



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

### Honourable Minister Barbara Creecy

Minister of Environment, Forestry and Fisheries

By email: [mndamase@environment.gov.za](mailto:mndamase@environment.gov.za)

[fshaik@environment.gov.za](mailto:fshaik@environment.gov.za)

### Copied to

#### Sabelo Malaza

Chief Directorate

Integrated Environmental Authorisations

Department of Environment, Forestry and Fisheries

By email: [smalaza@environment.gov.za](mailto:smalaza@environment.gov.za)

#### Mashudu Mundalamo

Chief Directorate

Climate Change Mitigation

Department of Environment, Forestry and Fisheries

By email: [mmundalamo@environment.gov.za](mailto:mmundalamo@environment.gov.za)

[climate@environment.gov.za](mailto:climate@environment.gov.za)

#### Ishaam Abader

Deputy Director-General

Legal Authorisations and Compliance Inspectorate

Department of Environment, Forestry and Fisheries

By email: [iabader@environment.gov.za](mailto:iabader@environment.gov.za)

#### Ronaldo Retief

PR. Environmental Scientist

Delta Built Environmental Consultants (Pty) Ltd

By email: [ronaldo.retief@deltabec.com](mailto:ronaldo.retief@deltabec.com)

Our ref: CER 57.1

21 October 2019

Dear Minister

### THE PROPOSED MUSINA-MAKHADO SPECIAL ECONOMIC ZONE INFRASTRUCTURE, LOCATED WITHIN THE VHEMBE DISTRICT MUNICIPALITY OF THE LIMPOPO PROVINCE

1. We address you as the Centre for Environmental Rights<sup>1</sup> on behalf of our clients, groundWork<sup>2</sup> and Earthlife Africa,<sup>3</sup> who have particular interest and expertise in environmental justice issues, and a long-standing history of working with, and representing, the interests of historically disadvantaged communities within the Limpopo Province.

2. We write to you with reference to:

<sup>1</sup> The Centre for Environmental Rights is a non-profit organisation of activist lawyers who help communities and civil society organisations in South Africa realise our constitutional right to a healthy environment, by advocating and litigating for environmental justice. See more information at: [www.cer.org.za](http://www.cer.org.za)

<sup>2</sup> groundWork is a non-profit environmental justice service and developmental organisation working primarily in Southern Africa in the areas of Climate & Energy Justice, Coal, Environmental Health, Global Green and Healthy Hospitals, and Waste. See more information at [www.groundwork.org.za](http://www.groundwork.org.za)

<sup>3</sup> Earthlife Africa is a non-profit organisation that seeks to encourage and support individuals, businesses and industries to reduce pollution, minimise waste and protect natural resources. See more information at: [www.earthlife.org.za](http://www.earthlife.org.za)


Cape Town: 2<sup>nd</sup> Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa

Johannesburg: First Floor, DJ du Plessis Building, West Campus, University of the Witwatersrand, Braamfontein, 2001, South Africa

Tel 021 447 1647 (Cape Town) | Tel 010 442 6830 (Johannesburg)

Fax 086 730 9098

[www.cer.org.za](http://www.cer.org.za)

