

## Comments on the Wild Coast N2 Toll Road EIR

Whilst there are obvious flaws and contradictions throughout the EIR the comments herein will be directed towards the Public Participation Process as that is where my expertise lies and having worked directly with some of the communities along the longer Greenfields section who have a desire to participate. These comments are also in regard only to the proposed Greenfields section between Port Edward and Lusikisiki and do not apply to any other part of the proposed road.

### Two flaws within the FSR creating two fatal flaws in the EIR

FIRSTLY - The Expert Review Panel commissioned to investigate the appeals on the previous EIA found that the Public Participation process was flawed owing to the fact that:

- The information given to the public throughout the process was biased in favour of the road.
- Information was “user unfriendly” thus not being comprehensible to those without a western education.
- Not all stakeholders were included in the process.

A further point is that first hand reports from many of the meetings held (which is obviously not evident in the reports that the Expert Panel were able to study) is that they were by no means free as the personalities involved merely told the participants what was going to happen as a fait accompli and no discussion on the merits of the case were allowed.

All the above are in complete violation of World Bank criteria for development projects which are commonly utilised as a bench-mark throughout the developing world. One stipulation is that consultation must be ‘free, prior and informed’.

Yet it was concluded in the Final Scoping Report:

“Therefore, taking into consideration the number of written submissions made during the previous EIA, the 223 detailed appeals against the RoD, the extensive public consultation undertaken, and in view of the fact that the project is the same as for the first application, it was felt that all the key issues and concerns relating to the proposed project were

already on the table. In view of this it was thus considered unnecessary to undertake a repeat of the initial public interaction, aimed at identifying issues and concerns, normally associated with the commencement of a Scoping Study.” (FSR)

How could all the “key issues of concern already be on the table” if stakeholders were omitted from the beginning of that process, biased information was given from the beginning of that process and people were unable to understand the information that was given? Furthermore the process outlined in the EIA Regs is the minimum requirements for a Public Participation Process. The Final Scoping Report states that the process in the initial EIA adhered to these and so was considered adequate. In a project of this magnitude and where Indigenous People are concerned the study has to go way beyond the minimum requirements.

Thus the premise of an acceptable PP Process having been undertaken in the first EIA underpinning the second EIA is flawed and therefore the whole process is fatally flawed.

SECONDLY - The process stipulated in the Final Scoping Report upon which the Draft Environmental Impact Report is based is flawed which creates a fatal flaw throughout the Public Participation Process of the EIR. The FSR stipulates information dissemination and gathering of comments only which cannot be regarded as genuine involvement of local people. This level of engagement that has been adopted is considered by the International Association of Public Participation (IAP2) to be the very basic level of ‘Inform’.

“To include a formal public consultation process in the study, which specifically addresses the distribution of information to Interested and Affected Parties (I&APs), provision of opportunities for I&APs to raise any issues and concerns and provision of opportunities for I&APs to comment on the EIA documentation;” (Final Scoping Report – Public Consultation Process Report, P1)

There is debate in EIA circles as to what level of Public Participation (see attached document for different PP levels) is necessary to be regarded as legally/ethically adequate as many factors come into play. In this particular case though there is no debate. The only acceptable level is that of ‘Collaboration’ as defined by the International Association of Public Participation (IAP2). The goal of this is to “partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution”. The promise to the public that is being made using this

level is “We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible”. (IAP2). The imperative for this level rests in the points below:

- This proposal to build the Greenfields section of the road was initiated through an unsolicited bid from a business consortium. Since no National, Provincial or Local imperative for this particular road has been proven in either National, Provincial or Local policy and planning documents (and nowhere in the EIR is a rationale based on hard evidence given for the need for this section of the road) it is incumbent on SANRAL to ascertain whether this road is actually required or whether it is purely for private financial gain. Since the Greenfields section does not appear in any National policy or planning document it is safe to assume that it is not strategically essential and therefore the real benefit of this section of the proposed road must be proven to be a local one if it is not to be purely for corporate financial gain. In order to do this an intensive dialogue with local authorities and local people has to take place to discover what local needs are. Since this dialogue did not take place prior (World Bank regulations state that this should happen) to the EIA being initiated it is essential that it then takes place during the EIA process. This then means that information dissemination (as stated in the FSR) is a totally inappropriate PP tool as no information collection has taken place at all which sidelines the needs, ideas and opinions of local authorities and people from the outset. The only appropriate Public Participation level for a process where the overall merits of a government project are yet to be proven is that of collaboration, which was not adopted by this process.
- This is now (it was not the case in the first EIA which was rejected) a SANRAL (government) proposed project and the government is accountable to its citizens. Local authorities and people have a right to be part of the process which does not mean sitting and listening to decisions and plans once they have been made and being allowed to comment on them, but actually being part of the planning process. This requires the PP to be at the level of collaboration, which was not adopted by this process.
- NEMA has been ignored in the formulation of the Public Participation Process. In Section 2(4)(f) of NEMA, “the participation of all I&APs must be promoted and all people must have the opportunity to develop the understanding, skills and capacity to achieve equitable and effective participation, especially vulnerable and disadvantaged persons. Section

2(4)(h) of NEMA also states that community wellbeing and empowerment must be promoted through environmental education, raising of environmental awareness and other appropriate means." It is therefore incumbent upon a Public Participation Process that is carried out on behalf of a government department to facilitate the obligations under this legislation. This means that the process is designed so as to incorporate an element of learning so that poorly western educated or illiterate people are able to participate in full understanding. Information dissemination (the adopted approach) in disadvantaged communities is actually counter productive to the spirit of NEMA as those who do not understand the information are reinforced as being 'worthless'. Education/learning can only take place at the level of collaboration, which was not adopted by this process.

