

COMMENTS ON THE INFRASTRUCTURE DEVELOPMENT BILL (B 49-2013)**1. Introduction**

The Bill has been well received. The following comments mainly arise from concerns relating to the planning of infrastructure development projects in relation to their actual implementation, what happens between planning and implementation, as well as the role that this Act will play during that gap. This document has been structured such that it states the comment, including a brief background to the comment, and thereafter it makes a proposal or recommendation.

2. Comments**2.1 General****Comment:**

The Act fails to address the issue of the legal protection of long-term transport corridors / plans from encroachment by other developments and informal settlements, which complicates the work of the Commission. Without these long-term plans, there can be no logic for identifying strategic integrated projects. The planning of these transport corridors of regional or national significance might precede implementation by decades, during which time, encroachment is possible. When implementation is finally contemplated, expropriations that could have been avoided through the legal protection of transport reserves become necessary. Together with expropriations, tedious processes of removal of illegal occupants within transport reserves must be carried out. There is currently no legislation that protects commuter / passenger rail reserves from being compromised.

Proposal:

Given that the Commission established in terms of this Act determines infrastructure development priorities [S. 4 (b)], determines current and future needs of the Republic in relation to infrastructure development [S. 4 (g) (i)], as well as evaluates existing infrastructure [S. 4 (h)], the Act must assist the Commission in carrying out its duties by including an explicitly stated clause for the legal protection of planned and existing transport corridors from encroachment or compromise.

Comment:

The Act refers to the designation of strategic integrated projects by the Commission (Section 8). Section 4 (i) implies that proposals may be submitted to the Commission for consideration. The Act does not specify the process of submitting proposals for consideration, although it is specific about the criteria that qualify projects as strategic integrated projects.

Proposal:

The Act must make provision for the process to be followed when submitting proposals for consideration, indicating the acceptable sources of these proposals.

2.2 Objects of the Act (Section 2)

Comment:

The objects of the Act refer to "identification and implementation" of strategic integrated projects without making reference to the planning thereof, yet the introduction and Section 4 (d) refer to prioritising "planning, approval and implementation" and Section 4 (m) refers to addressing capacity constraints within the planning phase of a strategic integrated project.

Proposal:

Include "planning" in Section 2 with a rider to the effect that infrastructure planning is often long-term and may be conducted long before implementation.

2.3 Functions of the Commission (Section 4)

Comment:

Section 4 (b) makes provision for the determination of infrastructure development priorities. It is unclear how the Commission will fulfil this function. In transportation alone, there are hundreds of future infrastructure development plans in each Province. These plans are prioritised by planning authorities on an on-going basis through spatial planning, infrastructure planning and transport planning processes, and are backed by demand or capacity analyses and projections. It would be understandable if the function of the Commission in this instance would be to adopt the pre-determined priorities and seek to ensure their legal protection from encroachment until the actual development of those priorities takes place.

Proposal:

Amend the clause to indicate that pre-determined infrastructure priorities will be adopted and protected from any form of compromise.

Comment:

Section 4 (h) and Section 4 (g) (i) make provision for the evaluation of existing infrastructure and for the determination of current and future needs of the Republic in relation to infrastructure development, respectively. Again, it is unclear how this will be done or whether the Commission has sufficient capacity to perform these functions.

Proposal:

Add the word "coordinate" to the clauses to clarify that the Commission will not be limited by resource capacity in performing these functions.

3. Conclusion

I am interested in giving a verbal presentation of these comments for clarity, particularly those that relate to the legal protection of future transport reserves.

A handwritten signature in black ink, appearing to read 'Sisa Maboza', written in a cursive style.

Sisa Maboza
20 November 2013