Socio-Economic Impact Assessment of the draft Infrastructure Development Bill

V1. March 2014

INTENDED FOR INTERNAL USE.

> *NOTE: EDD completed a Socio-economic Impact Assessment of the earlier draft of the Infrastructure Development Bill in May 2013. Subsequently, the Bill was amended through internal government consultation processes and then refined through the Parliamentary process in January to March 2014. EDD has completed a Socio-Economic Impact Assessment on the amended Infrastructure Development Bill to evaluate the impact assessment on the final version of the Bill.*

1 Introduction

This assessment of the draft Infrastructure Bill uses the SEIAS methodology. It assesses the draft bill as amended following Parliamentary hearings and an initial SEIAS evaluation in mid-2013. It is designed to assist in internal decisionmaking and should only be used as a back up for consultation, since it does not spell out all the information utilised or key assumptions.

The following section of this assessment goes through the steps of the SEIAS template. The final part summarises the findings.

2 Assessment

2.1 Summarise the proposal, identifying the problem to be addressed and the roots (causes) of the problem that will be addressed by the new rule.

The Bill establishes the PICC and its subsidiary structures as legally defined organs of the state. The problem being addressed is the lack of co-ordination across the state to ensure common priorities and management of trade offs around infrastructure projects, to ensure a sufficiently strong level of public investment, and to improve capacity for managing all phases involved in the development of infrastructure.

In response, the Bill takes six main steps.

(a) It establishes the PICC essentially as it now exists, but with the power to expropriate land in line with the Constitution and relevant laws. The PICC is responsible for developing and maintaining the National Infrastructure Plan, which sets priorities and secures alignment across state agencies around infrastructure. It is also required to assess the impact of infrastructure projects on economic and social development and inclusion. The structures of the PICC are the Commission itself, which includes representatives of local and provincial government; a management committee that is similarly representative but able to meet more often; and a secretariat, which is chaired by the Minister of Economic Development and is composed of Ministers and Deputy Ministers.

(b) The Bill empowers the PICC Council to designate SIPs, which essentially incorporate several linked projects, through the National Infrastructure Plan. It requires all agencies of the state to align their infrastructure plans with the SIPs. Criteria for designation of projects as SIPs are that a project be included in the National Infrastructure Plan; that it be of significant economic or social importance to the country or a province; and that it be above a certain value that is set by the Minister of Economic Development.

(c) It enables the Council establish coordinating mechanisms at the level of executive authorities and accounting officers to support coordination and implementation of each SIP. The SIP Chair is a Minister designated by the PICC, who convenes a committee of executing authorities to provide political leadership. The SIP Coordinator, reporting to the responsible Minister as SIP Chair, convenes a Steering Committee (SC) to help coordinate the activities included in the SIP with relevant agencies, departments and spheres. The Secretariat of the PICC nominates the members of the SC on the basis of their responsibilities and/or expertise. The SC is then required to (i) develop a project plan and identify projects that fall within the SIP, (ii) support implementation of the SIP including planning regulatory applications, impact assessments, pre-feasibility and feasibility studies, financial planning, local procurement, procurement of skills and development of operations and maintenance plans; (iii) facilitate authorisations and licences; and (iv) report every month on progress to the Secretariat.

(d) It establishes mechanisms to fast track implementation of SIPs. Specifically, it (i) sets timeframes for processing key regulatory requirements. These timeframes can be extended where greater consultation is legitimately required, (ii) uses the SIPs to coordinate applications, and (iii) enables the SIP chair to request the relevant accounting officers to tender in a coordinated fashion where appropriate.

(e) It empowers the Minister of Economic Development to regulate and develop frameworks for key elements of the SIPs, including amongst others local procurement, BBBEE, timeframes for regulatory approvals, financial planning, and so on.

2.1 Describe the intended outcomes of the proposal.

The PICC and its structures plan and support the implementation of infrastructure programmes that are sustainable and co-ordinated and that make the greatest possible contribution to more inclusive and dynamic economic and social development.

