



THE INFRASTRUCTURE BILL

1. Introduction

Infrastructure is important: it allows people to travel, it brings goods from distant lands and ports, and it provides the electricity we use, the water we drink and the fuel that powers our vehicles. Modern economies are contingent upon reliable, efficient transport networks, high speed communications, and a stable electricity supply. Since 1994, South Africa's economy, as measured by gross domestic product, has more than doubled in size¹, and since 1996, the population has increased from 40 million² to 52 million³. In order to keep up with this growth, and in order to spur further economic development and thus alleviate poverty, significant infrastructure needs to be built. Delaying necessary construction and upgrades places additional pressure on the current infrastructure, harms the economy and makes people's lives harder. The power cuts from 2005 to 2008 had a severe dampening effect on economic growth and employment. This should serve as a sobering reminder of the dangers of leaving aging infrastructure to its own devices. The tremendous complexity of projects such as constructing power plants and highways means that extensive planning and construction time – up to a decade – is needed.

During the long planning, permitting and construction phases, it is common for the public to lose track of these extensive projects. However, it is valuable to recall just how many of them have been put in place lately. The Coega Industrial Development Zone is a good example: 20 years ago, it simply did not exist. Now there are car factories, a wind farm and a deep-water

port, all built from scratch and sprawling across 110 square kilometres of land. The Medupi power station, while struggling, will also eventually be completed. A new airport for Durban, new rail lines for coal exports, the Gautrain, and various intra-city bus services have all been brought into service in recent years.

Better infrastructure is also necessary in order to overcome the spatial development patterns left by Apartheid. Large numbers of people live in locations that are underserved in terms of transport, jobs, and economic and educational opportunities. Many of them migrate so as to take advantage of the opportunities in better served areas. This means that the large cities must keep pace with this influx, while simultaneously the rural areas need to be developed in order to close the massive chasm between what is needed, and what has been provided. Clearly, infrastructure development is an important issue which must be attended to by anyone with a serious interest in South Africa's future.

2. Infrastructure and the NDP

Infrastructure development is a central part of the National Development Plan (NDP), which explains that: "To achieve sustainable and inclusive growth by 2030, South Africa needs to invest in a strong network of economic infrastructure designed to support the country's medium and long-term objectives⁴". Flowing from this, government released the National Infrastructure Plan in 2011, which contains the details of a host of major infrastructure projects.

These include a major renewable energy project, large railway and freight handling facilities, and a national school building project. In total, the National Infrastructure Plan identifies 18 Strategically Integrated Projects (SIPs). Some are located in a particular region (such as the development of mining and freight related infrastructure in the Waterberg region of Limpopo Province), while others are nationwide (such as the school building project).

The scale of the programme is immense: In total, the government intends spending R4 *trillion* on infrastructure projects over the next 15 years⁵. This figure dwarfs expenditures such as the infamous arms deal (a 'mere' R50 billion) and the 2010 soccer world cup (R30 billion).

3. Details of the Bill

The Infrastructure Development Bill was introduced into Parliament in November of 2013, and passed during the last week of February. Only the Democratic Alliance voted against it, arguing that it would undermine Parliamentary oversight mechanisms. This after DA MPs had earlier questioned aspects of the Bill relating to sustainability and environmental issues.

This Bill seeks to streamline and co-ordinate government processes related to infrastructure, by maintaining a Presidential Infrastructure Co-ordinating Commission (PICC) to oversee these projects. One of the major problems that the government has identified is the slow process of implementing infrastructure programmes. Speaking in Parliament, the Minister for Economic Development, Mr Ebrahim Patel, explained that in one case, the erection of an electricity transmission mast – “a sophisticated pole”, in his words – had been delayed by about 6 years, as applications churned through the system, were rejected, appealed, counter-appealed, and so on. The Bill is meant to bring an end to this by creating a central structure in which the paperwork can be expedited for major projects.

The Bill explicitly states that it does not seek to usurp the regulatory and licensing functions of the various national departments; neither will it interfere with Environmental Impact Assessments (EIAs). The PICC will include the

mayors of each municipality, and the premiers of each province, as a way of including provincial and local government in the process.

