

27 May 2022

Re: Submission to the Portfolio Committee on Environment, Forestry and Fisheries on the Climate Change Bill [B9-2022]

Dear Chairperson and Members of the Committee,

This is a short submission regarding two aspects of the Climate Change Bill (henceforth 'the Bill'). The brevity of our input is partly a function of time, so it should not be assumed that we do not have other concerns with the Bill aside from those raised.

Overall, we welcome the intention behind the Bill, namely to have a single, clearly-articulated set of principles and process according to which South Africa will address the challenge of anthropogenic climate change. In order for this to serve the public interest, however, it is crucial that the Bill properly define its objectives and establish institutions that are not swayed or manipulated by vested interests. In that regard we wish to raise four main concerns, as outlined in our submission below.

As an indication of our expertise to comment on these matters we provide abbreviated biographies below. Subject to mutual availability, one or both of us would be happy to present on these matters to the Committee.

Yours sincerely,

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Johannesburg Institute for Advanced Study, University of Johannesburg

Prof Mike Muller
School of Governance, University of the Witwatersrand

Short Professional Biographies

Mike Muller, is a professional engineer and Visiting Adjunct Professor at the Wits School of Governance. He was a National Planning Commissioner from 2010 to 2015 and DG of Water and Forestry from 1997 to 2005. From 1979 to 1988 he worked for the Mozambican government before returning to South Africa. Over the past decade he has advised many local and international organizations including Mozambique's HCB (operator of Cahora Bassa hydroelectric dam), and participated in global dialogue on water, climate, regional integration and sustainable development issues including the Climate Bonds Initiative, the International Hydropower Association and various meetings of the United Nations Commission on Sustainable Development. He also chaired the World Economic Forum's Water Agenda Task Force (2012-2014). A number of his publications are cited in the IPCC's 6th Assessment Report (2022).

Seán Muller is an economist with degrees from the University of Cape Town (BBusSc, MCom, PhD) and University of Oxford (MPhil). At present he is a Senior Research Fellow at the Johannesburg Institute for Advanced Study, University of Johannesburg. He has previously occupied academics posts as Senior Lecturer in Economics at the University of Johannesburg and Lecturer in Economics at the University of Cape Town, where he taught and supervised on – amongst others – the microeconomics of industrial policy, public economics and microeconomics. From 2014 to 2016 he worked at the Parliamentary Budget Office providing research and advice for the NA and NCOP Finance and Appropriations Committees on economics and public finance issues. He has led or participated in projects for the Financial and Fiscal Commission, European Union, Council on Higher Education and Southern Centre for Inequality Studies. He has published widely in well-regarded academic journals, including on topics in economics, development and public policy, and authored over 50 op-eds across a range of national publications most of which relate to South African public policy issues.

SUBMISSION ON THE CLIMATE CHANGE BILL [B9-2022]

1. Definition of the 'just transition'

The notion of a 'just transition' is central to much analysis and advocacy pertaining to climate change. This is reflected also in the Bill, from the *Objectives* onwards. For that reason it is crucial that the definition adequately capture all major dimensions of 'justice' and 'equity' that are relevant to national efforts to address climate change. That is not the case in the present version.

The present definition used in the Bill is:

"just transition" means a shift towards a low-carbon, climate-resilient economy and society and ecologically sustainable economies and societies which contribute toward the creation of decent work for all, social inclusion and the eradication of poverty;

This definition omits arguably the most crucial issue as regards equity: who pays for the transition. That itself has two dimensions: cross-national and intra-national. The first concerns the contributions made by different countries to cover the costs of the transition to a 'low carbon economy' and less environmentally harmful forms of energy. For example, countries that have made larger contributions to global warming should arguably incur more costs to address it. Similarly, wealthier countries should arguably make greater contributions on the basis of the 'ability to pay principle'.

The second concerns the contributions made by different groups within a country. For example, wealthy citizens versus poorer ones, big businesses versus small businesses, rural versus urban areas, large versus small municipalities, current versus future generations, and so on.

