06 Augustus 2026

Mr A. Kotze
Committee Secretary
Portfolio Committee on Electricity and Energy
3rd Floor, 90 Plein Street
Cape Town
8000

By e-mail: akotze@parliament.gov.za

Dear Mr Kotze

RE: AFRIFORUM'S COMMENTARY ON THE GAS BILL (B6-2026)

1. We refer to the Gas Bill, B6-2026 ("the Bill"), introduced in the National Assembly in terms of section 76 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). The Bill proposes to repeal the Gas Act, 2001 (Act No. 48 of 2001) ("the principal Act" or "the Gas Act") in its entirety and to replace it with a new regulatory framework for the piped gas industry.[1] Interested persons have been invited to submit written comments to the Portfolio Committee on Electricity and Energy on or before 16h30 on 7 August 2026.[2]
2. This submission is submitted in response to that invitation. It constitutes the submissions of AfriForum NPC ("AfriForum"), a non-profit company with registration number 2005/042861/08, registered as such in terms of the Company Laws of the Republic of South Africa with its principal place of business at AfriForum Building, corner Union and DF Malan Streets, Kloofsig, Centurion, Gauteng.
3. AfriForum makes these submissions in line with its stated purpose and objectives in its memorandum of incorporation, which is to, inter alia, protect and promote the constitutional rights of the citizens of the Republic of South Africa.
4. The Bill is introduced against a backdrop of significant structural change in the gas sector, including the anticipated decline of piped natural gas supply from the Republic of Mozambique on which the domestic market has relied for two decades,

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[1]Government Gazette No. 54206 of 24 February 2026 (explanatory summary of the Bill and prior notice of its introduction).

[2]Parliament, Portfolio Committee on Electricity and Energy, call for written submissions on the Gas Bill [B6-2026], closing 16h30 on 7 August 2026.

the consequent need to develop liquefied natural gas import, storage and regasification infrastructure, and the shortcomings in the enforcement and compliance capacity of the existing regulatory framework identified in the Bill's own Memorandum on the Objects of the Bill.

5. This submission adopts an initial narrative and thematic approach, situating the Bill within the broader structural and constitutional context of the gas sector, and thereafter a clause-by-clause approach.

THEMATIC OVERVIEW

6. AfriForum wishes to situate its concerns within six cross-cutting themes that recur throughout the Bill. These themes inform the specific submissions made below and, in AfriForum's respectful submission, ought to guide the Portfolio Committee's consideration of the Bill as a whole.

Licence security and the constitutional property clause

7. A gas licence, once granted, is not a bare administrative privilege. It is frequently the foundation of substantial, long-term capital investment in transmission, storage, distribution, liquefaction or re-gasification infrastructure, is relied upon to secure project finance, and is capitalised into the value of the underlying undertaking. The use and operating rights attaching to such a licence are properly regarded as property for the purposes of section 25 of the Constitution once granted.

8. Several clauses of the Bill, most notably clauses 21, 22 and 33, have the cumulative effect of narrowing existing procedural protections around the loss of a licence, and of empowering the expropriation of land for gas infrastructure on materially weaker preconditions than those in the principal Act.

9. AfriForum does not, as a matter of principle, oppose the orderly regulation of licence revocation, surrender or the acquisition of land needed for gas infrastructure. It does, however, submit that where the State deprives a person of a valuable licence or property interest in pursuit of these objectives, section 25(1) requires that the deprivation not be arbitrary, and, where the deprivation is of such a character and degree that it amounts in substance to expropriation, section 25(2) requires just and equitable compensation. The Bill, as introduced, does not adequately grapple with this distinction.

Redress, equality and the requirements of section 9 of the Constitution

10. AfriForum accepts that redressing historical patterns of ownership and participation in the gas industry is a legitimate objective.

11. AfriForum objects, however, to the open-ended, race-based conditions introduced or continued by clauses 2(h), 18(1)(b) and 36(1)(l). These provisions tie licensing objects and licence conditions to broad-based black economic empowerment requirements and to further "gas sector specific codes or requirements" that do not yet exist and are not defined, capped, or subject to any sunset mechanism.