Reading the Bill in conjunction with the National Infrastructure Plan, it appears that the Bill does seek to accelerate the decision-making process around permitting, licences and EIAs. Measures such as encouraging parallel applications and including relevant departmental officials on the project steering committees are clearly there in order to move the regulatory approval along. In addition, issues surrounding expropriation of land are mentioned as hindering infrastructure projects in the National Infrastructure Plan. The PICC is empowered to expropriate land, in line with the Constitution and all relevant legislation. This, again, is addressed in a fashion that explicitly defers to the existing legislation on the subject, while seeking to move the process along, in order to facilitate quicker implementation of major projects.

In its aims, the Bill is laudable. Co-ordination of these massive and complex programmes by high level committees, chaired by ministers, will hopefully facilitate rapid and efficient implementation. In addition, concrete timelines have been introduced for planning and approval stages, which should help prevent important projects from gathering dust on the shelves of government. Importantly, the Bill makes provision for the inclusion of local industrialization, youth employment, and employment benchmarks in overseeing these projects. It is not purely oriented around making infrastructure ‘happen faster’. Rather, it seeks to:

“advance national development goals, including local industrialisation, skills development, job creation, youth employment, small business and co-operatives development, broad-based economic empowerment and regional economic integration⁶.”

In South Africa these are important issues, and it is heartening to see them explicitly addressed in this Bill from the outset.

Lastly, a specific provision has been made for preventing conflicts of interest. Members of steering committees are barred from overseeing projects with which they have connections, either through their families, or as business partners.

This will help ensure the integrity of the process. However, as at least one analyst has noted⁷, these anti-corruption measures do not apply to members of the management committee or secretariat, which means that conflicts of interest arising at these levels are a potential problem.

4. The Bill's Reception, and the Minister's Responses.

The Bill has attracted a lot of interest from across the political spectrum. During the recent Parliamentary hearings, representatives of COSATU, business interests, provincial and local government, and civil society made representations on the Bill in particular, and on infrastructural issues in general.

The Economic Development Department prepared a lengthy and detailed response to the issues raised by various stakeholders. Presented by the Minister, Mr Ebrahim Patel, this response focused on reiterating the logic of the Bill, and supporting its adoption in a form similar to its original one. They have taken some of the proposals on board, including various language changes and technical issues. Most of the major proposals have been rejected.

COSATU and the various utility providers (including the South African National Roads Agency) generally praised the Bill, with a few minor suggestions being put forward from this quarter.

The general thrust of the inputs from the private sector, provincial and local government, represented by Business Unity South Africa, the Western Cape Government and the South African Local Government Association, is that they worry that the Commission is a needless additional layer of red tape, which may slow down the implementation of new projects. SALGA and the Western Cape government are also particularly concerned that the Bill overrides or interferes with their rightful role as primary service providers.

In response to BUSA's fears around red tape, Minister Ebrahim Patel has argued that "in one room, you will have all the public sector decision makers. That can only be good for development, that can only be good for jobs, that can only be good for inclusive economic growth⁸."

It is worth noting that the national government has hardly been tangential to previous infrastructure developments. Projects such as Coega would likely not have seen the light of day without central government's oversight and involvement. Having a central co-ordinating forum for infrastructure will hopefully assist local government in implementing these projects. The school building programme appears to be a good example of how national government can assist local government in making good on the promise of better services for poor South Africans without overstepping its bounds.

In contrast to the fears of increased red tape slowing down major projects, Professor Patrick Bond, of the University of KwaZulu-Natal, argues that streamlining and fast tracking massive and complex projects will simply generate underused, unnecessary and environmentally damaging projects at a faster rate. A 'bad' project undertaken quickly is still a bad project.⁹

The Centre for Environmental Rights (CER) has made a similar argument, claiming that the bill is incompatible with existing licensing regimes, which call for a somewhat longer consultation and permitting process – 300 days, instead of the 250 envisaged in the Bill¹⁰. These arguments have been rather baldly dismissed by the Minister, although the Bill does now include provision for extending the consultation timeframes, provided that the authorities involved inform the PICC in writing, and give reasons for the delay.

The argument surrounding the consultation times has some merit, and expanding these times should definitely be considered. However, the previous existence of white elephants does not mean that all major projects are inherently problematic, or that efficient design and planning processes are bad. Making the process work *faster* is not necessarily dangerous, provided it works *well*. The environmental arguments are important, but provided that the decision-making process and consultation times can be brought in line with existing legislation, this is not an insurmountable obstacle.

