COEGA, CONFLICTS OF INTEREST AND THE ARMS DEAL

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Introduction: Coega and the Arms Deal

In late 1999, the government proposed to spend R29.9billion of South African tax-payers money on military hardware. The only way in which it could even attempt to justify such expenditure was through the much-vaunted offset benefits accompanying the deal. These entailed promises of investment in local industry and the creation of thousands of jobs by the successful international consortiums. The Coega project, the proposed deepwater port and Industrial Development Zone (IDZ) near Port Elizabeth, was said to be the primary beneficiary of the arms deal offsets and became the flag of convenience for selling the deal to the South African public.

Opponents of the arms deal risk accusations of obstructing job creation and taking the bread out of the mouths of the Eastern Cape°Øs most impoverished citizens.

But just as the arms deal could not have been sold to the South African public without Coega the reverse is equally true. The South African tax-payer could not have been asked to fund even a portion of the costs of the Coega project without the promise of massive investments from the successful arms suppliers. After the withdrawal of Billiton as the °Æanchor tenant°Ø the project had all but collapsed. As one newspaper headline aptly put it in June 1999 °Æsubmarine deal resurrects Coega°Ø.

This was after Joe Modise, the Minister of Defence who was about to leave office, irregularly signed an agreement with the German submarine consortium to procure 3 vessels at a cost of R4.5bn. The deal involved an undertaking by Ferrostaal to construct a steel mill worth R6bn at Coega which would create 16 000 jobs. Modise signed off with the German consortium two months before the Ministerial Committee responsible for the deal had been briefed on its fiscal and economic impact. He had no Cabinet approval for the deal (See accompanying chronology of links between Coega and the Arms Deal).

Public undertakings that Coega would benefit from the arms purchases had started to circulate at least a year before this. Prior to Cabinet even identifying the °Æpreferred suppliers°Ø for the deal in November 1998, Paul Jourdan, the Director of Special Projects in the Department of Trade and Industry, was actively selling Coega on the basis of the offsets. In August 1998 he was already listing Ferrostaal°Øs R6bn stainless steel plant and Thyssen°Øs R1.5bn galvanized steel mill as °Ækey projects°Ø for the Coega IDZ.

Jourdan was one of the members of the International Offers Negotiating Team (IONT) tasked with securing the best possible offset arrangements in return for the arms purchases. His fellow negotiating team members, Jayendra Naidoo and Vanan Pillay, are also on record as promising that the deal would deliver jobs and investment to the Eastern Cape and Coega before Cabinet had even approved the deal.

The Coega Development Corporation (CDC)

It now emerges that Paul Jourdan is on the board of directors of the Coega Development Corporation (CDC), the private company appointed by the Minister of Trade and Industry to implement the Coega project. The chairperson of the CDC board is Moss Ngoasheng. He was the special economic advisor to Deputy President Thabo Mbeki during the period of the Defence Review which decided that it was necessary to acquire new military equipment. More importantly, he provided Thabo Mbeki with advice during the selection of preferred bidders, the negotiations with suppliers and the awarding of final contracts. Mbeki chaired the Ministerial Committee which decided on and presented the final recommendations on arms procurement to Cabinet for approval.

The Minister of Trade and Industry, Alec Erwin, has recently acknowledged that CDC has not been issued with an IDZ operators permit and that the Coega location has not yet been designated as an IDZ in compliance with the law. What is of crucial importance here is that in order to even apply for an operator°Øs permit, CDC has to first demonstrate °Ælegal and physical access to an international port°Ø. No such port exists atCoega.

What is remarkable is that despite this lack of a constitutional or legal mandate, CDC has been allocated R185m in public funds by the Eastern Cape provincial government in this year alone. There is no public record of the amount of funding it has received from national government. But what is apparent is that all of CDC°Øs activities are funded solely out oftax-payers money. And thus far it has spent millions of rands marketing an IDZ that has not yet been designated and has spent millions more on the services of private contractors. It has also incurred costs finding and entering into agreements with international partners and has spent thousands of rands removing residents from the Coega site.

But because CDC is neither a °Æpublic entity°Ø nor a licensed IDZ operator, its board of directors cannot be held to account by the Auditor General°Øs office for their use oftax-payer°Øs money. Nor can they be called before the oversight committees of parliament to explain any decision taken to spend public funds. CDC has no obligation to comply with State Tender Board regulations or the Public Finance Management Act. According to this Act, if the CDC were a public entity, then the members of its board would have to disclose °∞any direct or indirect personal or private business interest°± in any matter before the board and recuse themselves from any decision relating to such interests. They would be legally prohibited from engaging themselves in any potential conflict of interest between their private business interests and their board position.

More disturbing, still, is the fact that nearly two years after government signed the arms deal and handed over billions of South African tax-payers rands to the international military suppliers, not a cent has been invested in Coega as a result of the offsets. Nor has a single job been created by the successful consortiums. Ferrostaal, part of Modise°Øs German submarine consortium which undertook to construct a steel mill at Coega, has since decided to locate in Middleburg.

