



# Centre for Environmental Rights

## Advancing Environmental Rights in South Africa

### Ms Barbara Creecy

Minister of the Department of Forestry and Fisheries  
And the Environment  
By Email: [fshaik@environment.gov.za](mailto:fshaik@environment.gov.za)

### Adv Mokete Rakgogo

Director: Appeals and Legal Review  
By email: [MRakgogo@environment.gov.za](mailto:MRakgogo@environment.gov.za)  
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### Copied to:

### Honourable MEC Mokone

Department of Economic Development Environment  
and Tourism,  
By email: [KhorombbiA@ledet.gov.za](mailto:KhorombbiA@ledet.gov.za)

### Mr Masoga

Chief Executive Officer  
Musina Makhado Special Economic Zone (SOC) Ltd  
By Email: [l.masoga@mmsez.co.za](mailto:l.masoga@mmsez.co.za)

LEDET ref: 12/1/9/2-V79

NEAS ref: LIM/EIA/0000793/2019

20 April 2022

**URGENT**

Dear Minister and Adv Rakgogo

### **ENVIRONMENTAL IMPACT ASSESSMENT FOR THE PROPOSED METALLURGICAL CLUSTER OF THE MUSINA-MAKHADO SPECIAL ECONOMIC ZONE (LEDET ref: 12/1/9/2-V79; NEAS ref: LIM/EIA/0000793/2019)**

1. We write on behalf of our clients, Earthlife Africa,<sup>1</sup> groundWork,<sup>2</sup> Mining and Environmental Justice Community Network of South Africa (MEJCON-SA),<sup>3</sup> and Dzomo La Mupo<sup>4</sup>, who are registered interested and affected parties (I&AP) in relation to the Musina-Makhado Special Economic Zone (hereinafter referred to as the "MMSEZ Project") environmental impact assessment (EIA).
2. On 23 February 2022, the Limpopo Department of Economic Development, Environment and Tourism (LEDET) issued an environmental authorisation (LEDET Ref, 12/1/9/2-V79; NEAS Ref LIM/EIA/0000793/2019) to MMSEZ SOC Ltd. Numerous appeals were lodged against by civil society organisations including our clients, and our clients' appeal dated 28 March 2022 is attached as Annexure A.

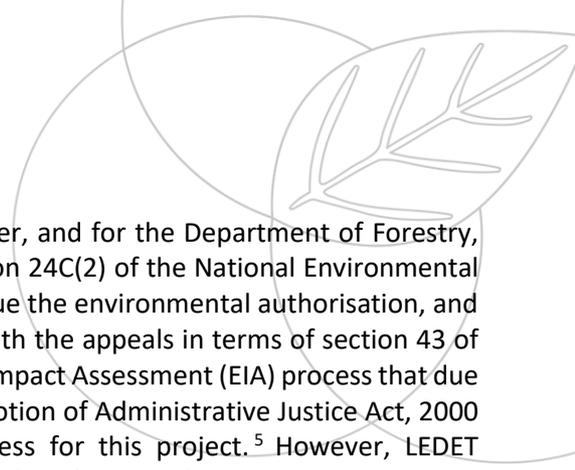
<sup>1</sup> <http://earthlife.org.za/>.

<sup>2</sup> groundWork is a non-profit environmental justice campaigning organisation working primarily in South Africa, in the areas of Climate & Energy Justice, Coal, Environmental Health, Waste, Environmental Justice Education and Environmental Justice Information. <http://www.groundwork.org.za/>.

<sup>3</sup> The Mining and Environmental Justice Community Network of South Africa (MEJCON-SA) is a network of communities, community-based organisations and community members whose environmental and human rights are affected, directly or indirectly, by mining and mining-related activities. <https://mejcon.org.za/>

<sup>4</sup> Dzomo La Mupo (DLM), a community based non-profit organisation based in Vhembe district, Limpopo, working with local communities to preserve and revive cultural diversity, food sovereignty and protect indigenous knowledge systems and sacred sites in South Africa. DLM aims to protect nature in all its forms, especially indigenous forests, rivers, wetlands and sacred natural sites, and to enhance the indigenous skills of traditional agriculture which support agro-ecological farming, and to preserve healthy nutritional food security. <https://www.thedzomolamupo.org/>