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- 2.1. the Musina-Makhado Special Economic Zone (SEZ) also referred to as the South African Energy and Metallurgical Special Economic Zone (“EMSEZ”) – designated by the Minister of Trade and Industry in 2016, in terms of Special Economic Zones Act, 2014; and
  - 2.2. in relation to the environmental impact assessment (EIA) application process for a number of facilities and components that will form part of the EMSEZ proposed by the Limpopo Economic Development Agency (LEDA).
3. We write to alert you and the Department of Environment, Forestry and Fisheries (DEFF or “the Department”) to the above EIA process in respect of which a scoping report has already been approved by the Limpopo Department of Economic Development, Environment and Tourism (LEDET) and to highlight the following concerns, which are of direct national and international significance:
- 3.1. the extensive environmental footprint of the proposed EMSEZ – in particular the **irreversible impacts for South Africa’s water resources and biological diversity**;<sup>4</sup>
  - 3.2. the anticipated negative **health impacts** of the EMSEZ – with its expected harmful air and water emissions; and
  - 3.3. the high **climate impacts** of the project, which will highly prejudice South Africa’s **mitigation and adaptation efforts, as well as its international commitments**.
4. We confirm that our clients are registered as interested and affected parties (I&APs) in relation to the above EIA process – although such registration was only effected some 8 months after our initial request of 7 December 2018.
5. In this regard, we refer to our most recent letter to Delta BEC – the appointed environmental assessment practitioners (EAP) – of 4 September 2019 wherein we recorded our objections to, *inter alia*, the unacceptable public participation process conducted in relation to the EIA process and reserved rights to submit comments on the EMSEZ’s final scoping report (“FSR”)<sup>5</sup> which had already been accepted by LEDET on 31 March 2019. This letter is attached for your ease of reference and we note that a formal response to this annexure continues to remain outstanding.
6. In light of the above concerns we have requested from the EAP that, *inter alia*:
- 6.1. the EIA process be held in abeyance until we, on behalf of our clients, have had an opportunity to submit formal comments on the contents of the FSR; and
  - 6.2. the scoping phase be re-conducted with proper consultation and public participation.
7. We are in the process of considering the FSR and preparing formal objections for submission to the EAP and LEDET – a copy of which will be provided to DEFF, as and when submitted. In the interim, and at the outset, we note that the FSR is manifestly inadequate and fatally flawed.
8. We record that, according to the FSR, the EMSEZ will entail the following components:

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<sup>4</sup> The EMSEZ will be located within a United Nations Educational, Scientific and Cultural Organization (UNESCO) Biosphere. See page 70 – 71 of the FSR and the following link: <http://www.unesco.org/new/en/natural-sciences/environment/ecological-sciences/biosphere-reserves/africa/south-africa/vhembe/>

<sup>5</sup> LEDET REF: 12/1/9/2-V709, Revision 03 of August 2019 hereafter referred to as the Final Scoping Report or FSR.

Table 4-1: Proposed SEZ Plants

Projects	CAPACITY	AREA (ha)	WATER (10km <sup>3</sup> for 9 year construction period)	LABOUR (total number of people for 9 year construction period)
Coal Washery	2 000	100	80,62	1 200
Coking Plant	300	400	11.64	1 460
Heat Recovery power generation	390	0	273.24	412
Thermal Plant	3 300	620	1 105.95	2 160
Ferrochrome Plant	300	500	1 055.15	16 960
Ferromanganese	100	100	87.6	4 980
Silicomanganese Plant	50	100	933	2 160
Vanadium – titanium magnetite project	1 000	1 000	6 350	12 775
High Manganese steel	100	280	300	4 800
High Vanadium Steel	100	100	300	2 880
Stainless Steel Plant	300	300	2 076	7 200
Lime Plant	500	60	40	3 680
Cement Plant	200	30	80	1 463
Refractories Plant	50	18	17,3	878
Sewage Treatment Plant	14	20		150
Industrial domestic water plant	30	10		360
Light Industrial		600	1 200	

