



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

PRESENTATION NOTES: PARLIAMENTARY PORTFOLIO COMMITTEE ON ENVIRONMENT, FORESTRY AND FISHERIES – 8/9 DECEMBER 2021

1. Honourable members, we thank you for the opportunity to address you on the issue of climate change governance at this critical and dynamic moment in the climate crisis and how the world is responding to it.
2. For a number of years, the CER has worked in the space of climate law and policy. We have been conducting ongoing research into climate governance mechanisms around the world and want to take this opportunity to share some of the key best practice principles that have emerged from this research. Due to our ongoing work in the field of climate change and the law, we also offer this presentation as a form of mapping of the many diverse elements and systems that both affect, and are impacted by, the climate crisis, as all of these need to be taken into account, balanced and effectively responded to.
3. At present trajectories, by the end of the century many regions in the world will be uninhabitable due to direct heat, desertification or flooding, as climate change intensifies. Other regions on all continents will be severely impacted by the climate crisis – facing water scarcity, high temperatures, the collapse of ecosystems and increased frequency and intensity of extreme weather events and fires. We can also expect to see indirect health and social impacts arising from the climate crisis's lack of access to necessary resources, habitable spaces and services, such as food insecurity, mass migrations, high living costs and conflict, as the world, as we know it, undergoes dramatic changes.
4. According to South Africa's own climate policy, *"we have to urgently strengthen the resilience of our society and economy to such climate change impacts and to develop and implement policies, measures, mechanisms and infrastructure that protect the most vulnerable."*
5. The burden of resolving these issues is unfairly placed on the shoulders of our young people and future generations, who will have to navigate a very different and difficult world, as a result of our choices and poor governance in mitigating the effects of the climate crisis.
6. The decisions that are made now have an irreversible impact on our climate and the future of a habitable planet. We have fewer than 10 short years to meet that target.
CC explainer
7. It will not be possible to save our climate and preserve a habitable planet, without drastically reducing global greenhouse gas (GHG) emissions. This requires drastic reduction of fossil fuel consumption. Yet, much of Southern Africa, including South Africa, is committing to increased exploitation of fossil fuels.
8. Although an environmental issue on the face of it, climate change is in fact also a social issue, an economic issue, a health and safety issue; an energy issue, an infrastructure and human settlements issue, a food and water security issue and more. The climate crisis is a crisis with far-reaching implications for the full spectrum of human rights in our Constitution – rights which all spheres of government are obliged to protect and promote. This notwithstanding, the primary responsibility of managing South Africa's climate change response resides with the Minister and the Department of Forestry, Fisheries and the Environment at an executive level. And significantly with this Portfolio Committee at a political and legislative level. How this

Cape Town: 2nd Floor, Springtime Studios, 1 Scott Road, Observatory, 7925, South Africa
Johannesburg: G/F the Cottage, 2 Sherwood Road, Forest Town, Johannesburg, 2193, South Africa
Tel 021 447 1647 (Cape Town)
www.cer.org.za

responsibility is exercised will play a powerful role in determining whether the mounting pressure leads to disaster, or is seized as the opportunity for socio-economic transformation that it can be.

A new era of climate crisis response

9. In our view, it is not unreasonable to say that we have entered a new era of climate crisis response. In October of this year, President Ramaphosa told the nation¹:

“It is no exaggeration to say that the world is facing a climate crisis of unprecedented proportions.

The latest report from the world’s leading climate scientists has warned that the pace of global warming is rapidly increasing, and Sub-Saharan Africa has been experiencing temperature increases well above the global average.

Climate change presents serious health, environmental and economic risks for our country. These risks will have increasingly damaging effects on human health, water availability, food production, infrastructure and migration.

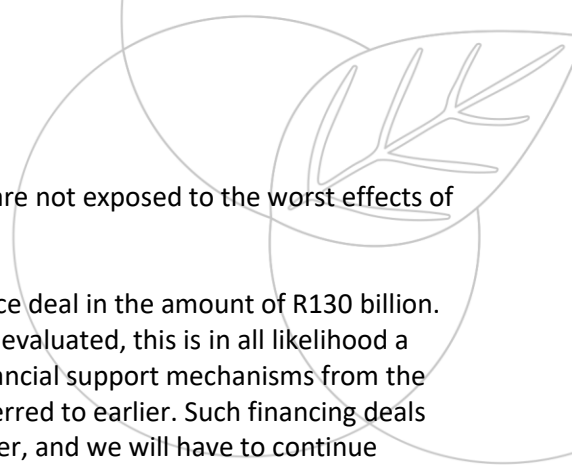
There are broader economic risks. As our trading partners pursue the goal of net-zero carbon emissions, they are likely to increase restrictions on the import of goods produced using carbon-intensive energy. The other economic risk is that investors will shy away from investing in fossil fuel powered industries. Banks and financial institutions are already facing pressures from their shareholders not to finance enterprises that depend on fossil fuels to produce their products or services.

All these emerging trends mean that we need to act with urgency and ambition to reduce our greenhouse gas emissions and undertake a transition to a low-carbon economy. Many of our peer countries have already started migrating to low-carbon economic dispensations.”

