



To
The Office of the High Commissioner for Human Rights
Chief
Special Procedures Branch
OHCHR

Attention: Beatriz Balbin
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Cc:
The Director General of Mineral Resources and Energy (South-Africa)
Attention: Mr T Mokoena
Email: Thabo.mokoena@dmre.gov.za

Your ref: AL OTH 82/2020
Our ref: Tendele Mining Proprietary Limited

08 February 2021

Dear Ms Balbin

RESPONSE BY TENDELE MINING PROPRIETARY LIMITED ("Tendele") TO THE JOINT COMMUNICATION RECEIVED FROM THE SPECIAL RAPPORTEURS ON 9 DECEMBER 2020

1 Introduction

- 1.1 We refer to the joint communication ("**Joint Communication**") received by Tendele from the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment; and the Special Rapporteur on extrajudicial or arbitrary executions ("**Special Rapporteurs**"), on 9 December 2020.
- 1.2 As is evident from the antepenultimate paragraph of the Joint Communication, a response ("**Response**") thereto is due within 60 days from the date of receipt of the Joint Communication. As such, this Response is submitted on 8 February 2021 being a date prior to the lapsing of the 60-day time period afforded to Tendele to respond to the Joint Communication.
- 1.3 Kindly note that Tendele hereby responds to the various queries in the Joint Communication as far as it is able to do so.
- 1.4 It is necessary, at the outset of this Response, to indicate that Tendele, in the strongest terms, condemns the senseless killing of Ms Ntshangase at her home in Ophondweni. Tendele condemns all forms of violence and is assisting the South African Police Service in every way possible to bring the perpetrators to book.

- 1.5 The escalating violence in the Mpukunyoni Community that surrounds the Somkhele Mine is linked to the uncertainty regarding the future of the Somkhele Mine. As outlined in further detail below, 40 000 local community members demonstrably benefit from the operation of the Somkhele Mine and in total some 220 000 community members directly and indirectly benefit from the Mine's activities.
- 1.6 If Tendele is unsuccessful to secure New Mining Area, the Mine will close within the next 18 months. To secure these areas, the following key issues to be resolved:
- 1.6.1 10 families need to be convinced to be relocated (detail below)
- 1.6.2 The Review Application needs to be withdrawn as no family can be relocated with the application remaining unresolved (see detail below)
- 1.6.3 The Mine to secure funding to compensate all the families that needs to be relocated as the pandemic decimated the balance sheet of the Mine and the Mine now has debt in excess of R 700 million (\$ 50 million).
- 1.7 Since 2006, Tendele has successfully relocated 225 Community households.
- 1.8 In order to commence with mining in the New Mining Areas, a further 143 families are required to be relocated. Tendele has spent more than 4 years negotiating with these families and has signed relocation agreements with 133 families. Stated differently, Tendele is yet to reach agreement regarding relocation compensation with 10 families.
- 1.9 A mediation agreement was signed during January 2021, and a mediation process (facilitated by an independent professional) has started on 1 Feb 2021 with the aim to resolve differences with the above 10 families.
- 1.10 Tendele is actively engaging with all stakeholders using the many different communication platforms (as will be more fully explained in paragraph 3.1.14 of this Response) in the area to try and de-escalate the violence.
- 1.11 Tendele recently concluded a joint Peace Accord, with, *inter alia*, leaders representing the 220 000 strong Community. The signed Peace Accord and draft press statement is attached hereto as Annexure "T1".
- 1.12 As will be evident from the information provided below, since May 2016 Tendele has established a number of committees and platforms that ensure that the interests and rights of all community members surrounding the Somkhele Mine are protected and these platforms ensure that all Community members are able to engage directly with the Mine to air concerns and grievances.
- 1.13 Tendele has been in operation since 2006, and is operating in the most regulated industry in South Africa, and is (and always has been) in good standing with the various regulators.

