



Wes-Kaapse Provinsiale Parlement
Western Cape Provincial Parliament
IPalamente yePhondo IeNtshona Koloni

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Datum
Date
Umhla 12 March 2024

Verwysing
Reference
Isalathiso 11/1/3

NEGOTIATING MANDATE


To: Hon TC Modise , MP
Chairperson: Select Committee on Land Reform,
Environment, Mineral Resources and Energy

Name of Bill: Upstream Petroleum Resources Development Bill

Number of Bill: [B 13B - 2021]

Date of deliberation: 8 March 2024

Vote of Legislature: The Standing Committee on Finance, Economic Opportunities and Tourism, having considered the subject of the Upstream Petroleum Resources Development Bill [B 13B - 2021] (NCOP)(S76) referred to it in terms of Standing Rule 217, confers on the Western Cape's delegation in the NCOP the authority to not support the Bill, and recommends that the Bill be redrafted in its entirety.


Signature

Date: 12 March 2024

**MS CAT MURRAY, MPP
CHAIRPERSON: STANDING COMMITTEE ON FINANCE, ECONOMIC OPPORTUNITIES AND TOURISM**

COMMITTEE REPORT

(Negotiating mandate stage) Report of the Standing Committee on Finance, Economic Opportunities and Tourism on the Upstream Petroleum Resources Development Bill [B 13B - 2021] (NCOP)(S76), dated 8 March 2024, as follows:

The Standing Committee on Finance, Economic Opportunities and Tourism, having considered the subject of the Upstream Petroleum Resources Development Bill [B 13B - 2021] (NCOP)(S76) referred to it in terms of Standing Rule 217, confers on the Western Cape's delegation in the NCOP the authority to not support the Bill, and recommends that the Bill be redrafted in its entirety.

The National Council of Provinces is requested to note the following:

1. Procedural concerns:

1.1 Socio-Economic Impact Assessment System (SEIAS) Integration

- The procedural concern remains that the SEIAS report provided to the Committee is a draft report from December 2019, which may not reflect the latest socio-economic context and that it may point to improper legislative processes being followed.
- The Department of Mineral Resources and Energy (the Department) needs to ensure the final SEIAS is updated, publicly available, and reflects an in-depth analysis of the Bill's impact which was completed in the necessary period.
- This should include an assessment of how the Bill promotes the interests of various groups of black persons and provides evidence for the clause's alignment with the Bill's objectives as stated in clause 2(d).
- The Department must ensure that the SEIAS report informs the legislative process with updated socio-economic impact data, adhering to best practices for transparency and accountability. Any procedural shortcomings must be addressed to reflect compliance with assessment procedures.

1.2 Public Participation Enhancement

- The public commenting process should be strengthened, particularly for underrepresented communities, to ensure a diversity of voices contributes to the policy-making process. This should encompass workshops and hearings beyond formal comment periods. During its public participation process, the Committee received complaints that some communities were consulted but that the National Department did not follow-up with them regarding their concerns about the Bill.
- The turnaround time for the processing of this Bill was very short, given the importance of its content, which put the entire value chain under pressure to process the Bill adequately.
- The Committee also observed the lack of representation in respect of the different major languages in the provinces. Members of the public expressed dissatisfaction that the Bill and presentation on the Bill were presented in English when the majority of the affected

communities were Afrikaans and isiXhosa. As a result, many of the members of the public struggled to understand the Bill.

2. Substantive concerns:

2.1 Definitions in the Bill and Regulations:

- Clause 1: It is not clear whether the definition of “development” is inclusive of “upstream petroleum infrastructure”. The relationship between these two terms should be clarified in the Bill. While the Department's response to the Committee indicated that the term "development" inherently includes "upstream petroleum infrastructure," clarity is needed to eliminate ambiguity. It is proposed that the Bill explicitly defines "upstream petroleum infrastructure" within the context of "development" to ensure comprehensive understanding and to avoid potential misinterpretations that could impact regulatory and compliance matters. This will ensure all stakeholders have a uniform understanding of the terms as they relate to operational and environmental obligations.
- Clause 21: The name of the committee established by section 21 should be revised to exclude "Environmental" to prevent overlap with existing National Environmental Management Act, 1998 (Act 107 of 1998) frameworks and clarify its distinct function.
- Clause 54 and 14: The definition of appraisal and the relevant provision (clause 54) does not clarify whether, or how, the petroleum resources, produced in the process leading to and during the appraisal process, should be managed and disposed of, or whether it can be used for commercial gain. Also, clarity must be provided on the management and disposal of petroleum that is extracted during the exploration phase of applications, especially considering that rights related to the exploration phase can be as long as nine years - see clause 14(2). It is also recommended that regulations be drafted and implemented with the Bill to ensure that inappropriate use and its associated impacts are managed during exploration and appraisal operations. While the commitment to developing regulations is noted, clarity on the immediate implications and management of appraisal outputs is needed. Regulations could be drafted concurrently with the Bill to provide clarity and assurance on the management and commercial use of resources produced during appraisal.
- Clause 84: To ensure the long-term protection of water resources, it is essential to establish a specialised workforce within the Petroleum Agency South Africa for the continuous monitoring of well casings and groundwater conditions. This team should have the authority to enforce accountability and remediation measures when environmental baselines are threatened, as well as to adjust operational practices to prevent long-term environmental degradation. This provision should be added to the Regulations of the Bill.

