



Centre for
Environmental Rights

Advancing Environmental Rights in South Africa

Financing Fairly

A CASE STUDY | 2021

From Policy to Practice: Is the Industrial Development Corporation a Responsible Investor?



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About the Centre for Environmental Rights

The Centre for Environmental Rights (CER) 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.

Contents

1	Introduction	1
2	About the Industrial Development Corporation	2
	TABLE 1: About the IDC	2
3	Reflection on the IDC's legislative, policy and Constitutional mandate	3
	3.1 A Constitutional mandate for financing sustainable development	3
	BOX 1: The objects of the IDC	4
	3.2 The IDC's Responsible Investment Policy and due diligence process	6
	BOX 2: Revisiting the IDC's finance and investment policies	7
4	IDC's investment in MC Mining	9
	TABLE 2: MC Mining's Projects in Limpopo	9
	BOX 3: The IDC loan to MC Mining	10
5	Non-compliance, opposition, and the feasibility of MC Mining's operations	11
	5.1 Lessons from opposition to the Vele Colliery	11
	FIGURE 1: Series of events which alters CoAL share price	12
	5.2 Rebranding and a renewed focus on Makhado	13
	BOX 4: The IDC's investment in ArcelorMittal	14
	5.3 MC Mining's reliance on the Musina-Makhado Special Economic Zone	15
	BOX 5: The IDC's role in financing MMSEZ	16
6	Environmental and Social Risks	17
	6.1 Heritage	17
	6.2 Water	18
	6.3 Biodiversity	18
	FIGURE 2: Vhembe District Bioregional Plan 2017	19
	6.4 Climate Change	20
7	Conclusion	21
8	Recommendations	23
	Acronyms and Abbreviations	25
	Bibliography	26

1. Introduction

In 2020, the Centre for Environmental Rights produced a report assessing the finance and investment policies of two South African Development Finance Institutions (DFIs). The report, entitled *Financing Fairly*, examined the extent to which the finance and investment policies of the Development Bank of Southern Africa (DBSA) and the Industrial Development Corporation (IDC) comply with social, environmental, and human rights standards and support the realisation of sustainable development in South Africa.

This case study builds on the *Financing Fairly* report by interrogating the IDC's investment practices, determining whether it is a responsible investor. It considers these practices in relation to the IDC's financing of MC Mining Limited (formerly Coal of Africa Limited), a coal producer with operations primarily located in Limpopo.

As this case study shows, the IDC's recent investment in MC Mining is indicative of its continued funding of unsustainable, climate-risky projects. In addition, the study indicates that the IDC's Responsible Investment Policy and its due diligence processes are inadequate, resulting in a lack of proper consideration of social, environmental, climate, and human rights concerns. As a result, the IDC's investment in MC Mining does not only harm the environment and local communities, but its failure to interrogate the impacts of MC Mining's activities exposes the corporation to risk.



2. About the Industrial Development Corporation

The IDC is a development finance institution with a public mandate to finance industrial development in Southern Africa. It was formed in 1940 by the Industrial Development Corporation Act (the IDC Act).¹ The IDC Act requires the IDC to realise development finance objectives determined by the State. Its primary object is financing and investing in new industries and the expansion of existing industries.²

PURPOSE OF THE IDC ³	VISION OF THE IDC ⁴	
<ul style="list-style-type: none">• Grow sustainable industries• Support entrepreneurs• Improve lives	Create globally competitive industries realising Africa's potential.	
MANDATE OF THE IDC ⁵		
<p>"Our mandate is to maximise our development impact through job-rich industrialisation, while contributing to an inclusive economy by, among others, funding black-owned and -empowered companies, black industrialists, women and youth-owned and -empowered enterprises. At the same time, the IDC must <i>ensure its long-term sustainability</i> through prudent financial and human resource management, <i>safeguard the natural environment</i> and increasingly <i>position itself as a Centre of Excellence</i> for development finance." [emphasis added]</p>		
SOURCE OF CAPITAL ⁶	TYPES OF PROJECTS ⁷	TYPES OF FINANCE ⁸
Funding is generated through income derived from loan and equity investments, borrowings from commercial banks, DFIs and others.	Financing companies and projects for industrial development in critical sectors such as mining, agriculture, manufacturing, tourism and telecommunications.	Debt, equity, quasi-equity, guarantees, trade finance, and venture capital.

Question

This case study asks whether the IDC's focus on industrial development is for the benefit of present and future generations, bearing in mind its Constitutional obligation (as a major public entity) to ensure the protection of the environment and people's health and well-being, as guaranteed under Section 24.

¹ Industrial Development Corporation Act, 22 of 1940.

² Section 2 and 3(B) of the *Industrial Development Corporation Act*. Also see long title: "To constitute a corporation the object of which shall be to promote the establishment of new industries and industrial undertaking and the development of existing industries and industrial undertakings, and to provide for other incidental matters."

³ IDC, *Integrated Annual Report 2020*, Industrial Development Corporation (2020), 10.

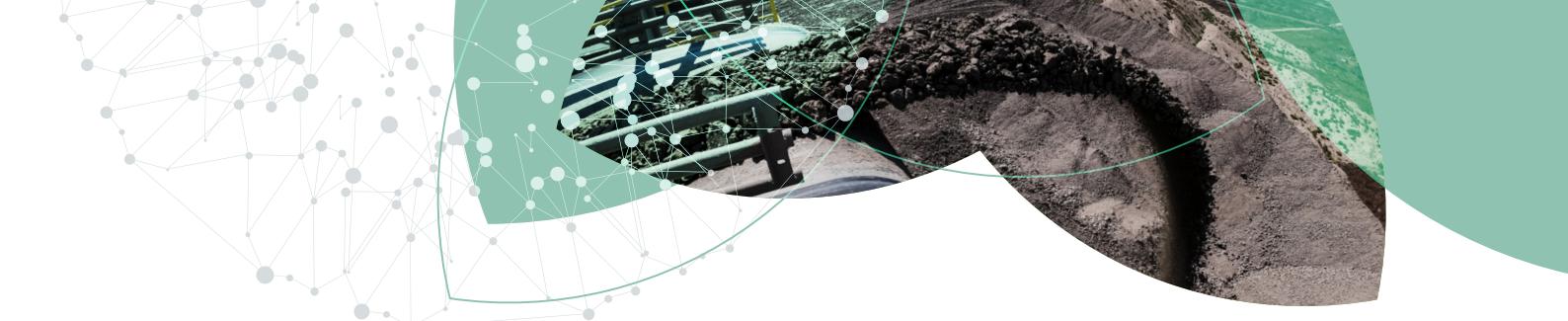
⁴ IDC, *Integrated Annual Report 2020*, 10.

⁵ IDC, *Integrated Annual Report 2020*, 10.

⁶ IDC, *Integrated Annual Report 2020*, 10; IDC, "Expanding industrial capacity for development: Briefing on Corporate Plan 2015/16 Portfolio Committee on Economic Development," (Parliamentary Monitoring Group, 2015), 46. See <https://static.pmg.org.za/150421idc.pdf>

⁷ Daiyaan Halim and Zahra Omar, *Financing Fairly: Assessing the Sustainability of Investment Policies for Development Finance Institutions in South Africa*, Centre for Environmental Rights (Cape Town: Centre for Environmental Rights, 2020), 2.

⁸ Halim and Omar, *Financing Fairly: Assessing the Sustainability of Investment Policies for Development Finance Institutions in South Africa*, 2.



3. Reflection on the IDC's Legislative, Policy and Constitutional Mandate

3.1 A Constitutional Mandate for Financing Sustainable Development

The *Financing Fairly* report recognised that development finance institutions conduct their activities according to the defined parameters of their statutory mandates and government policy.⁹ The IDC is guided by the IDC Act and government policies and programmes, including the National Development Plan (NDP); the Industrial Policy Action Plan (IPAP); the New Growth Path (NGP); and the Special Economic Zone (SEZ) Policy, among others.¹⁰

The IDC Act and public policy, particularly industrial policy, guide the categories and types of industrial activities that the IDC should fund. They ensure that IDC-funded industrial development aligns with the government's national priorities and objectives. According to a presentation by the IDC, these priorities and objectives are designed to support "increased economic activity in productive sectors" by seeking to have "a greater impact on job creation, inclusive wealth, provincial distribution of economic activity and regional development."¹¹

The developmental goals that the IDC seeks to achieve are crucial for South Africa and should be encouraged. However, to support sustainable

industrial development, it is insufficient to focus on job creation, wealth, economic activity, and regional growth without factoring in sustainability and the need to address the risks posed by climate change.

Development refers to economic growth and social improvement, recognising that poverty, inequality, and underdevelopment cannot be resolved without economic growth.¹² However, incorporating the concept of sustainability requires considerations beyond economic merit. It implies limitations on the use of environmental resources and constraints imposed by the biosphere's ability to absorb the effects of human activities.¹³

By definition, sustainable development is development that meets present needs without compromising the ability of future generations to meet their own needs.¹⁴ It requires the realisation of three dimensions: economic, social, and environmental.¹⁵

The Constitution recognises this universally accepted definition of sustainable development and the need to realise its three dimensions under section 24.¹⁶ The provision guarantees everyone the right to an environment protected for the benefit of present and future generations through measures that *secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development*.¹⁷

Further, the National Environmental Management Act¹⁸ (NEMA), promulgated to give effect to section 24, defines sustainable development as "the integration of social, economic and environmental factors into

⁹ Halim and Omar, *Financing Fairly: Assessing the Sustainability of Investment Policies for Development Finance Institutions in South Africa*.

¹⁰ IDC, "Expanding industrial capacity for development: Briefing on Corporate Plan 2015/16 Portfolio Committee on Economic Development," 9; IDC, *Integrated Annual Report 2020*, 21.

¹¹ IDC, "Expanding industrial capacity for development: Briefing on Corporate Plan 2015/16 Portfolio Committee on Economic Development," 9.