Is Coega feasible without the offsets?

Regardless of its abject failure to attract a replacement °Æanchor°Ø tenant for the proposed Coega IDZ, the executive arm of government appears bent on forging ahead with the Coega project.

The actual work on the development of the infrastructure and the construction of the port required for the Coega IDZ started in February this year. This was five months before the publication of the Environmental

Impact Report (EIR). The economic feasibility study for the harbour, was only published last week (17 July 2001). Unsurprisingly, the EIR links the viability of the Coega harbour to the viability of the IDZ as a whole. The obvious question raised by this study is whether the Coega IDZ is still feasible without the billions of rands in offset investments.

With Billiton°Øs withdrawal and subsequent lack of investor interest in the Coega IDZ, and despite CDC°Øs promises of 6-year tax holidays and import and export duty exemptions, the answer to this question would appear to be no. But the questions are; °Æwho is going to pay the costs for the construction of the port and IDZ infrastructure?°Ø and °Æwho took the decision to proceed with the construction of the port prior to the release of an IDZ feasibility study?°Ø

Who will pay for Coega?

The professed intention of government°Øs IDZ plan was to °Æencourage private sector involvement in the provision of infrastructure°Ø in areas of greatest need. IDZ°Øs were to be °Æfinanced primarily by the private sector with minimal government involvement°Ø.
Going back to July 1997, Paul Jourdan is on record as saying that private investment would be used to construct the Coega project on a °Æbuild-operate-transfer°Ø basis.
The then Deputy Minister of Finance, Gill Marcus, is also on record in December 1997 as saying that government would only contemplate paying 10% of the infrastructure costs for Coega. But, despite these undertakings, the tax-payer is now being told to foot the bill for 100% of the costs.

Saki Macozoma, the managing director of Transnet, announced in April 2000 that Transnet would incur the costs for the construction of the Coega harbour and °Æcommon infrastructure°Ø through its subsidiaryPortnet. In February 2001 the head of Portnet, Siyabonga Gama, set these costs at R4.65bn and confirmed that this money had been allocated by Portnet. As a state owned enterprise it is important to remember that Transnet was established out of tax-payers money. Consequently, any income that it generates forms part of the public revenue. By the same token any loss or fruitless expenditure that it incurs would have to be compensated for out ofpublic funds.

What is of some concern is the fact that the Transnet board took the decision to fund the Coega harbour and infrastructure at least a year prior to the publication of the economic feasibility study for the harbour. The EIR published last week concluded that the port°Øs viability is dependent on the viability of the Coega IDZ as a whole. The findings of this EIR would appear to question the degree to which members of the Transnet board applied their minds to the economic feasibility of the port: °ÆIt is °¶ not recommended that the port be built if the IDZ is not viable, as expansion of the container handling capacity in South Africa could be undertaken through the expansion of the Port of Richards Bay°Ø.

It is important to point out that no economic feasibility study has been conducted for the proposed Coega IDZ since the withdrawal of Billiton in 1998 as the anchor tenant for the project.

After Billiton and Ferrostaal withdrew from Coega, Transnet did not find it necessary to obtain a feasibility study for the IDZ. Yet, disturbingly, the Transnet board still ratified and agreed to finance the construction of the port.

The PSAM, together with a number of environmental groups, has approached the Eastern Cape government, the DTI and the CDC with requests for access to the research demonstrating the economic viability of the Coega IDZ. No economic feasibility for the IDZ has been forthcoming. This has left the public to speculate about the actual grounds on which Transnet°Øs decision was based.

The private business interests of Transnet and CDC board members

It is of concern that, at the time of the decision to pay for the construction of the Coega port and infrastructure, Mafika Mkwanazi, the Transnet deputy managing director, was a direct beneficiary of the arms procurement deal. What is also of concern is the fact that Saki Macozoma, the Transnet managing director, has since leaving the parastatal, emerged as a shareholder in a company founded by the chairperson of the CDC board, Moss Ngoasheng.

Mafika Mkwanazi is also a shareholder and director of Kgorong Investment Holdings. Kgorong secured a R220-million sub-contract to provide tracking radar on the corvettes as part of a joint venture with European Aeronautic Defence and Space Company (EADS) andSouth African defence supplier Reunert.

After resigning as Transnet managing director in March 2001, Saki Macozoma bought a 10% stake in Safika Holdings, a company co-founded by Moss Ngoasheng. He also joined the board of directors of Safika Technology Holdings. Ngoasheng is a director of Safika Holdings and owns 41% of the company.

What is disturbing here is the fact that tenders have been awarded by the CDC to companies with which Ngoasheng°Øs company Safika has business relationships.
Safika owns a 51% shareholding in a joint venture with Dutch firm of consulting engineers DHV and Stewart Scott consulting engineers called Safika-DHV (Pty) LTD.