2.2 Climate Change Mitigation:

- The Department should address the global urgency of climate change by embedding carbon reduction targets within the Bill and strategies for a sustainable energy transition. The Bill should emphasise South Africa's commitment to its international obligations, such as the Paris Agreement, and recognise the necessity for a long-term sustainable energy policy.

- A revision of the Bill is necessary to integrate climate considerations, ensuring alignment with international energy transition goals and the safeguarding of local economic development within a sustainable and environmentally conscious framework.
- Clause 3: To ensure that the Bill aligns with South Africa's climate change commitments and the constitutional mandate for environmental stewardship, Clause 3 should be amended to explicitly state the state's responsibility in the sustainable development and custodianship of petroleum resources. This should include specific provisions for the reduction of greenhouse gas emissions and the assessment of the impact of carbon tax implementation. The amended clause should articulate that environmental considerations, including climate impact assessments, are integral to the granting of any exploration or production rights and must be in compliance with both national commitments and international environmental agreements.

2.3 State Participation Scrutiny:

- The Department should critically evaluate the proposed State Petroleum Company Framework. Advocate for mechanisms that ensure its operations enhance transparency and deter corruption, drawing lessons from the challenges faced by other State-Owned Entities.
- The current clause 34 indicates that the State has a right to a 20% carried interest in petroleum rights, including in both the exploration and production phase. This requirement may be a concern for investors. The committee recommends that this clause be removed from the Bill.

2.4 Black Economic Empowerment Policy Appraisal:

- Black Economic Empowerment (BEE) provisions should be reassessed to prevent deterring investment while promoting broad-based economic empowerment and transformation.
- While ensuring that the country's mineral wealth directly benefits South Africans is an important policy objective, these provisions could deter investors with stipulations that every company applying for mining rights must be owned by a BEE-partner. As such, it is recommended that Clause 31 is removed from the Bill.

2.5 Environmental Legislation Compliance:

- The Department must ensure compliance with the National Environmental Management Act (NEMA), 1998 (Act 107 of 1998) and its regulations, particularly regarding Environmental Impact Assessments (EIAs) and environmental management plans. The Bill should align with NEMA's requirements for conducting EIAs and mitigating environmental impacts.
- Clause 44: There is a need for clarity and consistency in financial requirements across all phases of operation. The Bill should ensure that the terms for financial provisioning for rehabilitation, decommissioning, and latent impacts are transparent, inclusive, and do not grant the Minister excessive discretion that could lead to uncertainty or arbitrary decision-making. We propose that these provisions align closely with the best practices and standards outlined in NEMA to ensure environmental and financial accountability without compromising investment attractiveness and operational efficiency.

- Clause 46: The Bill should be amended to necessitate the re-evaluation of environmental risks and impacts for each new application or renewal, taking into account technological advances and changing operational contexts. It should mandate a specific assessment to address risks associated with high-impact geological structures. These amendments would help mitigate potential environmental damage and ensure that changes in operation do not inadvertently escalate risks.
- Clause 50: The legislation should be amended to require that detailed information on drilling additives, waste material volumes, and environmental measurements be published on a government-sanctioned public platform (Gazette), ensuring adherence to the Promotion of Access to Information Act (PAIA), 2000 (Act 2 of 2000) for accountability and public engagement.
- Clause 52: It is not clear if the application for a drilling permit will only be issued once an environmental authorisation (or an amended environmental authorisation) has been issued. The wording of clause 52(3) seems to suggest that a drilling permit must be issued "... within 60 days from the date of receipt of the application", regardless of whether the Environmental Impact Assessment process was finalised. The clause should be revised to unambiguously state that environmental authorisation is a prerequisite for the issuance of a drilling permit.
- Clause 88: Suspension or cancellation of permits should be predicated on clear criteria that protect the investment while ensuring compliance with NEMA's rehabilitation provisions, ensuring that the cancellation does not undermine financial security or environmental commitments.