- 1.14 The **Ministerial Task Team** (see paragraph 0) and the **Inter-ministerial Task Team** (see paragraph 3.2.11) have similarly played a critical and active role in facilitating discussions between the Mine and the Community.
- 1.15 Tendele's Mining Operations are conducted with the full support of the majority of the Mpukunyoni Community, the Minister of the Department of Mineral Resources and Energy ("**DMRE**"), the Director-General of the DMRE, the KwaZulu Natal Premier, the Zulu King's Royal Council, the Mtubatuba Municipality, the Association of Mineworkers and Construction Union ("**AMCU**"), National Union of Mineworkers ("**NUM**") and the other recognised union Solidarity.
- 1.16 Tendele is fully committed to engaging with all role players (including Community leaders, members of the Community and Government bodies and officials and also with those individuals that have adverse views on the mine. This is a small minority whose views are opposed to the views of almost the entire community) to ensure peace within the Community and to try and save the Mine. As is more fully set out below, the Mine is the only major employer in the Community where unemployment is over 72% and the closure of the Mine will have devastating implications for the local Community and its economy.

2 Relevant background regarding the Tendele Mining Operations

- 2.1 Tendele has been conducting mining and related operations in the Somkhele area since 2006 and has been mining under various Mining Rights.
- 2.2 On 31 May 2016, Tendele was granted a Mining Right by the Department of Mineral Resources and Energy ("**DMRE**") reference number: KZN30/5/1/2/2/10041MR ("**Tendele Mining Right**") in order to extend its existing mining activities into, *inter alia*, the areas known as Ophondweni and Emalahleni ("**New Mining Areas**"). The Tendele Mining Right and corresponding environmental management programme ("**EMPr**") were granted and approved in terms of section 22 and (now repealed) section 39 of the Mineral and Petroleum Resources Development Act, 28 of 2002 ("**MPRD Act**").
- 2.3 It is correct that a court application ("**Review Application**") has been brought against the decisions to grant the Tendele Mining Right and approve the EMPr.
- 2.3.1 The Review Application was brought by an organisation called the Mpukunyoni Community Environmental Justice Organisation and an individual from the Community, Sabelo Dladla.
- 2.3.2 This matter remains pending before the High Court of South Africa, held at Pretoria, as at the date of this Response. It is alleged in the Review Application that the decisions to grant the Tendele Mining Right and approve the EMPr were, *inter alia*, procedurally unfair and therefore fall to be set aside.

- 2.4 This is, however, vehemently denied by Tendele. Tendele conducted extensive meetings with affected community members to explain its proposed mining activities in, *inter alia*, the New Mining Areas and, furthermore, consulted several specialists to determine mitigation measures to address the environmental and socio-economic impacts associated with its proposed activities. The process of consulting and assessing the impacts of Tendele's mining activities took years to complete and required significant financial resources. As mentioned, Tendele has been operating the Somkhele Mine since 2006 and has an excellent track record with its various regulators. Furthermore, Tendele has engaged with critical role players in the mining industry, including the Minister of the DMRE, the Director-General of the DMRE, the KZN Premier, the Zulu King's Royal Council, the Mtubatuba Municipality, AMCU, NUM and Solidarity regarding its operations.
- 2.5 The MCEJO Somkhele Committee previously mandated its attorneys, Youens Attorneys, to bring the Review Application.
- 2.5.1 In October 2020, the MCEJO Somkhele Committee (with the majority support of Somkhele / Mpukunyoni MCEJO members following a general meeting held on 23 October 2020), instructed Youens Attorneys to withdraw the litigation against Tendele.
- 2.5.2 Youens Attorneys has not however done so, arguing that the MCEJO Somkhele Committee does not have the authority to issue such an instruction notwithstanding the written mandate that was given by the MCEJO Somkhele Committee to initiate the Review Application.
- 2.6 Tendele has, therefore, brought an interlocutory court application disputing the mandate of Youens Attorneys to continue with the Review Application. This interlocutory application remains pending and will be determined within the coming weeks.
- 2.6.1 It is Tendele's honest view that the will of the majority of the Mpukunyoni Community is being ignored in this matter.
- 2.6.2 In the Review Application, the Mpukunyoni Community, and Mathuba Municipality Counsellors, and all the unions at the mine have applied to Court to participate as an Amicus, and are supporting the Mine.
- 2.6.3 An overwhelming majority of the Community want the Mine to survive to ensure that over 1600 jobs are not lost and that there can be further investment in the Community.
- 2.7 Should the Tendele Mining Right be set aside, following the outcome of the Review Application, the Somkhele Mine will close which will have devastating implications for the entire Mpukunyoni Community.
- 2.8 If the Mine does not secure future mining areas, the Mine will close within the next 18 months. Tendele is the only major employer in the area. Tendele directly and indirectly employed some 1600 people (this was before Tendele had to commence with retrenchment proceedings in terms of section 189 of the Labour Relations Act, 66 of 1995 ("LRA") as referred to in paragraph 2.9 below).