10. Honourable members, a number of events have taken place recently, and there is growing evidence, which gives us a clear indication of the trends and imperatives that we face.
11. Firstly, in August of this year, the United Nations Intergovernmental panel on Climate Change (or IPCC) released the first part of its 6th Assessment report². This report addresses the latest findings from around the world on the physical science basis of climate change. The report confirms that the climate crisis is more severe than has been found up to now, and that we are entering a new era where pressure to respond is going to increase to unprecedented levels.
12. Secondly, we have just seen the conclusion of the COP 26 climate summit held in the UK. The Glasgow Pact which was agreed to clearly lays out a pathway for accelerated climate change mitigation and accountability measures. While the Paris Agreement calls for signatory nations to submit emissions reduction targets, or Nationally Determined Contributions (NDCs) every 5 years, and we have just submitted an updated NDC for this year’s COP, the Glasgow negotiations saw nations being requested to submit stricter targets by the end of next year already. What also emerged is that the \$100bn per year that developed nations had pledged to pay to support developing nations with climate aid has not been forthcoming, and may not be seen for at least another 2 years. We fully support the concept of climate justice, which includes wealthy countries who have historically emitted high levels of GHGs providing financial aid to support developing nations in their climate efforts. This is sometimes called a climate debt. Given the signals we’ve seen again at COP 26, we have to accept the scale and timeframe for such aid are open questions, and cannot afford to take a blanket approach that we will not address the climate crisis until such aid is available. As much as the develop world owes South Africa and others a climate debt, we in turn owe such debt to the rest of Africa for instance, being responsible for a third of the continent’s emissions. Furthermore, whether or not SA accesses financial support for its climate response, there remains a positive obligation and Constitutional imperative on

¹ <http://www.thepresidency.gov.za/from-the-desk-of-the-president/desk-president%2C-monday%2C-11-october-2021>

² <https://www.ipcc.ch/assessment-report/ar6/>



government to take adequate steps to ensure that the people of SA are not exposed to the worst effects of the climate crisis.

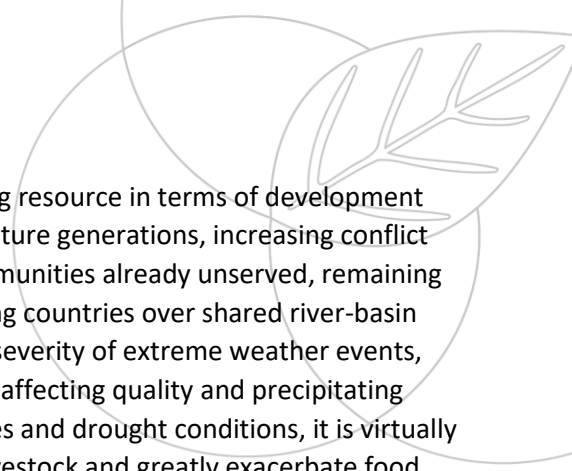
13. Thirdly, South Africa has been offered a first-of-its-kind climate finance deal in the amount of R130 billion. While the details of this deal are still to be worked out and then fully evaluated, this is in all likelihood a promising first step in what will hopefully be an ongoing series of financial support mechanisms from the developed world. This financing is different from the \$100 billion referred to earlier. Such financing deals come with conditions related to accelerated decarbonisation, however, and we will have to continue demonstrating increasing commitment and actions to decarbonise. One of the reasons we were considered eligible for such a deal is that the costs of decarbonising our economy are relatively low compared with other countries. But competition is fierce with countries like Mexico, Indonesia and Vietnam also vying for these opportunities. If we do not continue to exhibit strong commitment to climate mitigation action, we will lose our attractiveness as a destination for such financing.

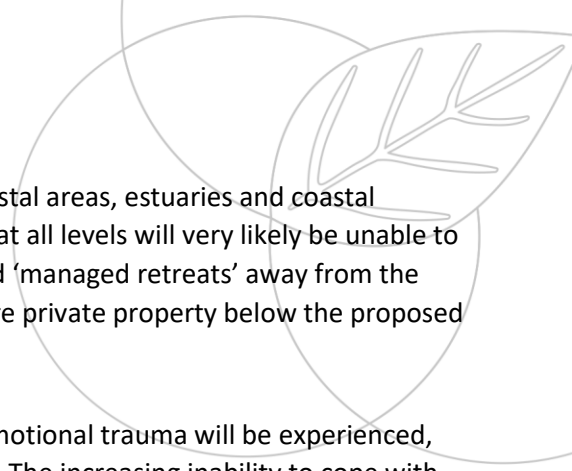
What the Science tells us

14. The scientific community has overwhelmingly and repeatedly warned that to avert major climate change risks and impacts, all efforts should be made to limit global warming to 1,5°C above pre-industrial levels. This has been affirmed by the United Nations Intergovernmental Panel on Climate Change (IPCC) in its 2018 Special Report on Global Warming of 1.5°C.³ This report states unequivocally that in order to limit warming to no more than 1,5°C, global greenhouse gas (GHG) emissions need to be reduced by 45% by 2030 (over 2010 levels), and that we need to reach Net Zero GHG emission by 2050. The South African scientists who contributed to the report say that Southern Africa is warming twice as fast as the average for the rest of the globe.
15. In terms of **physical risk**, the IPCC AR6 report indicates that the scientific community is more certain than ever before about the impacts of global warming, the links between GHG emissions and warming, the severity and timescales of these impacts. The key findings of IPCC AR6 as they relate to South Africa include:
 - a. Under all scenarios, South Africa is going to experience increasing heatwaves and extreme hot weather events;
 - b. Southern Africa is one of the relatively few regions globally that is going to experience a decrease in mean average rainfall, and an increase in droughts as a result of global warming. Soil moisture levels are going to decrease.
 - c. Rainfall events are going to increase, causing aggravated flooding risk;
 - d. There is increased risk of tropical storm impacts for the Northern KZN coast and Limpopo Valley.
16. A recently released report⁴ by Professor Nicholas King, called Climate Change Implications for SA's Youth provides an expert interpretation of a number of recent specialist reports on climate change as regards impacts on lives, livelihoods and lifestyles from 2021 onwards, through 2030, 2040 and beyond for today's and tomorrow's youth.
17. The report describes the following risks and effects which will intensify in the coming decades:

