

To: The Portfolio Committee on Mineral Resources and Energy

Attention: Hon S. Luzipo, MP
Chairperson of the Portfolio Committee on Mineral Resources and Energy

c/o Mr Arico Kotze

By Email: akotze@parliament.gov.za

29 July 2022

Re: THE GREEN CONNECTION - COMMENT ON UPSTREAM PETROLEUM RESOURCES DEVELOPMENT BILL (GN44696 od 11 June 2021)

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1. INTRODUCTION

These comments are submitted on behalf of The Green Connection.

The Green Connection is a registered non-governmental organisation, that believes economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and non-governmental/civil society sectors, which are an integral part of sustainable development. The Green Connection is an environmental and social justice civil society organisation that promotes sustainable livelihoods and the achievement of environmental rights.

These comments are submitted in response to an invitation by the Portfolio Committee on Mineral Resources and Energy to submit written comments on the Upstream Petroleum Resources Development Bill [13-2021] ('UPRD Bill').¹

It is recorded that the Green Connection is interested in making a verbal presentation to the Committee.

The Upstream Petroleum Resources Development Bill (UPRD Bill) seeks to establish a standalone Act to (among other things) create an enabling environment for the acceleration of exploration and production of the nation's petroleum resources.²

In brief, the Green Connection's main comments on the UPRD Bill are as follows:

- The UPRD Bill ignores the climate change crisis, and is not aligned with South Africa's Climate Change Bill and international climate change commitments. The Green Connection is of the view that the Bill should not be promulgated in its current form,

¹ <https://pmg.org.za/call-for-comment/1169/>

² Preamble.

but should instead provide an appropriate framework for a just transition away from fossil fuel extraction and use,³ and towards ecologically sustainable renewable energy.

- The period provided for commenting on the UPRD Bill is too short to ensure meaningful public participation, especially by rural and historically disadvantaged communities that do not have ready access to electronic media, and do not have the necessary skills to make informed comment.
- The UPRD Bill expands the (often contradictory) functions and powers of the Petroleum Agency (PASA), resulting in PASA performing the roles of both ‘player and referee’;
- The UPRD Bill retains the mandatory obligations imposed on the Minister to grant permits and rights where specified conditions are met, fettering the discretion of the Minister; and
- The provisions made for consultation under the UPRD Bill are inadequate, and in the Green Connection’s view do not meet the requirements for procedurally fair administrative action.

The Green Connection’s comments conclude with specific comment on selected sections of the UPRD Bill.

2. UPRD BILL IGNORES CLIMATE CHANGE CRISIS AND IS NOT ALIGNED WITH SOUTH AFRICA’S CLIMATE CHANGE COMMITMENTS

The Green Connection is alarmed that - notwithstanding the internationally recognized ‘climate crisis’ - the UPRD Bill seeks to create an enabling environment for the acceleration of exploration and production of the nation’s petroleum resources. The extraction, production and use of new petroleum resources (including oil and natural gas) will inevitably add to greenhouse gas (GHG) emissions (including of CO₂ and methane gas).

³ The Green Connection is also of the view that fossil gas is not necessary as a transition fuel. See for example two recent independent studies that challenge view that fossil gas is required, namely: the International Institute for Sustainable Development’s (IISD) *Gas Pressure: Exploring the case for gas-fired power in South Africa* (March 2022) report (available online at: <https://www.iisd.org/publications/report/south-africa-no-need-for-gas>) ; and Meridian Economics’ ‘*Hot Air about Gas – An Economic Analysis of the Scope and Role for Gas-Fired Power Generation in South Africa*’ (June 2022) report (available online at: <https://meridianeconomics.co.za/wp-content/uploads/2022/06/Hot-Air-About-Gas.pdf>).

The 'climate crisis'

By way of context, the Green Connection points out that climate change has been acknowledged internationally as a 'crisis', with human-induced climate change impacts being experienced in every region. It is also recognised that the climate change 'crisis' requires immediate, rapid and large-scale reductions in greenhouse gas (GHG) emissions to limit climate warming.