An estimated 220 000 people reside in the Mpukunyoni Community, most of whom live in conditions of severe poverty. 72% of the families from this community have a monthly income of less than R2000 (being less than US\$135 per family) and unemployment is currently at an estimated 65%. Should the Mine close, there are no alternative employment opportunities in the area. Consequently, the closure of the Mine will be devastating for the community and it is yet to be seen how the long-term effects of the COVID-19 pandemic will further worsen the situation on the ground.

- 2.8.1 Tendele directly employs 1023 people at Somkhele, with 87% of these employees residing in the Mpukunyoni area surrounding the Somkhele Mine. Tendele indirectly employs local community members through more than 70 locally based entrepreneurs who provide critically important services to the Mine. If the Mine closes, these entrepreneurial opportunities will be lost.
- 2.8.2 Tendele funds several projects and training initiatives, as set out in paragraphs 3.1.9, 3.1.10 and 3.1.13 below, which will be lost if Somkhele Mine closes.
- 2.8.3 Tendele is the major supplier of anthracite to the major ferrochrome producers in South Africa, which industry directly employs an estimated 46 300 people and indirectly an estimated 83 000 people. If Tendele does not supply the anthracite to the local ferrochrome market, it is likely that local ferrochrome producers would be required to import its reductants in order to continue with production. This would increase the cost of production of ferrochrome, a crucial component in the production of stainless steel. This in turn could result in retrenchments within the ferrochrome industry which could negatively affect South Africa's trade balance and have associated regional and national economic impacts.
- 2.9 In 2018, Tendele was required to commence with retrenchment proceedings in terms of section 189 of the LRA due to an inability to access the New Mining Areas (as a result of the ongoing court proceeding and on-going negotiations with occupiers in the New Mining Areas regarding relocation). This resulted in the workforce at Somkhele Mine being reduced from some 1609 employees to 1023 employees.
- 2.10 Since December 2020, Tendele has been undertaking open cast mining operations in an area known as Luhlanga Boxcut Zero, in an area known as Area 1 and in an area known as Area 9. Area 1 will be depleted in March 2021 and as a consequence a further 122 Tendele employees (most of whom are from the surrounding local community) will be retrenched. Area 9 will be depleted in September 2021 leaving only the small pit at Luhlanga Boxcut Zero. Consequently, if the New Mining Areas are not secured by September 2021, an estimated 500 Tendele employees will likely be retrenched as only 50% of Tendele's work force will be required to mine the small pit at Luhlanga Boxcut Zero. The anthracite reserve at Luhlanga Boxcut Zero will be depleted in early to mid-2022 and the Mine will close if the New Mining Areas are not being mined by this date.
- 2.11 Updates regarding, *inter alia*, retrenchments are regularly reported to the members of the Community. Community members and Tendele employees are constantly contacting and engaging Mine personnel asking questions about the on-going litigation and the future of Somkhele Mine.

As already mentioned in this Response, some 40 000 local community members benefit from the operation of the Mine and are increasingly anxious about their futures and the well-being of their families should the Mine close.

3 Processes undertaken by Tendele to ensure that human rights are recognised and respected.

3.1 The process followed by Tendele to assess, address and remedy environmental and socio-economic impacts of Tendele's Mining Operations

3.1.1 Section 24 of the Constitution of the Republic of South Africa, 1996 ("**Constitution**") provides that –

"Everyone has the right—

- (a) to an environment that is not harmful to their health or well-being;
and*
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—*
 - (i) prevent pollution and ecological degradation;*
 - (ii) promote conservation; and*
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."*

3.1.2 Since the Mine's inception in 2006, Tendele has conducted extensive consultation processes with local community members and traditional leaders to ensure that Tendele has identified and assessed all possible environmental and socio-economic impacts associated with its mining operations in order to adhere to its constitutional obligations set out in section 24 of the Constitution, which socio-economic impacts included a consideration of the Mine's possible impacts on the rights of those residing close to the Mine. Prior to the grant of the various Mining Rights held by Tendele, Tendele was obliged to conduct its consultation proceedings in accordance with (now repealed) section 39 of the MPRD Act.

