



30 January 2024

Ref: GC/UPRDB

To: The Select Committee on Land Reform, Environment, Mineral Resources and Energy

Attention: Ms TC Modise, MP, Chairperson
c/o Mr Asgar A Bawa

By Email: abawa@parliament.gov.za

**RE: THE GREEN CONNECTION - COMMENT ON UPSTREAM PETROLEUM
RESOURCES
DEVELOPMENT BILL [B13B-2021]**

1. 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 nongovernmental/ 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.
2. The Green Connection submits these comments in response to an invitation by the Select Committee for written comments on the Upstream Petroleum Resources Development Bill (UPRDB).
3. On 29 July 2022, The Green Connection submitted extensive comments on the UPRDB as part of the National Assembly's public participation process. A copy of these comments is attached as annexure "A".

4. The comments contained in annexure “A” address pertinent issues with the UPRDB such as:
 - 4.1. The UPRDB ignoring the climate crisis and is therefore misaligned with South Africa’s climate change commitments.
 - 4.2. The period provided for commenting on the UPRDB was 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.
 - 4.3. The UPRDB expands the (often contradictory) functions and powers of the Petroleum Agency (PASA), resulting in PASA performing the roles of both ‘player and referee’.
 - 4.4. The UPRDB 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
 - 4.5. The provisions made for consultation under the UPRD Bill are wholly inadequate.
5. Despite our extensive submissions in Annexure “A”, these were not taken into account by the Portfolio Committee on Mineral Resources and Energy. We wish to re-submit our comments contained in Annexure “A” which deals with specific provisions of the UPRDB as well as wish to provide additional comments on the impacts of climate change and the effect of the UPRDB on communities in its current form.
6. **Climate Change and the impact of the UPRDB on Constitutional Rights:**
 - 6.1. South Africa is not immune to the impacts of climate change and ordinary South Africans have already started to shoulder the burden of these events with frequent droughts, flooding and mudslides becoming prevalent leading to extensive property damage, threats to food security as well as a loss of lives.¹
 - 6.2. Notwithstanding the above, the UPRDB seeks to create an enabling environment for the acceleration of exploration and production of the

¹ [The impact of climate change on South Africa: What we need to do to adapt – The Mail & Guardian \(mg.co.za\)](https://www.theguardian.com/global-development/2018/05/22/the-impact-of-climate-change-on-south-africa-what-we-need-to-do-to-adapt)

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).

6.3. The UPRDB fails to make mention of South Africa's international climate change commitments despite South Africa being 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.² 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.³

6.4. South Africa has also committed, inter alia, 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; and
- Striving to formulate and communicate long-term GHG emission development strategies.

The acceleration of petroleum resources will undeniably make meeting our NDCs impossible as fails to take into account that the UPRDB is counterproductive to any long-term GHG reduction strategy.

6.5. The development of petroleum resources has significant adverse impacts on land, fish and the environment. Subsequently, this has implications for a number of human rights that are protected by the Constitution. Under section 24, The Right to a Healthy Environment, the South African Government has a responsibility towards future generations and therefore laws that are drafted should promote the sustainable and

² UNFCCC: Article 3.3.

³ [Paris Agreement English \(unfccc.int\)](https://unfccc.int/paris-agreement)

responsible management of natural resources. The Exploitation of petroleum resources during a climate crisis falls foul of this obligation.

6.6. The public consultation process that was carried out by the National Assembly prior to the UPRDB coming before the Select Committee was wholly inadequate. This issue was raised by civil society in various submissions to the National Assembly. The right to public participation and consultation is enshrined in our Constitution and form the cornerstone of our Democracy. The Constitutional Court has recently held that the importance of public participation cannot be understated and that “Affected persons must be afforded the opportunity to meaningfully participate in the legislative process. Public participation acts as a safeguard to prevent the interests of the marginalised being ignored or misrepresented.”⁴ We raise this point as the UPRDB should not have been passed in its current form seeing as that the public were not given reasonable and adequate opportunity to understand and engage with the Bill. This is evident from the various Public Participation hearings in which it was clear that many people who made submissions were not fully informed of or had time to engage with the Bill.

