



THE MUSINA-MAKHADO ENVIRONMENTAL IMPACT ASSESSMENT PUBLIC PARTICIPATION PROCESS:

Failures of inclusive development in South Africa

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INTRODUCTION: THE MUSINA MAKHADO METALLURGICAL ZONE AND INCLUSIVE DEVELOPMENT

The core of China's Foreign Policy in Africa strategy is setting up Special Economic Zones as part of the establishment of what is known as the Belt and Road Initiative. The BRI strategy of International Developmental Assistance (IDA) combines trade and infrastructural investment through low interest rate loans and Chinese private company and State-Owned Enterprise Assistance from China. This is marketed by China's state leader Xi Jing Ping and top political leadership as a new Global South form of Inclusive Development that is both compatible and synergistic with UN sustainable development goals. Chinese mega-infrastructural road and rail projects are frequently linked to SEZ mega-projects.

The proposed Musina Makhado SEZ (MMSEZ) and its linkages to the upgrading of South Africa's transport corridors to Durban, Richards Bay and into the SADC region, provides a perfect example of

this form of Inclusive Development. The expansion of BRI along with the establishment of the Chinese model of SEZs combines huge Foreign Direct Investment Incentives in the geographically designated Zones linked to technologically advanced rail and upgraded road networks. This is the main development strategy of the Forum on China-Africa Cooperation (FOCAC) and is closely intertwined with the African Union's Agenda 2063. The FOCAC driven vision of an integrated Africa, linked to Eurasia through Belt and Road, is the direct motivation for Cyril Ramaphosa's promotion on the Musina-Makhado SEZ on his return from the FOCAC Summit in Beijing in September 2018.

According to FOCAC's official Declarations, Inclusive Development is 'people-centred' and Chinese and African bilateral cooperation is characterised by 'win-win' projects of mutual benefit to both countries. Therefore, both IDA and Inclusive Development are positioned in direct contrast to Northern forms of Aid, where states in the South have been prescribed specific ways of spending loan disbursements. IDA is also described as labour and green energy intensive. The purpose of this brief is to track how the proposed MMSEZ Environmental Impact Assessment (EIA) and the participatory process against the background of this Inclusive Development framing.

It is against this background that the Musina-Makhado Environmental Impact Assessment process began in 2020. The process has been both a classic example of the flaws of EIA public participation processes, yet also of the gains that can be made to influence government through the activism and mobilisation of watchdog development non-governmental organisations, civil society coalitions and activism orientated research institutions. A loose coalition of Interested and Affected Parties (I& APs) has formed, loosely facilitated through webinars through the Friedrich Ebert Stiftung. The brief examines the impact of mobilisation of the coalition on the EIA process.

THE RUSH FOR AN ENVIRONMENTAL IMPACT ASSESSMENT FOR THE MMSEZ

In South Africa, EIAs are embedded in stringent developmental policy framings. For example, South Africa's legislation on EIAs and community inclusion is of the best in the world, especially on issues of sustainable development and the environment. The National Environmental Management Act (NEMA) of 1998 is inspired by international best practice on the inclusion of indigenous communities into participatory sustainable development. NEMA founding principles in chapter 1 states explicitly,

“...the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured”.

The Table below extrapolated explicates the key elements of NEMA's EIA guidelines in a simple format.

Minimum Requirements in Terms of Section 24 of NEMA

Section 24 of NEMA sets out the minimum requirements that every application for an environmental authorisation must comply with. They are:

Co-operative Governance

- Where the activity concerned falls under the jurisdiction of more than one organ of state, there must be coordination and cooperation between the relevant organs of state, when considering the assessment.
- Reference should be made to the principles of cooperative governance.
- When making decisions, organs of state must consider the findings and recommendations flowing from an investigation, the general objectives of integrated environmental management laid down in NEMA as well as the section 2 principles for environmental management contained in NEMA. There must be an indication that the decision-maker has applied his or her mind to these considerations.

Investigation and Assessment

- Where it is determined that the environment is likely to be significantly affected by the proposed activity in an application for an environmental authorisation, that environment must be clearly and accurately described, the potential consequences for the environment must be properly investigated, and thereafter the significance of each of the potential consequences or impacts must be assessed.

Public Participation

- There must be full and proper public information and public participation procedures.
- All I&APs, including all spheres of government that have jurisdiction over the activity in question must be given a reasonable opportunity to participate in the information and public participation procedures.