12. AfriForum submits that the relevant provisions should be redrafted to establish a closer nexus between the measure and demonstrated disadvantage, with defined criteria, proportionality safeguards and a review or sunset mechanism. Failure to do so renders the objects of the bill vague, therefore creating economic uncertainty within the gas sector. This will inevitably result in substantial divestment in the gas sector.

Legislative certainty, the rule of law and executive discretion

13. The Bill concentrates significant, insufficiently constrained discretionary power in the Minister and the Energy Regulator. The Minister, in particular, is empowered to:

    13.1 determine that new gas facilities, services or gas supply are required "in the national interest" or "in the event of an emergency", without either term being defined, and to direct that these be developed by the State (clause 28);

    13.2 exempt any activity or class of activities from the entire Act on the similarly undefined ground that this is likely to "promote the national, strategic or economic interests of the Republic" (clause 39);

    13.3 publish "imperatives" by Gazette notice that the Energy Regulator must apply to every licence application, without those imperatives being defined or constrained in the Bill itself (clause 15(3)); and

    13.4 prescribe the mechanisms for broad-based black economic empowerment, and other matters of substance, by regulation (clause 36(1)(l)), with only the general public-comment safeguard in clause 36(2) and no further parliamentary oversight.

14. AfriForum respectfully recommends that, wherever the Bill confers a discretionary power of this character, the Committee require the insertion of proper lawful

constraints on its exercise. Specific instances are dealt with under the relevant clauses below.

Existing licences, registration and transitional protection

15. The Bill repeals the principal Act in its entirety. It introduces, for the first time, a parallel registration regime under Part B of Chapter 3, extending registration obligations to categories of person, including importers, exporters and eligible customers, who bore no such obligation under the principal Act.

16. AfriForum does not dispute the need to modernise the regulatory framework. It submits, however, that persons who have structured their affairs around the existing dispensation, including the exemptions in Schedule 1 to the principal Act, should not be left without a transitional mechanism through which to regularise their position before enforcement action becomes competent against them.

Access to effective remedies and judicial oversight

17. Section 27 of the principal Act requires the Gas Regulator to apply to the High Court, on notice of motion, for an order revoking a licence. Clause 22 of the Bill removes this requirement and empowers the Energy Regulator to revoke a licence itself. A suspensive judicial review period is provided only in respect of revocation founded on an uncured compliance notice. No equivalent safeguard, and no internal appeal, is provided in respect of the other grounds of revocation listed in clause 22(1).

18. This is particularly significant given that the Bill simultaneously confers materially greater powers on the Energy Regulator and the Minister, including the power to set tariffs and maximum prices from first principles, to grant and withdraw geographic exclusivity, and to determine that new gas facilities are required. The rationality and constitutionality of these expanded powers cannot be assessed independently of the availability of an effective and expeditious remedy to a person affected by their exercise.

19. AfriForum submits that an accessible internal review or appeal mechanism, alternatively the retention of the principal Act's requirement of an independent judicial sanction for the revocation of a licence, is an essential safeguard that should not be removed without a clearly articulated substitute.

Proportionality of new sanctions on business, including small enterprises

20. The Bill introduces, for the first time, a criminal offence carrying a sentence of imprisonment for up to ten (10) years for conducting an unlicensed or unregistered gas activity (clause 38). The principal Act contains no equivalent custodial sanction for this conduct.

21. AfriForum welcomes the turnover-scaled administrative fine introduced by clause 32(3), which reasonably shields small and medium enterprises from the flat R2 million per day penalty presently found in the principal Act. AfriForum is concerned, however, that this benefit is undermined elsewhere in the Bill by the removal, without replacement or transitional relief, of the small-scale liquefied petroleum gas exemption presently found in item 4 of Schedule 1 to the principal Act, which would newly subject individual, farm-level and household gas arrangements to the full licensing regime.

22. These six themes recur, in varying combinations, throughout the clause-by-clause commentary which follows.

CLAUSE-BY-CLAUSE COMMENTARY

Clause 2 – Objects of Bill (paragraph (h))

23. Clause 2(h) makes it an object of the Bill to promote companies in the gas industry that are owned or controlled by black people in accordance with the Broad-Based Black Economic Empowerment Act, 2003, and any further "*gas sector specific codes or requirements… as may be applicable from time to time*". For the reasons given in the thematic overview above, AfriForum submits that this open-ended formulation should be replaced with a closely-tailored, time-bound provision.