6.7. In particular, the public participation hearing that took place in Port St Johns in which an attendee stated that they welcomed the UPRDB as it would help them understand the price fluctuation of petrol.⁵ Similar statements that had nothing to do with the substantive content of the UPRDB were made at this hearing indicating that there was a wide misunderstanding regarding the purpose of the UPRDB and the public hearing. Despite this, Parliament released a statement stating that the residents of Port St Johns “welcomed” the UPRDB.⁶ This is unfortunate considering that Port St Johns is particularly vulnerable to the impacts of climate change and the UPRDB will only worsen this.⁷ The statement

⁴ Mogale and Others v Speaker of the National Assembly and Others (CCT 73/22) [2023] at paragraph 3.

⁵ [Public Hearings: Upstream Petroleum Resources Development Bill, Port St Johns Town Hall, 2 March ... \(youtube.com\)](#)

⁶ [Media Statement: Port St Johns Residents Support Upstream Petroleum Resources Development Bill - Parliament of South Africa](#)

⁷ [Port St Johns flood leaves more than 1,000 displaced, infrastructure destroyed \(dailymaverick.co.za\)](#)

correctly notes the opposition from small-scale fishers whose livelihoods are at risk of being destroyed by the UPRDB.

6.8. It is clear that the impacted constitutional rights have not been given much consideration in the drafting of the UPRDB. The comments contained in annexure “A” made clear that the UPRDB in its current form should not be promulgated. The constitutional implications of the current UPRDB cannot be ignored. There is a need for all pieces of legislation to take into account the impacts of climate change and the need for an appropriate framework for a just transition away from fossil fuel extraction, production and use, and towards ecologically sustainable renewable energy. Without this – the UPRDB remains open to challenge.

7. The impact of the UPRDB on local communities:

7.1. The acceleration of petroleum development will inevitably lead to environmental degradation, including but not limited to: disruptions and the collapsing of eco-systems, air and water pollution as well as soil contamination.⁸ This has major consequences for a number of South African communities who are dependent on their surrounding environment for survival.

7.2. A study on an oil refinery in Durban found that the local community in the vicinity of the refinery suffered from respiratory diseases such as asthma and had significantly higher rates of leukaemia compared to the rest of the population.⁹ Communities who are exposed to pollutants from the extraction and combustion of petroleum resources are also exposed to waterborne diseases and other health issues which further creates a burden on the South African healthcare system and impacts their right to a healthy environment and disrupts their quality of life.

7.3. Land reform and distribution is an important part of the democratic project in south Africa, however, the associated infrastructure needed for the extraction and refinement of petroleum resources has implications for

⁸ Ngene, S., Tota-Maharaj, K., Eke, P. and Hills, C., 2016. Environmental and economic impacts of crude oil and natural gas production in developing countries. *International Journal of Economy, Energy and Environment*, 1(3), pp.64-73.

⁹ O'Rourke, D. and Connolly, S., 2003. Just oil? The distribution of environmental and social impacts of oil production and consumption. *Annual Review of Environment and Resources*, 28(1), pp.587-617.

communal land rights. Petroleum development often requires large land masses which will incontrovertibly result in conflicts between communities and industry as this can impact agriculture, traditional livelihoods, and access to natural resources.

7.4. The UPRDB has not been widely understood by communities, this has resulted in community disagreements on the UPRDB and has sewn social divisions. The inadequate public participation process has facilitated this by not providing communities with the requisite knowledge in order to make informed decisions on the economic, environmental and health concerns of the UPRDB. We further note that during the Public Participation Process carried out by the National Assembly, copies of the UPRDB were provided in English and only summaries were given to community members in the local vernacular.

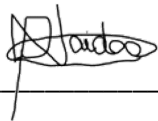
7.5. The UPRDB has further implications for the Constitutional right to just administrative action as it removes the requirement of adequate prior notice to all interested and affected parties. This has serious implications for rural communities who do not always have access to the internet as well as fishing communities who have a direct and substantial interest in offshore petroleum development projects. Such notice is necessary for communities to exercise their right to participate in these processes and the failure to recognise this, violates these rights. It is notable that procedural rights cannot be cured at a later stage and procedural rights need to be fulfilled in order for people to enjoy substantive rights.

8. Conclusion

8.1. 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). We reiterate that our substantive comments contained in annexure “A” should be taken into account and also wish to record our interest in making oral submissions to the Select Committee on the UPRDB. Conclusively, the Green Connection believes that the UPRD Bill should not be promulgated in its current form.

Submitted on behalf of The Green Connection on 30 January 2024.



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