Alternatives and Mitigation Measures

- All applications for environmental authorisation must include an investigation of alternatives to the proposed activity, which must consider the potential consequences or impacts of each alternative.
- The "no go option" must be assessed, which involves investigating the environmental impacts of not undertaking the activity.
- Mitigation measures to avoid, minimise or remedy adverse impacts must also be investigated.

Gaps in Knowledge

- It is a further requirement that gaps in knowledge be reported upon, as well as the adequacy of the predictive methods and underlying assumptions used in the assessment of the potential impacts.
- It is important to report any uncertainties that were encountered while compiling the information.

Monitoring and Management of Consequences

- Arrangements for the monitoring and management of consequences for, or impacts on the environment must be investigated and formulated.
- There must be follow up in that the effectiveness of the monitoring and management arrangements must be evaluated during the implementation (construction and operation) of the activity.

Compilation of Information and Maps

- NEMA makes provision for the Minister or an MEC with the concurrence of the Minister to compile information and maps⁵ that specify the attributes of the environment in particular geographical areas. The information or maps may include the sensitivity, extent, interrelationship and significance of such attributes. Where such information or maps exist, the environmental attributes specified therein must be taken into consideration in compiling the application.

THE MMSEZ EIA PROCESS

The MMSEZ EIA was released for comment in July 2020. Between September 2020 and January 31st 2021, many environmental organisations and activists had hoped to stay the approval of the first high level EIA on a variety of grave concerns, including the impact on local communities, their lack of knowledge of SEZs in general and the effect of the MMSEZ on their lives and livelihoods. The 8000-hectare site designated for the MMSEZ, situated between Musina and Makhado municipalities, is environmentally pristine, containing 200 ha of wetlands and 150 ha of baobab trees, endemic flora and indigenous fauna.

The dirty energy metallurgical cluster centres around a huge coal plant for mineral extraction and processing, of which, according the MMSEZ Master Operational Plan, 70% are destined for China. The entire SEZ will also be run by a Chinese operator Shenzhen Hoi Mor. The CEO, Yat Hoi Ning is on the Interpol Watch List after being charged with fraud by a Zimbabwean mining conglomerate, Bindura Nickel Corp and Freda Rebecca gold mine group, both listed in London. This is not encouraging with regard to due diligence on the part of the Department of Trade and Industry, who awarded the contract in 2017, when the charges against Yat Hoi Ning were made public.

TUG OF WAR ON THE EIA'S SUSTAINABLE DEVELOPMENT PROMISES BETWEEN GOVERNMENT AND CIVIL SOCIETY

The flawed public participation process on the first high level Environmental Impact Assessment left many local communities in the dark as to the community and climate impacts of what the final EIA refers to as "... the largest single planned SEZ in the country comprising 20 closely linked and interdependent industrial plants...".

The final EIA mentions the secured amount of FDI the Zone will be over R400 billion excluding infrastructural pledges made by the Operator. The selling point of the MMSEZ to the few local communities are, as Premier Mathabatha proudly boasts, "jobs, jobs, jobs..." in public announcements made on the imminent establishment of the Zone in 2019 and 2020.

Suspiciously, the official number of jobs promised has almost doubled during the course of January 2021. On the 21st of January in an online presentation, LEDA official Livhuwani Maligwe, when pressed on the question of jobs, estimated at around 20 000 local jobs. Inexplicably, the final EIA contains promises of 53 800.

After COVID no-one can argue with government that jobs are essential for growth in a province rated as the second poorest in South Africa. But where exactly the local executives and professionals to run the MMSEZ are to come from in Limpopo, characterized as it is by low levels of relevant educational and skills training, remains the big question.

It is against this backdrop that the comments and objections of some 2000 Interested and Affected Parties (as listed in the final EIA) are to be contextualised. The I&APs, amongst them, the Centre for Environmental Rights, Earthlife Africa, Save our Limpopo Valley (SOLVE) and the African Centre for Citizenship and Democracy, amongst many others, delayed the approval of the EIA to allow for another round of public participation. But President Ramaphosa's 28 December level 3 lockdown again allowed a critical gap for the Department of Economic Development, Environment and Tourism (LEDET) to insist that the EIA be finalized and submitted by 1 February 2021. The Master Plan makes it quite clear that the MMSEZ has a tight operational schedule- it indicates the start of the project as December 2020. An interview with the MMSEZ Board CEO Leghonolo Masoga and other officials from LEDA in March 2021 indicated that LEDA was already negotiating with Chinese companies (Masoga, March 2021). It emerges that LEDA has already signed an MOA with Power China for the development of the 3300MW coal powerplant.

