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Climate Change Bill submissions: focus on compliance and enforcement

Parliamentary Portfolio Committee on Forestry, Fisheries and the Environment

28 October 2022

Introduction

> Recent changes in the climate are widespread, rapid, and intensifying, and unprecedented in thousands of years.

SIXTH ASSESSMENT REPORT
Working Group I – The Physical Science Basis

CO_2 concentration	Sea level rise	Arctic sea ice area	Glaciers retreat
Highest	**Fastest rates**	**Lowest level**	**Unprecedented**
in at least	in at least	in at least	in at least
2 million years	**3000 years**	**1000 years**	**2000 years**

Ocean temperature

Increasing

Greenland Ice Sheet

Melting

Sea level

Rising

> It is indisputable that human activities are causing climate change, making extreme climate events, including heat waves, heavy rainfall, and droughts, more frequent and severe.

Extreme heat

More frequent

More intense

Heavy rainfall

More frequent

More intense

Drought

Increase in some regions

Fire weather

More frequent

Ocean

Warming

Acidifying

Losing oxygen

> "There's no going back from some changes in the climate system…

> "Unless there are immediate, rapid, and large-scale reductions in greenhouse gas emissions, limiting warming to 1.5°C will be beyond reach.

Every tonne of CO_2 emissions adds to global warming

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Working Group II – Impacts, Adaptation and Vulnerability

Fact sheet - Africa

Climate Change Impacts and Risks

Ecosystems

African biodiversity loss is projected to be widespread and escalating with every 0.5°C increase above present-day global warming *(high confidence)*. Above 1.5°C, half of assessed species are projected to lose over 30% of their population or area of suitable habitat. At 2°C, 7–18% of terrestrial species assessed are at risk of extinction, and over 90% of east African coral reefs are projected to be destroyed by bleaching. {ES-Ch9; 9.6}

Water

Recent extreme variability in rainfall and river discharge across Africa have had largely negative and multi-sector impacts across water-dependent sectors *(high confidence)*. Projected changes present heightened cross-cutting risks to water-dependent sectors, and require planning under deep uncertainty for the wide range of extremes expected in future *(high confidence)*. {ES-Ch9; 9.7}

Food

In Africa, agricultural productivity growth has been reduced by 34% since 1961 due to climate change, more than any other region. Future warming will negatively affect food systems in Africa by shortening growing seasons and increasing water stress *(high confidence)*. Global warming above 2°C will result in yield reductions for staple crops across most of Africa compared to 2005 yields. Climate change poses a significant threat to African marine and freshwater fisheries *(high confidence)*. Under 1.7°C global warming, reduced fish harvests could leave 1.2–70 million people in Africa vulnerable to iron deficiencies, up to 188 million for vitamin A deficiencies, and 285 million for vitamin B_{12} and omega-3 fatty acids by mid-century. {ES-Ch9; 9.4; 9.8}

Economy

Climate change has reduced economic growth across Africa, increasing income inequality between African countries and those in temperate northern hemisphere climates *(high confidence)*. Across nearly all African countries, gross domestic product (GDP) per capita is projected to be at least 5% higher by 2050 and 10–20% higher by 2100 if global warming is held to 1.5°C compared to 2°C. {ES-Ch9; 9.6; 9.11}

Health

Mortality and morbidity will escalate with further global warming, placing additional strain on health and economic systems *(high confidence)*. Above 2°C of global warming, distribution and seasonal transmission of vector-borne diseases is expected to increase, exposing tens of millions more people, mostly in west, east and southern Africa *(high confidence)*. Above 1.5°C risk of heat-related deaths rises sharply *(medium confidence)*, with at least 15 additional deaths per 100,000 annually across large parts of Africa. {ES-Ch9; 9.10}

Cities and Settlements

Exposure of people, assets and infrastructure to climate hazards is increasing in Africa compounded by rapid urbanisation, infrastructure deficit, and growing population in informal settlements *(high confidence)*. High population growth and urbanisation in low-elevation coastal zones will be a major driver of exposure to sea level rise in the next 50 years *(high confidence)*. By 2030, 108–116 million people in Africa will be exposed to sea level rise (compared to 54 million in 2000), increasing to 190–245 million by 2060 (*medium confidence*). Under relatively low population growth scenarios, the sensitive populations (people under 5 or over 64 years old) exposed to heat waves of at least 15 days above 42°C in African cities is projected to increase from around 27 million in 2010 to 360 million by 2100 for 1.8°C global warming and 440 million for >4°C global warming. {ES-Ch9; 9.9}

- The analysis suggests that the Paris Agreement is enhancing global climate ambition—but not at a pace or scale consistent with achieving its goals. The latest NDCs aim to reduce 2030 emissions by an estimated 5.5 gigatons of carbon dioxide equivalent (GtCO2e) more than the initial NDCs. This represents a 7 percent reduction from 2019 levels. According to the IPCC, however, emissions must decline by at least 43 percent from 2019 levels to keep the 1.5°C goal within reach.