- Section 2(4)(g) of NEMA states that decisions must take into account the interests, needs and values of all interested and affected parties. This can only be done at a level of collaboration, which was not adopted by this process.
- Indigenous People are defined on the World Bank website as being "distinct populations in that the land on which they live, and the natural resources on which they depend, are inextricably linked to their identities and cultures". The amaPondo people are such a group. The main Greenfields section therefore transects the land of Indigenous People and hence consultation of the highest order is essential. Whilst Indigenous People are ignored in South Africa's EIA Regulations and the Guidelines on Public Participation, they are specifically mentioned in the World Bank's.
  - "The Bank's Indigenous Peoples Policy provides higher consultation standards than normally apply". (World Bank website)
  - "*Consultation and Participation*. Where the project affects Indigenous Peoples, the borrower engages in free, prior, and informed consultation with them. To ensure such consultation, the borrower:
    - § (a) establishes an appropriate gender and intergenerationally inclusive framework that provides opportunities for consultation at each stage of project preparation and implementation among the borrower, the affected Indigenous Peoples' communities, the Indigenous Peoples Organizations (IPOs) if any, and other local civil

society organizations (CSOs) identified by the affected Indigenous Peoples' communities;

- § (b) uses consultation methods<sup>11</sup> appropriate to the social and cultural values of the affected Indigenous Peoples' communities and their local conditions and, in designing these methods, gives special attention to the concerns of Indigenous women, youth, and children and their access to development opportunities and benefits; and
- § (c) provides the affected Indigenous Peoples' communities with all relevant information about the project (including an assessment of potential adverse effects of the project on the affected Indigenous Peoples' communities) in a culturally appropriate manner at each stage of project preparation and implementation" (World Bank website)

This suggests a level of collaboration, which was not adopted by this process

- The South African government's principle of Batho Pele should be applied. If people are to come first their needs should be established which requires a level of collaboration, which was not adopted by this process.
- Many elements of the International Labour Organisation's Convention (no.169) on Indigenous and Tribal Peoples can be quoted here but for the sake of brevity I will use only Article 7
  - "1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
  - 2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
  - 3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to

assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

- 4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

This makes explicit the level of collaboration, which was not adopted by this process.

Hence the Public Participation Practitioners (Nomi Muthialu & Associates) and their client (SANRAL) are bound to collaborate with the public and not to merely inform. Information dissemination is what has occurred. Collaboration has not. The EIR is fatally flawed through its Public Participation approach.

This being said the specific strategy adopted for the public meetings to report on the draft EIR was also flawed.

#### Public meetings to report on the Draft EIR flawed

I attended an Open House event with a member of the community of Xolobeni. From a professional viewpoint my observations were:

- An Open House is a culturally insensitive public forum. This works well for 'western' communities along the South Coast section but it is totally alien to the amaPondo culture. As a communal culture the concept of one-on-one discussions does not exist and hence it is experienced as very intimidating. When faced with an issue it is customary for the whole community to meet and discuss/debate the issue in an open and transparent manner until such time as consensus is reached. An Open House is designed to achieve exactly the opposite – individual discussions to identify an individual's issues. Thus the imperative for a PP process to be "facilitated in such a manner that all potential interested and affected parties are provided with a reasonable opportunity to comment on the application" (EIA Regs) has not been met. And as far as the World Bank criteria are concerned this methodology does not comply with consultation in a "culturally appropriate" manner.
- The posters on display were too technical for a lay person to understand and too verbally based for an illiterate person. The Consultants may feel that they are transmitting understandable messages but it is commonly accepted in communications theory that it is not the transmission that is important but the receiving. The idea behind an Open House is to inform the public. If the message is in such a form that it cannot be received the

process is entirely negated. Local people left the Open House no better informed than they were before.

- In order to get the necessary information people have to ask questions. To do this they have to know the right questions to ask. If they don't, they very seldom emerge with a full knowledge of the pros and cons of a development on which they can form opinions and make comment. It is therefore assumed that they have no contribution to make and that they fully support the development. This is not necessarily the case and cannot be called "free, prior and informed consultation" as is required by the World Bank.
- Having only a few venues to which local people have to travel shows a complete lack of understanding for the way of life. People in rural communities do not have spare cash to pay for local transport. In fact in these communities local transport hardly exists. Only a small percentage of people are able to attend

South Africa's Public Participation Guidelines state that people must "be afforded an opportunity to influence those decisions". The Pondo people have not been afforded this opportunity owing to the fact that the process did not provide them with balanced and complete information, was not culturally appropriate and was not accessible to the majority of the affected people. They are hence not 'empowered' to contribute as NEMA stipulates and have not been afforded the opportunity to influence the decision.