9. As noted above, the anticipated environmental, climate and health impacts of all of these facilities combined will be astronomical.
10. To elaborate on our submission above, we submit that the EMSEZ is a matter of national and international concern, as:
- 10.1. the project would be built in an area of Limpopo that is already so water- stressed that the Department of Water and Sanitation, and the FSR itself, concede that a “*definite source of sustainable water for the SEZ is still under investigation*”.<sup>6</sup> Without a guaranteed supply of water, the EMSEZ would not be able to function, nor would it be able to contribute towards long-term regional “development” goals without having severe consequences for other water-users and ecosystems. This could have country-wide repercussions, particularly if water resources from other parts of the country are to be relied on;
- 10.2. it will be located within a province where air quality is of such concern that certain territories have been declared a priority area under the National Environmental Management: Air Quality Act, 2004. The threat assessment for the Waterberg-Bojanala Priority Area published by the then Department of Environmental Affairs (DEA) in April 2015, as part of the draft air quality management plan for the priority area, pointed out that the planned expansion of energy-based projects and coal mining in the region threatens ambient air quality, and poses threats to human and environmental health. It is certain that the EMSEZ will contribute to the worsening of air quality and human health impacts in the area due to the transboundary nature of air pollution; and
- 10.3. the EMSEZ will undoubtedly impact South Africa’s international and national obligations to mitigate and adapt to climate change. Not only would the various components of EMSEZ contribute to climate change through their greenhouse gas (GHG) emissions, but they will exacerbate the area’s vulnerability to climate change through, for example, using and polluting the area’s limited freshwater resources –threatened by the impacts of climate change – making it even harder for communities living in Limpopo to withstand the impacts of climate change.

<sup>6</sup> See 11.9, FSR

11. Based on the above, we submit that the LEDET is not an appropriate competent authority for this and other EIA processes in relation to the EMSEZ. This is a matter of national importance and one which cannot proceed without the consultation and approval of the DEFF, in addition to other Departments, and a thorough public participation process. In support of this we submit further that:

11.1. the project proponent (LEDA) is governed by the Limpopo Economic Development Agency Act 5 of 2016. Its website states that it complies with the Public Finance Management Act (PFMA) as a Schedule 3D Agency, and that it was established as a special economic and development vehicle for the province.<sup>7</sup> On this basis, the EMSEZ EIA process falls within the scope of section 24C(2)(d)(iii) of the National Environmental Management Act 1998 (NEMA) by virtue of the fact that the activities are being undertaken by a statutory body – LEDA. Therefore, national and international relevance notwithstanding, it is the Minister – and not LEDET – who should be regarded as the competent authority for the EIA process currently being undertaken for the EMSEZ, and for all future EIA processes.<sup>8</sup>

11.2. given its far-reaching impacts and the potentially significant issues around water availability, climate impacts, high costs and impacts on the communities in the area resulting from the EMSEZ, it is necessary and appropriate that the EIA process be preceded by a strategic environmental assessment (SEA).<sup>9</sup> According to the DEFF’s own Strategic Environmental Assessment Document of 2004 the “*role of SEA ... is to allow for the decision maker to proactively determine the most suitable development type for a particular area, before development proposals are formulated ... [an] EIA is used to evaluate the impacts of development on the environment and socio-economic conditions, while SEA can be used to evaluate the opportunities and constraints of the environment and socio-economic conditions on development*” (emphasis added).<sup>10</sup>

12. In particular, the development of 3 300 MW thermal power plant is unacceptable and should be of great concern to DEFF and the Minister. Government has confirmed the urgent need to reduce South Africa’s GHG emissions<sup>11</sup> and the country’s extreme vulnerability to the impacts of climate change.<sup>12</sup> The industrial components of the EMSEZ would individually and cumulatively emit significant GHG emissions, given the intensive nature of their processes, such as coal boilers and the indirect emissions of the supplying coal mines. In addition to our obligations under the Paris Agreement, the UN Secretary General has repeatedly pleaded that no new coal plants be built after 2020<sup>13</sup> if we have any intention of securing a viable climate for the future, as per the recommendations of the UN Intergovernmental Panel on Climate Change.

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<sup>7</sup> <http://www.lieda.co.za/Wordpress/>.

<sup>8</sup> Section 24C (2)(d)(ii) of NEMA states that the Minister must be identified as the competent authority if the activity is undertaken, or is to be undertaken, by a provincial department responsible for environmental affairs or any other organ of state performing a regulatory function and reporting to the MEC.