3.1.3 In terms of (now repealed) section 39 of the MPRD Act, Tendele had to conduct an environmental impact assessment ("**EIA**") and prepare its EMPr in terms of which, *inter alia*, its environmental and socio-economic impacts would be managed and mitigated. When preparing the EIA and EMPr, an applicant is obliged to assess its impacts on, *inter alia*, "*the socio-economic conditions of any person who might be directly affected by the prospecting or mining operation*".

- 3.1.4 Consultation under the provisions of the MPRD Act required engagement in good faith in an attempt to reach accommodation with regard to the impact of mining on the right of the occupier to use the land.
- 3.1.5 Tendele prepared the EMPr (inclusive of various specialist studies) and its appointed environmental assessment practitioner arranged the necessary public consultation meetings to discuss the mining project. Possible impacts and concerns identified by interested and affected parties (“I&APs”) were addressed by Tendele’s appointed environmental assessment practitioner. Following the consultation process, Tendele submitted the EMPr and the specialist studies to the DMRE for consideration, which EMPr incorporated the comments received from I&APs through the consultation process. The EMPr was subsequently approved by the Regional Manager: [REDACTED] of the DMRE. The various specialist studies that were prepared as part of the environmental impact assessment for the New Mining Areas included the studies relating to hydrogeology, biodiversity, aquatic impacts, wetlands impacts, soil capabilities and land use, heritage resources, socio-economic impacts, health impacts, noise impacts, vibration, air quality, climate, visual impacts and decant assessments.
- 3.1.6 Tendele consulted and interacted extensively with various organs of state, I&APs, traditional authorities, community structures and community members themselves. Tendele, furthermore, during the course of 2019 and 2020 conducted further specialist studies to ensure that its EMPr, compiled between 2013 and 2016, did not require an update, considering the time that has elapsed since the preparation and approval of the EMPr. These additional studies included further assessments of, *inter alia*, air quality, biodiversity, blasting and vibration, climate, health, noise, social impacts and visual impacts.
- 3.1.7 As is evident from the above, Tendele did not merely conduct a once-off assessment of the environmental and socio-economic impacts of its proposed mining activities in, *inter alia*, the New Mining Areas. Tendele periodically considers and reviews the impacts of its activities. The mitigation measures in place, detailed in Tendele’s EMPr, assist in avoiding and remediating the possible impacts of Tendele’s mining activities on human rights. Tendele has, furthermore, been in operation for 15 years and has an excellent track record with its various regulators. All processes concerning environmental and socio-economic approvals and assessments are done in collaboration and in agreement with these regulators.
- 3.1.8 It is important to note that, in addition to assessing the possible impacts of its mining activities on the environment and surrounding communities and having mitigation measures in place to address these impacts, the Mine has internal and external monitoring measures and procedures in place to manage, measure and monitor activities which could affect the surrounding communities. These monitoring measures and procedures include the monitoring of noise impacts, dust impacts and the impacts of periodic blasting activities.
- 3.1.9 In addition to the EIA that was conducted in respect of, *inter alia*, the New Mining Areas, Tendele has provided the following services and initiated the following projects in the Mpukunyoni Community –