¹² World Commission on Environment and Development, "Chapter 1: A Threatened Future," in *Our Common Future* (Oxford: Oxford University Press, 1987), paras 48-50

¹³ World Commission on Environment and Development, "An Overview by the World Commission on Environment and Development," para 27

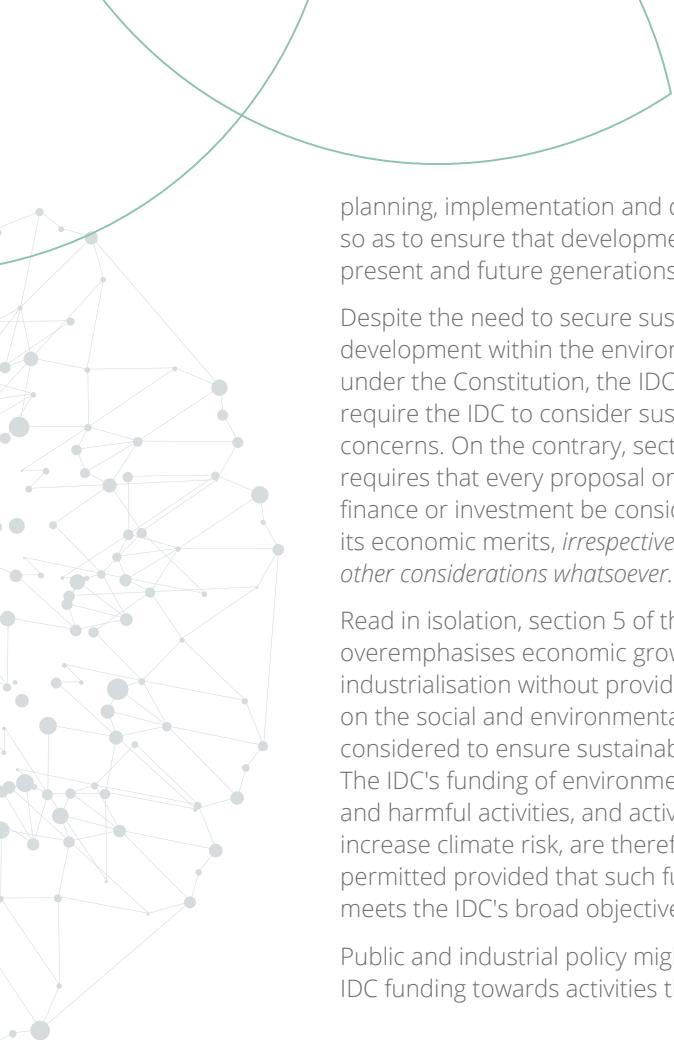
¹⁴ World Commission on Environment and Development, "An Overview by the World Commission on Environment and Development," para 27

¹⁵ Preamble, UN, "Resolution adopted by the General Assembly on 25 September 2015: Transforming our world: the 2030 Agenda for Sustainable Development," ed. United Nations General Assembly (2015).

¹⁶ Department of Environment and Tourism, *A National Framework for Sustainable Development in South Africa* (2008), 14-15. which states that South Africa's definition of sustainable development, entrenched in the Constitution, is influenced by the globally accepted definition formulated by the Brundtland Commission and refers to the definition as universally accepted.

¹⁷ Section 24(b) Constitution of the Republic of South Africa, (1996).

¹⁸ Act No. 107 of 1998.



planning, implementation and decision-making so as to ensure that development serves present and future generations."

Despite the need to secure sustainable development within the environmental right under the Constitution, the IDC Act does not require the IDC to consider sustainability concerns. On the contrary, section 5 of the Act requires that every proposal or application for finance or investment be considered "strictly on its economic merits, *irrespective of all other considerations whatsoever*."¹⁹

Read in isolation, section 5 of the Act overemphasises economic growth driven by industrialisation without providing any guidance on the social and environmental factors to be considered to ensure sustainable development. The IDC's funding of environmentally destructive and harmful activities, and activities that increase climate risk, are therefore effectively permitted provided that such funding meets the IDC's broad objectives.²⁰

Public and industrial policy might direct IDC funding towards activities that support

sustainable development. However, as pointed out in *Financing Fairly*, government policies that guide the IDC's investment decisions are frequently contradictory.²¹ For instance, the NDP and IPAP encourage finance and investment in economic infrastructure within the green economy and manufacturing of green industry components – sectors that support the realisation of sustainable industrial development.

On the other hand, these policies and the NGP encourage funding of the mining value chain and industrial infrastructure (such as coal mining and coal-fired power generation). Thus encouraging investment in activities that frequently lead to unacceptable environmental destruction, climate risk, and social harm.

Consequently, the IDC's enabling legislation and government policies and programmes do little to prevent the financing of unsustainable activities, including those that increase climate risk and harm our capacity for climate adaptation. Meanwhile, continued funding of environmentally destructive and harmful

Box 1: The Objects of the Industrial Development Corporation

The objects of the IDC as set out under section 3 of the IDC Act include:

-  Establishing and conducting any industrial undertaking with the approval of the Minister of Trade, Industry and Competition.
-  Facilitating, promoting, guiding, and assisting in the financing of new industries and industrial undertakings, and schemes to improve the efficiency of existing industries or industrial undertakings "to the end that the economic requirements of the Republic may be met."
-  Promoting economic empowerment of historically disadvantaged persons.
-  Fostering the development of SMMEs and co-operatives.
-  Promoting employment creating activities.
-  Leveraging foreign direct investment in South Africa and Southern Africa.
-  Encouraging the creation of new knowledge-based industries and services.
-  Enhancing corporate governance to achieve business excellence.

¹⁹ Section 5(a) *Industrial Development Corporation Act*.

²⁰ Section 3 *Industrial Development Corporation Act*.

²¹ Halim and Omar, *Financing Fairly: Assessing the Sustainability of Investment Policies for Development Finance Institutions in South Africa*.

activities limits the IDC's ability to support ecologically sustainable industrial development.²²

The IDC, nonetheless, states that it aims to achieve sustainable industrial development. According to its 2020 Annual Report, the IDC's development outcomes align with international sustainability protocols and frameworks such as the United Nations' Sustainable Development Goals (SDGs). The report states clearly, for instance, that "we strive to reduce our carbon footprint and support the adaptation and mitigation efforts that address the negative impact of climate change."²³

While the IDC Act and public policy do not impose a specific duty on the IDC to realise sustainable industrial development, the IDC should interpret the provisions of its founding statute and guiding policy in alignment with the Constitution to inform its investment policies and practices. In this way, the IDC can give effect to its intended sustainability objectives.

Like all legislation, any interpretation of the IDC Act and its provisions must be consistent with the Constitution.²⁴ The Bill of Rights binds the IDC as an organ of state, as it meets the requirements defined in section 239 of the Constitution by exercising a public power or performing a public function in terms of legislation.²⁵ Moreover, juristic persons – which includes the IDC's clients – are bound by the Bill of Rights, to the extent that specific rights may be applicable.²⁶

Consequently, the IDC should develop processes and policies to evaluate proposals or applications for finance that consider the impacts of environmental harm and ensure that proposed projects are not detrimental to people's health and well-being. In addition, they must consider sustainability and the need to ensure that the environment is protected for future generations. The IDC must also consider and defend the rights of access to water²⁷, religious and cultural rights²⁸ and access to information.²⁹

The 2020 *Financing Fairly* report considered the above when evaluating the criteria and processes that the IDC applies to determine which industries and industrial undertakings to fund. As a result, the report made the following key findings:



First, to achieve sustainable industrial development, the IDC should fund industries and industrial undertakings that support the realisation of sustainable development. This necessarily requires funding measures to address threats posed by climate change and environmental degradation decisively. The IDC should direct its funding towards climate mitigation, adaptation, and resilience in the industrial undertakings of its clients. In addition, the IDC's policies and practices should reduce its exposure to unsustainable activities such as fossil fuel extractive and dependant industries. Doing so would ensure that our natural environment is protected for the benefit of present and future generations.



Secondly, sustainable development requires the IDC to address the twin crises of high unemployment and rising inequality. The IDC's policies and practices should strive to increase funding for environmentally sustainable industries that create jobs and reduce labour surpluses to reduce income inequality. Examples included investment in renewable energy components and environmental goods manufacturing, particularly those for export.



Therefore, the IDC should follow a project selection process that balances economic objectives against social and environmental concerns. In this regard, we found that its policies and due diligence processes must protect the institution and its investment portfolio against unnecessary corporate risks as well as physical and transitional risks associated with climate change. Importantly, we found that the IDC should consider social, environmental, and human rights factors when selecting projects and making investment decisions.

²² Section 24(2)(c), Constitution of the Republic of South Africa, 1996

²³ IDC, *Integrated Annual Report 2020*, 21.

²⁴ Section 2 *Constitution of the Republic of South Africa*.: "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligation imposed by it must be fulfilled."

²⁵ Section 8(1) read with 239, Constitution of the Republic of South Africa, 1996.

²⁶ Section 8(2), Constitution of the Republic of South Africa, 1996.

²⁷ Section 27 *Constitution of the Republic of South Africa*.

²⁸ Section 31 *Constitution of the Republic of South Africa*.

²⁹ Section 32 *Constitution of the Republic of South Africa*.



To shift its practices towards realising sustainable industrial development, the IDC must formulate and apply policies that require it to take social, environmental, and human rights factors into account. *Financing Fairly* highlighted that "although DFIs must conduct their activities within the parameters of legislative mandates and government policy, they retain crucial decision-making powers. DFIs are ultimately responsible for setting the criteria with which companies and projects must comply to qualify for funding. They may also determine the conditions on which their funding must be used."³⁰ The criteria contained in the IDC's finance and investment policies and due-diligence processes must reflect the Constitution's values.

3.2 The IDC's Responsible Investment Policy and Due Diligence Process

The IDC's 2014 Responsible Investment Policy recognises that:

"there is a growing international movement that supports socially responsible investment and ethical investment in response to shareholder and stakeholder requirements, evolving consumer demand and media interest in corporate behaviour. Ethical investment combines the ethical, social and environmental considerations of investors with their financial objectives. For businesses, this implies that they must take responsibility for the effect of their investments on humans and the environment. This approach enables business to use monetary power to bring about positive social and environmental change whilst still enjoying competitive returns."³¹

It is clear from the IDC's Responsible Investment Policy, that the IDC recognises the need for socially responsible investment that excludes investments in unethical activities. However, due to the IDC's failure to disclose its policies, the 2020 *Financing Fairly* report was unable to evaluate the criteria applied by the IDC to exclude projects with negative effects on humans and the environment.

Subsequent to the release of the *Financing Fairly* report and a campaign to end fossil fuels in public finance, led by NGOs in South Africa, the IDC published its Responsible Investment Policy [online](#). Having now assessed the Responsible Investment Policy for purposes of this case study, it is evident that the IDC's policies fail to set out criteria and due diligence processes that adequately address issues related to sustainable development (see Box 2).

³⁰ Halim and Omar, *Financing Fairly: Assessing the Sustainability of Investment Policies for Development Finance Institutions in South Africa*, 3.
³¹ IDC, "Responsible Investment Policy," (Industrial Development Corporation, November 2014 2014), 2.

Box 2: Revisiting the IDC's Finance and Investment Policies

Two policy documents referred to by the IDC in its 2019 Annual Report hold the potential to support sustainable industrial development. In the first instance, the IDC refers to an Environmental and Social Policy in which it strives to assist business partners to improve their environmental, health, and safety performance; manage carbon liabilities and exposures while promoting bankable green projects that foster social responsibilities; promote trade and activities that have minimal adverse environmental and social impacts, and monitor the IDC's impact on the environment, among other goals. This policy applies to the IDC's internal operations and activities and could potentially contain requirements that the IDC prioritises sustainable investments in its investment decisions.³²

Secondly, the IDC's *Responsible Investment Policy* applies to companies and projects that the IDC invests in or finances. According to the IDC's Annual Report, this policy document reflects its values. It identifies activities in an exclusion list for which the IDC will not provide funding based on ethical considerations.³³ The Responsible Investment Policy could shift the IDC's exposure to unsustainable activities and encourage more funding to sustainable activities by restricting funding to activities with high environmental, social, and human rights risks.

Despite the potential for its policies to support sustainable industrial development, the IDC's policies fall short of expectations. The Environmental and Social Policy is not publicly available for assessment. Having considered the minimal commitments made by the IDC for purposes of this case study, we have found the Responsible Investment Policy to be lacking.

