

Press Release © 30 August 2001

The Coega Project: A test of Constitutional Democracy

The PSAM acknowledges the need to secure investment and create jobs in the Eastern Cape. However, unlike the apparent stance of the executive arms of national and provincial government and opposition parties within the province with respect to the Coega project, we do not believe that South Africa's democratic constitutional framework should be sacrificed in a bid to realize development. Government's disregard for democratic legislation in its handling of this project will serve to undermine investor confidence in South Africa rather than encourage it.

The defining feature of any Constitutional State is its consistent application of the rule of law. The executive arm of government, however, has knowingly failed to comply with the following key legislative provisions in its implementation of the Coega project:

The Constitution - The manner in which the executive arm of government has set up the Coega Development Corporation (CDC) effectively allows this company to escape parliamentary oversight. Sections 55 and 114 of the Constitution require that organs of the executive be held accountable to either the national parliament or to provincial legislatures. The CDC has not been held accountable by any provincial or national parliamentary committee.

The Public Finance Management Act - the CDC has yet to be subjected to a thorough financial audit, compliance audit or performance audit by the Auditor General's office. This is despite its allocation of hundreds of millions of rands of tax payer's money. The CDC chairperson, Moss Ngoasheng, has failed to meet reporting requirements set out in this act, which amongst other things require him to report to the Auditor General on CDC's performance against predetermined objectives within 5 months of the end of the financial year.

The Manufacturing Development Act - the CDC has violated the Industrial Development Zone Programme Regulations. No IDZ has yet been declared at Coega. Neither has the CDC obtained an IDZ operator's permit. Despite this it has proceeded with the construction of a

reservoir and a haul road on the site of the proposed IDZ. Such building work is in violation of the IDZ regulations. The CDC has also entered into contracts and agreements and has awarded sub-contracts to private companies to work on the Coega site in violation of these regulations.

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□ **The Minerals Act** °© The CDC has not yet obtained authorization from the Department of Minerals and Energy to proceed with the construction of a reservoir or haul road on the site of the proposed Coega IDZ. Both are busy being constructed.

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□ **The Development Facilitation Act** °© The CDC has not yet approached the Department of Minerals and Energy to conduct a survey of mineral rights, or to undertake a study of previous and future mining intentions, or to assess the value of mineral deposits on the site of the proposed IDZ.

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□ **The National Environmental Management Act** °© There has been no compliance with the public participation requirements of the Act. The recent Environmental Impact Report for the Coega port was only published 5 months after construction work for the port had already started. No economic and environmental sustainability studies have been undertaken for the IDZ.

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□ **The Promotion of Access to Information Act** °© The Department of Trade and Industry, the Eastern Cape MEC for Economic Affairs, the Department of Environmental Affairs and Tourism and the CDC have all to date failed to respond to requests for information from the PSAM on 24 May 2001 on the sustainability of the Coega project in terms of this Act.

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Whilst we welcome any effort to debate the issue of the sustainability of Coega and accountability for the project, we are concerned by the absence of the executive arm of government from the debate scheduled to take place in Port Elizabeth on Friday 31 August 2001. It is the executive of government that has taken all of the decisions in respect of Coega.

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For this reason, PSAM would like to invite the Minister of Trade and Industry, Alec Erwin, to a public debate on the accountability issues surrounding the implementation of the Coega project to be held in Grahamstown in the next month.

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We propose, as a topic for discussion, that this project has not been conducted in a responsible and accountable manner from the very outset.

This is something for which the Department of Trade and Industry must accept ultimate responsibility. In August 1998 the department began selling the viability of the Coega IDZ on the basis of the arms deal offsets to be delivered by the German submarine and frigate consortiums. This was a year before the deal was actually signed and two months before the Germans had actually been selected as the preferred suppliers.

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The Minister now has a responsibility to reassure the South African public about the reasons for the executive's decision for forging ahead with the Coega project with such indecent disregard for constitutional and legislative requirements. There are no confirmed anchor tenants for the project and its economic feasibility appears dubious. There are fears that the executive is proceeding with such indecent haste purely in order to stave off a crisis of public confidence that would result from its admission that the project is not economically viable. The executive wouldÄ then have to acknowledge that it misrepresented the benefits of the arms procurement deal.

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What is disturbing about the recently published Environmental Impact Report is that its authors caution against proceeding with the construction of the Coega port (at a cost of R4.5billion in public funds) unless the Coega IDZ can be demonstrated to be economically viable. No study of the economic feasibility of the IDZ has been undertaken. Effectively, government is gambling with billions of rands of public funds. If the IDZ fails to attract investors, government will effectively have spent R4.5billion on the construction of a port and container terminal which will be concessioned to a private company and which will result in the creation of no more than 350 sustainable jobs. This amounts to an investment of almost R13million per job.

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We would like to issue a caution to overly enthusiastic members of the press and politicians, whether ruling party or opposition, that the manner in which the Coega project is currently being implemented is in violation of our hard won constitutional and legislative framework. Government's disregard for this framework constitutes a direct threat to the future entrenchment of democracy in this country. We would like to remind those advocating the fast-tracking of this project that one cannot subvert and undermine the institutions of constitutional democracy in one context and then decry the failure to comply with this framework in another.

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For a culture of democratic accountability to emerge, and for effective social transformation to take place, a consistent application of the law is an absolute necessity.

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For Immediate Release

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<http://case.psam.ru.ac.za/Archive/othersources/155.htm>