and the necessary minutes were accordingly recorded.”

- 4.5. You mention that the trust's chair has power of attorney in terms of the trust deed. Nowhere in the deed is that stated.

“Dithabeng has not had sight of the power of attorney however is aware that there were numerous meetings that took place with the Trustees and at one such meeting the Trustees had mandated the Chairperson to sign on behalf of the Trust.”

- 4.6. The mining permit only allows Dithabeng to mine on 3.9 hectares according to the DMR. The recent satellite image shows that it is mining on an area well over that limit.

“Dithabeng is mining within the limit in which it is permitted to do so. The image shows the overburden which is the material that lies above an area that lends itself to economical exploitation, such as the rock, soil and ecosystem that lies above the seams. It would be helpful if the satellite images were properly appreciated.”

5. We trust that all of your queries have now been answered and our client will not be barraged with further queries.

6. Please confirm when you intend publishing the article, if at all, and if so in which publication.
7. Further we must reiterate that our client reserves its rights to take any legal and/or appropriate steps to challenge any defamatory and/or misleading allegations made against it.
8. All our client's rights are reserved.

Sincerely,



KAMESHNI NAIDOO

Senior Associate



Email: kameshni@galaktiou.co.za



NICQUI GALAKTIOU INC.

To: Kameshni Naidoo <kameshni@galaktiou.co.za>

Thank you I have received it.

We are running the story next week, most likely on our site as well as News24 and Daily Maverick.

Your client might want to comment on the ongoing violence at the mine. I understand that over the last few days there have been clashes between community members and mine security, who have fired on the community (we've been supplied with photos showing the bullet casings and the security guards).

Furthermore, who/which company, is providing security at the mine. Allegations are that they are not lawfully registered security providers.

If your client wishes to comment on the above, please do so before noon tomorrow.

Regards

Micah

[Quoted text hidden]

--

Micah Reddy

amaBhungane investigative journalist

0832973444

@redmicah

Kameshni Naidoo <kameshni@galaktiou.co.za>

29 June 2019 at 12:17

To: Micah Reddy <micar@amabhungane.org>

Cc: Nicqui Galaktiou <nicqui@galaktiou.co.za>

Dear Micah,

1. We refer to your email of 27 June 2019, which yet again seeks more responses/comments from our client. We trust that you have now completed your investigation. Our client has been more than co-operative and we trust that our client will be reflected fairly.
2. We refer to your comments which are set out hereunder, and our client's responses thereto:

2.1. Over the last few days there have been clashes between community members and mine security, who have fired on the community (we've been supplied with photos showing the bullet casings and the security guards.)

"The violence perpetuated on the mine is deliberately being incited by certain members of the community. This has been reported to the South African Police Services.

Further these same perpetrators are stealing chrome from the mine and conducting themselves in violent behaviour. Dithabeng's security guards have been victims

of such violent behaviour and their lives have been threatened. Dithabeng's mining machinery have been damaged by these culprits and further they have gone so far as to cause bodily harm to two operators. These individuals have been disguising themselves as members of the community."

2.2. Furthermore, who/which company, is providing security at the mine. Allegations are that they are not fully registered security providers.

“This allegation is untrue and baseless. The security providers are registered in terms of the relevant body.”

3. We trust that you will accurately record that our client had to lay criminal charges.

4. Further we must reiterate that our client reserves its rights to take any legal and/or appropriate steps to challenge any defamatory and/or misleading allegations made against it.

5. All our client’s rights are reserved.

KAMESHNI NAIDOO

[Quoted text hidden]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

