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TO: The Chief-Director: Department of Transport

ATTN: Ms. Valerie Carelse

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**RE: COMMENTS ON THE MARINE POLLUTION (PREVENTION OF POLLUTION
FROM SHIPS) AMENDMENT BILL (B5-2022).**

NATURAL JUSTICE COMMENTARY ON THE MARINE POLLUTION (PREVENTION OF POLLUTION FROM SHIPS) AMENDMENT BILL (B5-2022) GAZETTED NO. 45300 OF 11/OCT/2021.
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PART 1: INTRODUCTION

1. We submit to the Department of Transport the following comments pertaining to the gazetted *Marine Pollution (Prevention of Pollution from Ships) Amendment Bill* (the Bill), called for comments on 14/SEP/2022.
2. The Bill seeks to amend the 1986 Marine Pollution (Prevention of Pollution from Ships) Act (the Act) in several ways.
3. We extend our gratitude to the Portfolio Committee on Transport for the opportunity to comment on this Notice.
4. This commentary is set out as follows: general comments, specific comments, and the conclusion.

PART 2: NATURAL JUSTICE: Lawyers for Communities and the Environment

5. Natural Justice is a non-profit organization, registered in South Africa in 2007. Our goal is to protect biodiversity and make sustainable use of it by empowering local communities and indigenous peoples to make their own decisions.
6. Our goal is to make it easier for Indigenous peoples and local communities to participate fully and effectively in the formulation and application of laws and policies pertaining to the preservation and traditional uses of biodiversity as well as the protection of related cultural assets.
7. Natural Justice works at the local, national, regional, and international levels with a wide range of partners. In addition to making sure that advancements made in international fora are completely upheld at lower levels, we work to ensure that community rights and duties are reflected and upheld on a larger scale.
8. Natural Justice wishes to submit its comments to the Department of Transport. We further express our request to make a verbal submission or participate in any meaningful engagement with the Department when an opportunity arises.

PART 3: GENERAL COMMENTS

Marine Protection at its Crisis

9. South Africa is currently facing a crisis to protect its marine ecosystem. Marine pollution comes from both discharges from land and ships.

10. According to a United Nations Environment Programme report, South Africa discharges between 90,000 and 250, 000 tonnes of garbage into the ocean every year¹.
11. According to a report, the minimum lifetime cost of pollution produced in 2019 by large ships and common people to South Africa is a startling R885.34 billion, including losses to livelihoods and important economic sectors like fishing and tourism, clean-up expenses for the government, and risks to the population's health.²
12. Marine pollution poses complicated difficulties when compared to land pollution.
13. As a response, South Africa launched a oceans economy programme.
14. Additionally, the 2050 African Integrated Maritime Strategy was endorsed by the African Union (AU) (2050 AIM Strategy).

Challenges with Marine Protections

15. Chemical pollution, plastic pollution, light pollution, noise pollution, and air pollution are all examples of marine pollution. To the mariner, each of these issues, as well as their combination, poses significant challenges to the mariner.
16. In 2007, national and international shipping accounted for 3.3 percent of global carbon dioxide (CO₂) emissions. Emissions from the sector are projected to grow by up to 4% per year over the next decade³.
17. With respect to chemical pollution, there are many thousands of pollutants in the water, and for most of them, the available knowledge is very scarce. Despite the increasing volume of scientific literature addressing cumulative impacts, there is a huge gap in the knowledge of how different pressures may interact, what their resulting effects are, and what conservation and management decisions should be made to protect and restore marine ecosystems.⁴
18. Furthermore, marine pollution is caused by a variety of human activities, including agriculture, coastal tourism and recreation, port and harbor activities, urban and industrial development, mining, fisheries, and aquaculture.

¹ *South Africa aims to stop marine litter at its source*, United Nations Environment Programme. Accessed on October 14, 2022, <https://www.unep.org/news-and-stories/story/south-africa-aims-stop-marine-litter-its-source>

² Mandisa Nyathi, *Government looking to crack down on big ships that pollute the ocean*, Mail and Guardian. Accessed on October 14, 2022, <https://mg.co.za/environment/2022-09-07-government-looking-to-crack-down-on-big-ships-that-pollute-the-ocean/>

³ *International shipping should cut air pollutants and greenhouse gases together*, European Environment Agency (June 21, 2016). Accessed on October 14, 2022, at <https://www.eea.europa.eu/highlights/international-shipping-should-cut-air>.

