



# **MERCHANT SHIPPING BILL [B12-2023]**

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**NINA BRAUDE**

**BIODIVERSITY LAW CENTRE**

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# SUBMISSION OVERVIEW



Integrating maritime safety and anti-pollution measures



Integrating maritime regulation, ocean conservation, biodiversity protection and climate mitigation/adaptation



The constitutional context for domesticating maritime safety and anti-pollution measures



The Bill's role in regulating maritime-induced noise pollution

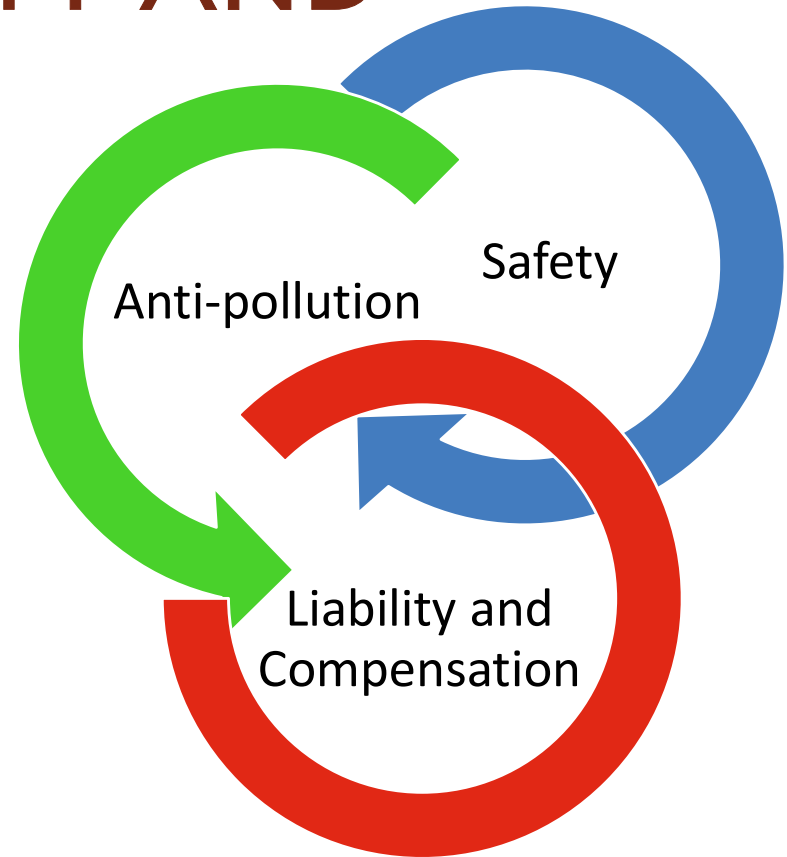


Providing appropriate environmental and criminal enforcement



Harmonising regulation of carriage of goods with animal welfare and wellbeing obligations and closing biosecurity gaps

# INTEGRATING SAFETY AND ANTI-POLLUTION



Constitution, section 24(a): Everyone has the right an environment which is not harmful to health and wellbeing

# IMO TREATIES



## Safety

- ★ SOLAS – Safety of Life at Sea
- ★ STCW & STCW-F – Training, Certification, Watchkeeping
- ★ FAL – Maritime Traffic Load Lines ?
- ★ STP – Passenger Ships ?
- ★ Tonnage Convention
- ★ COLREG – Collision prevention
- ✗ CSC – Safe Containers
- ★ SFV – Safety of Fishing Vessels ?
- SAR – Search and Rescue ?
- SUA – Safety of Maritime Navigation ?



## Anti-Pollution

### MARPOL 73/78 – Primary maritime anti-pollution treaty

- ? LDC – Dumping of Wastes
- ? AFS – Anti-fouling systems
- ? Ballast – Ballast Water
- ? OPRC 90 – Oil prevention
- OPRC-HNS Protocol 2000 – Hazardous Substances
- INTERVENTION 69 – High seas oil pollution
- Nairobi WRC 2007 - Wrecks
- SALVAGE 89 – Wrecks / Salvage



## Liability & Compensation

Conventions addressing Limitation of Liability for maritime claims; civil liability for damage arising from oil pollution, bunker oil pollution, hazardous / noxious substances and oil pollution damage; International fund for compensation



# SHIPPING & PROTECTING THE ENVIRONMENT

- ❑ Obligation of due diligence and principle of precaution (UNCLOS)
- ❑ Obligation to secure ecologically sustainable development and use of natural resources (Constitution, s 24(b)(iii))
- ❑ Principles of integration, co-operative governance, prevention, integrated environmental management, participation



- Construction, operation, navigation of ships & carriage of goods
  - Prevention, mitigation, response to marine casualties, incidents, hazards and accidents

*“[D]evelopment cannot subsist upon a deteriorating environmental base. Unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development.” (Ngcobo J, Fuel Retailers)*