For example, in August 2021, the Intergovernmental Panel on Climate Change (IPCC) (an international body for assessing the science related to climate change) released its 6th Assessment Report (AR6).⁴ In its summary for policymakers, the IPCC indicates (among other things) that:

- It is unequivocal that human influence has warmed the atmosphere, ocean and land, and that widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred;⁵
- The scale of recent changes across the climate system as a whole – and the present state of many aspects of the climate system – are unprecedented over many centuries to many thousands of years;⁶
- Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened since AR5;⁷
- Global surface temperature will continue to increase until at least mid-century under all emissions scenarios considered, and that global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO₂ and other GHG

⁴ Climate Change 2021: The Physical Science Basis, available online at: <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/>

⁵ Para A.1

⁶ Para A.2

⁷ Para A.3

- emissions occur in the coming decades;⁸
- Many changes in the climate system become larger in direct relation to increasing global warming. They include increases in the frequency and intensity of hot extremes, marine heatwaves, heavy precipitation, and, in some regions, agricultural and ecological droughts; an increase in the proportion of intense tropical cyclones; and reductions in Arctic sea ice, snow cover and permafrost;⁹
 - Continued global warming is projected to further intensify the global water cycle, including its variability, global monsoon precipitation and the severity of wet and dry events;¹⁰
 - Many changes due to past and future GHG emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets and global sea level;¹¹
 - From a physical science perspective, limiting human-induced global warming to a specific level requires limiting cumulative CO₂ emissions, reaching at least net zero CO₂ emissions, along with strong reductions in other GHG emissions. Strong, rapid and sustained reductions in CH₄ emissions would also limit the warming effect resulting from declining aerosol pollution and would improve air quality.¹²

On 9 August 2021, the IPCC issued a press release relating to its AR6 report. It states that the report provides new estimates of the chances of crossing the global warming level of 1.5°C in the next decades, and finds that unless there are immediate, rapid and large-scale reductions in GHG emissions, limiting warming to close to 1.5°C or even 2°C will be beyond reach.¹³ UN Secretary-General António Guterres has described the AR6 report as nothing less than "*a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable*".

Guterres is also reported as noting that the internationally agreed threshold of 1.5 degrees above pre-industrial levels of global heating was perilously close, and that we are at imminent

⁸ Para B.1

⁹ Para B.2

¹⁰ Para B.3

¹¹ Para B.5

¹² Para D.1

¹³ <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

risk of hitting this threshold in the near term. Guterres is indicated as advising that the only way to prevent exceeding this threshold, is by urgently stepping up our efforts, and pursuing the most ambitious path. Guterres is reported as stating that solutions are clear: "*Inclusive and green economies, prosperity, cleaner air and better health are possible for all, if we respond to this crisis with solidarity and courage*". Ahead of the COP26 climate conference in Glasgow in November 2021, Guterres stated that all nations needed to join the net zero emissions coalition, and reinforce their promises on slowing down and reversing global heating "*with credible, concrete, and enhanced Nationally Determined Contributions (NDCs)*" that lay out detailed steps.

In April 2022, Guterres tweeted that *'[c]limate activists are sometimes depicted as dangerous radicals. But the truly dangerous radicals are the countries that are increasing the production of fossil fuels. Investing in new fossil fuels infrastructure is moral and economic madness'*.¹⁴ Addressing graduate students in May 2022, Guterres expressed the view that Investing in fossil fuels is now *"a dead end - economically and environmentally. No amount of greenwashing or spin can change that. So, we must put them on notice: Accountability is coming for those who liquidate our future."*¹⁵

The 26th Conference of the Parties of the UNFCCC (COP26) was held in Glasgow in the last quarter of 2021. Recognition of the climate 'crisis', as well as the urgent need to increase effort and to accelerate action to address climate change (including by developing nations), are reflected in the outcome of COP26 and recorded in the Glasgow Climate Pact. The Glasgow Climate Pact (among other things):

- Expresses alarm and utmost concern that human activities have caused around 1.1°C of global warming to date and that impacts are already being felt in every region;¹⁶
- Reaffirms the long-term global goal to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit

¹⁴ <https://twitter.com/antonioguterres/status/1511294073474367488?lang=en>

¹⁵ <https://news.un.org/en/story/2022/05/1118932>

¹⁶ Clause I.3

- the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;¹⁷
- Recognizes that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C and resolves to pursue efforts to limit the temperature increase to 1.5°C;¹⁸
 - Recognizes that limiting global warming to 1.5°C requires rapid, deep and sustained reductions in global GHG emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century as well as deep reductions in other GHGs;¹⁹
 - Also recognizes that this requires accelerated action in this critical decade, on the basis of the best available scientific knowledge and equity, reflecting common but differentiated responsibilities and respective capabilities and in the context of sustainable development and efforts to eradicate poverty;²⁰
 - Invites Parties to consider further actions to reduce by 2030 non-carbon dioxide GHG emissions, including methane;²¹
 - Calls upon Parties to accelerate the development, deployment and dissemination of technologies, and the adoption of policies, to transition towards low-emission energy systems, including by rapidly scaling up the deployment of clean power generation and energy efficiency measures, including accelerating efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition;²²
 - Emphasizes the importance of protecting, conserving and restoring nature and ecosystems, including forests and other terrestrial and marine ecosystems, to achieve the long-term global goal of the Convention by acting as sinks and reservoirs of GHGs and protecting biodiversity, while ensuring social and environmental safeguards.²³

¹⁷ Clause IV.15

¹⁸ Clause IV.16

¹⁹ Clause IV.17

²⁰ Clause IV.18

²¹ Clause IV.19

²² Clause IV.20

²³ Clause IV.21

The climate 'crisis' is also recognised by the International Energy Agency (IEA), of which South Africa is an IEA associated country. During or about July 2021, the IEA published its *Net Zero by 2050 – A Roadmap for the Global Energy Sector* report. In the foreword to this report, the Executive Director of the IEA states (among other things) as follows:

We are approaching a decisive moment for international efforts to tackle the climate crisis – a great challenge of our times. The number of countries that have pledged to reach net-zero emissions by mid-century or soon after continues to grow, but so do global greenhouse gas emissions. This gap between rhetoric and action needs to close if we are to have a fighting chance of reaching net zero by 2050 and limiting the rise in global temperatures to 1.5 °C.

Doing so requires nothing short of a total transformation of the energy systems that underpin our economies...

On fossil fuels used in energy production, the report states that:

There is no need for investment in new fossil fuel supply in our net zero pathway.

Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required.

The Green Connection submits that within the context of the climate change 'crisis' and the reality that the extraction and use of fossil fuels (including oil and natural gas) will inevitably add to GHG emissions (including of CO₂ and methane gas), South Africa should not be promoting accelerated petroleum resource exploration development and production.

Climate Change Bill

In addition to no mention at all being made of climate change in the UPRD Bill, no attempt has been made to align the UPRD Bill with the Climate Change Bill [B9-2022]. For example, no reference is made to the sectoral GHG emissions targets that will be set for the petroleum resource sector once the Climate Change Bill is enacted. It is also notable that the Climate Change Bill, in contrast to the UPRD Bill, acknowledges that anthropogenic climate change represents an "urgent threat" to human societies and the planet, and requires an effective, progressive and incremental response.

South Africa's international climate change commitments

No mention at all is made of South Africa's international climate change commitments in the UPRD Bill.

South Africa is a Party to the UN Framework Convention on Climate Change (UNFCCC), which enjoins State Parties to take precautionary measures to anticipate, prevent or minimize the causes of climate change (Article 3.3).

South Africa, as a Party to the UNFCCC that ratified the Kyoto Protocol and adopted the Paris Agreement, has committed to *'working with others to ensure temperature increases are kept well below 2°C above pre-industrial levels, which could include a further revision of the temperature goal to below 1.5°C in light of emerging science'* by reducing GHG emissions. South Africa has also committed (among other things) to:

- Preparing, communicating and maintaining Nationally Determined Contributions (NDCs) that it intends to achieve reach global peaking of GHG emissions as soon as possible, and to undertake rapid reductions thereafter;²⁴ and
- Striving to formulate and communicate long-term GHG emission development strategies.²⁵

There have been various Conferences of the Parties and meetings since, with decisions related to Nationally Determined Contributions (NDCs) contained in decisions 4/CMA.1 and 18/CMA.1 and their annexes.