³ https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf

⁴ <https://cer.org.za/wp-content/uploads/2021/09/Nick-King-Report-Final.pdf>

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- a. **Freshwater:** Freshwater is already South Africa's most limiting resource in terms of development options. Climate change exacerbates these limitations. For future generations, increasing conflict over scarce water will almost certainly arise, with those communities already unserved, remaining unserved. Conflicts will also very likely arise with neighbouring countries over shared river-basin resources and diminishing supplies. With rising number and severity of extreme weather events, floods will occur more often, damaging water infrastructure, affecting quality and precipitating disease outbreaks. Together with ongoing rising temperatures and drought conditions, it is virtually certain that these events will collapse crop production, kill livestock and greatly exacerbate food insecurity. Girls and women who traditionally are tasked with fetching water for their families, will spend more time sourcing and fetching water, with all the attendant negatives associated thereto e.g. missed schooling for girls, insecurity and risks of violence.
 - b. **Food security:** Rising temperatures inducing prolonged drought will lead to reduced levels of soil moisture reducing plant growing days; combined with heat stress making agricultural labour untenable, this will negatively impact the full spectrum of the agricultural sector through reduced crop and livestock production, and declines in rural incomes. This directly affects the wellbeing of rural communities and the mental health of farmers. In addition, globally, sudden shocks in food production systems have been increasing, with the major driver of these increases being extreme climate events. In South Africa, extreme events such as hailstorms, floods and heat stress will almost certainly increasingly destroy crops and kill livestock. Warmer temperatures enable greater pest and disease productivity and outbreaks on crops, livestock and wildlife will almost certainly increase. Food insecurity will rise, and children will very likely suffer most from hunger and malnutrition, and have to spend longer hours assisting with food production and/or procurement, most especially girls. However, extreme heat will reduce the ability to work outdoors and extreme heat waves will lead to rising numbers of morbidities and mortalities, especially amongst the most vulnerable i.e. the young, the infirm and the elderly. Opportunities for children's schooling, especially girls, will increasingly be adversely affected, setting back gender equity gains.
 - c. **Fire:** Similar to semi-arid regions elsewhere subject to regular wildfires naturally, South Africa has already and will almost certainly experience rapidly increased probability of fire risk conditions in most areas, with increased penetration in areas not normally associated with fires such as the forests of the east coast and interior mountain ranges. Informal settlements will be particularly vulnerable to increasing fire risk, destroying dwellings and livelihoods and killing people. Children will be most vulnerable to these traumatic events.
 - d. **Infrastructure:** Public service infrastructure such as roads, water and sanitation, health, education and electricity services will very likely be continuously damaged by extreme events, becoming increasingly costly and unaffordable to repair and replace. As these stresses on infrastructure compound, service delivery will almost certainly decline, especially access to electricity and water, and health and education services for children. Disaster relief will be increasingly over-stretched and unable to reach most people. Private infrastructure such as houses, businesses and farm buildings will be damaged, destroying livelihoods. Insurance costs will rise, becoming unaffordable for many.
 - e. **Coasts and Oceans:** Temperature increases in the oceans together with acidification will negatively impact marine living resources. These will mostly shift ranges and/or die out, affecting the livelihoods of all who depend on them directly for food and income. In addition, collapse of coral reefs and other marine and coastal tourist attractions such as penguin, shark and whale watching will very likely close this sector. Most associated jobs will likely be lost. Rising seas levels exacerbated



by increasing storm surges will almost certainly inundate coastal areas, estuaries and coastal infrastructure. As evidenced in other countries, government at all levels will very likely be unable to overcome the public resistance to implementing the required 'managed retreats' away from the coastline. However, insurance companies will no longer insure private property below the proposed new setback lines, causing mayhem in the property market.

- f. Emotional wellbeing and climate-induced migration: Huge emotional trauma will be experienced, induced by physical, social, economic and cultural disruption. The increasing inability to cope with climate impacts, and the knowledge that government services are overwhelmed and unable to help, will almost certainly create feelings of abandonment, hopelessness and depression amongst a growing proportion of the populace. Many people will likely lose their sense of place and identity through dramatic changes in their surroundings, the breakdown of social ties and cultural connections as they are forced to move, to try and survive and access services such as health care, education and social grants. Informal settlements will expand dramatically, including with in-migration from countries to the north as climate change impacts compromise livelihoods across the region, with conflicts and xenophobia leading to violence. All of this will reduce people's economic status and compromise their physical and mental wellbeing. Children in particular, will be traumatised at these upheavals and the inability of their parents to provide for them, and their health and safety
- g. Childrens' Vulnerability: These impacts cannot be over-stated. UNICEF, in their just released Children's Climate Risk Index (UNICEF 2021b) rate the climate risks to children in South Africa as 'medium-high'
- h. Economic Impacts and Constraints: For less developed countries such as South Africa, with already constrained fiscal resources, disaster response, relief work and rebuilding will very likely overwhelm the state's ability to respond adequately, compromising every aspect of future service delivery and socio-economic wellbeing. For an example of just how costly addressing climate impacts is (and which will increasingly rise), the amounts in drought relief fund allocations (just one expense) across the country for each of the past 5 years are given. These were R212m, R162m, R265m, R300m, and R51m, or a massive R990m in total. The current allocations in progress across the country amount to an additional R138m. Addressing rising disaster relief costs and rebuilding will become increasingly unaffordable for a country with an already weak economy, massive unemployment and the world's greatest inequality and the ensuing growing social support demands

