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Comments regarding the

Cultural Heritage Survey Guidelines and Assessment Tools for Protected Areas in
South Africa (“The Guidelines and Assessment Tools”)

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A) INTRODUCTION

About the Centre for Applied Legal Studies and its Work on Mining and Environmental Justice

1. The Centre for Applied Legal Studies (“CALs”) welcomes the opportunity to make comments on the Cultural Heritage Survey Guidelines and Assessment Tools for Protected Areas in South Africa (“The Guidelines and Assessment Tools”).
2. CALs’ vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights. CALs practices human rights law and social justice work with a specific focus on five intersecting programmatic areas, namely Basic Services, Business and Human Rights, Environmental Justice, Gender, and the Rule of Law. It does so in a way that makes creative use of the tools of research, advocacy and litigation, adopting an intersectional and gendered understanding of human rights violations.
3. CALs’ environmental justice and mining programme is focused on the environmental, social and economic impacts born by mine-affected communities.
4. Communities and community-based organisations with whom we work testify have testified to and documented a pattern of destruction, damage and/or forcible separation from sacred sites (including graves and places of worship) to make for mining operations or associated infrastructure (such as access roads). Too often, in environmental impact assessments, the heritage of communities is unrecognised or overlooked which makes destruction, damage or separation more likely. We are of the view that this can be addressed through placing the emphasis, in legislation and policy, on how communities define their own heritage and on providing processes through which communities can participate in the identification and management of heritage resources.
5. CALs has also worked, in its capacity as attorneys of record, along with the Centre for Environmental Rights (CER) for the Save Mapungubwe Coalition, on the protection of the Mapungubwe Cultural Landscape World Heritage Site. Crucially in addition to being a World Heritage Site and a National Heritage Site in terms of the National Heritage Resources Act, the area is also a National

Park.¹ Our experience working in this area has shown us the importance of ensuring there is an integration of ecological and cultural heritage management, which the Guidelines and Assessment Tools can help achieve.

6. The Constitution provides, in section 24(b) (i) (ii) (iii), that the government must take legislative measures to prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.² It further provides, in section 31 (1) (a) protects the right of members of cultural, religious or linguistic communities to 'enjoy their culture, practise their religion, and use their language.'
7. The comments to follow are informed by the reality described above and by the state's obligations under the Constitution.

B) GLOSSARY OF TERMS

8. CALS has formulated comments and/or suggestions pertaining to some of the definitions contained in the Guidelines and Assessment Tools.
9. The first of these comments relates to the definition of 'sacred sites.' We suggest that the definition be augmented to give a central place to the meaning of the sites by the spiritual or religious community and provide an indication of some of the types of sites covered by the definition. This is in order to conceive of communities as playing a central role in the process by which sites are recognised by management authorities. The following augmented wording constitutes an example of this:³

'Places that have spiritual or religious significance to members of a cultural, religious or linguistic community, such as graves, and places of worship.'

10. The second of these comments relates to the definition of 'place'. We propose the concept should be expanded to more clearly address the customary land

¹ Act No. 25 of 1999.

² Constitution of the Republic of South Africa, 1996.

³ All proposed additions to the wording of the Guidelines and Assessment Tools in these comments are highlighted in bold script.

rights of communities and the centrality of communal land to the culture, way of life and identity of members of African communities.

11. The third of these comments relates to the definition of 'significance assessment.' It is critical that such assessments give regard to how the cultural, religious or linguistic communities value a heritage feature of particular significance to them, and not just how society at large views it. We therefore suggest the following insertion into the second part of the definition:

'2. The degree of value that it holds for society, **for cultural, religious and linguistic communities, and for individuals**, as guided by the NHRA.'

C) ABSENCE OF GUIDELINES ENABLING COMMUNITY MEMBERS TO IDENTIFY HERITAGE SITES

12. The Guidelines and Assessment Tools fulfil an important purpose in providing greater guidance for the Management Authorities of protected areas, such as national parks, to identify and manage heritage resources under their control, thereby increasing the integration of cultural and natural heritage management. We therefore welcome the development of these guidelines.
13. However, there remains an important gap, namely in providing members of communities with clear guidance on how to proceed in getting their heritage resources, including land, homes, grave sites, and places of worship, recognised. Communities should be able to initiate this process, not simply respond to an existing process.
14. It is critical that communities are provided with guidance in this regard given that their local heritage resources are not always officially recognised and are under constant threat by mining companies, often leading to the loss of livelihoods, breakdown of family structures and displacement. Such guidelines would need to be in plain language and translated into all official languages. They should provide simple and non-resource intensive steps towards initiating the formal process of recognising heritage resources (especially Grade 3 Resources, of local significance).
15. The language of the Guidelines and Assessment Tools is too technical and the processes involve too great an administrative burden to serve this role. Guidelines or a toolkit targeted at communities should therefore be developed to complement or augment the Guidelines and Assessment Tools.

D) COMMUNITY PARTICIPATION IN THE HERITAGE SURVEYING PROCESS

16. The Guideline and Assessment Tools, laudably, recognise the importance of the knowledge of ‘the local community living in and around the protected area’ in identifying heritage resources.⁴ Further, a second step in the process of preparing a survey includes identifying ‘existing expertise available in house *or in the community* that could contribute to the survey.
17. The Guideline and Assessment Tools could, however, be enhanced by providing guidance on identifying and notifying members of local communities of the opportunity to participate when the management authority is preparing for a survey. Such guidance should draw on the notice requirements contained in the National Environmental Management Act Environmental Impact Assessment Regulations.

E) CONCLUSION

18. Thank you for providing the opportunity to provide input. For queries and further information please contact Robert Krause (Researcher) at Robert.Krause@wits.ac.za or 011 717 8615.

⁴ Guideline and Assessment Tools at 36.