2.3 Describe the behaviour that must be changed, and the main mechanisms to achieve the necessary changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

Problematic behaviour	**Mechanisms to change it**
Infrastructure plans are not integrated across functions and spheres, and do not set clear priorities	Legal establishment of PICC with mandate to identify SIPs and monitor and support implementation; without however changing project management and fiscal responsibilities.

Problematic behaviour	Mechanisms to change it
Infrastructure projects are not always designed to maximise the social and economic benefits, and may not be carried out efficiently or expeditiously.	Establishment of Steering Committees to support infrastructure planning and implementation; regular monitoring and evaluation by PICC structures; mechanisms to support coordinated tendering; improving planning to meet key regulatory requirements, with timeframes established.
Organs of state do not always support or ensure rapid responses to blockages affecting nationally important infrastructure projects	Designation of SIPs, requirement that local plans be aligned around SIPs, and establishment of SCs with stakeholders from within government.
Organs of state may not have the capacity to implement infrastructure projects for which they are responsible.	SCs responsibility for supporting SIP implementation and power to regulate and set frameworks for infrastructure implementation.

2.4 Identify the groups inside and outside of government who will benefit or lose from the proposal, or whose behaviour will have to change to implement the proposal (add more lines if required).

a. Beneficiaries:

   i. Users of infrastructure where projects are designated, including poor communities and both emerging and established enterprises, should benefit

   ii. Suppliers of designated infrastructure and inputs for it

   iii. Employees on projects as well as in supplier and user companies

   iv. Ministers and DGs who lead SIPs, who must convene and house SCs but then gain support for their projects

b. Cost borne by:

   i. Members of SC who are (a) unable to participate in tenders and (b) expected to attend SC meetings consistently.

   ii. Landowners who could be expropriated

   iii. Stakeholders inside and outside of government who disagree with the priorities set in the National Infrastructure Plan, since they will be unable to compete with the SIPs for resources and support

   iv. Corrupt tenderers and officials who would be affected by improved oversight of projects within the SIPs.

2.5 Report on consultations on the proposal with the affected government agencies, business and other groupings noted in the previous point. What do they see as the main

benefits, costs and risks? Do they support or oppose the proposal? What amendments do they want, and have these amendments been incorporated in your proposal?

Preliminary consultation rounds on the draft Bill were undertaken at a Cabinet and FOSAD level in 2012 and January 2013 to engage all government departments. Subsequently a revised version of the draft Bill was gazetted on 8 February 2013 for a 45 day public comment period, leading to significant amendments. Following the Parliamentary hearings, further amendments were made, which are reviewed through this SEIAS.

Key benefits identified included:

a. Institutional streamlining around regulatory approvals for strategic infrastructure projects

b. Standardized and reduced timeframes provides certainty and can potentially reduce the cost of implementing infrastructure projects

c. Ensuring developmental impact of infrastructure programme and sustaining it as a national priority.

The key risks identified in public submissions are identified here. Responses are provided in each case; not all of the risks are accepted as possible eventualities or concerns.

a. Perceived centralization has potential to usurp planning and implementation functions away from implementing agents across the different spheres of government. *The Bill does not take any powers away from implementing agents, but rather provides space for them to engage in order to improve communication and coordination. An amendment was added to ensure that any powers exercised under the Bill will be in line with the Constitution.*

b. Superseding existing legislation and regulations governing environmental management, water licensing and land use management. *The Bill does not change any requirements or standards in these areas, but only sets timeframes for decisionmaking.*

c. Lack of clarity of the role of Implementing Agencies and existing transitional Coordinating Agencies. *A transitional clause provides for the existing SIPs.*

d. Lack of clarity about the scope and process for private sector involvement. *The Bill is about the internal organisation of the state, and it does not extend to defining private sector involvement. The designation of SIPs is explicitly limited to public infrastructure. Amendments were provided to clarify that privately owned projects, unless they are concessioned or contracted by the State, will be included in a SIP only with the owner's consent.*

e. Inadequate time provided for consultation in the timeframes. *The timeframes provide adequate time but were amended to clarify the phases covered. Furthermore, an amendment empowers the relevant authorities to extend timeframes if they inform the Council in writing that more time is required for consultation.*

f. The section on expropriation was unclear and could lead to more disputes. *The section has been amended to give the PICC power to expropriate and to expropriate in the public interest within the framework of the existing Expropriation Act (1975).*

g. The section on tenders overrides provincial and local powers. *The section on tenders only permits the SIP to* ***request*** *a tender, not to direct it.*