The Responsible Investment Policy does not require companies to which the IDC extends finance to phase out coal-fired power generation or coal mining, nor does it require them to disclose and reduce their direct and indirect greenhouse gas emissions. Instead, the Policy sets out a broadly-stated exclusion list of seven identified activities "that the IDC will not finance as a result of ethical considerations." Among them are "projects if the required licenses have not been granted", and "projects where environmental impact assessments have not been conducted or geological reports are not available."³⁴

Although the policy does require applicants to conduct an Environmental Impact Assessment (EIA), it does not specify under what circumstances the negative impacts reported in an EIA will be considered too high to exclude a project from IDC funding.

The IDC has not made its due diligence processes publicly available by publishing it on its website as it has done with its Responsible Investment Policy. Moreover, the IDC does not disclose the metrics used to evaluate its clients' performance or the specific targets that a client must achieve. The lack of disclosure on the part of the IDC makes it difficult for the public to understand its investment decisions or hold it to account.

The IDC's failure to limit social and environmental harm through its policies and due diligence processes can lead to poor investment practices. This case study provides an example of how the IDC may not, in practice, be the socially responsible and ethical investor it strives to be in its Responsible Investment Policy. Instead, it has invested in MC Mining and other harmful businesses that bolster extractive industries to the detriment of human well-being and the environment. This case study provides a clear indication that these policies and processes should be strengthened and made more transparent.

³² IDC, *2019 Integrated Report*, Industrial Development Corporation (2019), 66.

³³ IDC, *2019 Integrated Report*, 68.

³⁴ IDC, "Responsible Investment Policy," 4.



The Makhado Project is MC Mining's Flagship initiative.

4. IDC's Investment in MC Mining

MC Mining (formerly Coal of Africa Limited) is an Australian coal mining firm with a secondary listing on the Johannesburg Stock Exchange.³⁵ The majority of MC Mining's projects are in the exploration and development phase. The company's only operational mine is the Uitkomst Colliery in KwaZulu-Natal, while its strategy focuses on developing its mining operations in Limpopo.

MC Mining's Projects in Limpopo

MINING PROJECT	LAND AREA & COALFIELD	OWNERS	REGULATORY STATUS
Makhado Project	7,635 hectares Soutpansberg Coalfield.	67.3% Baobab Mining & Exploration (Pty) Ltd (Subsidiary of MC Mining Ltd.) 6.7% Industrial Development Corporation 20% Local communities 6% BBEEE partner. ³⁶	Mining right granted for 30 years. Water use license granted for 20 years. Environmental authorisation granted for life-of-mine. ³⁷
Vele Colliery	8,663 hectares Tuli Coalfield.	100% MC Mining Ltd. ³⁸	
Mopane Coal Project (Greater Soutpansberg Project)	38,825 hectares Soutpansberg Coalfield.	74% MC Mining Ltd. 26% Rothe Investments (Pty) Ltd. 26% Rothe Investments (Pty) Ltd. ³⁹	Mining rights granted. Water and environmental regulatory applications pending. ⁴⁰
Generaal Coal Project (Greater Soutpansberg Project)	24,859 hectares Soutpansberg Coalfield.		
Chapudi Project (Greater Soutpansberg Project)	24,719 hectares Soutpansberg Coalfield.		

In 2017, the IDC advanced MC Mining a R240 million loan facility to fund mining activities at its Makhado Project and the Vele Colliery in Limpopo (see Box 3). The loan provided by the IDC is intended for use in the development and construction of Phase 1 of the Makhado Project. Phase 1 is expected to commence in 2021 with the development of the west pit of Makhado, while processing of coal mined at the facility would take place at the mining company's Vele Colliery. Proceeds of the IDC loan were used to modify the existing processing plant at Vele.⁴¹

The Makhado Project is MC Mining's flagship operation. It is located within the Soutpansberg Coalfield and, once operational, will be South Africa's first large producer of hard coking coal for use in steelmaking.⁴² The Vele Colliery,

located at the Tuli Coalfield, produces semi-soft coking coal and thermal coal for industry and power generation use. It has been in care and maintenance since 2013, pending the development of the Musina-Makhado Special Economic Zone (MMSEZ).⁴³

In addition to the projects supported by the IDC, the Department of Mineral Resources and Energy has granted MC Mining the mining rights for three mines located alongside the Makhado Project in the Soutpansberg Coalfield.⁴⁴ These include rights for the Chapudi, Generaal, and Mopane mines which form part of MC Mining's Greater Soutpansberg Project. These projects are at the early-stage exploration phase and require water use licences and environmental authorisations for development to go ahead.⁴⁵

³⁵ MC Mining Limited, *Annual Report 2020* (22 October 2020 2020), <https://www.mcmining.co.za/component/downloads/send/96-2020/1610-mc-mining-annual-report-2020>.

³⁶ Although the company only operates in South Africa, its primary listing remains on the Australian Securities Exchange (ASX). MC Mining Limited, "SENS Announcement: Debt Funding Secured for Phase 1 of the Makhado Hard Coking Coal Project," news release, 19 July 2019, 2019, <http://www.sharedata.co.za/sens.asp?id=339189> ; Marleny Arnoldi, "IDC agrees to restructure MC Mining loan facility," *Mining Weekly*, 6 July 2020 2020, https://www.miningweekly.com/article/idc-agrees-to-restructure-mc-mining-loan-facility-2020-07-06/rep_id:3650.

³⁷ MC Mining Limited, *Annual Report 2020*, 16.

³⁸ MC Mining Limited, *Annual Report 2020*, 15.

³⁹ MC Mining Limited, *Annual Report 2020*, 15.

⁴⁰ MC Mining Limited, *Annual Report 2020*, 16. MC Mining reports that it will apply for Water Use Licences and Environmental Authorisation after the granting of the three mining rights, which was completed when the mining right for Mopane was granted.

⁴¹ MC Mining Limited, "SENS Announcement: Debt Funding Secured for Phase 1 of the Makhado Hard Coking Coal Project."

⁴² MC Mining Limited, *Annual Report 2020*, 6.

⁴³ MC Mining Limited, *Annual Report 2020*, 6.

⁴⁴ MC Mining Limited, "Announcement: Mopane Mining Right Granted," news release, 4 February 2021, 2021, <https://www.mcmining.co.za/component/downloads/send/98-2021/1629-mopane-mining-right-granted>.

⁴⁵ MC Mining Limited, "Announcement: Mopane Mining Right Granted.",MC Mining Limited, *Annual Report 2020*, 7.



Box 3: The IDC Loan to MC Mining

The loan issued by the IDC to MC Mining, which consists of debt and equity, has reportedly been restructured several times. The initial loan of R240 million was issued in 2017 to finance the pre-project development of MC Mining's flagship Makhado Project. The IDC acquired a 5% stake in the project as part of the agreement. The loan was drawn down in two instalments totalling R160 million (R120 million and R40 million, respectively), and the balance of the loan was reportedly cancelled. As part of the agreement, the IDC increased its shareholding in Makhado to 6.7%.⁴⁶

The 6.7% stake in the Makhado project does not grant the IDC any direct interest in the Vele Colliery project nor in the holding company, MC Mining Limited. However, the IDC has been granted share warrants in MC Mining, giving it the option to purchase 3.3% of the company's issued shares.⁴⁷ By exercising its right to purchase the 3.3% stake in MC Mining, the IDC may acquire a direct interest in the company later.

Despite the relatively small loan amount and shareholding in the Makhado project, the IDC's funding of the project can significantly influence both the project and MC Mining's prospects. To this end, it is crucial to understand the role of Development Finance Institutions (DFIs) in financing infrastructure and industrial development.

DFIs typically provide funding in activities where commercial banks are reluctant to invest because of perceptions of excessive risk that reduce the rate of return on investment. By fulfilling a portion of the funding requirements of large infrastructure projects or risky industrial undertakings, DFIs partially de-risk the investment, drawing in private investors who provide the remainder of the finance given more acceptable rates of return. This mechanism of credit enhancement is beneficial for realising sustainable industrial development where DFIs finance climate-resilience programmes.⁴⁸ However, in the present case, the IDC's investment in MC Mining serves to de-risk investment in an industry with poor long-term growth prospects due, at least partially, to its damaging climate, social, and environmental impacts.⁴⁹

As evidence of the credit enhancement mechanism at play, the loan agreement between the IDC and MC Mining requires the mining company to secure additional funding of R335 million for Phase 1 of the Makhado project from other funders.⁵⁰ Of this sum, the company was reported to be in discussions to secure a final amount of R130 million by the first quarter of 2021.⁵¹ To attract the additional funding, MC Mining is considering the issue of equity, the sale of minority stakes in the companies holding the project, and further debt and contractor funding. Its drawdowns on the IDC's loan are due to be repaid in July 2021.⁵²

⁴⁶ David McKay, "MC Mining says IDC support for R575m Makhado coal project safe as applies to extend loan," *miningmx*, 30 November 2020 2020, <https://www.miningmx.com/news/energy/44534-mc-mining-says-idc-support-for-r575m-makhado-coal-project-intact-as-applies-to-extend-loan/>; Arnoldi, "IDC agrees to restructure MC Mining loan facility."

⁴⁷ Arnoldi, "IDC agrees to restructure MC Mining loan facility."

⁴⁸ Palesa Shipalana, *Green Finance Mechanisms in Developing Countries: Emerging Practice*, South African Institute of International Affairs (2021), 5-6.

⁴⁹ See generally: Mariaan Webb, *Coal Report 2021: What is the future of coal?* (Creamer Media, April 2021 2021), 28-31. who shows that the outlook for the coal industry is not good.

⁵⁰ Webb, *Coal Report 2021: What is the future of coal*, 22.

⁵¹ Karl Gernetzky, "IDC agrees to extend repayment date of MC Mining loan," *Business Day*, 10 February 2021 2021, <https://www.businesslive.co.za/bd/companies/mining/2021-02-10-idc-agrees-to-extend-repayment-date-of-mc-mining-loan/>.

⁵² Webb, *Coal Report 2021: What is the future of coal*, 22.



5. Non-Compliance, Opposition, and the Feasibility of MC Mining's Operations

5.1 Lessons from Opposition to the Vele Colliery

By providing a loan and acquiring equity in MC Mining's Makhado Project, the IDC has invested public funds in a company with a history of negative social and environmental impacts as well as environmental non-compliance.

The Vele mine was controversially developed in the early 2010s in the Mapungubwe Cultural Landscape, situated next to the Mapungubwe National Park and World Heritage Site, and immediately across the river from the important Zimbabwe component of the forthcoming Greater Mapungubwe Transfrontier Conservation Area. The project posed significant heritage, water, biodiversity, air quality, noise pollution, tourism, and climate change impacts from inception. Notwithstanding the consequences, MC Mining (then Coal of Africa Limited) began conducting mining activities at Vele without the requisite zoning permits, water use license, and environmental authorisations.⁵³

The commencement of operations without the necessary authorisations led to a public outcry. A diverse group of local communities and environmental NGOs, with extensive knowledge of the local area and a range of expertise, came together to challenge MC Mining's activities under the Save Mapungubwe Coalition.⁵⁴ Despite promises of jobs, local communities recognised that extractive industries and the Vele Colliery would bring more harm than benefits.⁵⁵

Further Reading

- Changing Corporate Behaviour: The Mapungubwe Case Study, A research Report, Centre for Applied Legal Studies.
- Full Disclosure 2016: The truth about corporate environmental compliance in South Africa – Coal of Africa Limited, Centre for Environmental Rights.