UNRESOLVED WATER AND WASTE DIMENSIONS OF THE MMSEZ EIA

Yet despite the rush to get the MMSEZ EIA approved, LEDA and LEDET are very aware of some of the major environmental blind-spots in the proposed project. Aside from the Northern Limpopo Province being a Climate Change Hotspot, it is also severely water scarce. It is a closed catchment, in other words, all available water is already designated for commercial farming, industry, mining and domestic consumption. Even now, there is not enough water to meet the socio-economic demands of communities, including vulnerable, small scale, semi-subsistence and subsistence farmers, many of whom are women. It is as direct result of government's inept management of the water scarcity and other environmental impacts, that veteran ANC stalwart, Rob Tooley, decided to resign as Chair of the MMSEZ Board in late 2020, a move that LEDA and LEDET have kept from the public domain.

The EIA, Operator's Master Plan and the public presentations made by LEDA and Delta BEC, reassure that the huge water crisis the MMSEZ will elicit can be offset. The massive demands of the coal coking, coal washing and other mineral processing industries are to be made up by water transfers from the Zhove Dam in Zimbabwe, where 80 million cubic metres of water per annum are to be drawn, although no scientific evidence as to the feasibility of this supply is provided. In all likelihood, the main supply of water in the early phase will come from the underground aquifer known as the Thuli-Karoo, which also supplies small scale and subsistence farmers. Other dubious plans include 'harvesting' flood water from the Limpopo river and the bulding of a new dam in Musina.

Another area of grave concern is the vagueness in the EIA and Master Plan on the disposal of the huge amount of toxic waste that the Zone will generate. The Master Plan moots ridiculous and dangerous strategies of transporting ash, slag and sludge from mining in the MMSEZ via containers, some six hours drive to Gauteng to dispose of it at Holfontein or Vlakfontein. Other scary ideas mooted are to establish a 2000-hectare hazardous waste site somewhere nearby the Zone (which is very close to local communities, and indeed to those who will work in the Zone, see diagram). The Master Plan even goes so far as to suggest it may be feasible to dump the toxic waste into the Musina and Makhado

municipal landfills. A true horror story for local communities, as coal ash contains mercury, arsenic and other toxic chemicals that can leach into groundwater (and aquifers) if not disposed of correctly.

MMSEZ revised footprint 4500 hectares - EIA 30 April 2021



THE 2021 REVISED SCOPING FOR THE EIA REPORT

The Musina-Makhado metallurgical zone is largest proposed development project of its kind in South Africa, one that Limpopo government officials promote say ensures its “gateway to Africa status”. South Africa’s hegemonic role in the southern African region is something that Chinese policy Think Tanks like the *Centre for Rising Powers* based in the UK have commented might be on the wane. States like Ethiopia, Djibouti and Kenya have joined China’s ambitious Belt and Road Global South maritime road and rail route, thus benefitting from large scale infrastructural and investment. South Africa isn’t formally part of BRI, and the MMSEZ is set to change this.

Until April 2021, the scale of the envisaged MMSEZ was a mind boggling 8000-hectare dirty industry metallurgical complex with a 3300 MW coal water thirsty plant at its centre. Fortunately, criticism from Interested and Affected Parties (I & APs) during the public participation process turned the heat on Limpopo local and provincial government to rethink the footprint of the SEZ.

The back-to-the-drawing-board was also prompted by the Environmental Assessment Practitioner (EAP), Delta BEC. When the final Report was presented to the Limpopo Economic Development Environment and Tourism (LEDET) department on 1 February this year, there was no clear green-light to the project, with issues around community participation, water, waste and environmental

impact on the Vhembe Biosphere, a UNESCO heritage site of which LEDET, ironically, is the custodian.

This has led to a third round of public participation in April 2021 as LEDET returned the report on recommendation of the Independent External Reviewer to ensure more in-depth specialist reports on for example the critical water, waste, energy and climate change components and also for the public participation process to be completed properly.

While there is general agreement amongst a very heterogenous group of I & APs that the public participation process held in late April this year was a resounding flop third time in a row, the reduced footprint of the zone does contain major revisions that could potentially sizably reduce the negative impacts of the SEZ.