<sup>9</sup> A SEA can be defined as a “*process of integrating the concept of sustainability into strategic decision-making*” and the legal basis for it can be found in NEMA, where it is stated that “*environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option* (added emphasis)”. In light of the above, we submit that the SEA should be recognised as the “best practicable environmental option” as in this instance, the proposed development involves a series of sub-developments and individual projects, which will have far-reaching consequences. See generally section 2(4)(b) of NEMA and Department of Environmental Affairs and Tourism, Strategic Environmental Assessment, Integrated Environmental Management Information Series: Volume 10 at page 4. Available at:

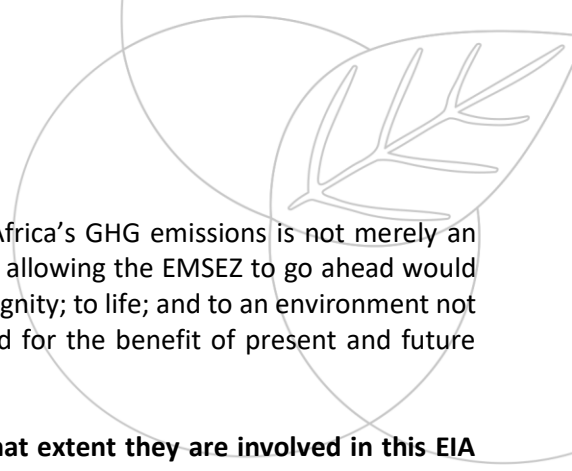
[https://www.environment.gov.za/sites/default/files/docs/series10\\_strategic\\_environmental\\_assessment.pdf](https://www.environment.gov.za/sites/default/files/docs/series10_strategic_environmental_assessment.pdf)

<sup>10</sup> Ibid, page 2.

<sup>11</sup> <http://www.dirco.gov.za/docs/speeches/2019/cram0923.htm>.

<sup>12</sup> See page 8, National Climate Change Response Policy.

<sup>13</sup> Statement from the United Nations Secretary-General, António Guterres of 18 May 2019, which states that: “*We must understand that the battle against climate change requires the political will for transformational policies in energy, mobility, industry and agriculture. This is why in the Pacific I have consistently conveyed three urgent messages to world leaders. First, we must shift taxes from salaries to carbon. We need to tax pollution, not people. Second, we must stop subsidizing fossil fuels. Taxpayer money should not be used to boost hurricanes, spread*

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13. We have, in many instances, pointed out that the reduction of South Africa's GHG emissions is not merely an international obligation but a Constitutional imperative. We submit that allowing the EMSEZ to go ahead would be a flagrant violation of, *inter alia*, the Constitutional rights: to human dignity; to life; and to an environment not harmful to health or well-being and to have the environment protected for the benefit of present and future generations.
14. **We request that both, the Minister and the Department, advise to what extent they are involved in this EIA process, and subsequent EIA processes to flow from the proposed EMSEZ. We further emphasise our requests that:**
- 14.1. the Minister be designated as the competent decision-making authority for any EMSEZ EIA processes;
- 14.2. due to the flawed contents of the FSR, as well as the woefully inadequate public participation processes that have been held to date, that the scoping process must begin afresh with the Minister as the competent-decision making authority; and
- 14.3. even before an EIA is conducted, a SEA should be conducted in order to accurately ascertain the EMSEZ's national impacts, strategic outcomes and benefits (if any).
15. We record that this development will be vigorously opposed by our clients.
16. Kindly confirm receipt of this correspondence and we look forward to receiving your response.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**



per:

**Ruchir Naidoo**

**Attorney: Pollution & Climate Change**

Direct email: [rnaidoo@cer.org.za](mailto:rnaidoo@cer.org.za)

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*drought and heatwaves, melt glaciers and bleach corals. Third, we must stop building new coal plants by 2020. We need a green economy not a grey economy*" (emphasis added). Available at: <https://www.un.org/press/en/2019/sgsm19584.doc.htm>.