Clauses 3 and 4 – Functions of Energy Regulator; Regulation of tariff and maximum prices

24. AfriForum has no principled objection to the expansion of the Energy Regulator's mandate to set, monitor and regulate tariffs and maximum prices. AfriForum notes, and welcomes, that clause 4(5) lists specific factors relevant to whether a maximum price is excessive, which is a marked improvement on the principal Act's largely unstructured pricing mandate and reduces the risk of an arbitrary exercise of this power.

25. AfriForum recommends that the Energy Regulator's methodology for determining an excessive price, contemplated in clause 37(k), be finalised and published before the

excessive-price standard is enforced against any licensee by way of an administrative fine, given the open-ended nature of the "unreasonable" test in clause 4(5).

Clause 11 – Activities no longer requiring licensing

26. Clause 11 permits the Minister, by regulation, to declare that an activity no longer requires a licence. Unlike the ordinary regulation-making power in clause 36, this power is not made subject to any express requirement of prior public notice or an opportunity for interested parties, including competitors and existing licensees, to comment. AfriForum recommends that clause 11 be made subject to the same public-participation requirement that clause 36(2) imposes on other regulations.

Clause 17 – Exclusivity

27. Clause 17 continues and elaborates the principal Act's distributor exclusivity model, under which non-eligible customers within a licensed distribution area must purchase gas from that area's distributor. AfriForum does not object in principle to this model, given the current state of development of the domestic gas market but recommends that the Bill itself fix a <u>maximum</u> permissible exclusivity period and publish the criteria for its grant, rather than leaving this entirely to case-by-case Energy Regulator-discretion.

Clause 18 – Conditions of licence

28. Clause 18(1)(b) is addressed under the equality theme above.

29. AfriForum further notes that clause 18(1)(q) cross-refers to "*Chapter 2, sections 12A(2) and 43A*" of the Competition Act, 1998. On the current structure of that Act, section 12A falls within Chapter 3 (merger control), not Chapter 2. AfriForum recommends that this cross-reference be verified and corrected before enactment, to avoid uncertainty as to the statutory basis on which a maximum price may be imposed for inadequate competition.

Clauses 21 and 22 – Surrender and revocation of licence

30. Clause 21(4) provides that the Energy Regulator may accept the surrender of a licence only once satisfied that land-rehabilitation obligations have been met, while clause 22(1)(e) separately lists the mere lodging of a surrender application as a

ground on which the Energy Regulator "*may revoke*" the licence. AfriForum recommends that these two clauses be cross-referenced, so that it is clear whether, and on what date, a licence is lost where a surrender application has been lodged but rehabilitation has not yet been confirmed.

31. As set out in the thematic overview above, AfriForum further submits that clause 22's removal of the principal Act's requirement of High Court sanction for revocation should not proceed without an equivalent internal appeal or other effective and expeditious remedy being substituted in its place.

Clauses 23 to 26 – Registration

32. Part B of Chapter 3 extends the registration regime to categories of person, including importers, exporters and eligible customers, who bore no registration obligation under the principal Act. AfriForum recommends that these newly-regulated categories be afforded a transitional period, equivalent to the six months given to existing operators under section 35(1) of the principal Act, within which to apply for registration before any enforcement consequence may attach to their failure to do so.

Clause 28 – New gas facilities, services or gas supply

33. Clause 28 is addressed under the rule-of-law theme above. AfriForum adds that clause 28(13), which empowers the Minister to issue guarantees, indemnities and other instruments binding the State to future financial commitments in connection with a publicly-owned gas facility, warrants particular scrutiny given the absence of any costed assessment of the State's exposure under this power in the Bill's Memorandum on Objects.

Clauses 31 and 32 – Compliance notice; Administrative fines

34. AfriForum welcomes the detailed, staged compliance-notice procedure introduced by clause 31, which requires prior written notice, reasons and an opportunity for the affected person to make representations before a compliance notice is issued. This is a marked improvement in procedural fairness on the principal Act's tribunal-based model.