⁴ L. Airolidi et al, *Marine Pollution - Emerging Issues and Challenges*. Accessed on October 14, 2022, at <https://www.frontiersin.org/research-topics/17385/marine-pollution---emerging-issues-and-challenges>.

19. In addition to polluting the environment, ships, and other vessels also harm wildlife and introduce invasive species through ballast water.
20. The complexity of marine preservation necessitates consideration and top priority from all jurisdictions. Specifically, when South Africa is comprised of a coastal line stretching 1,740 miles (2,800 km).

PART 4: SPECIFIC COMMENTS

Section 4 of the Bill: Amendment of section 3A of Act 2 of 1986, as amended by section 2 of Act 5 of 1998

21. The proposed legislation would increase the maximum fine from R500,000 to R10,000,000 and the maximum sentence from five to ten years in prison. Natural Justice appreciates the Minister for imposing higher liabilities on potential contraveners.
22. According to Natural Justice, the cap should either be raised further or eliminated outright. The Bill seeks to control all potential maritime pollution from any ships that fall under its purview. As a result, the Bill applies to any pollution, even the kind that would require spending billions of Rands to remedy. It is not difficult to conceive that potential contamination could result in losses that would cost more than R 10 million to prevent. According to Natural Justice, the sole sanction clause that doesn't have a cap might effectively discourage and remedy any possible marine pollution.
23. Alternately, Natural Justice argues that the Bill must be more explicit and create a separate offense for persistent disobedience over time if the Minister decides to stick with the R10 million cap. A separate offense occurs when a current offense is continued while a new offense is created.
24. For instance, the Canada Shipping Act, 2001 (S.C. 2001, c. 26), section 191(3), holds a person or a vessel accountable for a distinct offense for each day they violate the law by releasing a pollutant. Natural Justice implores the Minister to enact such rules to effectively reduce any potential contamination brought on by a large-scale discharge of pollutants.
25. Another option is for the Bill to specify a minimal penalty. Considering the magnitude and unknowable effects of all marine pollution, Natural Justice argues that minimal penalties are necessary to have a significant deterrent effect and promote recovery. For instance, section 73 of the Marine Environment Protection Law in the People's Republic of China sets a minimum fine of RMB30,000 (about R 76 000) on a person or a vessel releasing prohibited pollutants.
26. According to Natural Justice, a minimum penalty could adequately address the importance of marine protection, mitigate the unknown impact of all marine pollution, and impose strong deterrence.

Section 5 of the Bill: Insertion of section 3B in Act 2 of 1986

27. To reduce marine pollution, all government departments must work together and coordinate. The municipal departments adjacent to the coastal areas oversee much of the oversight. As a result, the Department of Transportation must coordinate and collaborate with other government agencies. Similarly, the Department of Transportation must collaborate and coordinate with coastal municipalities to reduce marine pollution.

Annex VI Chapter II Regulation 4 Section 6

28. The provision does not define the scope of the power that a nominated surveyor or a recognized organization must carry out corrective actions. Natural Justice contends that the Bill should give the surveyor the authority to detain and remove the vessel from the water immediately.
29. Given South Africa's current environmental crisis and the marine's sensitivity to pollution, the surveyor must be given the authority to stop marine pollution to prioritize marine protection and have a meaningful impact on their duty under the Act.

Annex VI Chapter II Regulation 4 Section 10

30. The current proposed language places a heavy burden on the ship's master or owner to report at the earliest opportunity. While Natural Justice agrees that the master or owner of the ship must report, the Bill should also include police and local authorities as surveyors.
31. Involving the police and local governments would strengthen the country's ability to monitor the marines and respond to any incident or violation of the Act.
32. Neither the Act nor the Bill establishes a central agency to enforce strict compliance regarding marine protection. Unlike environmental conservation on land, which is heavily regulated by the Department of Forestry, Fisheries, and Environment under the National Environmental Management Act 107 of 1998, the Act is primarily concerned with water.
33. A similar example, though not supported by Natural Justice, is the Upstream Petroleum Resources Development Bill's designation of the Petroleum Agency of South Africa (PASA) as the regulatory authority for the upstream petroleum sector.
34. As a result, the proposed regime here resulted in a lack of enforcement by a centralized agency. There is an urgent need to ensure strict and strong compliance with the Act through collaboration with police or local authorities.