Environmental NGOs provided scientific studies on social and ecological issues to highlight the negative impacts of the project. Two public interest legal organisations represented the coalition, enabling it to challenge MC Mining's non-compliances through legal proceedings.⁵⁶

Lengthy litigation ensued, and the Save Mapungubwe Coalition campaign and other affected communities drew public attention to MC Mining's activities. As a result, the company was the subject of enforcement action from the Department of Environmental Affairs and the Department of Water and Sanitation. Despite this, the company ignored directives by the Department of Water and Sanitation to cease illegal water usage. The protracted legal proceedings affected MC Mining's reputation as Coal of Africa Limited (CoAL) and impacted its share price as investors increasingly lost confidence in the company.⁵⁷

⁵³ Louis Snyman et al., *Changing Corporate Behaviour: The Mapungubwe Case Study* (Johannesburg: Centre for Applied Legal Studies, February 2014 2014), <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/Changing%20Corporate%20behaviour-The%20Mapungubwe%20case%20study.pdf>.

⁵⁴ Snyman et al., *Changing Corporate Behaviour: The Mapungubwe Case Study*, 38; "Full Disclosure 2016: The Truth About Corporate Environmental Compliance in South Africa, Coal of Africa Limited," Centre for Environmental Rights, 2016, accessed 11 June 2021, <https://fulldisclosure.cer.org.za/2016/company/coal-of-africa-limited?impacts>.

⁵⁵ Interview with local community representatives

⁵⁶ Snyman et al., *Changing Corporate Behaviour: The Mapungubwe Case Study*, 38; CER, "Full Disclosure 2016: The Truth About Corporate Environmental Compliance in South Africa, Coal of Africa Limited."

⁵⁷ Louis Snyman and Robert Krause, "Discussion with Centre for Applied Legal Studies," interview by Daiyaan Halim and Leanne Govindsamy, *Corporate Accountability and Transparency Programme*, 29 April 2021, 2021.

Series of Events Which Altered CoAL Share Price

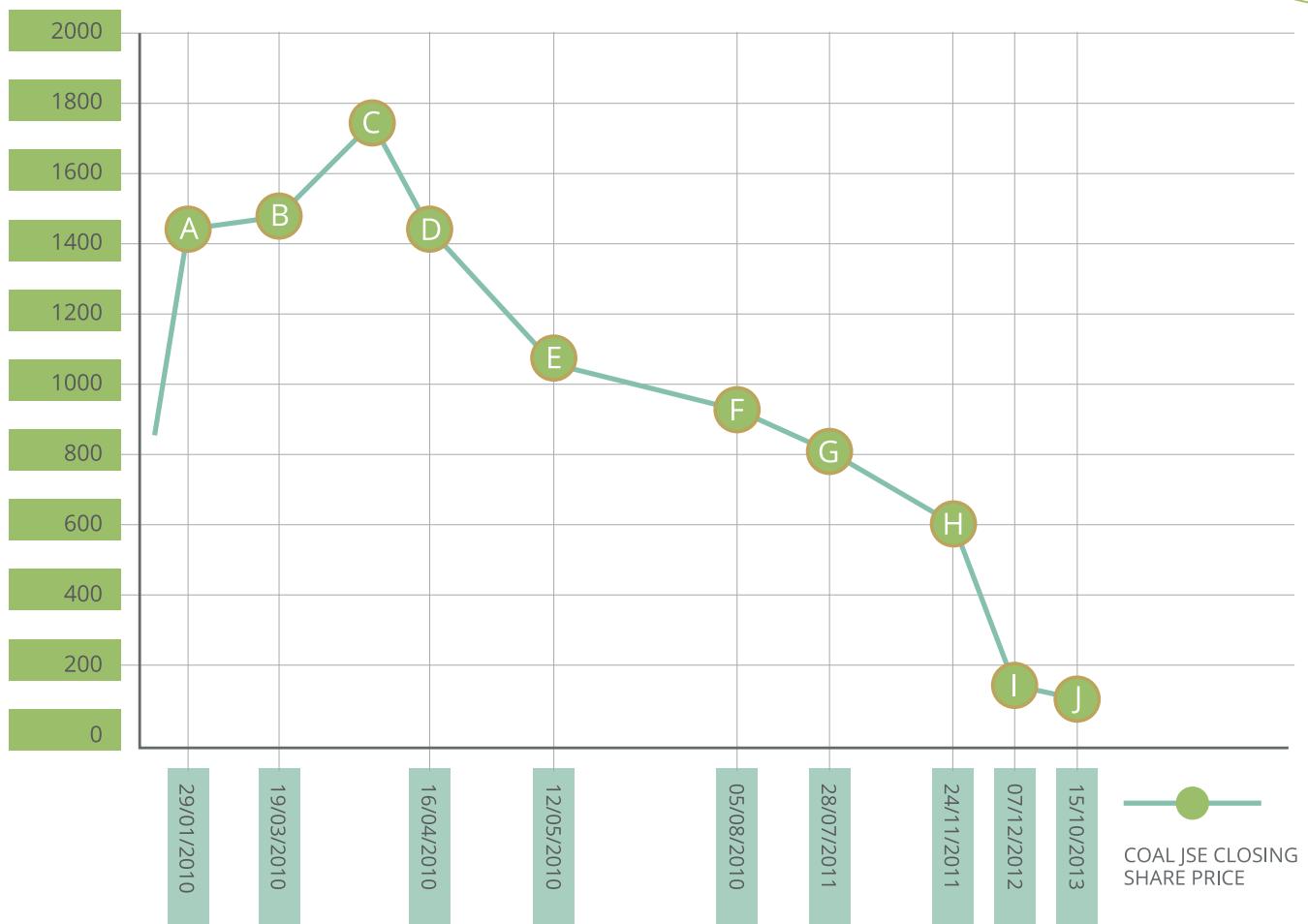


Figure 1: Series of events which alters coAL share price⁵⁸

- A:** Mining right granted
- B:** Coalition lodges appeal against mining right
- C:** Company lodges intention to appeal against refusal of its environmental authorisations
- D:** Coalition issues press release on appeals
- E:** Department of Environmental Affairs issues compliance notice
- F:** Company requests Department of Water Affairs to amend its water use license
- G:** Coalition files water appeal
- H:** Joint media briefing on negotiations between Coalition and company
- I:** Coalition withdraws from Memorandum of Understanding with the company
- J:** Coal announces cessation of production at Vele

⁵⁸ Snyman et al., *Changing Corporate Behaviour: The Mapungubwe Case Study*, 25-27.



Litigation by the coalition and regulatory enforcement action temporarily halted the mine. When mining recommenced, the company discovered that the coal produced at Vele was of a lower grade than expected. The proposed Mulilo thermal power station, intended to serve as an off-taker for the mine, was stalled from inception.⁵⁹ The mine ultimately went into care and maintenance shortly after commencement. The use of coalition building, advocacy, and strategic litigation were sufficient to bring the company to the negotiation table. As a result of the coalition's efforts, it serves as the first civil society organisation within an Environmental Management Committee (EMC).⁶⁰

5.2 Rebranding and a Renewed Focus on Makhado

Opposition attorneys for the Save Mapungubwe Coalition, who occupy a seat on the EMC, speculate that the reputational damage suffered at Vele had driven the decision to rebrand and change the company's name from Coal of Africa Limited to MC Mining.⁶¹ According to the company, the name change reflected its new focus on metallurgical coal prospects, primarily tied up in the Makhado Project.⁶²

Notwithstanding its renaming, MC Mining has continued to declare year-on-year losses.⁶³ Presently, its prospects of transitioning from project development to a self-sufficient and profitable mining company are contingent on the success of Makhado.⁶⁴ The Makhado project offers a crucial lifeline to the coal mining firm. However, the project has faced legal and regulatory challenges as well as opposition from affected communities, which delayed the commencement of the project and the ability of the firm to secure funding.

The Integrated Water Use Licence for Makhado was suspended following an appeal by a farmer in 2016. In 2015, the Vhembe Mineral Resources Stakeholders Forum, the Makhado Action Group and the Mudimeli community successfully applied to the court for an interim interdict against the company to halt any mining or construction activity. Despite a counter application to set aside the interdict, the court ordered that the interdict remain in force pending the judicial review of the environmental authorisation.⁶⁵ The interdict against MC mining was eventually set aside in 2018, allowing the company to seek financing for the project.

MC Mining secured off-take agreements for 85% of hard coking coal and all of the thermal coal by-product produced at the site and subsequently concluded its 2019 loan agreement with the IDC. However, the company is still required to secure additional funding of R335 million for the construction of phase 1 to go ahead (see Box 3).⁶⁶

The key off-taker for the Makhado project is major steel producer ArcelorMittal South Africa. The agreement between the coal mining and the steelmaking firm should improve the prospects of securing funding for phase 1 of the Makhado development. However, the security of this off-take arrangement remains questionable as ArcelorMittal faces environmental and financial challenges of its own (see Box 4).

For MC Mining, an over-reliance on ArcelorMittal does not bode well for the long-term viability of the Makhado Project and, in turn, its operations. Should ArcelorMittal be unable to purchase coal from Makhado, MC Mining will require additional buyers to ensure the long-term viability of its largest project. Finding buyers will become increasingly difficult as climate activism threatens production, the rise of renewables destroys demand, and the future of coal pricing in South Africa comes under pressure.⁶⁷

⁵⁹ Snyman et al., *Changing Corporate Behaviour: The Mapungubwe Case Study*, 38.

⁶⁰ Snyman et al., *Changing Corporate Behaviour: The Mapungubwe Case Study*, 45.

⁶¹ Snyman and Krause, interview.

⁶² "Coal of Africa officially rebrands as MC Mining." (Australia: Proactive, 2017), Online.

<https://www.proactiveinvestors.co.uk/companies/news/308410/coal-of-africa-officially-rebrands-as-mc-mining-8410.html>.

⁶³ The company has declared losses as both Coal of Africa Limited and MC Mining Limited in 2016, 2017, 2018, 2019, and 2020.

⁶⁴ MC Mining Limited, *Annual Report 2020*, 80-81; MC Mining Limited, *Annual Report 2018* (2018), 62; Coal of Africa Limited, *Annual Report 2016* (2016), 96.

⁶⁵ Webb, *Coal Report 2021: What is the future of coal?*, 17. 7

⁶⁶ CER, "Full Disclosure 2016: The Truth About Corporate Environmental Compliance in South Africa, Coal of Africa Limited."

⁶⁷ Webb, *Coal Report 2021: What is the future of coal?*, 22.

⁶⁷ Webb, *Coal Report 2021: What is the future of coal?*, 32.

Box 4: The IDC's Investment in ArcelorMittal

Due to heavy reliance on coal in its steelmaking operations, ArcelorMittal is the third highest emitter of greenhouse gases in South Africa.⁶⁸ In addition, the company has failed to comply with various environmental laws, and the government's annual National Environmental Compliance Reports have repeatedly listed ArcelorMittal for numerous environmental transgressions at its Vanderbijlpark Works.