Failure to explicitly reflect these two fundamental issues means that the proposed legislation risks allowing for policy trajectories that are deeply inequitable (globally and locally). In other words, an unjust just transition. To eliminate that possibility, at least in terms of the legislation, we propose the following amended definition:

"just transition" means a shift towards a low-carbon, climate-resilient economy and society and ecologically sustainable economies and societies - the costs of which are equitably distributed across and within countries - which contribute toward the creation of decent work for all, social inclusion and the eradication of poverty;

While we believe this succinctly captures the fundamental issues, we are open to discussion of alternative formulations that address those.

2. Costing of adaptation plans

It is standard good practice in public policy that policy changes and interventions should be costed whenever possible. In the case of national response to climate change, it is crucial that proposed strategies be accompanied by estimates of likely cost to determine their feasibility. Furthermore, it is crucial that such estimates also provide an indication of how such costs may be covered; without that it is impossible to ascertain whether the proposals/strategies are indeed consistent with a 'just transition'.

For this reason we propose the following additions. To section 15 (pertaining to provinces and municipalities):

15. (2) (a) identify climate change response considerations and options and estimated costs based on the best available evidence and information;

To section 17 (pertaining to national strategy):

17. (2) The adaptation scenarios must—

(e) include estimates of the costs of implementing the adaptation policies underlying the scenarios

We cannot see any concern with such additions given that it is self-evident that any responsible policy process must make and consider estimates of the costs of different options.

3. Omission of requirements for members of the Presidential Climate Commission

A third critical issue is that those who advise on, and make decisions about, South Africa's approach to climate change must have the public and national interest as their sole priority in the provision of such advice or making of such decisions.

They must also identify the trade-offs between different approaches to the mitigation of climate change and provide recommendations that explicitly explain how the interests of different sections of the national community are affected, and how negative impacts on the most vulnerable and disadvantaged members of society may be minimised.

At present, for example, we are of the view that numerous experts who have informed the country's strategy in relation to energy mix and restructuring of Eskom have material undeclared conflicts of interest that call into question their suitability to advise on matters of public and national interest. It is imperative that such conflicts be addressed going forward and it would be remiss of any legislation not to do so.

To that end we propose the following addition:

(2) The composition of the Presidential Climate Commission must—

(a) broadly reflect the demographics and gender composition of the Republic; and

(b) be appropriately qualified and have expertise in the socio-economic, environmental and broader sustainability field.

(c) ensure that appointees publicly declare all potential conflicts, including funding from industry, domestic and foreign non-governmental organisations as well as foreign governments and multi-lateral agencies, and, where appropriate, exclude individuals whose conflicts may compromise their ability to prioritise the public and national interest in a credible manner.

Again, there may be alternative formulations that address the same substantive issues and we welcome such engagement.

4. Inappropriate powers vested in the Minister responsible for environmental affairs

Finally, we believe that some powers in the Bill are inappropriately allocated to the Cabinet Minister responsible for Environmental Affairs since they have a clear conflict of interests, recognised in section 25.b of the Constitution, between the protection of the environment for which that Minister is responsible and ‘promoting justifiable social and economic development’ which is the competence of other Ministers.

We thus contend that it is inappropriate to vest in the Minister responsible for Environmental Affairs the powers to regulate the economic and social matters inherent in the process of promoting a ‘just transition’ in South Africa.

While the Minister responsible for Environmental Affairs should have primary responsibility for engaging with the science of climate change and, in particular, in international programmes to set the goals that must be achieved at national level, they and the Department for which they are responsible do not have the role nor the associated competences to lead the identification, evaluation and prescription of the alternative social, economic and technological interventions required to support ‘justifiable social and economic development’.

The powers which it is proposed to vest in the Minister responsible for environmental affairs in terms of the Bill currently enables them to intervene in areas beyond the competence of their Department without adequate oversight.

We thus propose that Ministerial responsibility for the mitigation of Climate Change and the promotion of a ‘just transition’ should be allocated to a Minister in the Presidency specifically tasked to ensure coordination between the economic, social, technical and environmental departments in order to ensure that responses achieve that climate protection goals are achieved through a package of interventions designed to balance the interests of different groups in society and specifically protect and advance the interests of the poorest and most vulnerable and disadvantaged communities. This will also help to counter-balance the influence of external groups that have in the past successfully lobbied for sub-optimal public policy responses in support of their private interests.

As a practical matter, the Bill could be amended by including an additional definition for a ‘Minister in the Presidency’ or ‘Coordinating Minister’ and amending the relevant sections of the Bill accordingly.