



# ALLRISE

Attorneys for climate and environmental justice

2<sup>nd</sup> Floor Offices, 29<sup>0</sup> South, 7 Umsinsi Junction, Dube City  
Dube Trade Port, La Mercy, KwaZulu-Natal, South Africa  
Tel : +(27) 32 814 0140  
Mobile : +27 (0)61 226 6868  
Email: kyouens@allrise.org.za; jtooley@allrise.org.za;  
Web : www.allrise.org.za

Ms Janice Callaghan  
**GCS Water & Environmental Consultants**  
By email: [janicec@gcs-sa.biz](mailto:janicec@gcs-sa.biz)

17 June 2022

Dear Ms Callaghan,

**RE: IMVUKUZANE RESOURCES (PTY) LTD - PROSPECTING RIGHT APPLICATION, FULENI RESERVE, (KZN  
30/5/1/1/2/10747 PR): BASIC ASSESSMENT PROCESS**

1. Previous correspondence herein refers. ALL RISE is representing several parties in the abovementioned application process, the iMfolozi Community Environmental Justice Organisation ("MCEJO") being one of them. This letter pertains specifically to our instructions from MCEJO.
2. The proposed project is situated in the Fuleni area which neighbours the famous Hluhluwe-iMfolozi Park, a premiere tourism destination and sanctuary for the threatened White Rhino. It is also an area rich in tradition and heritage for the Zulu people, where King Shaka lived as a boy with his Mthethwa uncle and grew into the warrior that forged the Zulu nation.
3. The prospecting and potential mining will affect at least 7 villages, more than 1 600 households and between 12 600 and 16 000 people. Within these communities are areas of subsistence farming, cattle grazing, homes, schools, clinics, graveyards, places of worship, communal facilities and areas of cultural significance. The households in the area depend on the natural resources of the area for subsistence and commercial farming. The rivers and streams are a source of water for some villages where there is no or intermittent municipal water supply.
4. As a consequence of the Constitutional Court judgment in Bengwenyama Minerals (Pty) Limited v Genorah Resources (Pty) Limited, Minister for Mineral Resources & Others, it is a requirement that the applicant consult with all interested and affected parties:

*"consultation is to provide owners or occupiers with the necessary information on everything that is to be done so that they can make an informed decision in relation to representations to be made..." because "the granting and execution of a prospecting right represents a grave and considerable invasion of the use and enjoyment of the land on which the prospecting is to happen."*

5. We met with our clients in Fuleni on 9 June 2022 and it was clear that, as was the case in 2018, there has been complete disregard for customary protocols and for the rights of the landowners. Our

instructions are that the Inkosi and Indunas have not been properly consulted which is highly irregular in terms of customary law and practice. We are further informed that an apology was supposed to have been given to all the Indunas and to the residents of each village, but that most of these meetings are yet to take place.

6. The Protection of Informal Land Rights Act 31 of 1996 (IPILRA) makes it clear that customary communities have a right to decide whether or not development occurs on their land. As the Constitutional Court has repeatedly recognised, secure access to land is deeply linked to the dignity of African people and communities. In the case of *Daniels v Scribante*, Madlanga J begins his judgment with the following quote:

*“The land, our purpose is the land; that is what we must achieve. The land is our whole lives: we plough it for food; we build our houses from the soil; we live on it; and we are buried in it. When the whites took our land away from us, we lost the dignity of our lives: we could no longer feed our children; we were forced to become servants; we were treated like animals. ... [I]n everything we do, we must remember that there is only one aim and one solution and that is the land, the soil, our world.”*

7. The people of Fuleni hold informal rights to their land in terms of IPILRA and consent from them is required prior to the granting of the prospecting right. As an independent source of law, the customary system gives rise to rights, such as access and use rights to resources, including land and minerals.

8. The core provision of IPILRA is section 2(1) which requires the consent of the holder of an informal right before he or she may be deprived of property. It reads:

*“Subject to the provisions of subsection (4), and the provisions of the Expropriation Act, 1975 (Act 63 of 1975), or any other law which provides for the expropriation of land or rights in land, no person may be deprived of any informal right to land without his or her consent.”*

9. Given your lack of regard for customary protocols and the fact that our clients have no intention of being deprived of their land, we are instructed by our clients to inform you, as we hereby do, that **they do not consent to being deprived of their land and therefore do not consent to you entering upon their land, for EIA purposes, prospecting purposes or otherwise**. Your client is strongly urged to withdraw its application with the Department of Mineral Resources and to cease with the EIA process.

10. All our clients' rights herein are reserved.

Yours sincerely,

*Kirsten Youens*

*(Sent by email and therefore not signed)*