# SAFETY IS AN ENVIRONMENTAL RIGHT



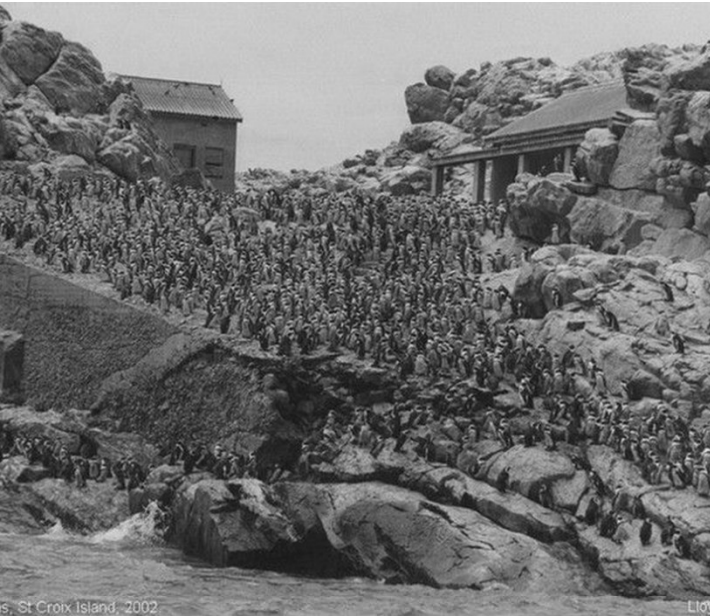
*"[S]ection 24(a) is an "unqualified" right to an environment that is not harmful to human beings' health or well-being. It is a right to a safe environment here and now. Section 24(a) of the Constitution provides an immediate, unqualified right to an environment that is not harmful to health and well-being.*

*(Collis J, "Deadly Air")*



Human, animal, ecosystem and environmental health, safety and wellbeing are integrally connected to environmental rights and the rights to life, dignity, culture & religion, livelihoods and development and access to water, food and social services.

The State has a duty to respect, protect, promote and fulfil all constitutional rights including legislating to ensure reasonable measures to implement environmental obligations and to act fairly, transparently and according to the rule of law.



St Croix Island, 2002



St Croix Island,

Lloyd Edwards

# WHY NOISE MATTERS



Noise Pollution is a threat to humans, animals and ecosystems

Underwater radiated noise (**URN**) has contributed to the crash of St Croix's African Penguin population. This is one example of the impact on marine ecosystems.



Maritime Noise contributes significantly to levels of marine noise pollution and is linked to other pollutants

URN travels vast distances. Reducing noise pollution is linked to energy efficiency, reducing biofouling and vessel safety.



Maritime Noise Pollution is unregulated but mitigation of noise pollution is possible

URN can be mitigated through effective ship design, operational parameters and navigational controls.



South Africa needs to demonstrate action as part of the GloNoise Project

South Africa can lead by regulating construction, operation and navigation of vessels, drawing on the IMO's Noise Reduction Guidelines



Image: Daily Maverick

# IMPORTANT GAPS

- ❑ Animal welfare & wellbeing
- ❑ Transshipment of living modified organisms
- ❑ Biosecurity
- ❑ Human, wildlife, plant and arms trafficking

*“Though not conferring rights on the animals they protect, the statutes are designed to promote their welfare. The statutes recognise that animals are sentient beings that are capable of suffering and of experiencing pain. And they recognise that, regrettably, humans are capable of inflicting suffering on animals and causing them pain. The statutes thus acknowledge the need for animals to be protected from human ill-treatment.”* (Cameron JA, Openshaw)

*“The duty resting on us to protect and conserve our biodiversity is owed to present and future generations. In so doing, we will also be redressing past neglect. Constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general.”* (Navsa ADP, Lemongthai)





# RECOMMENDATIONS

Integration	Ensure integration of Bill with anti-pollution legislation and treaties, environmental Framework, measures to ensure biosafety and biosecurity and animal wellbeing and welfare protections
Effective	Ensure enforcement is effective, incorporates Environmental Management Inspectorate and contains clear and appropriate offences and penalties
Harmonise	Harmonise principles of safety, international maritime law and constitutional requirements, environmental principles within provisions of Bill
Fairness	Ensure principles of administrative justice are integrated and provide for express reference to administrative laws
Participation	Ensure that public participation and consultation guidelines are effective mindful of impacts on coastal communities and fishers
Clarify	Ensure definitions are clear, easy to interpret and aligned with related legislation and conventions and remove vagueness relating to offences/penalties



# RECOMMENDATIONS

Access to Information	Ensure information collected by SAMSA, the Register and cross-referenced treaties are readily accessible without undue costs or barriers
Minimize Harms	Cater for harmful activities such as off-shore bunkering, trans-shipment of dangerous / hazardous goods and other environmental and safety harms clearly and practically. Specifically ensure bunkering is tightly controlled.
Integrate Children's rights	Ensure penalties for child labour are effective and aligned with the Children's Act.
Prevent Trafficking	Ensure Bill expressly addresses issues of human, wildlife, plant and arms trafficking and is aligned with CITES, UNCTOT and other applicable treaties and laws
Protect mental health	Incorporate express provisions for protection of seafarers' mental health and wellbeing
Promote polluter liability	Uphold the polluter pays principles through ensuring environmental harms are not exempt from liability



# QUESTIONS?

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NINA BRAUDE - [NINA@BIODIVERSITYLAW.ORG](mailto:NINA@BIODIVERSITYLAW.ORG)

[WWW.BIODIVERSITYLAW.ORG](http://WWW.BIODIVERSITYLAW.ORG)

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