THE EIA PROCESS WITHIN THE LOCAL COMMUNITY CONTEXT: CONTRADICTIONS AND CONFUSION

South Africa's commitment to democratic development processes sustained through public participation, reached an all-time critical low with public participation meetings exploding as communities vented their frustration around the lack of information they have received on the MMSEZ.

An issue of major concern to South Africa's commitments to Sustainable Development Goals is that communities remain divided and suspicious about how they would benefit from the MMSEZ. As Omega Mudimele of the Mudimele royal family insightfully comments "...they are going around saying that they will create jobs but what sort of jobs exactly? If they were truly talking about jobs, why haven't they approached students in affected areas and given them bursaries to go study for those jobs?". Calvin Leshiba, interim chairperson of the newly formed community property owners association, concurs, stating the MMSEZ will only ensure employment for the very few, at a high risk of destroying our environment".

Yet despite the enormity of the MMSEZ in sustainable development terms, both in terms of its impact on communities, livelihoods and the environment, as field interviews in March 2021 yet again exposed, no attempt by DELTA BEC and LEDA was made prior to the meetings to inform communities as to the details of the MMSEZ project. In meetings with key affected communities the Mulambwane and Mudimeli, leaders expressed outrage at the lack of information and inclusion and have approached LEDA for focus group meetings.

The extent of the proposed MMSEZ impact on communities, it appears, has been relayed to communities through Limpopo Premier Stanley Mathabatha's promises of jobs, and of spurious guarantees that the metallurgical zone, centering around a coal plant and related metallurgical (and highly extractivist) industries will not irrevocably damage the highly water scarce Vhembe Biosphere and District.

The April 2021 round of community public participation meetings showed that once again the Limpopo Economic Development Agency (LEDA) and Delta-Built Environment Consultants (DELTA BEC) had given little to no thought to the process except to tick off the public participation box on LEDETs to-do list.

The two most important public participation community meetings in Musina and Makhado on the MMSEZ Environmental Impact Assessment (EIA) process descended into anarchy after a dispute over the necessity of translating the presentation into 3 different languages. As one community member from Makhado stated in the Louis Trichardt meeting, “why were we not consulted about translation or the way these meetings are being held?”.

It is for this reason that renowned environmental activist organisations, such as Earthlife Africa and Mining Communities Unite in Action (MACUA), have dismissed previous participation rounds as “tick-box processes”. Equally, it is no wonder that the Musina and Louis Trichardt meetings descended into shouting matches between different community groupings. LEDA and Delta BEC officials made no effort whatsoever to manage the pandemonium. Instead, the LEDA facilitators, officials and the DELTA BEC Environmental Assessment Practitioner consultant Ronaldo Retief, simply abandoned the meetings to the local police force to ensure crowd control. It is rather telling that a police presence was evidently felt as necessary by LEDA in the first place (this was not a feature of the last rounds of engagement).

A striking feature of how DELTA BEC and LEDA have organized the public participation process is that many of the questions, issues and comments raised by LEDET in the letter that referred the EIA back for further tweaking are in fact not the EAPs sole responsibility. For example, LEDET states that “sources of water and energy supply have not been explicitly outlined in the EIAR”. However, the onus of responsibility for determining adequate water supply is clearly the responsibility of both LEDA as enabling agency, and ultimately LEDET.

The proposed energy components of the MMSEZ give the chills in that not only does the Zone’s energy rest on the myth of “clean coal fired energy”, but in the short term, incompetent ESKOM has committed to supplied 5MW of energy to get the Zone up and running. With Eskom barely able to supply South Africa, committing an energy resources to the mega-project is downright negligent.

Equally of concern is that the revised EIA proposal presented in April revises the size of the coal plant from 3300MW to 1320MW, with a commitment to ultra-super-critical clean coal, a term most environmental specialists raise their eyebrows upon hearing. This is even more the case in South Africa where more than a decade after its inception, Medupi, now the most expensive and dysfunctional infrastructural project of its kind on earth, still “aspires” to clean coal, making a mockery of earlier promises to lead the way in clean coal technology.

Ironically, LEDET initially refused DELTA BEC an extension to finalise the EIA in January 2021, then granted one a month later. At the Pretoria meeting, a participant pointed out that the NEMA legislated turn-around time of 107 days for LEDETs decision will expire on 19 May. Ronaldo Retief, on

behalf of DELTA BEC, was forced to admit that, to their knowledge, the current process is in fact unlawful as to date, DELTA BEC had received no written explanation from LEDET as to the legality of the current extension.