- 3.1.9.1 an estimated R54,000,000.00 has and will be spent on community projects and development and training opportunities (as referred to in paragraph 3.1.10 below) in accordance with Tendele's approved Social and Labour Plans ("SLPs"). Some of the larger projects that have already been undertaken by Tendele in terms of its approved SLPs include the following –
- 3.1.9.1.1 the construction of the Siphelele Primary School and a soccer field, at a cost of approximately R10,000,000.00 and assisted with the provision of teachers as well as basic maintenance and water (when required);
- 3.1.9.1.2 the construction of the Somkhele Maternity ward at the Somkhele clinic at a cost of R3,500,000.00 after consultation the Department of Health;
- 3.1.9.1.3 the construction of community roads and bridges;
- 3.1.9.1.4 the construction of a hall at Ingaqa School for the disabled;
- 3.1.9.1.5 the construction of public ablution facilities in St Lucia and refurbishment of hawker stalls;
- 3.1.9.1.6 tractors and implements to be utilised by co-operatives in Mpukunyoni for agricultural purposes; and
- 3.1.9.1.7 the construction of 4 community halls in the greater Mpukunyoni area.
- 3.1.10 These are only some of the projects that have been initiated and funded by Tendele.
- 3.1.11 Tendele has, furthermore, provided several training opportunities to members of the local community. In this regard, 20 688 people have received training opportunities over the past 13 years, including, *inter alia*, the following -
- 3.1.11.1 202 people have been trained under the Tendele job shadowing scheme;
- 3.1.11.2 2 035 people obtained Adult Basic Education and Training, at both the training centre constructed by Tendele at Somkhele Mine and at an education centre in a nearby area that was refurbished by Tendele and is rented from the Mtubatuba Municipality. The education centre also provides maths and science programmes for school children, matric study support and Tendele sources student teachers for community schools to assist with educating learners;
- 3.1.11.3 the Vulamehlo Project assisted some 3 344 children from Grade 10 and Grade 12 with making career decisions; and
- 3.1.11.4 the Lego project assisted some 9 894 children aged 4 to 10 with early childhood learning.

- 3.1.12 It is important to note that, in accordance with regulation 45 of the Mineral and Petroleum Resources Development Regulations (GNR 527 of 23 April 2004), as amended ("**MPRD Regulations**"), promulgated in terms of the MPRD Act, Tendele is obliged to submit an annual report on its compliance with the approved SLPs to the relevant Regional Manager. The annual reports are submitted by Tendele to the DMRE outlining compliance with SLP commitments.
- 3.1.13 In addition to the SLP projects referred to above, -
- 3.1.13.1 Since 2006, over R650,000,000.00 has been spent on procuring services from community based black economic empowerment companies;
- 3.1.13.2 Tendele, at its own expense, has constructed new homes, with water as well as sewerage and electricity infrastructure for community members that were required to be relocated by Tendele; and
- 3.1.13.3 Tendele has provided local communities with potable water delivered by water tanker since 2015, at a cost exceeding R100,000.00 a month, as the Mtubatuba Municipality is unable to provide water to certain areas in Mpukunyoni (despite having no obligation to do so) ;
- 3.1.14 Tendele also obtained the free, prior and informed consent of the community members in accordance with the provisions of the Interim Protection of Informal Land Rights Act, 31 of 1996, as amended ("**IPILRA**") to conduct mining within the Mpukunyoni Community. In terms of section 2(4) of IPILRA, the decision to grant consent is taken and binding when a majority of the community supports the decision to give consent. In this regard, Tendele obtained the consent of the Mpukunyoni Traditional Authority, which is the legally recognised traditional authority that has the authority to represent the Mpukunyoni Community. The required consent in terms of section 2 of IPILRA, is attached hereto as Annexure "**T2**". *The manner in which consultations are conducted by Tendele with affected community members and how grievances are reported to Tendele*
- 3.1.15 It must be appreciated that there are 220 000 members of the Mpukunyoni Community, (the majority of whom are in support of the Mine) who had to be engaged with and consulted by Tendele. These include local community leaders, the Traditional Authority, trade unions (namely, AMCU and the NUM), representatives from the Local Municipality, the Mpukunyoni Community Mining Forum and thousands of members of the Mpukunyoni Community.
- 3.1.16 In order to adequately consult with and ensure that the views of all of these members are considered and addressed, Tendele initially proposed the formation of the Somkhele Tribal Authority Working Committee ("**STAC**") to manage communication between Tendele, the community and its various leaders. The STAC has since 2016 been replaced by the Mpukunyoni Community Mining Forum ("**MCMF**").
- 3.1.17 The MCMF represents the interests of the communities in the Mpukunyoni area surrounding Somkhele Mine and has several representatives including, *inter alia*, -