35. AfriForum also welcomes the turnover-scaled administrative fine in clause 32(3), for the reasons given in the thematic overview above, while noting that the "*greater of*"-formulation increases the maximum possible exposure for larger licensees relative to

the principal Act's flat penalty, and that this should be well understood by operators of every size in the sector.

Clause 33 – Expropriation of land

36. Clause 33 empowers the Minister, in consultation with the Minister responsible for the Expropriation Act, 2024, to expropriate land or a right in land for gas facilities. Section 32 of the principal Act, by contrast, empowers the Gas Regulator to expropriate only once satisfied that the licensee is unable to acquire the land by agreement and that the land is reasonably required. Clause 33 omits both of these preconditions.

37. By routing the power through the Expropriation Act, 2024, clause 33 further imports that Act's compensation framework, including its provisions for compensation to be determined as "*nil*" in defined circumstances, into the gas sector, without any gas-specific procedural protection to compensate for the loss of the principal Act's "*unable to acquire by agreement*"-safeguard. AfriForum submits that this raises the section 25 concerns identified in the thematic overview above and should be revisited.

Clause 34 – Environment and rehabilitation of land

38. Clause 34(1) describes the principles in section 2 of the National Environmental Management Act, 1998, as serving as "*guidelines*" for the interpretation and administration of the Bill. Those principles already bind every organ of state exercising a function that may affect the environment under section 2 of that Act. AfriForum recommends that clause 34(1) be reworded to confirm, rather than appear to soften, their binding legal status.

Clause 36 – Regulations

39. Clause 36(1)(l), empowering the Minister to make regulations on "*mechanisms to promote broad-based black economic empowerment*", is addressed under the equality and rule-of-law themes above.

Clause 38 – Offences

40. AfriForum supports firm enforcement of the Bill against unlicensed and unregistered activity. AfriForum submits, however, that a maximum sentence of ten years'

imprisonment for this conduct, as opposed to the twelve-month maximum the Bill itself prescribes for obstructing an inspector or furnishing false information under clause 38(3), is disproportionate to the underlying conduct and is not explained in the Memorandum on Objects. AfriForum recommends that this penalty be reconsidered.

Clause 39 – Exemptions

41. Clause 39 is addressed under the rule-of-law theme above. AfriForum recommends that any exemption granted under this clause be subject to a defined maximum duration and a reporting obligation to Parliament.

Clause 40 – Repeal of law and savings

Schedule 1 – Exemption from obligation to apply for and hold a licence

42. Item 4 of Schedule 1 to the principal Act, exempting liquefied petroleum gas supplied from a bulk storage tank or cylinder and piped at low pressure across no more than four erf lines, does not appear in Schedule 1 to the Bill. This exemption presently covers arrangements such as a shared bulk LPG installation serving several dwellings or structures on a single farm or smallholding. AfriForum recommends that this exemption, or a proportionate equivalent, be restored, failing which individual property owners and small operators will be brought within the full licensing regime designed for commercial gas facilities.

CONCLUSION

43. AfriForum supports the objectives of a secure, well-regulated and modernised gas sector, including the orderly development of gas infrastructure and the diversification of South Africa's gas supply.
44. AfriForum's concern is not with these objectives, but with the means by which the Bill seeks to achieve them. In its present form, the Bill confers extensive and, in places, insufficiently constrained discretionary power on the executive, narrows existing procedural and compensation protections for licensees, and introduces measures which raise serious concerns regarding legality, administrative fairness, constitutional property rights and equality.
45. These concerns are particularly significant in circumstances where existing and prospective participants in the gas sector are expected to make long-term, capital-

intensive investment decisions on the strength of the licences and registrations the Bill creates.

46. AfriForum accordingly submits that the Bill, in its present form, does not yet strike an appropriate balance between the legitimate public interest in a secure and well-regulated gas industry and the constitutional protection of individual rights, legal certainty and accountable government.

47. AfriForum remains committed to constructive engagement and respectfully requests that this submission be placed on record before the Portfolio Committee on Electricity and Energy.

Yours sincerely

Lambert de Klerk
Manager: Environmental Affairs
AfriForum
Cell: 081 594 0718
Email: lambert.deklerk@afriforum.co.za