It is abundantly clear that LEDA and LEDETs haste to finalise the EIA is to please the Chinese Operator, Shenzhen Hoi Mor (now listed as a South African subsidiary company) and Chinese State-Owned Enterprises (SOES) waiting impatiently in the wings for the official nod for the Zone. As a result, due process, including the effective participation of communities and other Interested and Affected Parties is being thrown under the bus. The EAP, Ronaldo Retief has landed up under the bus too, as his role has exponentially expanded to one of facilitator, mediator/apologist for LEDA and LEDET, not to mention general scapegoat for everything that is wrong with the proposed MMSEZ. As a result of this public ordeal and lack of clarity from LEDET, Retief requested to be recused as EAP. Delta BEC has to appoint a new EAP in order to complete the process.

A prime example of the EAPs scapegoat role is LEDAs failure to provide DELTA BEC or the general public with information that ought to be in the public domain. At the Pretoria public meeting held on Friday the 30th of April, Retief, on behalf of DELTA BEC and LEDA, could provide no further information or assurances of the promises of 50 000 jobs being made to locals. Retief's comment on this question was to say "... we will only know about the jobs when the Chinese get here". LEDA officials at present refused to comment. Retief also confirmed that the EIA peer review document has also been withheld by LEDET from both the DELTA BEC and the general public, at the same time as he clarified that the review document is not confidential.



One thing is plain to see, the last round of public participation on the MMSEZ was a further smear to the South African government's commitment to legislation on the importance of public participation. Yet in the growing South African tradition of mobilization on unsustainable development, frustrated

by the lack of information and the participation process, Vhembe District communities have learned to raise their voices of dissent. These voices will only get louder.



IS THE MMSEZ STILL LIKELY TO GO AHEAD?

The finalisation of the MMSEZ EIA has been halted due to a number of legal technicalities. The first of these arises from the NEMA Act and the length of time that LEDET, has to respond to the final EIA. Legally, this is 107 days. While one of the large commercial farming conglomerate ZZ2, aims to legally contest the legality of the process due the extended public participatory timeline caused by COVID, LEDET has stated unequivocally that the 107-day rule does not apply in these circumstances. The real holdup is that the EAP, Ronaldo Retief, has resigned. Delta BEC thus has to find a new EAP to finalises the EIA. While the EIA process will be challenged in court no doubt, the odds are stacked that the revised EIA for the MMSEZ will be approved in government's validation of its largest development initiative for the next two decades.

Should this be the case, the need for greater public awareness and I&AP watchdogs will remain high. As a subsequent brief will unpack through case study examples, the history of Chinese megaproject investments in Africa have shown that public pressure for the disclosure of the terms of Chinese investments and loans are critical. Even more so on local job creation and environmental degradation control monitoring, the dubious track record of the CEO Ning Yat Hoi ensuring this is paramount. A recent environmental disaster in eThwেকini is worrisome and relevant. Linked to recent protests in KZN, a huge chemical spill has been caused by the razing of the Indian run United Phosphorus Limited chemical plant on 13 July. Government environmental oversight has been compromised in the name of speed through the Presidency's Structural Infrastructure Projects (to which the MMSEZ is also linked through SIPs 1,2 and 17) As the lack of any measures to ensure environmental protection associated

with the UPL make clear, both citizens and the environment can be seriously compromised by the PICC SIP fast track process. In the case of UPL, the fast tracking of the establishment of PICC SIP 24, called Greater Cornubia, of which the chemical plant forms part, meant that checks and balances were overridden at all governmental levels in the name of development. The consequences have been disastrous and the long-term impact has yet to be calculated. The lessons to be learnt for the MMSEZ are plain to see.

Further examples of problems with Chinese investments and loans in Africa show that ensuring accountability lies at the top. If President Cyril Ramaphosa really wants to sell China-South Africa bilateralism as win-win, a favourite Chinese investment mantra, then full transparency and public inclusion are central to every level of the proposed MMSEZ. To trust that the Zone will be run sustainably and that jobs for locals will simply appear, is naive, at best. Similarly, even a conditional endorsement of the reduced MMSEZ footprint as a win for sustainability would be a mistake. With these caveats, the MMSEZ is still at high risk of becoming another South Africa meg-project disaster.

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