- 3.1.17.1 the Inkosi (representing the 8 Royal Houses (related to the Zulu King) of the Mpukunyoni Area, the Traditional Council and the Traditional Authority);
- 3.1.17.2 [REDACTED] Chief Induna of the Mpukunyoni Area;
- 3.1.17.3 the Mayor of the Mtubatuba Municipality (or his / her nominee), in his/her capacity representing the entire Mtubatuba Municipality;
- 3.1.17.4 the 8 Indunas of the areas in which the Mine operates;
- 3.1.17.5 representatives of local entrepreneurs;
- 3.1.17.6 full-time shop stewards; and
- 3.1.17.7 faith-based organisations.
- 3.1.18 The MCMF came about during May 2016, when Tendele revised all communication platforms that existed between Tendele and the Mpukunyoni Community. This process, which the DMRE participated in, involved many information sharing meetings between Tendele and the Mpukunyoni Community and led to the signing of a Road Map agreement (“**Road Map**”) between the Inkosi and the Mpukunyoni Traditional Council as representatives of the local community and Tendele. Representatives from all 30 Izigodi signed the Road Map and over time there were additional signatories to the Road Map, including, the Mtubatuba Municipality, representative Trade Unions and local entrepreneurs. A final version of the Road Map was signed in the beginning of 2017 and is attached hereto as Annexure “**T3**”.
- 3.1.19 The Road Map provides a platform through which, *inter alia*,
 - 3.1.19.1 all stakeholders, including the community leaders, the Inkosi, Indunas (and other local leaders), the Traditional Council, the Municipality, representative Trade Unions, local entrepreneurs and individuals from the Mpukunyoni Community can meet to discuss the Mine, its operations and community related matters in respect of activities undertaken at Tendele. Meetings take place quarterly;
 - 3.1.19.2 complaints can be raised regarding activities at Somkhele Mine; and
 - 3.1.19.3 SLP projects are discussed and developed.
- 3.1.20 The Road Map is, therefore, a critical document to ensure that Tendele addresses all concerns and comments raised by affected community members regarding any aspect of the Mine’s operations. These include impacts concerning the rights of community members and occupiers and the impacts of the Mine’s operations on health and the environment.

- 3.1.21 In addition to the establishment of the MCMF, Tendele has established the below mentioned committees where complaints can be lodged and addressed –
- 3.1.21.1 Directly Affected Community (“**DAC**”) committees; and
- 3.1.21.2 Mining Affected Community (“**MAC**”) committees.
- 3.1.22 DAC and MAC meetings are held monthly and MCMF meetings are held quarterly. In these meetings, all complaints raised by affected community members are discussed and resolved. In the event that issues are not resolved on the DAC and MAC platforms, these issues are escalated to the MCMF.
- 3.1.23 Whenever grievances are noted and need to be reported on, such grievance can be reported/escalated to the MCMF, in accordance with the Road Map, which grievances are then communicated to the Mine. The Mine will consider any grievance received, engage directly with the complainant and attempts are then made to address the grievance to the best of the Mine’s ability.
- 3.2 *Policies and procedures in place for the payment of compensation and relocation of affected community members*
- 3.2.1 Tendele is an opencast mine and in order to access the New Mining Areas, regrettably, certain families must be relocated. Before relocating any community member, the mine is obliged to reach agreement with the family members regarding relocation (including compensation payable). This includes following a process as set out in section 54 of the MPRD Act which regulates the process to be followed by the Holder of, *inter alia*, a Mining Right to determine the reasonable amount of compensation payable to a lawful occupier if it is determined that a lawful occupier will suffer loss or damage as a result of the proposed mining activities. In the past, Tendele has successfully relocated 225 Community households.
- 3.2.2 In order to commence with mining in the New Mining Areas, a further 143 families are required to be relocated. Tendele has spent more than 3 years negotiating with these families and has signed relocation agreements with 133 families. Stated differently, Tendele is yet to reach agreement regarding relocation compensation with 10 families (8 families residing in Ophondweni and 2 families residing in Emalahleni), notwithstanding having exhausted the process as set out in section 54 of the MPRD Act. Tendele has concluded a mediation agreement with these remaining 10 families and a mediation process will commence in early February 2021. The mediation is being facilitated by an independent mediator and Tendele is hopeful that agreement can be reached with these remaining families through the mediation.
- 3.2.3 Tendele has established policies and procedures, as more fully set out below, to, *inter alia*, ensure that the families who are required to be relocated are fairly compensated and relocated in accordance with applicable traditional practices. It is reiterated that families are only relocated once written agreement has been reached with each family.