Further reading: Full Disclosure: ArcelorMittal South Africa Ltd. Fact Sheet May 2019, Centre for Environmental Rights

ArcelorMittal has run into significant challenges around demand for its steel. The company has not performed well in recent years, declaring shrinking revenues and losses over the last two years.⁶⁹ ArcelorMittal's auditors have raised concern about the company's ability to continue as a going concern, and solvency and liquidity remain the company's most critical and likely risk.⁷⁰

It is highly indebted and, on its balance sheet, ArcelorMittal's liabilities are significant.⁷¹ Moreover, its high carbon emissions and persistent environmental violations expose the firm to long-term climate-related physical and transitional risks that threaten to exacerbate its financial problems.⁷²

The IDC is a significant investor in ArcelorMittal's South African operations.⁷³ The off-take agreement between MC Mining and ArcelorMittal for a significant portion of the coal produced by the Makhado Project has an important bearing on the viability of the IDC's investments in both firms. ArcelorMittal's agreement to purchase coal from MC Mining increases the attractiveness of the Makhado Project for the IDC. However, from a due-diligence perspective, the IDC's investment in MC Mining and ArcelorMittal as off-taker signifies its readiness to entrench its exposure to social and environmentally harmful activities.

⁶⁸ CER, "Full Disclosure 5: The truth about South African banks' and companies' ability to identify and address climate risks - ArcelorMittal South Africa," (2019). <https://fulldisclosure.cer.org.za/2019/companies/arcelormittal-south-africa-amsa>.

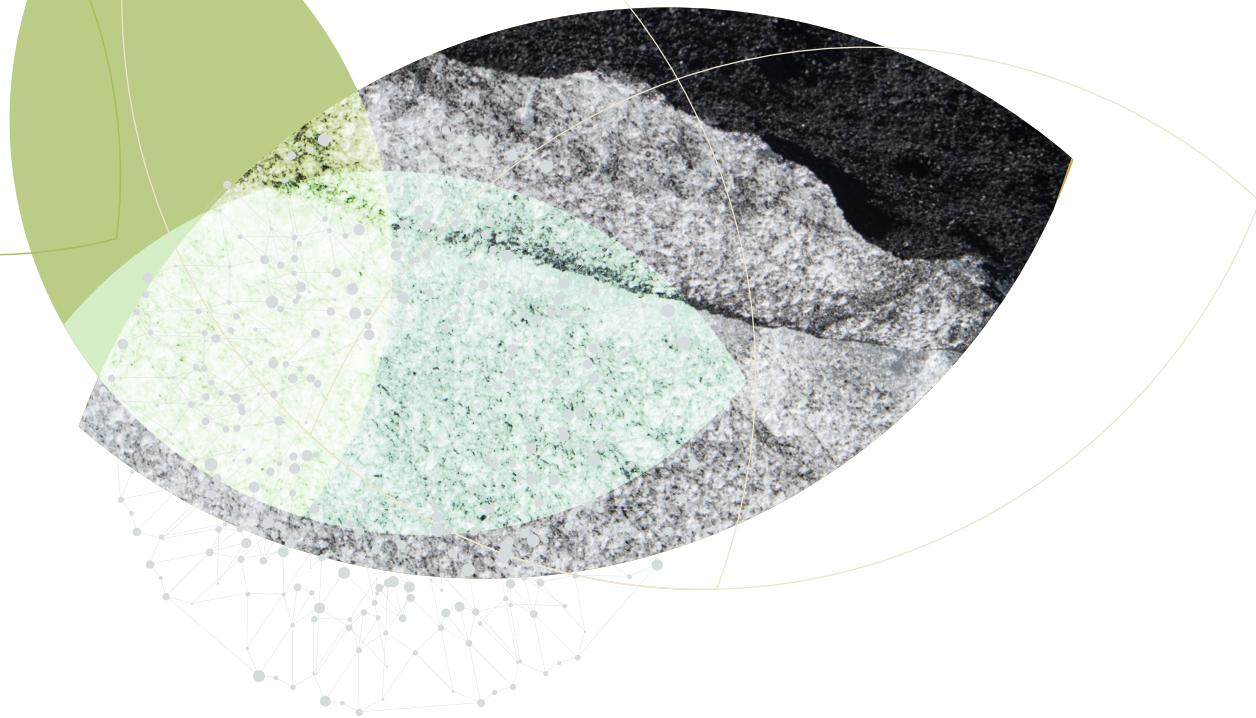
⁶⁹ ArcelorMittal South Africa Limited, *Audited annual financial statements 2020* (2021), 12; ArcelorMittal South Africa Limited, "Integrated report 2020," (2021), 21.

⁷⁰ ArcelorMittal South Africa Limited, "Integrated report 2020," 13.

⁷¹ ArcelorMittal South Africa Limited, *Audited annual financial statements 2020*, 6.

⁷² CER, "Full Disclosure 5: The truth about South African banks' and companies' ability to identify and address climate risks - ArcelorMittal South Africa."

⁷³ The IDC holds 8.18% of issued share capital in ArcelorMittal SA, ArcelorMittal South Africa Limited, *Audited annual financial statements 2020*, 11.



5.3. MC Mining's Reliance on the Musina-Makhado Special Economic Zone

MC Mining's best long-term prospects are to sell its coal to industries located within the proposed Musina-Makhado Special Economic Zone (MMSEZ). MC Mining has confirmed that the development of the energy and metallurgical zone at MMSEZ will provide the impetus required to bring the Vele Colliery out of care and maintenance.⁷⁴ The Special Economic Zone (SEZ) is located adjacent to the Soutpansberg Coalfields and could also potentially serve as a large purchaser of coal from the Makhado project as well as the Greater Soutpansberg Project.⁷⁵

The SEZ is planned to consist of two clusters. A 3,500-hectare stretch comprising a light-industrial and agro-processing zone and an initially proposed 8,022-hectare energy and metallurgical zone. Its energy and metallurgical cluster was set to house a 3,500MW thermal power plant as well as a coking plant, ferrochrome plant, ferromanganese plant, ferrosilicon plant, pig iron metallurgy plant, steel plant, stainless steel plant, and lime plant. The industries are highly reliant on thermal and coking coal.

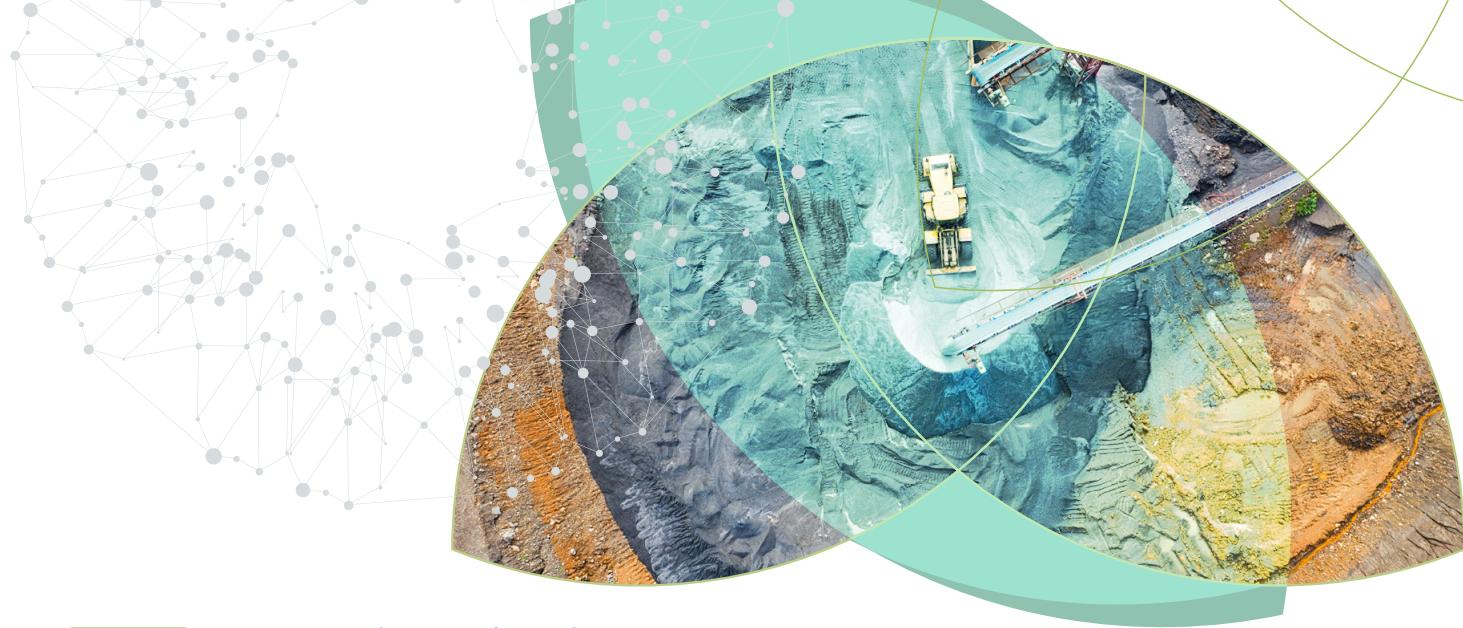
Currently, the SEZ is in the early stages of development. Many organisations that have previously opposed MC Mining's Vele and Makhado operations are now similarly challenging the Musina-Makhado project. Opposition to the environmental authorisation process for the SEZ centres around the cumulative social and environmental challenges posed by the planned industrial development, and these interested and affected parties have already won some notable concessions.

Following opposition, the final Environmental Impact Assessment (EIA) report by the Environmental Assessment Practitioner (EAP) provided no clear green light for the project. Instead, it highlighted that the social and environmental impacts outweigh the economic benefits (see Box 5). The operator of the SEZ subsequently agreed to reduce the size of the zone from 8,000 hectares to 3,500 hectares, and the capacity of the proposed thermal coal power plant has been revised down from 3,500MW to 1,320 MW.⁷⁶ However, further successful opposition to the SEZ would reduce the prospects of bringing the Vele Colliery online.

⁷⁴ MC Mining Limited, *Annual Report 2020*, 7.

⁷⁵ MC Mining Limited, "Announcement: Mopane Mining Right Granted."

⁷⁶ Lisa Thompson, Hazel Shirinda, and Meshack Mbangula, "Is the MMSEZ now a sustainable mini mega-Project?", *Mail and Guardian*, 12 May 2021 2021, Opinion, <https://mg.co.za/opinion/2021-05-12-musina-makhado-metallurgical-zone-revision-a-back-peddle-or-a-back-door/>.



Box 5: The IDC's Role in Financing MMSEZ

Special economic zones (SEZs) are a valuable tool of industrial policy that could attract foreign direct investment (FDI) to support South Africa's economic growth through industrial development, investment, improvements in competitiveness, and employment creation. According to the UN's 2030 Agenda and SDGs, SEZs could bolster trade and investment, which are crucial levers for realising sustainable development.

The IDC has a critical role in financing the companies and projects located within SEZs in South Africa. Sponsoring both local and foreign companies' operations and SEZ activities aligns with the objects set out for the bank under the IDC Act to finance new industries and industrial undertakings and leverage FDI for South Africa.