South Africa revised its NDC in 2021:²⁶

²⁴ Paris Agreement, Article 4.1 – 4.3.

²⁵ Paris Agreement, Article 4.19

²⁶ Available online at:

https://www.dffe.gov.za/sites/default/files/reports/draftnationallydeterminedcontributions_2021updated.pdf#:~:text=South%20Africa%E2%80%99s%20intended%20nationally%20determined%20contribution%20%28INDC%29%28RSA%2C%20n.d.%29,Agreement.%20The%20INDC%20and%20first%20NDC%20are%20identical.

Table 2 - South Africa's updated NDC mitigation targets

Year	Target	Corresponding period of implementation
2025	South Africa's annual GHG emissions will be in a range from 398-510 Mt CO ₂ -eq.	2021-2025
2030	South Africa's annual GHG emissions will be in a range from 350-420 Mt CO ₂ -eq.	2026-2030

South Africa's energy sector is estimated at contributing about 84% percent to the country's overall GHG emissions (including Carbon Dioxide and Methane).²⁷

In February 2020, South Africa submitted to the UNFCCC its first long-term low GHG emission development strategy titled *South Africa's Low Emission Development Strategy 2050*. It is indicated in the executive summary of this strategy that South Africa, as one of the top 20 global GHG emitters and with a high dependency on fossil fuels, will need to make substantial emission cuts to contribute its fair share to global GHG emission reductions.²⁸

Synthesis

The UPRD Bill does address how future GHG emissions (resulting from the exploitation and use of oil and gas that may be discovered through the accelerated exploration for and production of petroleum resources project) would impact on South Africa's ability to achieve its updated GHG emissions targets (as set out in South Africa's revised NDC). This is particularly relevant given that the emissions targets for the 2026-2030 period are lower than the targets for the 2021-2025 period, while offshore oil and gas developments could take at least a decade to reach the production stage. This could result in offshore oil and gas investments (as well as associated gas infrastructure developments) in the future becoming unneeded 'stranded assets' and a burden on future generations.

²⁷ <https://www.climatelinks.org/resources/greenhouse-gas-emissions-factsheet-south-africa>

²⁸ South Africa's Low Emission Development Strategy 2050, pviii.

The Green Connection is of the view that the accelerated exploration for and production of oil and gas contemplated in the UPRD Bill is in conflict with the need to effectively address the climate change crisis and achieve the rapid, deep and sustained reductions in GHG emissions that are required to limit global warming to 1.5°C (including accelerated action in this decade to reduce global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century).

The Green Connection believes that, despite one of its objects being to give effect to section 24 of the Constitution,²⁹ the UPRD Bill undermines section 24 by creating an enabling environment for the acceleration of exploration and production of the nation's petroleum resources. Rather than being to the benefit of the people of South Africa, the objective of accelerating exploration and production serves the vested interests of both domestic and multinational companies that seek to profit from the exploitation of fossil fuels, without regard being had to the implications of the UPRD Bill for the climate crisis, the externalized socio-economic cost of carbon emissions, or of South Africa's vulnerability to the negative impacts of climate change.

The Green Connection submits that in the context of the 'climate crisis', the unconstrained and accelerated exploration for and production of petroleum resources is not ecologically sustainable development and use of natural resources, and does not constitute justifiable economic and social development. The unconstrained exploration for and development of petroleum resources will be to the detriment of the environment and the inter-generational constitutional right to an environment that is not harmful to human health or well-being (and to have that right protected through reasonable legislative and other measures).

As a consequence, the Green Connection believes that the UPRD Bill should not be promulgated in its current form. Instead, the UPRD Bill should be clearly aligned with South Africa's international climate change obligations and commitments. The Green Connection submits that the UPRD Bill should provide an appropriate framework for a rapid and just

²⁹ Section 2(i).

transition away from fossil fuel extraction, production and use,³⁰ and towards ecologically sustainable renewable energy.