The policies and procedures are followed in addition to discussions and assistance from the **Ministerial Task Team** (as defined and more fully explained in paragraph 0 below).

3.2.4 Regarding how relocation engagements and discussions are conducted by Tendele, ordinarily, “one-on-one” meetings are held with the head of each family. In collaboration with officials of the Mpukonyoni Traditional Council, Tendele’s original relocation protocol was developed during 2011.

3.2.5 A revised version of the Relocation Protocol titled “*memorandum of understanding*” was signed on 31 May 2018 (“**Revised Relocation Protocol**”), a copy of which is attached hereto as Annexure “**T4**”. The Revised Relocation Protocol has been independently reviewed by Mr Derrick Griffiths, an independent Professional Property Valuer, to assess the reasonableness and fairness of the Revised Relocation Protocol. Mr Griffiths, in his expert opinion, concluded that the processes followed by Tendele meet the requirements of, *inter alia*, the MPRD Act, the Constitution and the International Finance Corporation’s resettlement policies.

3.2.6 The Revised Relocation Protocol applies to directly affected communities who reside within 500 metres of a blasting area at a pit (clause 2(a) of the Relocation Protocol).

3.2.7 The Revised Relocation Protocol, which is used in conjunction with a “*draft standard template agreement*”, provides a basis for negotiations with the families that have to be relocated and provides for compensation that is well in excess of the norm in the area and what other companies offer when they relocate and compensate occupiers. All negotiations are conducted in Zulu and all relocation agreements are translated into Zulu. The Revised Relocation Protocol is simply a guide through which negotiations are initiated. The position, circumstances and wishes of each family are distinct and therefore the guiding principles in the Revised Relocation Protocol are not “cast in stone” and are adapted to accommodate each family.

3.2.8 Where a family member is illiterate, the Mine ensures that an interpreter explains the terms of the agreement in full to the family member concerned. A copy of the “*draft standard template agreement*” is attached hereto as Annexure “**T5**”. As with the Revised Relocation Protocol, this agreement is simply a template and is revised depending on the wishes and circumstances of each family. It must be noted that each agreement is signed after extensive negotiations with each family and taking into account all facts that may be unique to each family. The relocation process followed by Tendele with each family required to be relocated, is set out in the attached summary, marked as Annexure “**T6**”.

It is submitted by Tendele that the abovementioned policies adequately identify, prevent, mitigate and remedy any possible impacts on the rights of occupiers who are required to be relocated by the Mine.

3.2.9 In addition to the development of the relevant policies and procedures as referred to above, it is important to note that the Minister of the DMRE visited, *inter alia*, the New Mining Areas in September 2018 and appointed a task team (“**Ministerial Task Team**”) to facilitate the relocation process and to try, with the assistance and co-operation of

Tendele, resolve community concerns regarding the operation of the Mine. The Ministerial Task Team included the following members of the DMRE –

- 3.2.9.1 [REDACTED] (at the time the Chairman of the Mineral and Petroleum Board);
- 3.2.9.2 [REDACTED] (Chief Director: Mineral Regulation);
- 3.2.9.3 [REDACTED] (the DMRE Acting Regional Manager: KwaZulu Natal at the time);
- 3.2.9.4 [REDACTED] (DMRE Community and SLP); and
- 3.2.9.5 [REDACTED] (from the DMRE Mine Inspectorate Division).

3.2.10 Several meetings were held between Tendele and the Ministerial Task Team in an attempt to ensure that any community issues (which mainly concerned relocations) were resolved with the knowledge and assistance of, *inter alia*, the DMRE. Between November 2018 and March 2019, the DMRE facilitated and chaired 5 meetings between the Mine, local community leaders and directly affected occupiers.

3.2.11 In addition to the Ministerial Task Team, in July 2020 an Inter-ministerial Task Team was established by the KwaZulu Natal MEC for Transport, Community Safety and Liaison following concerns regarding escalating violence in the Mpukunyoni area, the potential closure of the Mine and the status of relocation negotiations. The Inter-ministerial Task Team includes the Premier of [REDACTED], [REDACTED], the [REDACTED] MEC for Cooperative Governance and Traditional Affairs, [REDACTED] and representatives from, *inter alia*, the DMRE, the Zulu Royal House and the KwaZulu Natal Department of Economic Development, Tourism and Environmental Affairs. These top-ranking Government officials all recognise the role the Mine plays within the Community and the need to de-escalate violence in the area. Various meetings were arranged by the Inter-ministerial Task Team between July and November 2020 in order to facilitate discussions between the Mine and members and leaders of the Community. Tendele is in constant communication with the Inter-ministerial Task Team regarding the progress being made with, *inter alia*, relocation negotiations.