The IDC is essential for the rollout and regulation of SEZs in South Africa. It is the only South African DFI required under the Special Economic Zone Act to nominate a national SEZ Advisory Board representative. Further, the DTI has set up a Project Management Unit (PMU) within the IDC to coordinate investment into industrial parks and SEZs. The PMU is to collaborate and coordinate with the IDC, taking advantage of the IDC's processes and capabilities to investigate the viability of potential projects.

Both the provincial and national governments have highlighted the IDCs role in supporting industrial undertakings within the Musina-Makhado SEZ (MMSEZ) or in connection with the MMSEZ development. The project has received

over US\$10 billion in FDI commitments, with several indications that the government could use the SEZ to develop Sino-South African relations at the diplomatic level.

However, the impacts of the MMSEZ development are both socially and environmentally unsustainable. The Environmental Impact Assessment (EIA) for the site clearing of energy and metallurgical zone indicates that "the potential negative impacts of the development in the natural, tourism, and agricultural environment of the site and region *may in all likelihood outweigh the identified positive impacts associated with the potential social and economic development benefits in the longer term.*"

The IDC's Responsible Investment Policy requires it to consider an EIA. However, the policy does not state that the IDC will not invest in activities where the cumulative negative environmental impacts outweigh the economic benefits. The IDC's Responsible Investment Policy does not specify detailed criteria under which it will not invest. So it is possible that the IDC could be compelled to invest in activities in MMSEZ or the region even though the cumulative environmental and social harm exceeds the benefits of the investment.

Given its influential position, the IDC policies and processes must be transparent. The IDC must also ensure that industrial development through SEZs is socially and environmentally sustainable so as to support sustainable development.

MC Mining's activities in Limpopo, located near the Vhembe Biosphere and Mapungubwe World Heritage Site, have been and continue to be vehemently opposed by civil society and local communities. Resultant reputational damage, enforcement action, and litigation have historically affected the value of MC Mining Limited and could similarly impact the feasibility of its off-takers in future. The IDC should have considered these factors when deciding to grant MC Mining a loan as they threaten the value of the investment and the company's ability to repay. However, due to a lack of transparency in the IDC's decision-making criteria, it is unclear that the IDC's policies and due diligence processes assign these risks adequate weight.

6. Environmental and Social Risks

Should MC Mining's projects go ahead as planned, the cumulative impacts of mining and industrial activities supported by the IDC and its investments could devastate the Soutpansberg area. MC Mining's operations will encroach on vast swathes of land and consume massive volumes of water in this water-scarce region. Clearing the land to make way for mining developments will lead to the destruction of biodiversity and impact local communities' heritage.

6.1 Heritage

The Vele coal mine has already threatened the integrity and authenticity of the Mapungubwe Cultural Landscape, which was inscribed on the list of UNESCO World Heritage Sites in 2003. The Mapungubwe Cultural Landscape includes the remains of an important inland settlement in Southern Africa, developed between 900-1300 A.D., where inhabitants traded ivory and gold with Swahili towns located near the Indian Ocean.⁷⁷

According to the Endangered Wildlife Trust, "A point of commonality amongst the descendants of Mapungubwe is a deeply-held view that they have a status that is distinct from other stakeholders and which needs to be respected by government, the private sector and all role players in the area. Community representatives have contrasted the often-transient relationship of some other stakeholders in the area and the permanent and spiritual connection of their descendants. They assert their right to be included in all decision-making concerning the development of the World Heritage Site and its surroundings."⁷⁸

For local communities, an important aspect is the heritage impact on sacred sites (*zwifho*). The Mudimeli and Mulwambwane communities, most of whom follow the VhaVenda traditions, have described how, spiritually and culturally, herbs and rituals are attached to the land and environment. Land clearing for mining and industrial activities directly threatens sacred sites and spiritual and cultural practices.⁷⁹

"The landscape forms the bowl of life to us as a people. These projects threaten the journey of self-actualisation of the community. They threaten the natural springs, the herbs, the trees, and indigenous knowledge. If these projects come in, they threaten these aspects. They are going to kill us as a people, because we are going to lose what makes us us."

David Tshidzumba, Save Our Limpopo Valley and Environment (SOLVE)

⁷⁷ Endangered Wildlife Trust, "The Endangered Wildlife Trust's Objection to the Proposed Musina-Makhado Special Economic Zone and Comments on the Musina-Makhado Special Economic Zone Draft Environmental Impact Assessment," (22 October 2020 2020), Letter.

⁷⁸ Endangered Wildlife Trust, "The Endangered Wildlife Trust's Objection to the Proposed Musina-Makhado Special Economic Zone and Comments on the Musina-Makhado Special Economic Zone Draft Environmental Impact Assessment."

⁷⁹ Community Leaders, "Interview with Community Based Organisations," interview by Daiyan Halim and Leanne Govindsamy, *Corporate Accountability and Transparency Programme*, 22 April 2021, 2021.



6.2 Water

A critical factor to be considered is the risk posed to the long-term availability of water resources.⁸⁰ South Africa is a water-scarce country, and water within the Limpopo region is fully allocated. Drought has already affected commercial agricultural production of mangoes, macadamias and avocados in Tzaneen and other areas.⁸¹ Rural communities are most at risk due to constrained water supply. However, the impacts of water shortages are likely to extend far beyond the Limpopo province. Due to climate change and insufficient capacity to meet current demand, water shortfalls in the catchment area are expected to affect downstream users in Gauteng, parts of Botswana, and Zimbabwe.⁸²

An MC Mining sample pit for the Makhado project has already lowered the water table and dried up some of the boreholes accessed by the Mudimeli community. Members of this community are required to buy water for daily tasks, with women being disproportionately affected.⁸³ The water impacts of these mining and industrial developments further affect local cultural and spiritual traditions. In an interview with CER, Tshiwela, Chairperson of the Mulwambwane Women's Community League, explained that "the issue affects us as a people because our lives are intertwined with the environment. We are not only concerned about water shortages but cultural perspectives."

Challenges in accessing water are likely to be exacerbated if mining activities are expanded, affecting commercial farmers, food production and livelihoods. Due to its influence on water supplies, the establishment of mining activities has the potential to negatively impact 689,000 hectares of livestock and wildfire grazing fields, according to the draft Environmental Impact Assessment (EIA) for the energy and metallurgical zone.⁸⁴ Local mopane worm farming and baobab harvesting are similarly affected.

6.3 Biodiversity

Portions of the proposed coal mines fall within Critical Biodiversity Areas under the South African National Biodiversity Institute's (SANBI) National Biodiversity Priority Areas, the Vhembe Biosphere Reserve, several nature reserves, and the Mapungubwe National Park.⁸⁵ The Vhembe Biosphere Reserve was designated a UNESCO Biosphere Reserve in 2009. It is the largest biosphere reserve in South Africa, covering an area of 30 701km. According to the biosphere zonation plan, MC Mining's Makhado mine falls within a portion of a Core Area and Buffer Zone within the Vhembe Biosphere Reserve.⁸⁶

⁸⁰ Delta BEC, *Musina-Makhado Special Economic Zone Designated Site - Environmental Impact Assessment Report - Draft Report Revision 00* (September 2020), 117.

⁸¹ Endangered Wildlife Trust, "The Endangered Wildlife Trust's Objection to the Proposed Musina-Makhado Special Economic Zone and Comments on the Musina-Makhado Special Economic Zone Draft Environmental Impact Assessment," 11.

⁸² Endangered Wildlife Trust, "The Endangered Wildlife Trust's Objection to the Proposed Musina-Makhado Special Economic Zone and Comments on the Musina-Makhado Special Economic Zone Draft Environmental Impact Assessment," 11.

⁸³ Victor Munnik, *Water risks of coal driven mega projects in Limpopo: the MCWAP and the EMSEZ* (May 2020 2020).

⁸⁴ Delta BEC, *Musina-Makhado Special Economic Zone Designated Site - Environmental Impact Assessment Report - Draft Report Revision 00*, 796.

⁸⁵ Endangered Wildlife Trust, "The Endangered Wildlife Trust's Objection to the Proposed Musina-Makhado Special Economic Zone and Comments on the Musina-Makhado Special Economic Zone Draft Environmental Impact Assessment," 9.

⁸⁶ Vhembe Biosphere Reserve, "Response by the Vhembe Biosphere Reserve on the Draft EIA Report for the proposed Musina-Makhado SEZ site clearance and township development," (2020).



Vhembe District

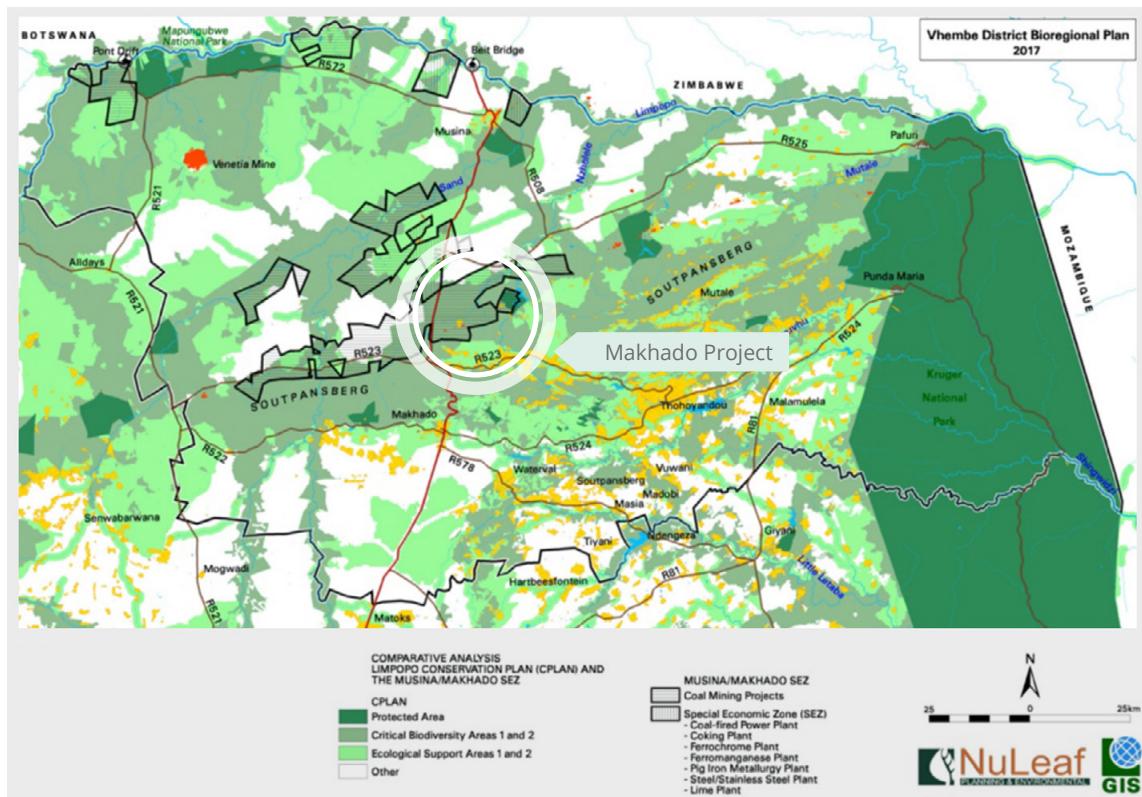


Figure 2: Vhembe District Bioregional Plan ⁸⁷

The Reserve submitted objections to the draft EIA for the energy and metallurgical zone at MMSEZ highlighting that both areas are environmentally sensitive. A mine located in the area would contravene UNESCO's guidelines. The Vhembe Biosphere Reserve argues that mining should not go ahead, acknowledging that this could impact the coal-fired power plant's feasibility.⁸⁸ If all coal-bearing areas in the region are mined, these activities could destroy up to 26% of the surface area of the Vhembe Biosphere Reserve.⁸⁹

⁸⁷ Vhembe Biosphere Reserve, "Response by the Vhembe Biosphere Reserve on the Draft EIA Report for the proposed Musina-Makhado SEZ site clearance and township development."

