

## **Negotiations between the Save Mapungubwe Coalition and Coal of Africa**

The Save the Mapungubwe Coalition (the Coalition) was formed in early 2010 in response to the mining right granted to Limpopo Coal Company (Pty) Ltd (Limpopo Coal) in March 2010 for its proposed Vele Colliery.

During November 2011, after careful deliberation, the Coalition commenced direct formal negotiations with Limpopo Coal and its holding company Coal of Africa Limited (CoAL).

### **Why the Coalition entered into negotiations with Coal?**

#### *Benchmark for the broader region:*

The overall aim of the negotiations is to set a benchmark for best practice in relation to managing and mitigating the impacts of coal mining and related activities on the environment, specifically including the impact on water and heritage resources – not only for the Vele Colliery, but for all future coal mines in the area.

#### *Possible outcomes:*

It is important to keep in mind that the members of the Coalition are not regular litigants and based on the concerns raised by the Coalition during the litigation process, for example issues regarding water, heritage and biodiversity impacts and mitigation, a key part of the negotiation process is centred around reaching consensus on how to address these issues adequately.

#### *Changes in legal and operational status:*

It is further important to note that at the time when the Coalition launched interdict proceedings during August 2010, Limpopo Coal had been undertaking extensive activities at the site without all the required authorisations. At that stage, no final enforcement action had been taken by any of the authorities to stop these activities. No decision had been taken on the detailed appeals lodged by the Coalition against both the mining right and the environmental management programme granted by the Department of Mineral Resources. Since then, both the Department of Environmental Affairs and the Department of Water Affairs forced Limpopo Coal to cease its unauthorised activities. Furthermore, some of the grounds raised by the Coalition in the interdict have been rectified retrospectively by Limpopo Coal, and by the authorities who granted authorisations to Limpopo Coal after the suspension of unauthorised activities by that company. In addition, further obligations have been imposed by the subsequent authorisations given to Limpopo Coal, most notably the s.24G authorisation issued by the DEA.

### **The negotiation process**

Negotiations have been structured in a two stage process. The first stage involved the conclusion of a formal memorandum of understanding (MoU) between the Coalition members, Limpopo Coal and CoAL, which was signed by all parties on 24 November 2011. A copy of the MoU is available to the public and all of our stakeholders at.....

The next step entails concluding a more detailed memorandum of agreement (MoA).

It is important to note that if a MoA cannot be reached, the Coalition will withdraw from negotiations and resume the legal proceedings.

### **What has the Coalition achieved so far?**

The Coalition believes that its challenge to the proposed Vele Colliery has had far-reaching positive consequences that go well beyond this one mining development. We regard these consequences as including the following:

1. A clear message has been sent to the mining industry that civil society will not take sloppy permit applications with bad or no public participation, bad permitting decisions and slow enforcement action by authorities lying down. Interested and affected parties, including public interest organisations like the Coalition members, have legal remedies and will not hesitate to use them again in future. Attempts to shortcut the regulatory requirements will come at great cost to companies and their investors, as has been powerfully demonstrated in the case of the Vele Colliery.
2. The Coalition's challenge has highlighted the inappropriateness of a regulatory system in which one government department (DMR) ignores the concerns of its sister departments and agencies and makes it near impossible for those departments and agencies to fulfil their mandates towards the environment, water and heritage resources in a responsible way. If anything, this case demonstrates the need for a single permitting system where all the mandated authorities consider applications for new mines jointly, and where each authority has a veto to ensure that mining permits are only granted to a company and for an area where all the requirements of the Mineral and Petroleum Resources Development Act, 2002 (MPRDA), the National Environmental Management Act, 1998 (NEMA), the South African National Heritage Resources Act, 1999 and the National Water Act, 1998 can be satisfied.
3. The Coalition's challenge has highlighted the urgent need for authorities to agree on and demarcate areas of heritage, ecological, biodiversity, cultural and hydrological importance and value where no mining should be allowed, particularly to avoid a situation where mining companies are allowed to invest significant capital in an area where mining should never have been allowed in the first instance. A proposed list of such areas of critical biodiversity and hydrological value and sensitivity, based on extensive scientific research and consultation with a wide range of affected parties and authorities, was submitted to the Minister of Mineral Resources in February 2011 by a group of thirteen NGOs.
4. The Coalition's challenge has generated significant awareness, locally and internationally, about the natural and cultural heritage contained in the Mapungubwe Cultural Landscape, and highlighted the urgent need for adequate protection of our World Heritage Sites, including provision for adequate buffer zones for all World Heritage Sites.
5. Partly as a result of the Coalition's challenge, the proposed Vele Colliery will have far greater obligations to mitigate, offset and responsibly manage its heritage and environmental impacts than would have been the case without the Coalition's challenge. The Vele Colliery will also operate under far greater scrutiny than is normally the case with coal mines.