The final challenges were based on the notion that the Bill should 'do more'. For example, in addition to expediting SIPs and including objectives such as youth employment and local

industrialization, representatives from organizations for the physically challenged argued that the Bill should include implementing the principles of open access design¹¹ among its objectives. These suggestions were noted, but the Minister argued that the Bill should be kept 'lean', and that these "proposals would dilute the core aim of the Bill, which is to empower the State to implement priority infrastructure projects¹²". In effect, the Minister argues that the Bill must be kept from 'doing too much', lest it become an additional source of friction and create bureaucratic stumbling blocks to the process of implementing SIPs.

6. Conclusion

During the hearings there were repeated calls from affected communities for greater consultation and more transparency. Communities such as the people of South Durban, represented by the South Durban Community Environmental Alliance (SDCEA), have suffered the impact of massive, environmentally damaging projects, and they are insisting that their demands be included in the consultative process. In a small victory for SDCEA the planned expansion of harbour facilities in Durban has recently faced a setback, due to the Department of Environmental Affairs rejecting Transnet's environmental impact assessment as being inadequate. Apparently the existing oversight system still has some teeth, which is good news. However, this rejection also highlights some of the problems with the process. Ideally, Transnet should never have submitted a plan that was inadequate. This could have been avoided by better communication with the Department of Environmental Affairs, and a better

understanding the specific problems that they needed to address. Getting it right the first time is better for everyone involved.

It is important that the PICC does not override or detract from the legitimate public consultation process, and that the concerns of all relevant stakeholders be taken into account in a legitimate and transparent fashion. It is also important that major infrastructure projects which are in the interest of the country go forward in an expeditious fashion. As noted before, the Infrastructure Bill does not seek to interfere with regulatory powers, and it also explicitly acknowledges the role and importance of EIAs. The Bill does make provision for steering committees to consult with and invite relevant persons to make submissions on SIPs. Such committees should be formulated so as to include the inputs of members of affected communities and other stakeholders throughout the process. Despite the Minister's concerns about 'leanness', public consultation and involvement is an important element of infrastructure development, and must not be overlooked, however tempting the desire to fast track projects becomes.

The Infrastructure Bill is designed to get us to our destination (in terms of infrastructure) in less time. Where exactly we are going is certainly something worth debating. Having said that, legislation that will arrange a smoother and more efficient implementation of major projects should be applauded. If it also manages to meet its lofty goals of increasing employment, broad based black economic empowerment, local industrialization and youth employment, it will truly be an impressive feat.

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¹ In 1994 South African GDP was \$135 billion: In 2013 it was \$384 billion. Figures are adjusted to current US dollars, and are derived from the World Bank Database: <http://databank.worldbank.org/data/home.aspx>

² <http://www.statssa.gov.za/census01/Census96/HTML/default.htm>

³ <http://beta2.statssa.gov.za/publications/P0302/P03022013.pdf>

⁴ NDP p137

⁵ Mr Zuma gave this figure during a speech at an infrastructure conference. Treasury has stated that the expenditure will be approximately R3 trillion. <http://www.bdlive.co.za/economy/2012/10/19/infrastructure-spend-to-be-r4-trillion-over-15-years-says-zuma>

⁶ Infrastructure Development Bill Part 1.2 (g)

⁷ <http://mg.co.za/article/2013-11-22-00-infrastructure-bill-finds-no-favour>

⁸ <http://www.youtube.com/watch?v=AwiOAE2X13k>

⁹ Professor Bond made this argument during submissions on the Bill before the Portfolio Committee on Economic Development on the 16th of January 2014.

¹⁰ <http://cer.org.za/news/environmental-rights-blog-infrastructure-development-bill-law-high-rollers>

¹¹ Open Access Design is a design philosophy premised on the notion that facilities should be designed, from the outset, to be as accessible to people of all physical types as possible. It seeks to take disabled accessibility beyond simply tacking on a few wheelchair ramps to public buildings and adding some disabled parking lots.

¹² Infrastructure Development Bill – Comments from EDD on Public Submissions, 28 January 2014, p11