Even if all the arguments in the previous section that the level at which the whole Public Participation Process should be geared is that of 'collaborate' are negated and it is agreed that the level of 'inform' is sufficient, even this process has not satisfied this most basic of levels. At the 'inform' level the goal is to "provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions." (IAP2) The Pondo people have not been provided with balanced and objective information and do not understand the problems, alternatives and/or solutions.

#### My first hand experience with the local people

I was told by a consultant that DEAT considers this PPP to be one of the most intensive to date. In my professional opinion it still falls far short of a desired state. It is not the quantity of meetings that should be considered but the quality of the interaction that has taken place within those meetings. If people are not able to participate meaningfully the process is immediately negated. If the quality of interaction is poor and people leave no better informed than before the

process is negated. If the people are not able to submit comments in writing because they are illiterate or do not know how to say what they need to, the process is negated. This has most certainly been the case with the people with whom I work on the Wild Coast. Even though the FSR states that over 100 meetings have been held there is the possibility that they have been completely ineffective.

I have been working with 6 communities in the Xolobeni area for the last year on social, cultural and environmental issues. Because of the lack of information on the road and the confusion that misinformation was causing in the communities, I was asked to do a workshop to provide the information that no one else was providing. The workshop was culturally based, conducted in amaPondo, action learning biased, geared to the illiterate and informationally objective. The uncontested outcome was that the proposed road satisfies none of their needs and they will not support it.

One of the World Bank's criteria for accepting a project is broad support from the local Indigenous People.

"The Bank reviews the process and the outcome of the consultation carried out by the borrower to satisfy itself that the affected Indigenous Peoples' communities have provided their broad support to the project. The Bank pays particular attention to the social assessment and to the record and outcome of the free, prior, and informed consultation with the affected Indigenous Peoples' communities as a basis for ascertaining whether there is such support. The Bank does not proceed further with project processing if it is unable to ascertain that such support exists"  
(World Bank website)

A CCA consultant told me that the road had received uncontested support from all local people. I know first hand that this is not the case. I submit that if this is the impression of the consultants it is because the local people do not have 'balanced and objective information'. I do not believe that either the consultants or SANRAL are doing this purposefully. But I do believe that they do not know how to run a free and fair process because of a lack of cultural and educational understanding. A project of this magnitude cannot be given approval on the basis that it is supported by the majority of local people until such time as local people are sufficiently empowered to make the decisions that are rightly theirs to make.

I was also told by the consultant that all the correct procedures had been followed regarding consultation with Traditional Leaders. In a telephonic conversation today (Tuesday 20<sup>th</sup> Jan 2009) with Princess Wezizwe Sigcau (who verified the information she had given me with Queen Masobhuza Sigcau and then phoned me back) I was informed that no member of the Great Place at Quakeni has been approached by anyone with respect to feedback on the Draft Environmental Impact Report (although she has received documentation in the post). Neither does the Queen know of any other Traditional Leader who has been consulted. She had heard of consultants going to a local Headman but the consultants were 'chased away'. This raises the question as to the validity of the consultant's statement. This also makes me question the quality of the many 'imbizos' that the FSR states were held. Did they solicit opinions and input from local leaders or were they merely an announcement of the project? There is no way to tell this from the EIR.

From a communications perspective the script of the information video supplied as an appendix to the FSR and I assume used at these 'imbizos' is totally irrelevant as a communications tool as it has no consideration for non-western educated people. It is completely removed from their knowledge base, has no linkages to their culture and would have totally alienated the audience. It shows a lack of understanding on the part of the consultants as to who the people are with whom they are dealing and how cross-cultural communication works. As stipulated by the World Bank it is imperative that techniques used in the Public Participation Process are culturally appropriate which implies meaningful and courteous.

How then can this consultant tell me that the road has received "full support from local people"? And where is the documentation to this effect?

World Bank policy also states

"The Indigenous Peoples Policy is the only Bank operational policy that references human rights; the policy is to ensure that the development process fully respects the dignity, human rights, economies and cultures of indigenous peoples." (World Bank website)

It is my contention that this is not the case with respect to the proposed Greenfields section of the Wild Coast Toll Road. The original unsolicited bid was not put forward with the concerns of the Indigenous People in mind, SANRAL has not investigated the needs of the Indigenous People and the Public Participation Process has not been geared towards ensuring the full participation of the Indigenous People.

In conclusion, with respect to the EIR in general I note that the consultants claim that a National Park will be the solution to much of the mitigation that has to happen. Working in the area I have been personally involved in public meetings between DEAT and the local people regarding a National Park and witnessed the local people's vehement resistance to the concept, to the extent that DEAT officials are afraid to return. In meetings with DEAT I have learned that the idea of a National Park has been shelved. How therefore can the EIR rely so heavily on a National Park assisting mitigation of impacts? A National Park in the area is not going to happen!!

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