

# Submission on the Gas Master Plan, 2022

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(NJ)

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## ***1. Introduction***

The Department of Mineral Resources and Energy (DMRE) released the Gas Master Plan Base Case report for public comment on Tuesday, December 2021. The purpose of the Base Case report is to establish baseline information for the South African natural gas as well as outline the Gas Master Plan roadmap. This baseline information includes an overview of the gas value chain as well as regulatory framework. The report also sets the scene for the development of Gas Master Plan. Once completed, Gas Master Plan is developed, will serve as a policy instrument, providing a roadmap for taking strategic, political, and institutional decisions which will guide industry investment planning and coordinated implementation.

Natural Justice: Lawyers for Communities and the Environment (NJ) welcomes the opportunity to make a submission in accordance with the invitation to submit written comments by the Department of Mineral Resources and Energy (DMRE), for public comment.

NJ has read and considered the implications of the Gas Master Plan Base Case report and submits the following comments and recommendations to Department of Mineral Resources and Energy (DMRE). NJ's submission sets out a) background to the organisation and its work; b) comments on the Gas Master Plan Base Case report and c) makes recommendations – including factoring in climate change in Master Plan.

## ***2. Introducing Natural Justice***

Natural Justice: Lawyers for Communities and the Environment is a non-profit organization, registered in South Africa since 2007. Our vision is the conservation and sustainable use of biodiversity through the self-determination of Indigenous peoples and local communities.

Our mission is to facilitate the full and effective participation of Indigenous peoples and local communities in the development and implementation of laws and policies that relate to the conservation and customary uses of biodiversity and the protection of associated cultural heritage.

Natural Justice works at the local, national, regional, and international levels with a wide range of partners. We strive to ensure that community rights and responsibilities are represented and respected at the broader scales and that gains made in international fora are fully upheld at lower levels. Given the importance of the Gas Master Plan Base Case report, also within the context of climate change and environmental degradation, NJ wishes to submit its comments to the Department of Mineral Resources and Energy. We further express our request to make a verbal submission or participate in any meaningful engagements with the department when an opportunity arises.

### ***3. Background and purpose of the Gas Master Plan Base Case Report***

The National Development Plan (NDP) envisions that by 2030 South Africa will have an energy sector that promotes economic growth and development through adequate investment in energy infrastructure. At just 2.6% of the country's total energy mix, South Africa's natural gas market is small, but with all its inherent benefits, it has the potential to completely change the economy by stimulating economic growth and development, stability, and job creation. The meaningful addition of natural gas to the country's energy mix will rejuvenate an overburdened, outdated energy infrastructure and reduce cyclical energy shortfalls. Perhaps even more importantly, it will stimulate the economy by allowing business and industry to lower their energy and operational spend while also creating significant numbers of new jobs and skills development opportunities. Considering that nearly 90% of South Africa's existing natural gas demand is supplied by a single entity, namely Sasol Gas, the associated economic and employment risks of limited supply options, development and sourcing of alternative natural gas resources are high. It is imperative to ensure economic and employment stability within the natural gas sector by introducing more suppliers. Southern Africa's gas potential has been revealed by major discoveries that, when developed, widen options for greater regional energy trade.

South Africa's unconventional gas potential remains to be quantified but raises the prospect of possible domestic production in the longer term. Globally the natural gas industry has moved into a supply surplus, favouring a larger role for gas as a clean fossil fuel in many countries' energy policies. A challenge in developing the gas sector is to bring gas demand and supply on stream at the same time and spread geographically to stimulate broader localized demand through South Africa. Without such localized gas demand, it is difficult to develop distributed gas supply and without such distributed gas supply it is difficult to develop localized gas demand. One way of breaking this impasse is to create significant "anchor" gas demand through the development of a gas-to-power programme. In pursuit of adding generating capacity, lowering carbon emissions, enhancing energy security, and supporting industrial development, South Africa has taken the first steps in a gas-to-power programme to be executed under the Integrated Resource Plan 2019, aiming to increase the national energy mix natural gas contribution from 2.6% to 15.7% by 2030.

The purpose of this document is to establish baseline information for the natural gas sector in South Africa and to outline the Gas Master Plan roadmap. The report will also set the scene for the Gas Master Plan development process. The Gas Master Plan document, once developed, will serve as a policy instrument,

providing a roadmap for taking strategic, political, and institutional decisions which will guide industry investment planning and coordinated implementation.

#### ***4. Report's Limitations***

At the outset, it should be noted that Natural Justice notices at the time of the public comment period for the Gas Master Plan Base Case report, the Department of Mineral Resources and Energy (DMRE) had yet to publish a suitable modeling tool to model the country's current gas sector as well as to develop immediate sector expansion scenarios to accompany the report.

