



groundWork

**Environmental justice action**

P.O. Box 2375, Pietermaritzburg, 3200, South Africa ● 6 Raven Street, Pietermaritzburg, 3201, South Africa  
Tel: +27-33-342 5662 ● Fax: +27-33-342 5665 ● team@groundwork.org.za ● www.groundwork.org.za

**Comment on “Draft Critical Infrastructure Protection Bill, 2016”  
Submitted by groundWork, Friends of the Earth, South Africa**

**Date:** Wednesday, 15<sup>th</sup> June 2016  
**For attention:** Ms. Noluthando Xuba and Mr. Milton Ntwana,  
Police Services, [dawn.bell@csp.gov.za](mailto:dawn.bell@csp.gov.za)  
**Pages:** Three

**Introduction**

groundWork is an environmental justice organisation. groundWork’s method is using advocacy and science in fostering good environmental governance that is built upon transparency. Since 1999, groundWork has worked with community people throughout South Africa who have chemical industrial facilities within their residential communities.

**Unconstitutional apartheid law**

In our work with community people, groundWork often has to attain information from industry that relates to pollution that effects community people’s health and well-being and violates section 24 of our Bill of Rights in the South African Constitution. It is our experience that corporations and industry in South Africa utilise the apartheid legislation of the National Key Points Act, a law passed in 1980, that sought to protect the apartheid regime from the actions of the liberation struggle.

Despite this being an apartheid law, our democratic dispensation and corporations have used this to limit civil society’s democracy. An example of this is the Cutler Complex in south Durban, which is a toxic chemical storage, blending and transit facility, that will not release information that is critical for residents of the area to be able to understand the environmental health impacts of these developments.



Companies such as Engen, Sasol, Shell, BP and many others have used this legislation in the past to limit access to information by the public.

### **Exclusion from decision-making**

This practice explicitly limits people participation in democratic decision making. Exclusion from decision-making was the basis of colonial and apartheid policies. This has resulted in industry enjoying a virtual monopoly on environmental policy input, dominating government departments responsible for environment, mining, energy and water.

This is all because they are protected by the secrecy legislation of apartheid. Information relating to planning applications, production technologies, discharges, emissions and wastes, and related health and environmental impacts was restricted, inadequate and partial. Aspects of this legislation, such as the Key Points Act, remain in place, and the Draft Critical Infrastructure Protection Bill 2016 seeks to replace this, making “undemocratic practices” legitimate in our still young democracy. It will be one of the building blocks of “undemocracy”. Critically, it also shielded corporations from local regulators, making local governance meaningless.

There have been attempts by the Ministry of Defense to revive the National Key Points Act and the Ministry has told south Durban industries that environmental information should be treated as ‘extremely sensitive’.

### **Preliminary concerns**

This Bill is merely an attempt to re-establish the National Key Points Act under a new democratic guise.

groundWork believes the Bill excludes the public in its processes – Council and Structures - and decisions it seeks to establish. It therefore makes the Bill unconstitutional and open to review.

The Bill also gives discretionary power to the Minister and the structures within the act, without there being effective parliamentary oversight, public scrutiny and participation in mechanisms employed by the act.



groundWork has had limited time to peruse the Bill as we only became aware of the Bill on the 14<sup>th</sup> June 2016. We therefore reserve our rights to make further comments on this Bill.

We also request that we are registered as a formal respondent to the Bill and that we are kept informed of all future actions in relation to the Bill.

### **Conclusion**

In conclusion, we do not think that this Bill and the National Key Points Act 1980 is needed legislation in a democratic dispensation, and thus urge the South African Police Services to reconsider and withdraw the Bill and put an end to this attempt at weakening our democracy.

For the record, groundWork endorses the submission by “Right 2 Know” on the Bill.

End:-

groundWork