Economic Risks

18. Goods and service created using fossil fuel energy are going to have a high carbon footprint due to the direct and indirect GHG emissions caused by their production. This means exposure to increased taxes and other costs. The European Union introduced the Carbon Border Adjustment Mechanism (CBAM) which will levy a fee on all imports based on their carbon footprint.⁵ An extensive fossil fuel powered electricity system will ensure that our exporters are heavily penalised and their competitiveness is at risk.

- a. As the laws continue to get applied more vigorously, and as policies, targets and financial pressures become ever more restrictive, we foresee the very real risk that fossil fuel infrastructure and developments will become inviable and illegal to operate long before the end of their economic lifespan, resulting in stranded assets that will never realise the profits counted on by the owners,

⁵ <https://economics.rabobank.com/publications/2021/july/cbam-carbon-border-adjustment-mechanism-eu-explained/>

and very likely placing burden on the public purse in terms of decommissioning and management costs.⁶

- b. There is a range of climate and transition financing mechanisms becoming available from the Global North for countries embracing accelerated decarbonisation policies and measure. South Africa is viewed as an attractive destination for such financing given the relatively low cost of decarbonisation for the country. In order to remain attractive, we need to send the right signals by embracing strong emission reduction measure and avoid expanding or even maintaining carbon intensive fossil fuel use such as gas. This financing is known to be much needed in order to fund out mitigation and adaption measures, and assist with a implementing a Just Transition.⁷
- c. Continued use and development of fossil fuel infrastructure, energy generation and services brings with it **reputational risk** whereby South Africa is seen as a reckless and unnecessarily intensive carbon emitter, compromising our investment opportunities and depriving the economy of growth opportunities.
- d. As more stakeholders align with the imperatives of halting global warming, **litigation risk** increases, and more than one thousand climate litigation cases have been launched around the world between 2015 and 2020.⁸ Our courts have already recognised that new coal fired power developments are contrary to climate change imperatives⁹, and the climate science relating to gas will result in similar and increasing challenges to new gas developments.

What needs to be done?

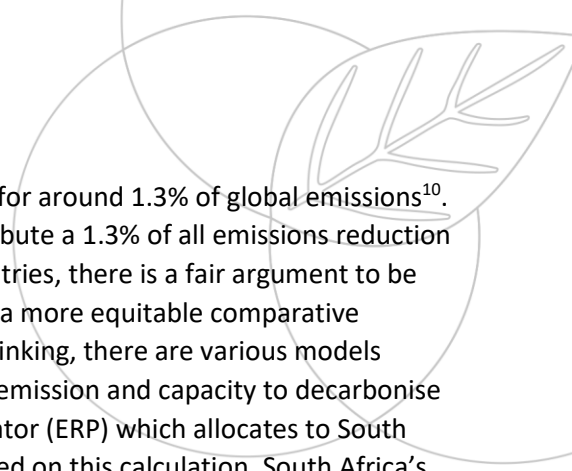
- 19. We can see that the climate crisis is broad and deep, in terms of risks and impacts, as well as solutions and responses. Responses are generally classified as either mitigation or adaptation.
- 20. **Mitigation** fundamentally means slowing down, halting and then ideally reversing global warming by reducing human caused GHG emissions. Nearly all human activities and developments have a carbon footprint, whether direct (causing emissions by burning fossil fuels or destroying carbon sinks) or indirect (using infrastructure or systems, such as transport, to carry on business). All of these carbon footprints need to be reduced and ultimately eliminated. The big immediate focus for South Africa needs to be decarbonising the energy system which is responsible for close on 80% of our GHG emissions, depending on how it's measured. Industrial processes, transport, agriculture and waste are other relatively high-emissions sectors that will also need to address mitigation.
- 21. Emissions reduction is managed via setting targets and trajectories to reduce emissions in a progressive manner. The Paris Agreement stipulates that each nation will set and submit Nationally Determined Contributions (or NDCs), which are GHG emissions limits that a country aims to not exceed. South Africa formulated an updated NDC in the past few months, which is expressed as a range of 350Mt CO₂e to 420Mt CO₂e per annum by 2030. By comparison, South Africa's current emissions are around 450 MtCO₂e per annum.