Recommendations:

- *The Green Connection recommends that the UPRD Bill is not promulgated in its current form;*
- *The Green Connection recommends further that the UPRD Bill should be clearly aligned with South Africa's international climate change obligations and commitments, the sectoral emissions target to be set for the petroleum resource sector once the Climate Change Bill is enacted, and South Africa's updated NDC GHG emissions targets.*
- *The Green Connection also recommends that the UPRD Bill should be revised to provide an appropriate framework for a just transition away from fossil fuel extraction, production and use, and towards ecologically sustainable renewable energy.*

3. PUBLIC PARTICIPATION ON THE UPRD BILL

The Green Connection is also concerned about the lack of meaningful consultation carried out regarding the proposed UPRD Bill.

While the Portfolio Committee on Mineral Resources and Energy opened its call for comments on the UPRD Bill on 24 June 2022, the Green Connection is of the view that the commenting period provided is unreasonably short given length and the technical complexity of the Bill.

The Green Connection respectfully submits that the commenting period should be extended to at least 60 days.

³⁰ The Green Connection is also of the view that fossil gas is not necessary as a transition fuel. See for example two recent independent studies that challenge view that fossil gas is required, namely: the International Institute for Sustainable Development's (IISD) *Gas Pressure: Exploring the case for gas-fired power in South Africa* (March 2022) report (available online at: <https://www.iisd.org/publications/report/south-africa-no-need-for-gas>) ; and Meridian Economics' *'Hot Air about Gas – An Economic Analysis of the Scope and Role for Gas-Fired Power Generation in South Africa'* (June 2022) report (available online at: <https://meridianeconomics.co.za/wp-content/uploads/2022/06/Hot-Air-About-Gas.pdf>).

The Green Connection is also concerned that many of the small-scale fishers and fishing dependent communities that it works with on the East, South and West coasts of South Africa are most likely unaware of the opportunity to submit comments (the Green Connection itself only became aware of the invitation to comment on 27 July 2022). Many of these fishers and communities - whose livelihoods are most at risk from the adverse impacts of petroleum resource exploration and production - lack electronic resources and have limited (if any) access to the internet. In order to meaningfully participate in this process, such communities should be notified of the opportunity to comment on the UPRD Bill through other means (such as community notices, radio and television), and would also need sufficient time to be able to seek expert assistance given the highly technical nature of the UPRD Bill. Ideally, community workshops should also be held to inform these (and other) potentially affected communities, and to provide them an opportunity to develop the necessary skills to comment meaningfully on the UPRD Bill.

Should the Portfolio Committee decide to extend the commenting period, the Green Connection reserves the right to supplement these comments.

Recommendation:

The Green Connection recommends that the commenting period be extended to at least 26 August 2022.

4. ROLE OF PASA

The Green Connection notes its concern regarding the expanded functions, roles and powers to be performed or exercised by the Petroleum Agency (PASA).

While a number of the prescribed functions replicate some of the functions contained in the MPRDA, additional and/or amended functions are included in section 10 of the UPRD Bill. Notably, PASA must (among other things):

- Provide technical support to the Minister for the promotion of onshore and offshore

- exploration and production of petroleum;
- Formulate exploration strategy that includes acquisition of seismic data through non-exclusive multi-client speculative surveys in frontier or under-explored areas ahead of licensing rounds;
- Formulate license allocation strategy that includes delineation of blocks to be licensed, licensing guidelines for each invitation, and licensing terms and conditions that reflect the risk profile of the specific areas;
- Ensure optimal levels of recovery of petroleum;
- Verify the measurements of petroleum production to allow for assessment of royalties and revenue due to the State;
- Receive and evaluate applications for reconnaissance permits, petroleum rights and retention permits and make recommendations to the Minister;
- Monitor and enforce compliance with rights and permits (and report regularly to the Minister on compliance); and
- Receive and review applications for environmental authorisation in terms of NEMA, and make recommendations to the Minister.

While the Minister is obliged to grant a reconnaissance permit if certain conditions are met,³¹ and is also obliged to grant a petroleum right if certain conditions are met,³² PASA is empowered to exercise various other powers in the UPRD Bill. For example, PASA is empowered and/or obliged to (among other things):

- approve progression by a petroleum right holder to subsequent stages of the exploration phase;³³
- approve progression by a petroleum right holder to another term (exploration stage);³⁴
- approve an application for a drilling permit;³⁵

³¹ Section 39.