Annex VI Chapter II Regulation 7 Section 1

35. In addition to the prescribed languages, the Certificate must also be drafted in local languages in that coastal municipality.
36. South Africa is a country rich in cultural diversity and ethnic diversity.
37. Local languages are included not only to reflect South Africa's true cultural diversity, but also to ensure compliance with the Act at the local level. If local governments are designated as the regulatory authorities, the Certificate must be written in a language that everyone understands.

Annex VI Chapter III Regulation 3 Section 2

38. This provision exempts a ship trial from other provisions in the Annex for up to five years.
39. Natural Justice submits that this exemption is overly broad and is in direct conflict with South Africa's commitment under the Paris Agreement. Under the Paris Agreement, South Africa has pledged to cut carbon emissions by 50%.
40. Potentially, once a ship is exempted from the Annex under section 2(a), the ship could be producing as much emission as desired during the period of the exemption.
41. If any exemptions are granted under this provision, Natural Justice contends that the terms and conditions of the exemption must be made public to boost public trust in government administration. The public has the right to oversee any abuse of exemption.
42. Disclosure of exemptions would also better facilitate enforcement of the Act by informing the public which ships, or vessels are currently exempt.

Annex VI Chapter III Regulation 3 Section 3.1

43. This provision is directly related to the development of upstream petroleum resources. Natural Justice argues that this provision is completely unjustified for a variety of reasons, including a direct contradiction to South Africa's commitment to environmental protection, being overly broad with no limitations, and being unnecessary.
44. The provision exempts from the provisions of this annex the exploration, exploitation, and associated offshore processing of sea-bed mineral resources ("Offshore Mineral Processing"). When combined with the recently passed Upstream Petroleum Resources Development Bill (B13-2021), the South African government's desire to expand the petroleum industry is clear. There is no doubt that the petroleum industry emits a significant amount of CO₂. Further development of the industry would jeopardize South Africa's efforts to reduce carbon emissions in accordance with its Paris Agreement commitment.
45. Unlike the exemption provided in section 2 of Regulation 3, this provision provides an absolute exemption from all restrictions for emissions from offshore mineral processing. The Annex

contains no prohibitions, limitations, oversight, or reporting requirements. Natural Justice claims that the exemption is overly broad and lacks justification. As such, the provision is unnecessary.

46. Finally, Natural Justice asserts that the offshore mineral processing exemption is unnecessary. Considering the country's agenda on energy transition, government policies, including offshore mineral processing, should gradually direct the public away from fossil fuels. Many sources have demonstrated that South Africa has sufficient sustainable energy options to power the country, making further development in the fossil fuel industry unnecessary. An exemption like this is an indirect incentive for the private sector to expand further. As a result, Natural Justice believes that this specific provision should be repealed entirely.

Annex VI Chapter III Regulation 11 Section 1

47. The provisions must ensure that criminals are apprehended. This includes reducing corruption caused by bribery. According to the South African Constitution, the Bill must ensure that justice is fair, equitable, and reasonable.

Annex VI Chapter V Regulation 14 Section 1

48. This provision enables officers of the Administration to inspect a ship in a port or an offshore terminal in South Africa.
49. Natural Justice recommends that the Minister appoint officers of the Administration to all coastal municipalities and provinces.
50. Coastal municipalities and provinces have geographical advantages when it comes to supervising masters or crew who are unfamiliar with critical shipboard procedures for preventing sewage pollution. The designated offer would not have needed to seize or detain the ship because it would have been in a port or an offshore terminal. As a result, the officer would not be given broad authority.

Annex VI Chapter VI Regulations 15 & 16

51. Compliance must be strengthened through the establishment of specialized authorities with critical skills. In South Africa, there is a need for specialized maritime police who can identify, investigate, and arrest perpetrators. A monitoring police force that patrols South Africa's coastal lines and shores is also required.

Memorandum On the Objects of the Marine Pollution (Prevention of Pollution from Ships) Amendment Bill, 2022 (Memorandum) sections 4 and 6.2

52. As indicated in section 4, during the drafting of the Bill, the Minister did not consult any local communities including South Durban communities and Western Coast communities.
53. Natural Justice submits that meaningful consultation with local communities must take place before the Bill can be passed into law.
54. The Bill addresses general marine pollution in the ocean, which undoubtedly has an impact on local communities' traditions and livelihoods. There is no physical barrier between the ocean and the surrounding airspace. Pollution from one source can spread to unexpected places. Marine pollution will have an impact on how local communities use ocean space.
55. As a result, Natural Justice asserts that, contrary to section 6 of the Memorandum, the Bill must be referred to the National House of Traditional Leaders.