Key costs identified include the following:

a. Resourcing PICC structures with technical and secretariat capacity

b. Perception that initiative will add to bureaucratic delays through the redirecting of institutional capacity to infrastructure projects prioritized by the PICC

Experience with the structures of the PICC to date suggest that they do not impose significant additional costs on the state. The redirection of capacity to state priorities is an inevitable consequence of the decision to set priorities, which in turn is necessary for a functional state.

2.6 Estimate the costs and benefits of implementing the proposal to the groups identified in point 4 above, using the following chart. Note that not all costs or benefits will affect all groups – some may face costs or benefits from the outcome but not from the implementation process or a need to change behaviour, and vice versa. Add more lines if required.

Group	**Implementation costs**	**Cost of changing behaviour**	**Costs/benefits from achieving desired outcome**	**Comments**
a. Users of designated infrastructure	None from bill	n/a	Assuming projects chosen appropriately, major benefits for both enterprises and communities	Depends on effectiveness of impact and feasibility assessments.
b. Suppliers of designated infrastructure and inputs for it	None from bill	n/a	Benefit from projects and from greater predictability, and from more coherent and pro-active approach to local procurement through PICC and SCs.	
c. Employees on projects as well as supplier and user companies	None from bill	n/a	Increased employment as implementation scaled up with employment impact taken into account.	
d. Ministers and DGs who lead SIPs, who must convene and house SCs but then gain support for their projects	Costs of SCs, delegated staff and time for meeting and secretariat support	Time for engagement with other departments and need to manage possible disagreements	Accelerated and more cost-effective completion of projects	Costs are small relative to benefits

Group	Implementation costs	Cost of changing behaviour	Costs/benefits from achieving desired outcome	Comments
e. Members of SC who are (a) unable to participate in tenders and (b) expected to attend virtually all SC meetings	Time spent on SC	Opportunity cost of giving up on tenders	Able to participate in successful build programmes	Benefits will depend on SC being well run and efficient. Experience to date is positive.
f. Land owners who could be expropriated		Same	Emotional cost of giving up land, despite compensation; compensation may not provide in practice for same conditions	Procedures for expropriation ensure benefits will outweigh costs.
g. Decision makers around authorisations lose power, must adhere to deadlines and may therefore face higher workloads	Higher workload and tighter deadlines	Loss of bureaucratic power	Should benefit from accelerated development, like all other South Africans	Need to manage bureaucratic resistance, which however is not a social cost
h. Stakeholders with different priorities	n/a/	Projects that are foregone as not prioritised in National Infrastructure Plan	Should benefit from accelerated development, like all other South Africans, but individuals may consider those benefits less than the opportunity cost of not getting the infrastructure they want	Any process of prioritisation will be contested. The inclusive nature of the PICC in the context of a democratic order ensures that the benefits to the majority of the population should prevail. Where a local or sectoral priority falls outside of a SIP, it can still be implemented, although it will not benefit from PICC support.
i. Projects that are supposed to be supported may instead face additional delays if SCs are unable to function efficiently.	N/A	Add a layer of management – and more trouble if poorly capacitated	Could cause delays in build programme rather than accelerating it.	Experience to date demonstrates that SC have not been a burden but rather have facilitated implementation.

2.7 Describe the changes required in budgets and staffing in government in order to implement the proposal. Identify where additional resources would be required for

implementation. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

If the current list of SIPs is adopted, then there will be 18 SC. Some departments, such as DEA and DWA, may have to have people in each SC. This could present a staffing challenge.

In addition, the bill requires the SC to ensure that all SIPs undergo impact assessment, pre-feasibility and feasibility studies, and that they have financial, operations, maintenance and local procurement plans. The SC must also help unblock projects within their SIP, presumably including through assistance with capacity. Some of these costs are included in good project planning, while others will be additional – as a minimum, the costs of initiatives to address blockages and drive local procurement.