⁶ <https://oilprice.com/Energy/Crude-Oil/A-Third-Of-Fossil-Fuel-Assets-May-Soon-Be-Stranded>

⁷ <https://www.climatechangenews.com/2021/08/20/us-guidance-development-banks-puts-gas-infrastructure-finance-question/>

⁸ <https://energymonitor.ai/policy/litigation-increasingly-the-only-option-when-big-emitters-fail-to-address-climate-change>

⁹ <https://cer.org.za/wp-content/uploads/2017/03/Judgment-Earthlife-Thabametsi-Final-06-03-2017.pdf>

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22. South Africa is the 13th highest emitter in the world, and responsible for around 1.3% of global emissions¹⁰. All other factors being equal, this would mean that we need to contribute a 1.3% of all emissions reduction required. However, due to the climate debt owed by developed countries, there is a fair argument to be made that a developing nation like South Africa should be permitted a more equitable comparative reduction trajectory, given its developmental needs. Based on this thinking, there are various models available which calculate a 'fair share', taking these needs, historical emission and capacity to decarbonise into account. One such model is the Climate Equity Reference Calculator (ERP) which allocates to South Africa a decarbonisation 'fair share' of between 0.46% and 0.7%. Based on this calculation, South Africa's updated NDC upper range is only just compatible with 2°C of warming, and the lower range is just within the 1,5°C warming range.¹¹
23. According to the globally renowned Climate Action Tracker, South Africa's NDC is rated as 'Insufficient' and on track to contribute to in excess of 2°C of warming. If the government must be commended on improving this rating, as the last NDC from 2015 attracted a rating of 'Highly Insufficient' (warming of over 3°C). As already stated, pressure to strengthen these targets is going to continue increasing.
24. **Adaptation** refers to those policies and measures that need to be taken to adapt to the impacts of climate change that are already happening, or are unavoidable. We can see from the physical risks, that we will have to bring all efforts to bear on adapting and creating a climate resilient society and economy. A selection of diverse examples includes:
- a. Protecting informal and other vulnerable settlements from flooding, landslides, fires and extreme weather events.
 - b. Ensuring food security with the knowledge that important sources such as maize and livestock farming are facing an existential threat.
 - c. Managing water supplies in the face of increasing drought and freshwater scarcity.
 - d. Managing climate migration as people move away from heavily climate change impacted regions.
 - e. Managing peace and security as environmental pressures create conflict conditions.

Current regulation of climate change in SA

25. SA's international climate commitments

- a. Having ratified the Paris Agreement, South Africa has committed to, *inter alia*, strengthen the global response to climate change, including by "*holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.*"¹²
- b. The parties (including South Africa) to the Paris Agreement commit to "*ambitious efforts*"¹³ and successive NDCs must "*represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition*".¹⁴

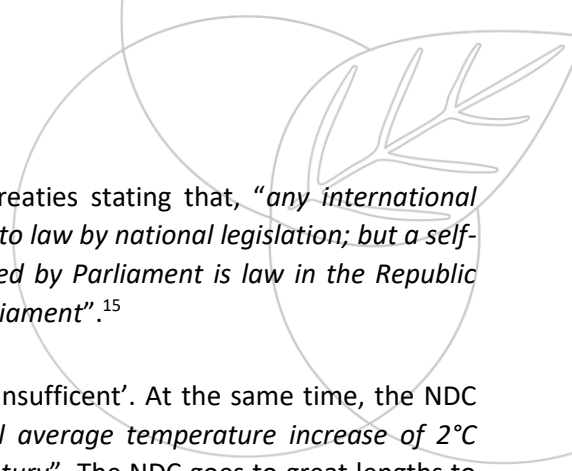
¹⁰<http://globalcarbonatlas.org/en/CO2-emissions>

¹¹ <https://cer.org.za/wp-content/uploads/2021/05/NDC-vs-fair-share-memo-v04-corrected-version.pdf>

¹² Article 2(1)(a).

¹³ Article 3.

¹⁴ Article 4(3).

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- c. Section 231 of the Constitution deals with international treaties stating that, *“any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament”*.¹⁵
 - d. South Africa’s NDC under the Paris Agreement is rated as ‘Insufficient’. At the same time, the NDC notes South Africa’s climate vulnerability in that a *“global average temperature increase of 2°C translates to up to 4°C for South Africa by the end of the century”*. The NDC goes to great lengths to emphasise that as a country *“heavily dependent”* on coal, it *“faces significant rigidity in its economy and any policy-driven transition to a low carbon and climate resilient society must take into account and emphasise its overriding priority to address poverty and inequality”*.

26. GHG Reporting Regulations and Pollution Prevention Plan Regulations

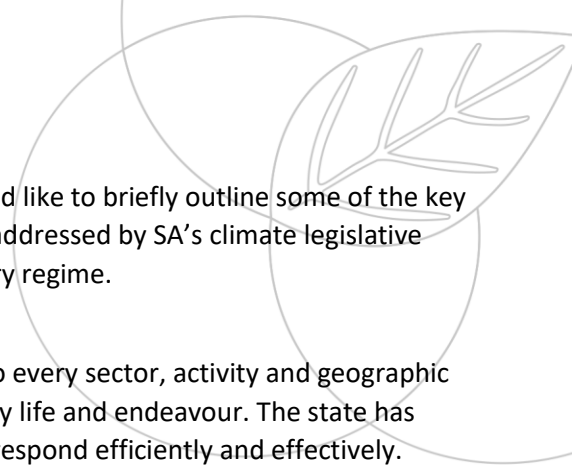
- a. Under the Air Quality Act, 6 Greenhouse Gases (GHGs) were declared by the department as priority pollutants in July 2017 - Carbon dioxide (CO₂); Methane (CH₄); Nitrous oxide (N₂O); Hydrofluorocarbons (HFCs); Perfluorocarbons (PFCs); and Sulphur hexafluoride (SF₆).
- b. The National Greenhouse Gas Reporting Regulations, and the National Pollution Prevention Regulations were also published in the same year. CER submitted written comments during development of these regulations between 2014-6 and in response to more recent amendments, as well as engaging with the Department and erstwhile Ministers outside of these public consultation processes, regarding the implementation and enforcement of these regulations.