³² Section 44.

³³ Section 46

³⁴ Section 47.

³⁵ Section 52.

- provide written permission to produce petroleum and conduct various tests during exploration;³⁶
- extend the exploration phase period;³⁷
- approve progression by a petroleum right holder to the production phase;³⁸
- approve progression by a petroleum right holder to subsequent stages of the production phase;³⁹ and
- approve progression by a petroleum right holder to another term (production phase);⁴⁰
- grant a retention permit.⁴¹

Importantly, the UPRD Bill also empowers the Minister to delegate any power conferred on him or her by the Act (except a power to make regulations or deal with an internal appeal), and to assign any duty imposed on him or her to the Director General (DMRE), the Chief Executive Officer, or any officer (of PASA).⁴² The UPRD Bill thus facilitates the delegation of the Minister's power to grant reconnaissance permits and petroleum rights to the CEO or any employee of PASA.

The Green Connection submits that it is undesirable for PASA to exercise powers and perform various (and often conflicting) functions under the MPRDA (i.e. act as both 'player and referee'), including decision making powers (statutory and delegated), technical advisory functions, formulation of exploration and license allocation strategies, verification of the measurement of petroleum production, receiving and processing applications for permits and rights and making recommendations to the Minister, and monitoring and enforcing compliance etc.

³⁶ Section 53.

³⁷ Section 56.

³⁸ Section 59.

³⁹ Section 62

⁴⁰ Section 63.

⁴¹ Section 70

⁴² The term 'officer' is defined in section 1 of the UPRD Bill as meaning 'any employee of Petroleum Agency'. 'Chief Executive Officer' is not defined in section 1.

Recommendation:

It is recommended that the UPRD Bill be revised to stipulate that decision-making powers are to be exercised by the Minister, and that the delegation of such powers be limited to delegation to the Director-General of the DMRE.

5. MANDATORY POWERS OF THE MINISTER

The Green Connection notes that the UPRD Bill retains the mandatory power of the Minister to grant a reconnaissance permit (section 39) and a petroleum right (section 44) where certain prescribed conditions are met. The Green Connection submits that these provisions unnecessarily fetter the discretion of the Minister.

Recommendation:

It is recommended that the word 'must' as used in sections 39(1) and 44(1) be replaced with the word 'may'.

6. CONSULTATION UNDER THE UPRD BILL

The Green Connection submits that the provisions made for consultation under the UPRD are inadequate, and do not meet the requirements for procedurally fair administrative action.

For example, while section 19 requires PASA to call upon interested and affected persons (I&APs) to submit comments and objections regarding specified applications (and empowers PASA to hold public hearings), no provision is made in the UPRD Bill for the application (or other sufficient information) to be provided to I&APs to inform their comments (meaning that I&APs are required to comment or object 'blind'). Notice of the application must be in the prescribed manner, but it is not specified that such notice must include appropriate forms of notice to rural or historically disadvantaged communities, including small-scale fishers and fishing-dependent communities (such as local notices, radio adverts etc.). In addition, no provision appears to have been made in the UPRD Bill to notify I&APs of the decision on application.

It is also noted that while section 20 requires PASA to notify the applicant in writing to consult in the prescribed manner with the landowner, lawful occupier and any affected party, it is unclear what this prescribed manner is. It is also of concern that the term 'affected party' is not defined in the UPRD Bill. As a consequence, it is unclear whether small-scale fishers whose livelihoods are threatened by the adverse impacts of offshore oil and gas exploration and production (such as marine ecosystem impacts related to offshore seismic surveys, as well as impacts resulting from major uncontrolled oil spill) would be treated as 'affected persons'.