In addition, the lead Ministries must pay for the cost of accommodation and operations for the SC. This cost should not be particularly large relative to the overall cost of the SIPs.

2.8 Describe how the proposal minimises implementation and compliance costs.

As the Bill addresses the internal organisation of the State, the state will bear implementation and compliance costs. For the most part, these are not in fact add ons but rather involve redeploying capacity in a more efficient and effective fashion to achieve existing developmental aims. Experience to date has demonstrated that the burden on the various state agencies is not substantial, especially given the benefits in terms of improved implementation.

2.9 Describe the main risks that could arise from adoption of the proposal. Add more lines if required.

a. Inappropriate projects could be pushed through because of mistakes by the PICC or SC.

b. SC could become a blockage due to overburdening of staff of departments with major regulatory functions (DEA, DWA)

c. The Bill does not discuss the role of the current lead agencies for SIPs. This could lead to confusion in light of the detail provided on SCs and the SCs' role as implementing agencies for SIPs. Do they replace the existing lead agencies, complement them, or what?

2.10 Describe the measures taken to manage the identified risks. Add more rows if necessary.

Identified risk	Mitigation measures	Additional possibilities
a. Inappropriate projects, where financial and other costs outweigh benefits, pushed through	The bill requires impact, pre-feasibility and feasibility analyses. In addition, the representative nature of the PICC helps ensure a broad range of perspectives in the identification of priorities.	None. This is a risk for any investment programme, and the Bill contains all the standard measures to improve decisionmaking.
b. SC becomes a blockage due to inadequate capacity	Requires high level participation, led by relevant DG, with major time dedicated. Challenge is to ensure that departments delegate relevant people with sufficient time.	Given the focus on a limited number of priority projects and the role of SC, which is to facilitate rather than to make key decisions, this does not seem to be a major risk.
c. Lack of role clarity around current lead agencies	Transitional clause clarifies position of existing SIPs.	

2.11 Describe the mechanisms included in the proposal for monitoring implementation, evaluating the outcomes, and modifying the implementation process if required. Estimate the minimum amount of time it would take from the start of the implementation process to identify a major problem and remedy it.

The SC and Secretariat must provide monthly reports on progress, which would make possible evaluation of the impact of the Act on the build programme.

2.12 Describe possible disputes arising out of the proposal, and the system for settling and appealing them.

Disputes over designation of SIPs – PICC includes representatives of key stakeholders within the state.

Disputes over expropriation as well as authorisations etc - exist in the relevant legislation

Disputes over financing mechanisms such as user fees or taxes – PICC can support a constructive solution and provide general guidelines, but the decision is made by the implementing authorities under existing legislation.

2.13 Summarise the impact of the proposal on the main national priorities.

Priority	Impact
Social cohesion	Build programme is critical for equality and therefore for social cohesion
Security	As the build programme supports equity and social cohesion, it will bolster security. The PICC should assist in ensuring an appropriate balance between developmental and short-run economic imperatives.
Economic growth and investment	Build programme is critical for economic growth and investment, especially if local procurement and productive investment by users is maximised. Inappropriate projects may however impose substantial costs as a result of wasted or inappropriate public investment. The PICC should assist in avoiding undesirable projects.
Economic inclusion (employment creation and equity)	Build programme is critical for employment and access to markets for new enterprises and historically impoverished regions.
Environmental sustainability	Build programme should support environmental sustainability through improved transport and water systems. As always, authorisations will have to balance environmental and developmental concerns in some cases.

2.14 Identify the social and economic groups that would benefit most and that would bear the most cost. Add more rows if required.

Main beneficiaries	Main cost bearers
1 Poor communities that have historically been deprived of economic and social infrastructure	1 Stakeholders whose priorities do not align with SIPs
2 Businesses that gain quality infrastructure, assuming cost is not excessive	2 Departments that must provide personnel
3 Workers who gain employment in construction, provision of inputs, or businesses using infrastructure	3 Users of infrastructure if the improvements do not outweigh the cost in the form of taxation or user fees

3 Conclusions

The benefits of the Infrastructure Bill clearly outweigh the costs and risks. The amendments provided adequately address the concerns raised in the submissions to Parliament.