27. A key issue that we have emphasised from the outset in relation to the implementation of these two sets of regulations is the necessity of public access to GHG emission data and pollution prevention plans. This is crucial foundational climate information needed to track SA’s progress in relation to GHG emission and hold emitters accountable. Currently, these are not automatically available to the public. Instead, an interested or affected party has to incur the time, cost (prohibitive for some) and administrative burden of having to submit a PAIA request in order to access GHG emission data each year once reports are submitted. There is no guarantee of access and in the event that access is granted, the timeframes of the PAIA process mean that this information is only made available months after a request is submitted – at best within one month. This is an untenable situation for crucial public and time-sensitive data.

28. The Climate Change Bill – Beyond the Air Quality Act

- a. Climate legislation is urgently needed, as a starting point, to set out in more detail, the obligations on government to implement mitigation and adaptation measures, and to provide the legislative basis for regulating emission reductions within GHG emitting sectors and by companies. Currently there are no direct GHG emission limits prescribed by the law. Although we have the obligations, duty of care and environmental management principles outlined in the Constitution and NEMA, specific and overarching climate change legislation would go a long way to provide the necessary legal certainty and a clearer path for climate action in South Africa.

¹⁵ Section 231(4). Whether or not the Agreement is self-executing – whether it can be given effect without national legislation – has been the subject of debate. In any event, government has long been in the process of adopting a Climate Change Act (currently a Bill) to give effect to the Paris Agreement.



29. We note that the Bill will soon be tabled in Parliament. We now would like to briefly outline some of the key things that – in our view, and based on our experience – need to be addressed by SA’s climate legislative regime. Again highlighting the urgency of, and need for this regulatory regime.

Collaboration and co-operation

30. We can see from how the mitigation and adaptation needs reach into every sector, activity and geographic area of society, we are facing a monumental task that will touch every life and endeavour. The state has quite probably never faced such an urgent and far-reaching need to respond efficiently and effectively.

31. The DFFE is ultimately not going to manage the full spectrum of the response on its own. Indeed the Climate Change Bill devolves responsibility onto a wide range of state departments and SOEs, as well as provincial and local government structures. It is globally recognised that ensuring effective cooperative climate governance is one of the biggest challenges to ensuring an effective response, and that a ‘siloed’ approach hampers efforts, wastes time and dilutes effectiveness.

32. A challenge for the DFFE, and for this committee, is how to ensure seamless co-operation with other entities and agencies. We need to avoid a situation where climate crisis response is seen as the sole preserve of the environmentally mandated state bodies, persuading and policing other relevant roleplayers. Climate change response needs to be adequately mainstreamed and centred within all relevant departments and agencies, and become a key performance area in each. While this can be catered for as best as possible in the legislation, its success also depends heavily on the attitude and approach of those to whom the responsibility has been primarily entrusted.

33. The level of constructive coloration need to extend beyond the intra-governmental however. The business sector, financial sector, labour movement, traditional leadership structures, civil society, academia and other role-players all need to play important roles in making the transition to a decarbonised economy and climate resilient society.

Access to information, transparency and public participation

34. In order to facilitate and enable this level of collaboration and effort by the range of roleplayers described, it is critically important that relevant information is made easily and publicly available. Climate change affects everyone and access to information allows people, communities, a range of state actors, businesses and others to understand what is happening, and plan for effective responses.

35. According to the World Bank Reference Guide to Climate Change Framework Legislation¹⁶ (December 2020) accessible information can “*support independent expert advice, coordination, stakeholder engagement, and oversight*”. It can also “*serve a broader developmental purpose. It can contribute to independent research, raise awareness, and facilitate debate on climate change policy. The data can help businesses assess markets and identify investment opportunities.*”

36. Information concerning GHG emissions and their management affects us all and must be publicly-accessible. Peru’s climate law, the Framework Act on Climate Change, has detailed provisions on access to information. Its law states at the outset the following “Principle of transparency:” “*The State has the duty to make available all public information related to climate change, respecting the right of every person to access*

¹⁶ <https://openknowledge.worldbank.org/handle/10986/34972>

*adequate and timely information without the need to invoke justification or interest that motivates such requirement, reducing the asymmetries of information...”*¹⁷

37. In Guatemala, much of the country's climate change information can be found online, on a government website¹⁸, as all public and private entities are legally required to provide information directly related to climate change. There is no reason why the records under the Bill cannot be expressly made publicly available, particularly given the public interest in this information.
38. Along with other civil society organisations, we have had extensive experience of not being able to access information of this nature. This usually results in having to submit a PAIA application, and occasionally litigate in this regard. Ultimately the sought after information is accessed, although often at considerable cost and with delays. Not only is this a drain on resources for all parties, it creates an atmosphere of mistrust and antagonism, none of which serve the interests of responding to a crisis of this nature.
39. The public must have access to detailed facility-level reporting, transparent auditing and verification of data, and public access to GHG emission data. It is also important to have access to sectoral emission targets, carbon budgets (and any exemptions thereto) and adaptation and mitigation plans.
40. Again, due to the impact that climate change has on everyone, it is essential that there be adequate and meaningful public participation in all key administrative decision-making processes in matter relating to climate change.