2.6 Labour Standards Adherence:

- The Department must ensure adherence to the Labour Relations Act, 1995 (Act 6 of 1995) and the Basic Conditions of Employment Act, 1997 (Act 75 of 1997). The Bill should include provisions that uphold labour rights, fair employment practices, and safe working conditions for workers in the petroleum sector.

2.7 Mining Regulations Consistency:

- The Department must ensure consistency with the Mineral and Petroleum Resources Development Act (MPRDA), 2002 (Act 28 of 2002) in terms of licensing, rights allocation, and regulatory oversight. The Bill should align with MPRDA provisions related to exploration, production, and the exploitation of petroleum resources.

2.8 Constitutional Compliance and Alignment to Legislation:

- The Department must ensure alignment with the Constitution of the Republic of South Africa, 1996, particularly regarding fundamental rights and principles such as environmental protection, socio-economic rights, and the promotion of equitable access to resources. The Bill should not infringe upon constitutional rights and should promote the realisation of constitutional objectives.
- Clause 91: The language should be revised to obligate the holder of petroleum rights to provide fair and timely compensation to landowners and occupiers affected by extraction

activities. This amendment will align the Bill with constitutional rights and expropriation laws, ensuring those impacted by oil and gas operations are justly compensated. For the administrative penalties section, the Bill should be amended to set penalties based on a percentage of the annual turnover of the oil and gas operations, to ensure they act as a true deterrent. Funds collected as penalties must be explicitly earmarked for environmental restoration and support community development projects impacted by the industry's activities. Regarding state liability, the Bill must stipulate that state-owned entities are equally subject to the full force of the law for environmental infractions. This accountability ensures no legal exemptions for state entities, maintaining equitable enforcement across all operators within the industry.

- Clause 92: A redrafting of this clause is required to ensure expropriation for petroleum activities is aligned with the Constitution, balancing property rights with the public interest and affirming the necessity of proportionality evaluations for any property deprivation.
- Clause 99(4): The application of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) should be unequivocal in the Bill, ensuring that all relevant sections are applied to court proceedings, thus avoiding any legal ambiguity, and ensuring that administrative actions are fair, reasonable, and procedurally sound.

3. Additional Recommendations:

3.1 Public Participation Framework:

- There must be a call for a robust framework for comprehensive stakeholder engagement that underscores transparency, inclusive dialogue, and environmental impact assessment.

3.2 SOE and BEE Framework Reconsideration:

- There must be a reassessment of the frameworks governing state participation and BEE to ensure they promote a conducive investment environment while advancing equitable participation.

3.3 Environmental Compliance Enhancement:

- The Committee proposes the inclusion of rigorous environmental compliance standards and safety regulations reflective of both national interests and international benchmarks within the Bill.

3.4 Skills and Infrastructure Investment:

- The Department must highlight the importance of investment in industry-relevant infrastructure and skills development as pivotal to the sustainability and growth of the petroleum sector.

3.5 Market Dynamics and Economic Sustainability:

- There must be a thorough analysis of the Bill's implications on job creation, economic growth, and South Africa's competitiveness in the global energy market.

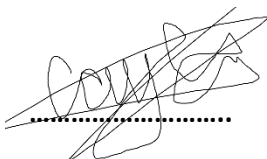
4. Conclusion

The Committee's negotiating mandate drew upon extensive stakeholder feedback, including inputs from the Western Cape Government (WCG), Life After Coal/Impilo Ngaphandle Kwamahle (LAC) coalition, The Green Connection, the Mossel Bay Socio-Economic Collective (CBO), Treasure Karoo Action Group (TKAG), and considerations from the draft Socio-Economic Impact Assessment System (SEIAS). This mandate will articulate a comprehensive strategy reflecting the multifaceted nature of the Bill.

The need for a holistic approach to legislating the upstream petroleum sector is paramount to align with both domestic priorities and global energy trends. This negotiating mandate endeavours to encapsulate the wide array of feedback and construct a cohesive, informed, and forward-looking legislative direction.

Given the current form of the Bill, coupled with the highlighted concerns, the draft negotiating mandate suggests the Western Cape's delegation in the NCOP withhold support for the Bill until substantial revisions are made.

These proposed revisions should strive to embed environmental sustainability, economic viability, and equitable benefits for all South Africans. The reformed Bill should consider the imminent energy transitions globally and position South Africa as a leader in sustainable energy practices.



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