Recommendation:

- *It is recommended that the UPRD Bill be revised to require that adequate prior notice of administrative actions is given to all interested and affected parties, and that such notice is to include sufficient information on the relevant applications to render the opportunity to make representations meaningful.*
- *It is also recommended that alternative forms of notice to be specified in relation to rural and historically vulnerable communities.*
- *It is recommended further that I&APs are notified of any decisions to grant permits or rights under the UPRD Bill.*
- *It is recommended that the term 'affected persons' be clearly defined.*

7. OTHER COMMENTS ON THE UPRD BILL

Additional comments relating to specific sections of the UPRD Bill are set out below. As mentioned earlier in these comments, the Green Connection only became aware of the Bill being opened for comment on 27 July 2022. As a consequence, these comments focus primarily on areas of concern to the Green Connection, and no attempt is made to comment on each and every section.

Section 1 - Definitions

'Exploration right' is defined as meaning an exploration right granted in terms of the section 80 of the MPRDA. This is clearly incorrect given that section 80 of the MPRDA is intended to be repealed (per UPRD Bill Schedule – Amendment of Laws)

'Chief Executive Officer' is not defined.

'Frontier' is not defined.

Section 2 – Objects of Act

The Green Connection notes that the objects included in the Bill largely duplicate the objects contained in the MPRDA (with some minor changes in emphasis).

Significantly, however, the Bill includes two new objects, namely to:

- (j) Accelerate exploration and production, and maximise the economic recovery of petroleum for the benefit of the people of South Africa; and
- (l) Promote and facilitate acquisition of petroleum geotechnical data.⁴³

As discussed in more detail in paragraph 2 of these comments, the Green Connection is alarmed that - notwithstanding the internationally recognized 'climate crisis' - the UPRD Bill seeks to create an enabling legal framework for the acceleration of exploration and production of the nation's petroleum resources. In the Green Connection's view, the abovementioned objects undermine the environmental right contained in section 24 of the Constitution.

Recommendation:

The Green Connection recommends that objects 2(j) and (k) be removed from the UPRD Bill.

Section 8 – Administration of acreage

The UPRD Bill provides that all acreage for exploration, development and production of petroleum in South Africa must be administered by the Petroleum Agency (PASA),⁴⁴ and that

⁴³ Section 2 (j) and (k).

⁴⁴ Section 8(1).

PASA must adopt a national grid system for petroleum acreage management (which must include, among other things, subdivisions and aggregation of blocks within the grid system).⁴⁵

The Bill provides further that PASA must, by notice in the *Gazette*, designate any area, block or blocks, including shale gas acreage, over which there is no or limited knowledge of the geology as frontier.

This section will perpetuate the ‘open season’ for petroleum exploration in South Africa.

Recommendation:

The Green Connection is of the view that South Africa should be phasing out fossil fuel exploration and production, and as a consequence the Bill should not make provision for the designation of new areas or blocks (including shale gas acreage) as ‘frontier’.

Section 11 - Funding of PASA

The UPRD Bill introduces new methods for funding PASA (in addition to monies appropriated by Parliament and provision of technical and consulting services to equivalent agencies of other countries), including: moneys received by way of State grant, contribution or investment; application fees payable in terms of the Bill; and revenue received from the sale of petroleum geo-technical data.⁴⁶

It is of concern to the Green Connection that PASA will be funded by application fees and revenue received from the sale of petroleum geo-technical data – PASA should not have a financial interest in processing petroleum applications or selling petroleum geo-technical data, while also undertaking various other regulatory functions (such as evaluating permit and right applications, and monitoring and enforcing compliance).

Recommendation:

Section 11(1)(c) and (d) should be removed from the Bill.

⁴⁵ Section 8(3).

⁴⁶ Section 11(1).

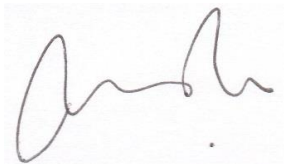
Section 99 – Internal Appeals

It is noted that the UPRD Bill provides that an appeal lodged in terms of section 99(1) suspends the administrative decisions. The Green Connection welcomes this provision.

8. CONCLUSION

For the reasons set out in these comments above, the Green Connection submits that the UPRD Bill should not be promulgated in its current form.

Signed at Durban this 29th day of July 2022

A handwritten signature in black ink, appearing to read 'Adrian Pole', is written over a light grey rectangular background.

Adrian Leonard Pole