Effective monitoring and oversight

41. The need for easily accessible information will also support effective monitoring and oversight. Because there are so many roleplayers, it is critically important that the DFFE, and this committee in its oversight role, is able to effectively evaluate compliance with climate change response mechanisms.
42. The World Bank Reference Guide states that monitoring and oversight systems “*should generate the information needed to track progress toward national climate change targets, support the national policy-making process, and monitor compliance with international commitments. [Such] systems inform the review, revision, and evaluation of targets, risk assessments, strategies and plans, and policy instruments.*”

Climate impact assessments and strategic assessment approach

43. According to the IPCC 6th Assessment Report, humanity can only emit another 300Gt CO₂e globally if we are to have an 83% chance at limiting warming to 1.5°C. If we are to accept a much more dangerous warming level of 2°C, this goes up to 900Gt CO₂e. By comparison, we have already emitted about 2400Gt CO₂e since 1850. This reality shows us that there is a hard limit to how much more we can emit.
44. It is therefore essential that development planning takes place in a central and strategic manner, with reference to the remaining global carbon budget, which can be pro-rated to ascertain a South African emissions allowance.
45. Currently it is only effectively mandatory for listed activities subject to an EIA process to undergo climate impact assessment. While this can be effective at project level, there is currently no known system in place

¹⁷Peru, Framework Act on Climate Change, article 2.5. Available at <http://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2018/04/1638161-1.pdf>

¹⁸ See <http://sgccc.org.gt/informacion-general/>.

to evaluate the carbon footprint of development as a whole, leading to a dangerous knowledge and information gap which potentially sets the scene for an uncoordinated pathway into excessive emissions.

Strict targets and enforcement

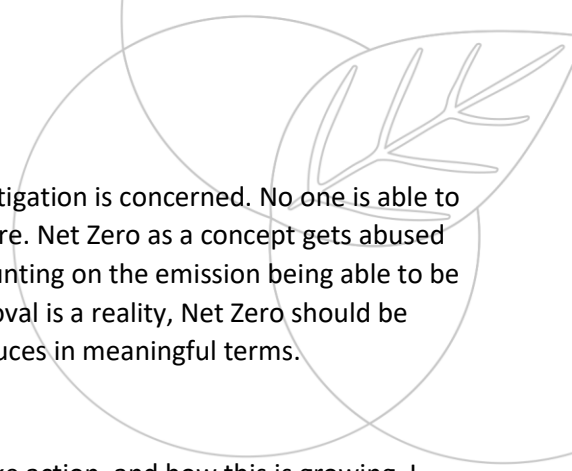
46. Emission reduction pathways and emission limits are possibly the most important tools in ensuring adequate decarbonisation. It is therefore critically important that targets and limits are set with reference to the best available science. The disturbing truth is that, ever since the global scientific community has been studying global warming, the results continuously become more alarming as our understanding of the climate and humanity's effects on it grows.
47. The Nationally Determined Contribution, while supposedly rooted in science, is also a political decision taken by the Cabinet as it exercises a balancing function. It is therefore conceivable that any given NDC may become outdated when the latest and best available science is consulted. It is therefore important for the legislature and executive to ensure that it has access to the latest science, and makes strategic decisions in light of this, and not a benchmark (the NDC) which may no longer be adequate to ensure safety.
48. Emitters who exceed emissions reduction targets, particularly if they do so habitually or excessively, are committing a wrong against the rest of society. It is unlikely that they will, or are even able to, make reparations or pay compensation for damages suffered. It is therefore imperative that transgressors are strictly policed and held accountable via tight regulation which has strong built-in deterrence.

Red flags

49. In our climate change related work, we have become familiar with a number of dynamics, trends and concepts that pose challenges to effective and efficient climate change response, and we wish to take this opportunity to alert the committee to some of these, as they can cause confusion and fragmentation if not properly understood.
 - a. In the context of climate change, there is no such thing as clean coal. The burning of coal is our single biggest source of GHG emissions and consequently also our best opportunity to decarbonise our economy. In a report¹⁹ by expert Dr Ron Sahu, it is clearly demonstrated how even the latest and supposedly most 'clean' technologies do not mitigate the climate harms of burning coal.
 - b. Further coal-fired power infrastructure development is climate harming, technologically unnecessary, is unnecessarily expensive and has a more detrimental effect on employment numbers than alternatives. According to the report²⁰ by the Energy Systems Research Group from UCT, new coal fired power plants would cost the economy R23 billion more than alternative options.
 - c. The use of fossil gas (also sometimes called 'natural gas') is often presented as being a necessary transition energy source, and is claimed to be less harmful to the environment than burning coal. While burning gas has lower GHG emissions than burning coal, the methane that leaks from the supply chain (extraction, liquefaction, transport, storage and regasification) cancels out any benefit over coal and gives rise to economic and climate risk and harm in the same way that coal does.
 - d. Net Zero is a target that must be reached in order to limit dangerous global warming. However, in the definition of Net Zero there is room for the possibility of carbon dioxide removal – the idea being that we could conceivably remove as much carbon dioxide as we are emitting. The technology to do

¹⁹ <https://cer.org.za/reports/potential-impacts-of-proposed-new-coal-generation>

²⁰ <https://cer.org.za/news/new-coal-power-will-cost-south-africans-much-more-report-shows>



so does not exist at any meaningful scale as far as climate mitigation is concerned. No one is able to guarantee that it will be able to do so in the foreseeable future. Net Zero as a concept gets abused by emitters who don't want to reduce emissions, and are counting on the emission being able to be removed at some point in the future. Until such time as removal is a reality, Net Zero should be thought of as Actual Zero – where emissions are actually reduces in meaningful terms.