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3. We write to you to request your urgent intervention in the above matter, and for the Department of Forestry, Fisheries and the Environment (DFFE) to fulfil its obligations under section 24C(2) of the National Environmental Management Act, 1998 (NEMA) as the lawful competent authority to issue the environmental authorisation, and administer the EIA process, and for the Minister to subsequently deal with the appeals in terms of section 43 of NEMA. We have consistently maintained throughout the Environmental Impact Assessment (EIA) process that due to the conflict of interest by LEDET, and in terms of NEMA and the Promotion of Administrative Justice Act, 2000 (PAJA), DFFE is the competent authority to administer the EIA process for this project.<sup>5</sup> However, LEDET nonetheless has continued with the EIA process, and the MEC will be deciding the appeal.
  4. As you are aware, according to section 24C(2) NEMA, the Minister must be the competent authority, if an activity has implications for international environmental commitments;<sup>6</sup> has a developmental footprint that falls within boundaries of more than one province or traverses international boundaries;<sup>7</sup> if it is undertaken or to be undertaken by a provincial department responsible for environmental affairs or any other organs of state performing a regulatory function and reporting to the MEC;<sup>8</sup> or will take place within a national protected area or other conservation under control of a national authority.<sup>9</sup>
  5. The MMSEZ project meets various criteria listed in s24C(2) above, which warrants the Minister being the competent authority and in turn, the appeal authority. In particular, the MMSEZ project is an industrial mega hub in Limpopo, comprised of a coal-fired power station and approximately 14 heavy metal industries. It is a project undertaken by a provincial department in that the project is funded and spearheaded by LEDET, LEDA and MMSEZ SOC Ltd, as part of the provincial objective and long term goals.<sup>10</sup> In addition, we are advised that water for the project will be required from Zimbabwe, as such, the water abstraction for the project, as well as the water and air pollution impacts are likely to have transboundary implications.
  6. A project of this scale and magnitude has potential to have far-reaching environmental impacts for the country including impacts on SA's water resources, food security and climate. Thus – notwithstanding the above reasons – it is a matter of national importance and should sit with the Minister. The MMSEZ project will, according to the MMSEZ's own climate change impact assessment, have long term, irreversible negative impacts in terms of climate change, and will take a significant portion of the national carbon budget. It will therefore have implications for South Africa's climate change international obligations. Moreover, the MMSEZ project will have negative impacts on the various conservation sites, buffer zones, international heritage and national conservation sites, including UNESCO and RAMSAR sites and protected trees in the area. For all these conditions related to the project, according to s24C(2) of NEMA, the competent authority to decide on the environmental authorisation is the Minister (accordingly DFFE).
  7. Aside from the applicable laws, the DFFE has also confirmed that the Minister of the DFFE should be the competent authority in this matter according to s24C(2) of NEMA. The email from DFFE confirming this position, dated 17 September 2018 is attached as Annexure B.

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<sup>5</sup> <https://cer.org.za/wp-content/uploads/2022/03/Annexure-A-ELA-gW-MEJCON-DLP-Appeal-to-MMSEZ-EA-28.03.2022.pdf>;  
<https://cer.org.za/wp-content/uploads/2020/11/gW-ELA-and-MEJCON-Objection-to-the-EMSEZ-DEIR-22.10.2020.pdf>;  
<https://cer.org.za/wp-content/uploads/2022/03/ELA-gW-MEJCON-objections-to-MMSEZ-Enviroexcellence-FEIR-3.11.2021.pdf>;  
<https://cer.org.za/wp-content/uploads/2022/03/gW-ELA-and-MEJCON-Revised-EMSEZ-EIA-objections-29.01.2021-1.pdf>

<sup>6</sup> S24C(2)(a)(ii)

<sup>7</sup> S24C(2)(c)

<sup>8</sup> S24C(2)(d)

<sup>9</sup> S24C(2)(e)

<sup>10</sup> LEDET Strategic Plan 2020-2025 [https://drive.google.com/file/d/1Klmp72ZnczTVY78RzBW3\\_9yTjTdBGU7/view](https://drive.google.com/file/d/1Klmp72ZnczTVY78RzBW3_9yTjTdBGU7/view); LEDA Annual Performance Plan 2020/21, <https://mmsez.co.za/wp-content/uploads/2020/09/AnnualPerformance-Plan-2020-21.pdf>; MMSEZ SOC Ltd Strategic Plan 2020-2025 [https://mmsez.co.za/wp-content/uploads/2020/05/FINAL-MMSEZ-STRATEGY-06\\_MARCH-2020-For-Sign-off\\_23\\_03\\_2020.pdf](https://mmsez.co.za/wp-content/uploads/2020/05/FINAL-MMSEZ-STRATEGY-06_MARCH-2020-For-Sign-off_23_03_2020.pdf)

8. Given the obvious conflict of interest by LEDET who spearheads the MMSEZ project, even if any agreement between DFFE and LEDET exists (for LEDET to be the competent authority), it would be unlawful. In circumstances where empowering legislation does not allow the administrator to undertake the administrative action in question, or where the administrator lacked the necessary delegation or powers, or if an administrator is reasonably suspected of bias (actual or perceived bias), the administrative action is reviewable in terms of section 6 of the Promotion of Justice Administrative Act of 2000 (PAJA).
9. Aside from the section 24C(2) NEMA obligations, and PAJA obligations, we point out that the DFFE also has the power to intervene in terms of section 100 of the Constitution, as it states that:

*“(1) When a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation, including -*

*(a) issuing a directive to the provincial executive, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligations; and*

*(b) assuming responsibility for the relevant obligation in that province to the extent necessary to -*

*(i) maintain essential national standards or meet established minimum standards for the rendering of a service;*

*(ii) maintain economic unity;*

*(iii) maintain national security; or*

*(iv) prevent that province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.”*

10. As can be seen from the above and from the appeal submissions, approximately 18 out of 21 expert reports in the EIA process have indicated that there will be negative impacts should the project go head. There have also been a number of procedural irregularities that point to mala fides on the part of LEDET in granting the environmental authorisation.<sup>11</sup> Despite these irregularities, and despite the conflict of interest, LEDET has continued to act as a competent authority, issued an environmental authorisation, and as a result the MEC of LEDET is now acting as an appeal authority. This clearly suggests that the province is not fulfilling its executive obligations under the Constitution or national legislation (NEMA and PAJA) – as per section 100 of the Constitution.
11. In light of the above, we kindly request that the Minister exercise her powers in terms of s24C(2) and 43 of NEMA, as well as in terms of section 100(1)(a) of the Constitution, and that the Minister intervene by directing the MEC to set aside the EA in its appeal decision and refer the matter to DFFE.
12. We look forward to receiving your response.

Yours faithfully

**CENTRE FOR ENVIRONMENTAL RIGHTS**

per:



**Michelle Koyama**  
**Attorney**

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<sup>11</sup> For example, during the public consultations, communities were precluded from entering the premises initially by armed security guards. LEDET also allowed the EIA process to continue despite the legally having expired on 19 May 2021.