



26 May 2025

ATTN: Ms Stella Mamogale

BY EMAIL: Representations@dmre.gov.za

DATE: 26th of May 2025

Total Pages: 7

FROM: THE GREEN CONNECTION

RE: COMMENTS ON THE DRAFT REGULATIONS OF UPSTREAM PETROLEUM RESOURCES DEVELOPMENT ACT, 2024

THE GREEN CONNECTION ENDORSES THE SUBMISSION MADE BY NATURAL JUSTICE, THE CENTRE FOR ENVIRONMENTAL RIGHTS, AND GROUNDWORK, REGARDING THE DRAFT REGULATIONS OF THE UPSTREAM PETROLEUM RESOURCES DEVELOPMENT ACT, 2024

Dear Ms. Stella Mamogale,

1. The Green Connection is a registered non-governmental organisation dedicated to the principle that economic growth, socio-economic improvement, and the conservation of natural resources are achievable only within a commonly understood framework of sustainable development. We endeavor to provide

practical support to governmental and non-governmental sectors integral to achieving sustainable development in South Africa.

2. The Green Connection hereby formally endorses the comprehensive joint submission (hereinafter "the Joint Submission") prepared by Natural Justice, the Centre for Environmental Rights, and groundWork, dated 26 May 2025, pertaining to the Draft Regulations of the Upstream Petroleum Resources Development Act, 2024 ("the Draft Regulations"). We have had sight of this meticulously prepared document and commend its thorough analysis of the deficiencies within the Draft Regulations.
3. The Joint Submission raises critical concerns that resonate profoundly with The Green Connection's core mandates, particularly in relation to Sustaining Our Oceans for the Future, Protecting Coastal Livelihoods and Small-Scale Fishing Communities, ensuring Public Participation and Good Governance, and addressing Climate Change. We wish to highlight the following specific areas from the Joint Submission which we believe demand your urgent attention and substantive revision:

Public Participation and Ensuring Good Governance

4. Meaningful and inclusive public participation, as well as transparent decision-making, are cornerstones of environmental governance and are constitutionally protected rights. The Draft Regulations, as critiqued in the Joint Submission, present significant barriers to achieving this. We strongly endorse the Joint Submission's critique of the overly restrictive definition of "interested and affected parties" (I&APs). This definition, if enacted, could unjustifiably narrow the scope of public engagement, undermining Section 24 of the Constitution and the principles of the National Environmental Management Act (NEMA). This must not happen as section 2 of the Constitution enshrines that the Constitution is the supreme law of the Republic of South Africa. It also contradicts established

jurisprudence that affirms participation rights for all stakeholders with a vested concern in environmental justice.

5. The Green Connection concurs with the Joint Submission's concerns regarding the inadequacy of public notice requirements, including the discretionary nature of supplementary publicity channels, insufficient language accessibility, and the omission of critical project information necessary for informed public input. We support the call to rectify flaws in the consultation processes to be undertaken by applicants, particularly the problematic framing of reaching "agreement...regarding the impact", and the failure to explicitly require and integrate Free, Prior, and Informed Consent (FPIC) where appropriate, especially concerning customary and informal land rights as highlighted in various landmark court cases such as Maledu and Baleni, among others.
6. The imposition of a non-refundable fee to lodge an appeal against administrative decisions, as proposed in Regulation 37(6), presents an unacceptable financial barrier to justice and public oversight. This may go against the principle of section 33 of the Constitution as placing a financial burden as a requirement to appeal administrative action has the potential to severely impact on the Constitutional right to just administrative action. Section 33 of the Constitution also states that national legislation must give effect to these rights. We therefore support the Joint Submission's recommendation for its removal or significant amendment to ensure equitable access to appeal mechanisms.

Sustaining Our Oceans For the Future

7. South Africa's marine and coastal ecosystems are invaluable national assets, ecologically sensitive, and critical for biodiversity and livelihoods. The Green Connection is deeply concerned that the Draft Regulations, in their current form,

may fail to provide adequate protection for these environments against the inherent risks of upstream petroleum activities.

