

FOR IMMEDIATE RELEASE:

**SOUTH AFRICAN AND INTERNATIONAL HUMAN RIGHTS GROUPS GRANTED
PERMISSION TO INTERVENE IN FOREIGN MINING COMPANIES' COMPLAINT
AGAINST SOUTH AFRICAN GOVERNMENT**

**INTERNATIONAL ARBITRATION TRIBUNAL AGREES TO ACCEPT HUMAN RIGHTS
ARGUMENTS AND ORDERS DISCLOSURE OF KEY DOCUMENTS**

Date: 19 October 2009

Human rights groups to argue that South Africa's bilateral investment treaties should be interpreted in accordance with South Africa's human rights obligations under its own constitution and under international treaties.

Two South African and two international human rights groups have scored a major victory in their bid to participate in an international investment dispute between some foreign investors and the Government of South Africa. In July of this year, the groups had filed a joint petition seeking permission to assist an international arbitration tribunal in interpreting the South African Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA) in light of the country's constitutional and international human rights obligations. The petition was granted on October 5th by the international arbitration tribunal hearing the case, which is constituted under the World Bank's International Centre for Settlement of Investment Disputes (ICSID).

The tribunal's decision also marks the first time ever that an ICSID arbitration tribunal has ordered the parties to disclose their key legal filings to a set of public interest organisations, despite the strong objections of the claimants. ICSID arbitrations have historically been shrouded in secrecy, with the parties' pleadings typically kept strictly confidential. The decision thus marks a major step towards improving the transparency of investor-state arbitrations under ICSID.

The dispute involves a complaint filed in 2006 by several Italian citizens and Luxembourg corporations against the Government of South Africa. The claimants, who hold stakes in granite quarrying companies in South Africa, allege that numerous provisions of the MPRDA effectively extinguish their mineral rights without providing adequate compensation and unfairly discriminate against them, in violation of South Africa's bilateral investment treaties with Luxembourg and Italy.

The case, known as *Piero Foresti, Laura de Carli and others v. Republic of South Africa*, has attracted widespread attention from South African and international human rights groups and scholars. Human rights activists are concerned that the claimants' interpretation of South Africa's bilateral investment treaties – if accepted by the international arbitration tribunal – could severely impinge upon the government's policymaking space and impede its ability to pursue key policies such as Broad-based Black Economic Empowerment (BBBEE) and environmental preservation efforts. The investors' initial complaint alleged, among other things, that the environmental and BBBEE provisions within the MPRDA render the Act inconsistent with South Africa's investment treaties.

The tribunal's decision means that the four human rights groups - the Centre for Applied Legal Studies (CALs), the Legal Resources Centre (LRC), the Center for International Environmental Law (CIEL),

and INTERIGHTS (the International Centre for the Legal Protection of Human Rights), will have an opportunity to view the documents filed by the parties in the case and then to make written submissions to the tribunal concerning key public interest issues.

The group's comments will address the extent of South Africa's legal obligations to promote human rights - such as the right to equality - and sustainable, equitable development. They will also demonstrate the relevance of these obligations in relation to the interpretation of South Africa's bilateral investment treaties. The group's aim is to assist the tribunal in resolving the dispute fairly while at the same time avoiding any conclusion that would create conflict between South Africa's legal obligations arising from bilateral investment treaties and its human rights obligations under its constitution and international human rights treaties. A similar petition, filed by the International Commission of Jurists in Geneva, was also granted by the tribunal last Monday, 5 October 2009.

The human rights groups have been instructed to file their written arguments by December 21st. Hearings in the case, which the tribunal has yet to decide whether to open to the public, are currently scheduled for April 2010.

Issued jointly by: The Legal Resources Centre, the Centre for Applied Legal Studies, the Center for International Environmental Law, and Interights, the International Centre for the Legal Protection of Human Rights.

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