Noticably, one of Safika°Øs partner°Øs in this company, Stewart Scott, has been awarded three contracts by the CDC. According to the Stewart Scott website the company was awarded one contract for the design of bridges and another for the design of the sewerage reticulation system for the Coega IDZ. It points out that both contracts were awarded as joint ventures with black empowerment partners Boonzaaier Dotwana and Associates. The dates on which these contracts were awarded are not indicated. The CDC announced in November 1999 that it had awarded a contract to Stewart Scott in a joint venture with Fongoqa, Skade Toyi and Silva McGillavray to conduct a study of the requirements for a sewerage treatment or water reclamation works for the IDZ.

CDC claims that the tendering process involved member°Øs of the CDC team, technical experts from local authorities and the CDC°Øs external consulting engineers.
The PSAM, in terms of the Promotion of Access to Information Act, has requested information from the CDC in respect of all of the tenders that it has issued and all contracts it has awarded. But after two months PSAM has not received so much as a written acknowledgement of its request. What is clear, however, is that Moss Nogoasheng, as chairperson of the CDC board of directors would, at the very least, have been required to endorse the awarding of these contracts. It is of concern here that Ngoasheng is listed in the CDC°Øs 2000 Annual Report as the chairperson of the CDC Audit and Investment Committee. It is usual business practice for the executive of any company board to be clearly separated from its audit committee.

If the Coega project is to have any form of credibility, it is vital to establish whether Ngoasheng declared his private interests in respect of these companies and whether he then recused himself from any further involvement in the process leading to the awarding of contracts to them.

What makes these questions more pertinent is the fact that CDC is a private company which is issuing contracts to be met out of tax-payers money. Yet, because it is a private company, the financial statements of the CDC cannot be audited by the Auditor General°Øs office. Nor does the CDC have to comply with the strict financial reporting requirements set out in the Public Finance Management Act.

Ex-Minister of defence obtains contracts from Coega

It has already been noted that by June 1999 the Coega Project had effectively collapsed due to the withdrawal of Billiton as its anchor tenant. It has also been pointed out that Joe Modise°Øs irregular agreement with the German submarine consortium on (13 June 1999) to purchase 3 submarines at a cost of R4.5bn in return for Ferrostaal°Øs promise to construct a steel mill worth R6bn at Coega, effectively resurrected the Coega Project from the dead.

Modise, after resigning as Minister of Defence, bought shares in and was appointed the chairperson of a company which has been awarded contracts to conduct work on the Coega project. Again, these contracts have been paid for out of tax-payer°Øs money.

Modise is the head of Harambee Investment Holdings, a black empowerment company, which bought a 30% shareholding in the BKS group in August 2000. BKS, one of South Africa°Øs biggest firms of consulting engineers, established and partially owns a company called Khuthele Projects.

In November 1999, the CDC announced that it had appointed Khuthele Projects as the engineering consultants responsible for conducting the integrated transportation study for the Coega IDZ. It also points out in its annual report that the contact to Khuthele would be extended for the 2000-2001 financial year.

Modise effectively ends up benefiting financially as a businessman from a decision that he made whilst he was a Cabinet Minister. This constitutes a clear conflict of interests.

Coega and the exclusion of the Special Investigating Unit

What we would appear to be witnessing is a situation in which tax-payer°Øs money is being used to fund infrastructure for companies and individuals, such as Modise, who have risked no capital at all, yet stand to reap financial benefits. If the Coega port and IDZ turns out to be an economic disaster, the private companies and individuals involved in the project will incur no losses.

Yet, there is evidence to suggest that individuals associated with these companies have also participated in the policy process whereby public funds have been utilized in ways which might benefit them personally. This is not to suggest that there has been any necessary impropriety. But, it does indicate that a much tighter regulatory framework is required to prevent commercial conflicts of interest from influencing public decision makers.

The complexities of the private holdings and public positions relating to the individuals associated with Coega and the arms deal require further, official investigation. This would best be undertaken by a body with specialized forensic audit capabilities and a legal mandate to scrutinize contracts between public entities and private businesses. Government°Øs decision to exclude the Special Investigating Unit from the arms probe effectively prevents the issue of profiteering from commercial conflicts of interest from being examined. The SIU was the only public protection agency with the power to effectively investigate the awarding of sub-contracts. Uniquely, it was also empowered to have these contracts set aside by a Special Tribunal in the event of impropriety.

What is of particular importance here is the fact that the Auditor General and the Public Protector are powerless to investigate the financial affairs of the CDC as it is a private company. The Directorate of Public Prosecutions, the Scorpions, are limited to investigating and prosecuting criminal matters and are prevented from pursuing cases of commercial conflict of interest.

If the Coega project is to meet its objectives, then the procedures used to establish the Port and IDZ and the grounds for its economic viability must be beyond reproach. This is particularly the case if the CDC hopes to attract private investors to Coega.

http://case.psam.ru.ac.za/Archive/othersources/154.htm