8. We align ourselves with the Joint Submission's assertion that the Upstream Petroleum Resources Development Act (UPRDA) and its Draft Regulations appear to facilitate an accelerated expansion of oil and gas activities without adequately addressing the possibility of severe environmental impacts. This is particularly alarming for offshore exploration and production. The Green Connection supports the Joint Submission's emphasis on the State's constitutional and international obligations as a trustee of the public interest in marine spaces, including the need to prevent, reduce, and control marine pollution from all sources, including greenhouse gas emissions as highlighted by the ITLOS Advisory opinion.
9. We endorse the call for mandatory lifecycle impact assessments for all petroleum projects, which must quantify cumulative impacts, including those specific to marine ecosystems such as seismic impacts on marine fauna, potential for oil spills, and disruption of marine ecological integrity. The current vague reference to "possible impact on the environment" in notice requirements is wholly insufficient. The inadequacy of consultation requirements for offshore developments, which may exclude those with a significant interest if not "directly affected" or if the landowner/lawful occupier concept is inappropriately applied to marine spaces, is a critical flaw identified in the Joint Submission that we support rectifying.

Protecting Coastal Livelihoods and Small-Scale Fishing Communities

10. Coastal communities, particularly small-scale fishers, depend intrinsically on healthy marine ecosystems for their livelihoods, food security, and cultural heritage. Upstream petroleum activities may pose direct and significant threats to these communities through potential pollution, displacement from traditional

fishing grounds, and adverse impacts on marine resources. Therefore, the Green Connection endorses the Joint Submission's concerns regarding the Draft Regulations' failure to adequately safeguard the rights and livelihoods of these vulnerable communities. We particularly highlight the Joint Submission's critique of Regulation 23(1)(g), which vaguely mentions "provision for co-existence with fishermen, where applicable" within local content plans, deeming it so vague as to be almost meaningless. Such provisions must be substantive and genuinely protect fishing communities.

11. The broader failure of the Draft Regulations to create any meaningful obligations on rights holders to address and mitigate the adverse socio-economic impacts of petroleum operations on affected local communities, including fishing communities, is a grave concern we share with the Joint Submission. We support the Joint Submission's call for explicit requirements that applications for offshore/coastal projects include confirmation of potential impacts on local industries, including small-scale fisheries, and, that detailed plans for mitigating impacts on existing jobs and livelihoods, as well as processes for obtaining free, prior, and informed consent (FPIC) from affected coastal communities, are mandated.

Climate Change

12. The global climate crisis necessitates an urgent and decisive transition away from fossil fuels. The Draft Regulations, however, appear to promote the continued and expanded exploitation of oil and gas resources, directly contravening South Africa's national and international climate change commitments. The Green Connection shares the profound concern expressed in the Joint Submission that the UPRDA and its Draft Regulations may be prioritising the fast-tracking of oil and gas development, while disregarding the imperative to transition away from fossil fuels and the risk of creating stranded

assets. Promotion of gas as a transitional fuel particularly for gas to power projects could result in more greenhouse gas emissions and methane. Methane emissions could potentially have a greater impact than those of carbon dioxide and may be up to eighty-two times more impactful over a twenty year period. The International Energy Agency report has highlighted that there is no need for new investments in the fossil fuel industry.

13. We strongly support the Joint Submission's call for the Draft Regulations to explicitly define and incorporate critical terms such as "greenhouse gas (GHG)", "Scope 1, Scope 2, and Scope 3 emissions", and "sectoral emission targets". This is essential for alignment with the Climate Change Act and for ensuring that the petroleum sector is accountable for its emissions and contributes to South Africa's decarbonisation pathway. The failure of the Draft Regulations to mandate comprehensive lifecycle assessments that include quantification of all greenhouse gas emissions (including methane leaks and Scope 3 emissions) as well as the unquantified social cost of carbon, as highlighted by the Joint Submission, is a critical omission that undermines any claim of environmentally responsible development.
14. Expanding fossil fuel infrastructure without rigorous scrutiny of the possible environmental and social implications runs counter to the global imperative for decarbonisation and South Africa's own stated commitments to a just energy transition. The Green Connection believes that the concerns and detailed recommendations articulated in the Joint Submission by Natural Justice, the Centre for Environmental Rights, and groundWork are fundamental to ensuring that the regulatory framework for upstream petroleum activities in South Africa upholds constitutional environmental rights, promotes genuine public participation, protects our invaluable marine ecosystems and the livelihoods they support, and aligns with our urgent climate change obligations.

15. We urge you to give due and serious consideration to the Joint Submission and to engage substantively with the recommendations therein to revise the Draft Regulations accordingly.

We thank you for the opportunity to add our voice in support of these critical considerations and trust they will receive your urgent attention.

Yours sincerely,

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