⁸⁸ Vhembe Biosphere Reserve, "Response by the Vhembe Biosphere Reserve on the Draft EIA Report for the proposed Musina-Makhado SEZ site clearance and township development."

⁸⁹ Endangered Wildlife Trust, "The Endangered Wildlife Trust's Objection to the Proposed Musina-Makhado Special Economic Zone and Comments on the Musina-Makhado Special Economic Zone Draft Environmental Impact Assessment," 11.

6.4 Climate Change

Mining is responsible for between 4-7% of global CO₂ emissions, while coal combustion accounts for 40% of emissions and remains the single highest contributor to climate change.⁹⁰

South Africa is home to some of the most carbon-intensive power and industrial sectors globally. It ranks 12th for its overall emissions due to a heavy reliance on coal for energy.⁹¹

Coal mined by MC Mining will ultimately increase the country's greenhouse gas emissions – through its own operations and, more significantly, through the burning of coal for power and heavy industries. Coking or metallurgical coal mined at Makhado and Vele is required for industrial purposes and could serve as a crucial input for metallurgical industries situated within MMSEZ. The hard coking coal of the type mined at Makhado is utilised as a reductant in steel production and is therefore suitable for supply to ArcelorMittal South Africa.

Globally, the steel industry contributes between 7-9% of direct CO₂ emissions. In South Africa, ArcelorMittal alone is responsible for approximately 14.82 MtCO₂e in direct and indirect emissions – representing 2.81% of the country's total emissions in 2019.⁹² If MC Mining supplies coal to MMSEZ, the emissions from the planned thermal coal-fired power plant and

heavy industrial and metallurgical activities are likely to exacerbate South Africa's contribution to global warming and climate change.⁹³

Of particular concern is the planned construction of the thermal coal-fired plant at MMSEZ, which was estimated to increase South Africa's emissions by 3%.⁹⁴ The draft EIA for the energy and metallurgical zone notes that the thermal coal-fired plant should only be built where all other alternatives have been investigated, and carbon capture and storage technology is available. The report states that such technology is prohibitive and practically not feasible due to financial and geographical constraints.⁹⁵

In addition, the ferrochrome, ferromanganese, ferro-silicon, steel, stainless steel, and lime plants are expected to generate significant carbon dioxide and other greenhouse gas emissions. A Climate Change Impact Assessment for the energy and metallurgical zone at MMSEZ indicates that the emissions from the cluster are estimated to cause South Africa to exceed its Nationally Determined Contributions (NDC) under the Paris Agreement by 10%. The draft EIA estimates that the total emissions from the development are expected to constitute between 11%-16% of South Africa's total carbon budget.⁹⁶

⁹⁰ Michael Jakob et al., "The future of coal in a carbon-constrained climate," *Nature Climate Change* 10 (2020); Lindsay Delevigne et al., "Climate risk and decarbonization: What every mining CEO needs to know," (2020), Article. <https://www.mckinsey.com/business-functions/sustainability/our-insights/climate-risk-and-decarbonization-what-every-mining-ceo-needs-to-know>.

⁹¹ Global Carbon Project, "Global Carbon Atlas," (Fondation BNP Paribas, 2020).

⁹² CER, "Full Disclosure 5: The truth about South African banks' and companies' ability to identify and address climate risks - ArcelorMittal South Africa."

⁹³ Richard Worthington, "Expert opinion regarding the coal component of the Musina Makhado SEZ," (2020).

⁹⁴ Worthington, "Expert opinion regarding the coal component of the Musina Makhado SEZ."

⁹⁵ See CER, "Objections to the Draft Environmental Impact Assessment Report of the Proposed Musina-Makhado Special Economic Zone, located within the Vhembe District Municipality of the Limpopo Province," (Centre for Environmental Rights, 22 October 2020 2020), Letter; Worthington, "Expert opinion regarding the coal component of the Musina Makhado SEZ."

⁹⁶ CER, "Objections to the Draft Environmental Impact Assessment Report of the Proposed Musina-Makhado Special Economic Zone, located within the Vhembe District Municipality of the Limpopo Province."



7. Conclusion

As a state-owned DFI, the IDC does not operate for the sake of generating profit for private interests. Its statutory mandate is to ensure industrial development and economic growth for the benefit of all South Africans. Both the IDC's Responsible Investment Policy and the South African Constitution recognise that development must be sustainable – not only for the present but for the sake of future generations. Supporting sustainable development requires the IDC to consider three dimensions – economic, social, and environmental. Despite this, the IDC Act requires that only economic considerations be taken into account in the IDC's investment decisions. As a result, social and environmental factors might be ignored or afforded insufficient weight and sustainable development not realised.

Further, contradictory government policies and political pressure encourage investments in fossil-fuel-related industries and industrial undertakings at a time when investment is urgently required for climate mitigation and adaptation. Given the vital role that the IDC plays in supporting development, such investment

eschews the Constitutional imperative to protect the environment for the benefit of the future. It sets South Africa on an environmentally destructive and climate-harmful path.

As a consequence of legislative, public policy, and political dynamics, the IDCs finance and investment policies and due diligence criteria are either lacking or not open to public scrutiny or engagement. It is clear from the assessment of the Responsible Investment Policy that its content is wholly insufficient to give effect to critical international social, environmental, and human rights standards. In the present case, the policy would have required MC Mining to provide the IDC with an Environmental Impact Assessment in order to avoid exclusion of the Makhado Project from funding. However, it does not state under what conditions the social and environmental impacts would be unacceptable.

Its due diligence process, which does take social and environmental factors into account, is insufficient to prevent investment in unsustainable activities that lead to social, climate, and environmental harm. Alternatively, the IDC's policies and due diligence processes do not consider the investment in MC Mining harmful.

Unanswered questions:

- Did the IDC consider the climate, social, and environmental impacts of mining and the MMSEZ development?
- Did it consider the impacts of climate change and water scarcity in the region?
- Did it consider the effects of mining on the heritage of surrounding communities?
- If it did consider these aspects, what weight did it assign to them relative to other factors?
- On what basis did it decide that the benefits of its investment in MC Mining outweighed the harm?
- How much harm needs to occur before the IDC will decide not to invest?

These and other questions cannot be answered without detailed disclosure of the criteria considered in IDC's due diligence processes and which should be set out in its finance and investment policies.



MC Mining has a well-known history of social and environmental harm, and the impact of that harm has affected the firm's financial and operational context. When making its investment decision, these factors should have been considered as part of the IDC's due diligence process.

In the absence of transparent policies and processes that respect social, environmental, and human rights standards, the harm and risks of such investment are seemingly ignored. Consequently, the IDC's investment in MC Mining exposes public funds to coal mining activities that have threatened the integrity and authenticity of a UNESCO World Heritage Site, affected the rights of indigenous people to practice their rituals and traditions, lowered the water table and dried up boreholes in a water scarce area, destroyed the surface area of a

protected biosphere, and threatened to exacerbate South Africa's contribution to global warming and climate change.

Moreover, the IDC's investment in MC Mining does not appear to depart from usual practice. On the contrary, it entrenches its exposure to fossil-fuel related activities. The IDC is one of the largest investors in ArcelorMittal – a potential buyer of MC Mining's coal and the third highest emitter of greenhouse gasses in the country. The IDC is also set to invest in an SEZ that exacerbates the social and environmental harm in the Makhado region and threatens to devour as much as 16% of South Africa's carbon budget.

By failing to make the criteria with which it assesses its investments publicly available, and by failing to disclose the metrics and targets used to evaluate companies' social and environmental performance, the IDC has limited the public's ability to scrutinise the sustainability of its investment decisions – which are ostensibly made to benefit all South Africans. This failure exposes South Africa's future to the risks of social, environmental, and climate harm.

Its investment in MC Mining is indicative of the IDC's willingness to invest public funds in projects with high environmental, climate, and social impacts without being held to account through public scrutiny. Not only does the IDC fail to support the realisation of sustainable development through this investment, but it continues to hide its decision-making processes from the public that it is designed to serve.



8. Recommendations

-  The purpose of the IDC as set out in the long title of the IDC Act and the corporation's objects determined by section 3 of the IDC Act should be reviewed and amended to align the IDC's industrial development objectives with the goal of securing ecologically sustainable development. The instruments establishing the African Development Bank (AfDB) and Development Bank of Southern Africa (DBSA) might serve as examples. Article 1 of the Agreement Establishing the African Development Bank states that "the purpose of the Bank shall be to contribute to the sustainable economic development and social progress." The long title of the DBSA Act states that the DBSA is constituted to mobilise financial and other resources "for sustainable development projects and programmes," among other objects. Similar provisions applied to the IDC could, for example, see section 3(b) of the Act amended to state that "*sustainable* industrial development ... be planned, expedited, and conducted on sound business principles." An additional objective could be included under section 3, namely "to promote the development of ecologically sustainable industries and industrial undertakings and the adaptation of existing industries and industrial undertakings and to enhance sustainability". To this end, the Portfolio Committee on Trade and Industry could play a leading role in initiating a review process towards formulating an amendment bill for public debate.
-  Section 5 of the IDC Act, which limits the considerations that the IDC must apply when dealing with proposals or applications to only their economic merits, must be interpreted in a manner that is consistent with the Constitution and other legislation. Such an interpretation should be reflected by the formulation of new finance and investment policies to guide both the IDC and its financial intermediaries' investment decisions and the conduct of the companies it directly and indirectly funds. These policies would necessarily require the IDC to consider factors in addition to economic merit, with precedent for such a practice demonstrated, albeit inadequately, through the IDC's existing policies such as the Responsible Investment Policy.
-  The IDC's finance and investment policies must reflect the objective of securing ecologically sustainable industrial development that protects the environment for the benefit of present and future generations, consistent with section 24 of the Constitution. They must, in general, be compatible with all rights contained in the Bill of Rights and South African legislation such as National Environment Management Act (NEMA). They should also be aligned with international social, environmental, and human rights standards that are consistent with realising the UN SDGs, the Paris Agreement, UN Guiding Principles on Business and Human Rights, the Equator Principles, conventions and recommendations of the International Labour Organisation, as well as other international treaties and obligations to which South Africa has committed concerning the protection, promotion, and realisation of social, environmental, climate, and human rights standards. Although the IDC recognises that its activities contribute to the achievement of the SDGs and refers to the Global Reporting Initiatives (GRI) and the UNEP Finance Initiative (UNEP FI) Principles for Responsible Banking that apply to its reporting, it should firmly commit to achieving international standards and ensure that the realisation of Constitutional rights is more fully integrated into its decision-making and strategies. Specifically, but not exhaustively, the finance and investment policies of the IDC should support the realisation of sustainable industrial development and a just transition to a low-carbon economy. These policies should exclude further funding of coal mining and coal-fired power and provide criteria that support the rapid phasing out of coal mining and coal-fired power and a reduction in greenhouse gas emissions.