The DMER failed to meet its obligation to publish necessary information, such as expansion scenarios and natural gas demand projections, for this round of public participation in the report before the deadline for public comment.

#### ***5. Commentary and recommendations***

The Gas Master Plan is comprehensive, attempting to provide a global and national perspective of the gas industry and sector. There is still a lot of work to be done to narrow it down to a South African perspective. At glance, it reads more like a pitch from the gas industry than a South African policy document. Since it is assumed that South Africa imports gas from its neighboring countries and abroad, a few issues should have been clarified in this Master Plan. These issues include fugitive gas emissions, cooperation and coordination with the Climate Change Bill, property expropriation and compensation, specialized gas jobs, the financial implications of the gas industry, and the just energy transition plan.

##### ***5.1. Fugitive Gas Emissions***

Fugitive gas emissions are emissions of gas (typically natural gas containing methane) to the atmosphere or groundwater which result from gas mining activity. Methane emissions from gas mining has been linked to an increase in greenhouse gas emissions. As a result, this sector is not as clean and carbon neutral as proclaimed. Gas is not a better alternative and falls short of being a clean and sustainable energy source. Similarly, South Africa has ratified the United Nations Framework Convention on Climate Change (UNFCCC) and Paris Agreement. South Africa due to its international obligations has a duty to reduce greenhouse gas emissions, and use or invest in clean green energy.

##### ***5.2. Incompatibility***

This gas project is incompatible with the commitments announced by the government to combat climate change. Since the gas sector is already known for fugitive emissions, one of the more compelling arguments is that it does not cooperate and coordinate with the Climate Change Bill. All adaptation and mitigation

efforts should be based on the most up-to-date science, evidence, and information. The Climate Change Bill gives effect to South Africa's international climate change commitments and obligations, as well as defining the steps to be taken to protect and preserve the planet for the benefit of current and future generations.

The Climate Change Bill, which will help South Africa transition to a greener economy, compels businesses to reduce greenhouse gas emissions that contribute to climate change. Furthermore, climate change planning will be integrated into the budget process and fiscal risks will be monitored by the Treasury.

Climate targets are at odds with the Master Plan. The plan runs counter to the Climate Change Bill, which calls for reduction in investments in fossil fuels. South Africa must to adopt stricter NDC targets that are consistent with international principles of equitable shared contributions to climate change mitigation and adaptation efforts, as required by the Paris Agreement.

### ***5.3. Coordination***

There is failure to reference National Environmental Management Act (NEMA) provisions with regards to financial provisions, as well as NEMA provisions regulating environmental rehabilitation. Gas policies must be read in a manner capable of advancing the section 24 environmental right in the Constitution, which protects the right to an environment 'not harmful to health or wellbeing', embodies principles including sustainable development, environmental justice and intergenerational equity, and which requires the legislature and executive to undertake 'reasonable legislative and other measures' to realise this right.

Further, Section 2 of NEMA ('national environmental management principles') expands on the principles in the environmental right. These principles are of particular importance to understanding the rehabilitation obligations of mineral rights holders and the rights of mining-affected communities. The extent of managing this process of rehabilitation, decommissioning, and lapsing of licenses should be conducted through NEMA, and not through the Energy Regulator, as this encroaches on the powers of the Minister responsible for environmental affairs. Moreover, the financial provision constitutes an important part of a statutory scheme to incentivize the sound management of environmental impacts and encourage thorough rehabilitation - and only the enabling legislation and the relevant state department should do so.

### ***5.4. Infrastructure***

The Gas Master Plan is an initiative step to exploit the mineral resources of South Africa and other Southern African countries. The gas will be used to generate power and use the gas to power in the smelters, rather than petrol or diesel. However, the problem in this Southern African region is that no country has such infrastructure to store, process and distribute. The domestic use of gas is at a minimum of 2.6% though, in the future, it will improve. In South Africa, the domestic use of gas is not a commercially-viable option for many communities.

A further issue is that gas pipelines are not large enough for industrial-scale energy generation projects.

As a result, there are concerns about how community property will be compensated if it is necessary to expropriate land or property to build the necessary infrastructure.

Another concern is the finances needed to construct gas pipelines and their carbon footprint used in their construction. The Gas Master Plan did not go deeper and explain all these scenarios, and much more information will be required in the future on how these issues will be resolved. Furthermore, greater emphasis should be put on participatory democracy, as this plan will affect many communities and property security.