As is evident from the above, any concerns regarding relocation, were not only dealt with by Tendele and/or the MCMF, but through the Ministerial Task Team that was appointed to facilitate the relocation negotiations.

3.2.12 Despite the pro-active support and assistance from the Ministerial Task team as well as the Inter-ministerial Task Team, agreement has not been reached with certain of the occupiers who are required to be relocated.

As is evident from paragraph 3.2.2 above, Tendele has concluded a mediation agreement with these occupiers and a mediation process will commence in early February 2021.

3.3 *Policy commitments by Tendele*

3.3.1 Tendele has the following policies in place –

3.3.1.1 Environmental Policy;

3.3.1.2 Health and Safety Policy;

3.3.1.3 Quality Policy;

3.3.1.4 Vision, Mission and Values Policy; and

3.3.1.5 Wellness Policy,,

all of which are in place to ensure the health, safety and welfare of all employees on site. These policies are explained to Tendele employees and are revised and revisited regularly. These policies are, furthermore, discussed and developed with the input of representative Trade Unions.

Conclusion

3.4 Tendele is increasingly concerned about the escalating violence within the Community which is directly linked to the uncertainty regarding the future of the Mine.

3.4.1 It is Tendele's sincere hope that the conclusion of the Peace Accord will assist in alleviating concerns and fears and will assist in de-escalating violence within the Community.

3.4.2 It is Tendele's sincere hope that the conclusion of the Mediation Agreement will assist in finalizing a "win win" solution of the remaining 10 out of 143 families that have not signed relocation agreements.

3.4.3 It is Tendele's sincere hope that the parties that oppose Tendele in the Review Application will agree to terminate the court proceedings and start a review process with the intention to resolve environmental issues (if any), and to ensure the survival of the mine (the pandemic has indicated the suffering that will occur in the community if the mine closes).

3.5 It is important to note that the compilation of an EIA and EMPr requires extensive engagement with I&APs, traditional leaders and government departments. It was confirmed by the relevant authorities that Tendele adequately conducted its assessments and that appropriate mitigation measures are in place to ensure that the impacts associated with Tendele's mining activities are adequately mitigated.

- 3.6 Tendele has actively engaged members of the Mpukunyoni Community and traditional leaders in the area and has communication platforms through which any concerns, grievances and complaints by community members can be reported on and brought to the attention of Tendele (namely through the DACs, MACs and MCMF) . Members of the community can also approach the Mine directly with any concerns they may have and Tendele maintains a complaints and grievances register and records the manner in which such grievances have or are being addressed.
- 3.7 All consultations conducted by Tendele have been in good faith with the aim of accommodating community members. In order to ensure sustainable development, economic, social and environmental factors must be balanced. The Mine has provided more than a thousand employment opportunities in an area where unemployment is at a staggering 65% and through its various community projects, invested millions of Rands in the Community through various projects and initiatives. Mining projects will impact the environment; however it is the manner in which these impacts are mitigated, off-set and rehabilitated that is of critical importance. The DMRE as well as the Department of Human Settlement, Water and Sanitation (“**DHWS**”) have issued Tendele with various regulatory approvals and conducted annual audits and site visits to monitor Tendele’s compliance with its various approvals. Tendele has an excellent track record with these Departments and this is evidenced by the fact that in July 2020, Tendele was issued with an environmental authorisation by the DMRE and a water use licence by the DHWS for its open cast activities in the Luhlanga area.
- 3.8 Tendele remains committed to open and honest engagement with Community members, local leaders and Government bodies and officials and if the New Mining Areas are secured, Tendele will be in a financial position to continue to invest in the local Mpukunyoni Community, continue to employ local Community members and entrepreneurs and assist in uplifting this community.
- 3.9 Please do not hesitate to contact us should you require any clarity regarding the information provided in this Response.

Yours faithfully



CEO
TENDELE MINING PROPRIETARY LIMITED