References applicable to the recommendations are set out in the bibliography and are not contained in footnotes.



Government, particularly the Department of Trade and Industry, should take steps to align all of its industrial policy around the common goal of realising ecologically sustainable development consistent with the Constitution, the National Development Plan, and South Africa's international commitments. While the government is primarily responsible for national policy formulation, the IDC can play an essential role in influencing the government's public and industrial policy-making. The IDC could, for instance, utilise its position on the SEZ Advisory Board to encourage the adoption of policies and regulations for SEZs that align with international social, environmental, climate, and human rights standards. In addition, the IDC's direct relationships with companies and financial intermediaries provide the corporation with unique insights into the financial risks and harm associated with environmental degradation and climate change that could be useful in advising the Department of Trade and Industry on sustainable development finance practices.



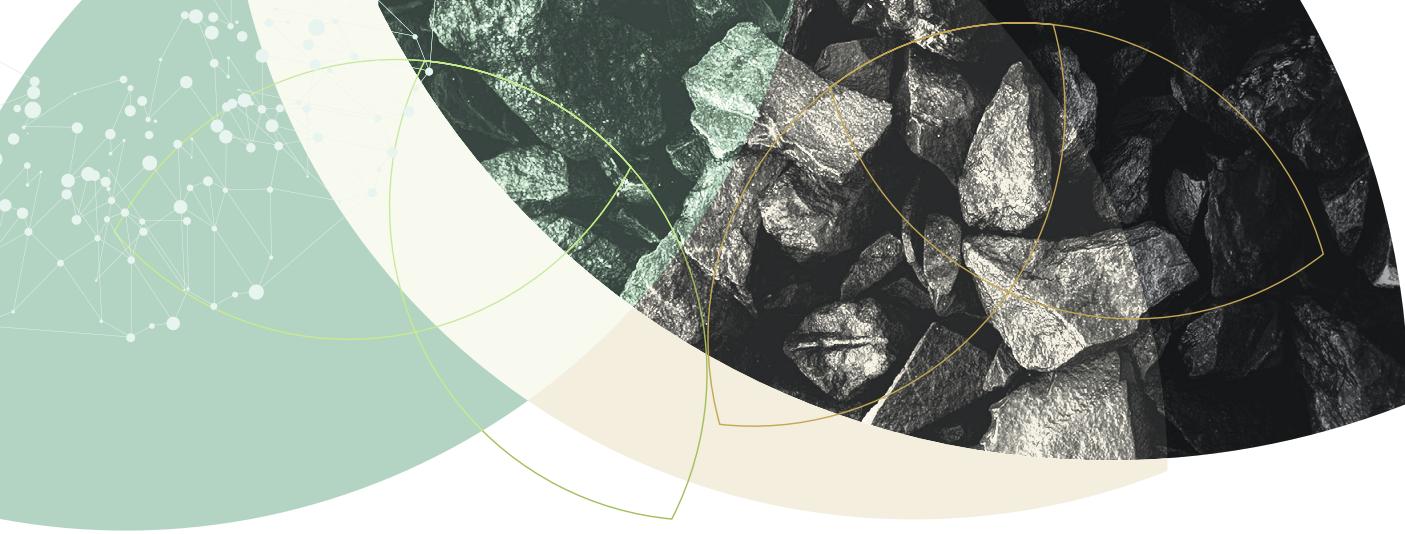
Vigilance and oversight are required to ensure that the IDC's investments adequately consider social and environmental impacts. The IDC must afford these impacts fair weight relative to other considerations in the investment decision. Relevant portfolio committees in Parliament, such as the Portfolio Committees on Trade and Investment, Environment, Forestry and Fisheries, and Economic Development, should interrogate the IDC's specific activities during parliamentary briefings and ad hoc sittings to ensure that social, environmental, and climate-related impacts are adequately considered in the IDC's policies, due diligence processes, and large investments.



To enable oversight, the IDC's investment policies and decisions must be transparent and consistent with the right of access to information under section 32 of the Constitution and the Promotion of Access to Information Act (PAIA). The IDC should follow a transparent and collaborative approach in developing finance and investment policies in which all stakeholders are included. Trade unions, civil society, industry bodies, and academia should be consulted in the formulation of policies. Further, the IDC must make its finance and investment policies and the criteria considered in its due diligence processes publicly available to enable its clients to understand their obligations and for the public to hold the IDC and its clients to account. South Africans, individually and through Parliament, trade unions, civil society, political parties, academia, and industry bodies, must be allowed access to documents that enable them to interrogate and assess the use of public funds. The IDC should facilitate access by making documents (including policies, practices, due diligence criteria; the details of fund beneficiaries and the terms of their agreements; environmental and social impact assessments; and ongoing monitoring reports) publicly accessible online or at its offices, without the need to file a request under PAIA.



The IDC should report on and reduce its exposure to carbon-intensive industries and the physical and transitional risks it faces through its investments. A strategy to reduce exposure to carbon-intensive sectors should include funding climate mitigation and adaptation programmes of heavy industry. In the present case, the IDC could, for example, use its shareholding in ArcelorMittal South Africa to encourage the steel-maker to accelerate research and development into the use of hydrogen technology in its processes to reduce reliance on coal. Financing the adaptation of ArcelorMittal's production process instead of investment in MC Mining's coking coal mine offers a better use of public funds that aligns with the need to secure sustainable industrial development. Furthermore, the IDC should require its intermediaries and the companies it finances or invests in to report on their carbon emissions, exposure to high carbon-emitting industries, and their strategies to reduce emissions and exposure. The internationally accepted reporting framework set out in the Taskforce on Climate-related Financial Disclosures (TCFD) Recommendations should be used by the IDC, its financial intermediaries, and beneficiaries for reporting.



Acronyms and Abbreviations

AfDB	African Development Bank
CBO	Community Based Organisation
CER	Centre for Environmental Rights
CoAL	Coal of Africa Limited
DBSA	Development Bank of Southern Africa
DEFF	Department of Environment Forestry and Fisheries
DFI	Development Finance Institution
EAP	Environmental Assessment Practitioner
EGS	Environmental Goods and Services
EIA	Environmental Impact Assessment
EMC	Environmental Management Committee
EWT	Endangered Wildlife Trust
FDI	Foreign Direct Investment
GRI	Global Reporting Initiative
IDC	Industrial Development Corporation
IPAP	Industrial Policy Action Plan
MMSEZ	Musina-Makhado Special Economic Zone
NDC	Nationally Determined Contributions
NDP	National Development Plan
NGP	New Growth Path
NGO	Non-governmental organisation
PMU	Project Management Unit
SANBI	South African National Biodiversity Institute
SDGs	Sustainable Development Goals
SEZ	Special Economic Zone
SOLVE	Save Our Limpopo Valley Environment
TCFD	Taskforce on Climate Related Financial Disclosures
UN	United Nations
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization

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Telephone: +27 21 447 1647

Email: info@cer.org.za

Physical address - Cape Town:

Second Floor, Springtime Studios, 1 Scott Road, Observatory,
Cape Town

Physical address - Johannesburg:

2 Sherwood Road, Forest Town, Johannesburg, 2193

Postal address:

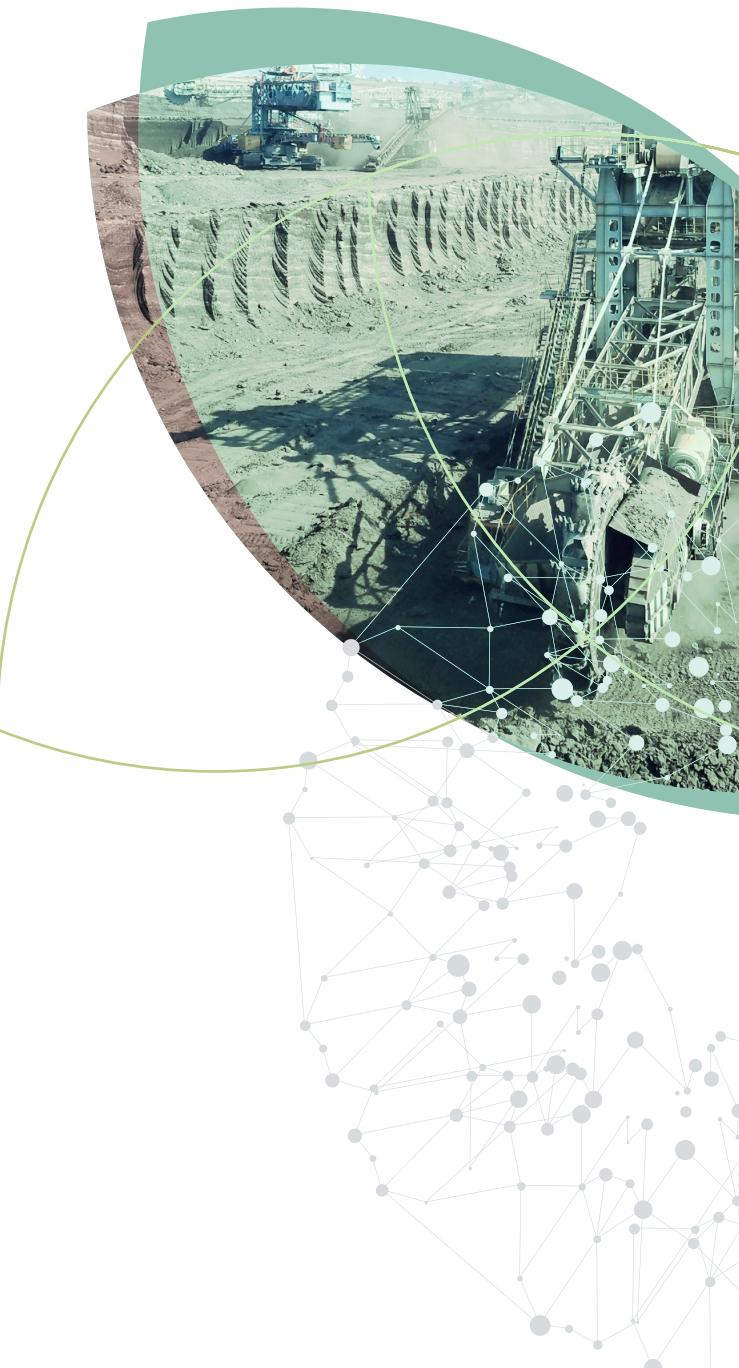
Second Floor, Springtime Studios, 1 Scott Road,
Observatory, Cape Town, 7925

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Website: <https://www.cer.org.za>



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Author:

Daiyaan Halim

Edited and Reviewed by:

Leanne Govindsamy

Melissa Fourie

Layout and Design by:

Brendan Chidrawi - Creativlab

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