### ***5.5. Dependency***

The development of Gas in South Africa will also lead to fossil fuel dependence, making the transition to cleaner energy (renewable and other types) difficult. Fossil fuels contribute to greenhouse gasses, which is one of their major disadvantages. Compared to other countries, South Africa is relatively water scarce, making hydropower unsustainable. The country's main strengths are in its sunshine and wind, making energy projects in solar and wind more viable.

### ***5.6. Financial Implications***

The gas sector will have a huge financial implication on the country's budget, since most of this infrastructure expansion will be done from scratch. Gas projects could be a boon for South Africa, yet their environmental and social costs often outweigh their benefits. Partnerships between project developers, governments, and local communities are crucial for projects to have lasting developmental impacts. Concerns remain surrounding the funding allocation and, in general, the funding sources for the project. There are concerns that the government will increase certain taxes or use people's pensions to fund this project. Furthermore, the Gas Master Plan seems to have ignored the environmental consequences of gas, and these consequences are also fiscal. Fugitive gas emissions contain methane which falls under carbon-equivalent carbon tax initiatives.

### ***5.7. Just Energy Transition***

In order to transition towards a sustainable, low carbon and equitable energy system which is better for people and the planet, South Africa needs to transition from where we are at – 90% coal-generated electricity – to a system that is transparent, equitable, and incorporative of renewable energy (RE) and alternative sources. South Africa's transition from coal to renewables has been beset by difficulties, resulting in the country producing very low decarbonisation levels. South Africa is currently the most industrialised economy in Africa and the biggest source of carbon emissions. With coal still accounting for

80 percent of the country's electricity, developed countries have sought South Africa as a model for transitioning to renewables.

### ***5.8. Property Expropriation***

The gas pipelines which will run from Tumane and Pande (Mozambique and other regional countries) fields will affect many communities. It is on this end that the Master Plan has not yet developed a scale of scenarios on how best they can compensate the families affected by these pipelines. Such expropriation of land and property will need to be in line with the Bill of Rights and Section 25 of the Constitution of South Africa. The gas industry plan will affect properties of vulnerable communities; thus, the plans need to give a meaningful indication on how these communities will be compensated. Public participation will be crucial for the vulnerable communities to voice their opinions regarding their land and property security. These gas pipes are also prone to bursting and explosions, thus there is a greater need for surveillance, repairs, monitoring and maintenance.

### ***5.9. Participatory Democracy***

There are additional processes that should have been included in the Gas Master Plan. Importantly, the consultation process outlined in the National Environmental Management Act of 1998 and the Environmental Impact Assessment (EIA) Regulations should be used. The EIA Regulations provide a detailed description of what constitutes adequate notice, with the goal of removing barriers to participation such as disability or literacy. Furthermore, notice includes posting a notice board on the site for exploration, construction, and an alternative site; personal notification of parties such as landowners, lawful occupiers, and holders of informal land rights; placing advertisements in government gazettes or local newspapers; publishing advertisements in both provincial and national newspapers where the activity may have an impact beyond municipality; and other forms of notice to overshadow the municipality.

### ***5.10. Energy Regulator***

It is unclear what procedure the Energy Regulator will use when required to publish the criteria outlined in Section 19. (2) of the Gas Amendment Bill. The Gas Master Plan as a policy document should have explained this further. We anticipate that it will be published in the government gazette, allowing interested and affected parties to learn about the additional criteria that were used.

### ***5.11. Administrative Justice***

Gas policy should advance the principles of administrative justice. There is no provision for consultation, notification, or public participation in how the energy regulator would carry out this process. Inadequate time allocation prevents consultation or public participation in the objection and application process, which,



we argue, would allow companies to operate or launch reviews and appeals against refusals without the knowledge of interested and affected parties.

Furthermore, the timeframes within which the energy regulator receives the application and objections allow the applicant to respond but do not provide opportunities for consultation processes, which, we believe, are required to take place and are still woefully inadequate and are not addressed in the National Energy Regulator Act 40 of 2004 (NERA). There are no timeframes for consultation under the NERA, which, in our experience, is one of the reasons given by companies for not conducting proper consultation. As a result, interested and affected parties are not given enough time to consider and comment on complex, detailed applications.