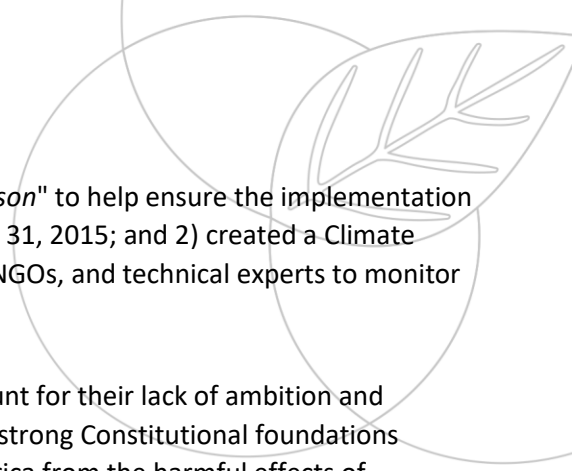
A time for action

50. We have referred a number of times to the increasing pressure to take action, and how this is growing. I wish to highlight where this pressure comes from, because sometimes the argument gets made that we are being dictated to be the developed world for its benefit. The world has moved fast in terms of climate crisis awareness and actions and strategies taken to respond to the crisis. Beyond the United Nations and its member countries, we are seeing pressure to respond being brought to bear by trading partners, financiers and insurers, regulators, the business community, civil society, consumers and voters. Every day more parties are realising that an effective climate crisis response is a matter of survival, and not an optional nice-to-have.
51. In recent years there has been a global surge in litigation brought by citizens and NGOs against their governments for failing to take adequate action to protect people, and their rights, from the impacts of the climate crisis. More and more of these cases are coming before the courts – and winning. Some examples are *Urgenda Foundation v State of the Netherlands* (filed in the Netherlands) *Ashgar Leghari v Federation of Pakistan* (Pakistan);²¹ and *Future Generations v Ministry of the Environment and Others* (Colombia).²² All of them were successful at obtaining orders against the respective governments to take steps to improve their climate action efforts.
52. The Urgenda case in met success all the way to the Netherlands' highest court, which confirmed the order directing the state to reduce GHGs by the end of 2020 by at least 25% compared to 1990. Pursuant to the European Convention on Human Rights (ECHR) rights to life and respect for private and family life,²³ the Court of Appeal concluded that the state is obliged to achieve that reduction, due to the risk of dangerous climate change that could have a severe impact on the lives and welfare of the residents of the Netherlands.
53. In the Leghari case in Pakistan, a Pakistani farmer sued the national government for failure to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). In 2015 the court determined that "*the delay and lethargy of the State in implementing the Framework offend the fundamental rights of the citizens.*" As a remedy, the court 1) directed several

²¹ A Pakistani farmer sued the national government for failure to carry out the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). In 2015 the court determined that "*the delay and lethargy of the State in implementing the Framework offend the fundamental rights of the citizens.*" As a remedy, the court 1) directed several government ministries to each nominate "*a climate change focal person*" to help ensure the implementation of the Framework, and to present a list of action points by December 31, 2015; and 2) created a Climate Change Commission composed of representatives of key ministries, NGOs, and technical experts to monitor the government's progress. At <http://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/>.

²² 25 youth plaintiffs sued several bodies within the Colombian government, Colombian municipalities, and a number of corporations to enforce their claimed rights to a healthy environment, life, health, food, and water. The plaintiffs alleged that climate change along with the government's failure to reduce deforestation and ensure compliance with a target for zero-net deforestation in the Colombian Amazon by the year 2020, (as agreed under the Paris Agreement and the National Development Plan 2014-2018), threatens plaintiffs' fundamental rights. The case was unsuccessful in the court of first instance but in 2018 the Supreme Court reversed the lower court decision, recognizing that the "*fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem.*" At <http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>.

²³ Articles 2 and 8.



government ministries to each nominate "*a climate change focal person*" to help ensure the implementation of the Framework, and to present a list of action points by December 31, 2015; and 2) created a Climate Change Commission composed of representatives of key ministries, NGOs, and technical experts to monitor the government's progress.

54. Governments around the world are increasingly being called to account for their lack of ambition and sufficient action on the climate crisis. South Africa, as a country with strong Constitutional foundations undisputedly requires government to protect the people of South Africa from the harmful effects of industrial air pollution and GHG emissions contributing to the climate crisis.

Conclusion

55. We trust that we have shed some light on the complexity and urgency of the climate crisis. And have hopefully highlighted why the DFFE and this committee have an enormous and unique responsibility in ensuring the safety and wellbeing of all in South Africa. We have forwarded a copy of our taking points to the committee secretary, which includes links to all reports and findings mentioned during the presentations. We would also be more than happy to have discussion with members on any of these or related issues.

We thank you.