### ***5.12. Processes***

By failing to provide adequate time and resources to determine the range of interests and conflicts relating to land and petroleum resources, the rights of interested and affected parties to fair administrative action are violated, and the need for decisions to be appealed or reviewed increases. We recommend that the overall application and objection process be reviewed and included in the Gas Amendment Bill to ensure that the constitutional right to lawful, reasonable, and procedurally fair administrative action is honoured. During this process, we recommend that the following principles of meaningful consultation be followed:

1. meaningful consultation should be defined and include the applicant's obligation to have taken all reasonable and appropriate measures in the specific circumstances of its application to engage all interested and affected parties;
2. applicants take all reasonable steps to ensure that interested and affected parties understand the information provided and how it specifically affects them, so that they can make an informed decision;
3. this should include text translations into the predominant language in the area, as well as scientific or otherwise technical language translations into plain language; and,
4. a revised process of meaningful consultation should also include an obligation on applicants to collaborate with interested and affected parties.

### ***5.13. Public Participation***

While reconsidering the consultation processes in South Africa, we urge the Minister to consider other appropriate standards for public participation, specifically the internationally accepted principle of free prior and informed consent (“FPIC”). The application of FPIC would, among other things, facilitate the realisation of a range of human rights - socio-economic rights in particular - and empower communities to be better informed and be able to address how the provision of permits and rights affect them.

### ***5.14. Definitions***

Natural Justice is concerned that the undefined use of the phrase "national interest" could be used to justify the licensing of certain gas infrastructure that may not be in South Africa's best interests. As a result, we believe it is critical to include a definition of what is meant by national interests, as this will provide clear guidance on how it should be understood in the context of the Bill. This will be especially important for Interested and Affected Parties when determining whether the "additional criteria specified by the Minister" are just and consistent with our Constitutional values – the starting point for determining South Africa's national interests. Another concern is how potentially conflicting national interests will be assessed, and whether the Minister has discretion in this regard. We propose incorporating a set of principles that will help to avoid potentially conflicting national interests.

### ***5.15. Risks***

The Gas Master Plan proposes many possibilities of which there are risks. These risks are not explained or given scenarios on how the Department and Ministry will deal with. The obvious is that gas is traded in US dollars and the prices fluctuate every day, influenced by certain countries. It is noted that the Ministry should have made a plan on how to deal with the international market. It is also understood that the deposits of gas in South Africa will need to be liquified abroad and then brought back to South Africa. It is unknown how South Africa will be able to afford this liquified gas. Thus, any product produced in the future with gas power will have higher tariffs. The report does not engage with the increasing gas volatile prices. If gas is used to power electricity in South Africa prices for electricity will increase massively affecting many communities already strained. The prices of LNG have experienced significant fluctuations; however, there are plans in the Master plan to buy gas at spot prices from Mozambique or Angola. These gas price shocks seem to have been left without address, and with the deteriorating rail network for transporting goods and gas in South Africa detailed plans were required.

### ***5.16. Timing***

The Gas Master Plan was published on the 14<sup>th</sup> of December 2021 as everyone was starting to wind down for the summer holidays. This timing has not been ideal for people who had planned to travel and yet had vested interests in the plan. The public commenting period will finish on the 31<sup>st</sup> of January 2022, thus there was no meaningful opportunity and reasonable time given to prepare for comments on this 100-page plan. In fact, it has been less than a month, counting the summer holidays. The Gas Master Plan looks at how South Africa will be gas-powered in the future; however, it is not detailed enough and barely explains the risks and counter scenarios. The release of such an important document during the long-holidays wasn't ideal. In short, the fact that the Gas Master Plan was published for comment in December, when people are on summer holidays, does not show good faith from the Department of Mineral Resources and Energy (DMRE).

## ***6. Conclusion***

Natural Justice recommends that the Gas Master Plan include the precautionary principle, environmental considerations, the polluter-pays principle, and a Strategic Environmental Assessment. We recommend that meaningful consultation be included in license applications, particularly those that will have an impact on rural or marginalized communities.

We recommend that meaningful consultation be included in license applications, particularly those that will have an impact on rural or otherwise marginalized communities. This procedure should be included to allow for all notices provided to interested and affected parties (including landowners and lawful occupiers) to be published in all accessible media platforms, including notices in the Magistrate's Court in the magisterial district applicable to the land in question, advertisements in local or national newspapers circulating in the area where the land or offshore area to which the application relates, and notices on community radio stations, in community halls, municipal offices, or traditional offices in English and at least one other official language that is dominantly used in the relevant area.

The role of government is to provide an appropriate policy framework; clearly delineate the division of responsibilities between the public and private sectors; determine how project revenues are to be used; monitor and evaluate projects; and deliver other social services; provide security for projects or properties; and develop mechanisms for financing rural infrastructure and planning upstream projects. Project developers must give attention to social concerns, acknowledge all stakeholders, identify risks and opportunities, assess impacts, provide for public involvement in project design and implementation, and develop mechanisms for resolving conflicts and evaluating project effectiveness. NGOs and communities can provide valuable input and should work side by side.

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