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Minerals Council calls on Govt to consider changes to proposed carbon tax amendments

By David McKay - Sep 14, 2022

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South Africa energy group comes out against carbon price increase

Industrial groups in South Africa have voiced their commitment to an equitable transition, while calling for increased carbon prices to be pushed back to after 2035.

BUSA, BLSA "joint position" on delaying carbon tax compromises corporate SA's climate credibility

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Business has called for a reduction in the 2026 and 2030 carbon tax proposals, saying they are too steep and too soon

BL PREMIUM

21 SEPTEMBER 2022 - 13:03 by LINDA ENSOR

UPDATED 21 SEPTEMBER 2022 - 23:00

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Those arguing for a watered-down Carbon Tax Bill are using it as a delaying tactic — they are among the high emitters

21 SEPTEMBER 2022 - 16:31 by JAMES REELER

UPDATED 21 SEPTEMBER 2022 - 17:11

Government must not give in to intense fossil fuel industry lobbying on carbon tax bill

By Robyn Hugo Follow 06 Sep 2022

Sasol warns carbon tax could prompt it to scale back operations

Bloomberg 22 August 2022

- A single criminal offence.
- Very limited provision to hold emitters accountable.
- Provision must be made for additional violations (both criminal offences and administrative penalties), significantly higher fines, and much less leniency and other opportunities to delay compliance.
- Numerous important provisions contain no timeframes at all; and/or defer any consequences for non-compliance to future potential regulations.

- Disconnected from the urgency with which meaningful climate action must be taken to limit the worst impacts of the climate crisis, and to adapt to those impacts that are already faced by people in SA.

  - S23: Minister to publish a list of GHGs and activities likely to cause or exacerbate climate change.
  - List of activities must determine quantitative GHG emission thresholds to identify companies to be assigned a carbon budget; and required to submit GHG mitigation plans to the

Minister.

- No timeframe in the Bill for the publication of the list of activities, despite centrality in assignment of budgets.
- When allocating carbon budgets, Minister must consider the alignment of the carbon budgets with the national GHG emissions trajectory.
- No timeframe in the Bill for the trajectory to be determined, despite importance in mitigation architecture.

- S24: a company with a carbon budget must prepare and submit to the Minister, for approval, a GHG mitigation plan; which must, *inter alia*: describe the mitigation measures that company proposes to remain within its allocated carbon budget.
- Failing to submit this plan is a criminal offence.
- On conviction, the company is liable to the penalties in s49B(2) of the National Environmental Management Act, 1998 (NEMA) (1st offence: fine not exceeding R5 million and/or imprisonment for a

period not exceeding 5 years; and for 2nd/subsequent conviction, double those).

- Wholly inadequate to be a proper deterrent – especially when compared with the short-term financial benefits of not having to ensure that emissions comply with a 1.5°C-aligned timeframe.

- No longer (as in 2018 version) specific provision for a failure to *implement* the mitigation plan - which appears to create the unacceptable result that simply *submitting* the plan is good enough to avoid committing an offence.

- Nor is any penalty attached to a failure to report, monitor or effect remedial action if there is non-compliance with the GHG mitigation plan.
- In addition to monetary fines and possible imprisonment, these failures should attract personal director liability and the potential revocation of licences.

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- S26(6): a company with a carbon budget must:
- implement the approved GHG mitigation plan;
- monitor annual implementation of the plan as prescribed;
- evaluate progress on the allocated carbon budget; and
- annually report on this progress to the Minister in the manner prescribed.
- If such reporting indicates that the company has failed, is failing, or will fail to comply with the allocated carbon budget, it must provide a description of measures to be implemented in order to remain within the allocated carbon budget.

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- But no provision for how to address the situation where the company “has failed” to comply with the budget, and no penalty is attached to this failure.
- 2018 Bill also watered down in that the provision stating that it was an offence to exceed a carbon budget was removed. The 2021 version of the Bill (approved by Cabinet) provided that the exceedance of a carbon budget would be subjected to a higher carbon tax rate on emissions above the carbon budget as provided for in the Carbon Tax Act (to be outlined in carbon budget regulations).
- The Finance Minister in the February 2022 Budget Speech referenced a higher carbon tax rate on emissions exceeding the carbon budget, but this is not contained in the current version of

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the Bill. No public explanation has been provided for this omission. It is also not contained in the current proposed amendments to the Carbon Tax Act.

- Bill contains **no reference to any penalty** for failing to ensure compliance with - or exceeding - a carbon budget, nor for such exceedance to attract a higher carbon tax rate.
- Instead, the Bill provides that the Minister may make regulations, *inter alia*, in relation to the determination, review, revision, compliance with and enforcement of an allocated carbon budget, amendment and cancellation of a carbon budget allocation, the content, implementation and operation of a GHG mitigation plan, and all related matters. Such regulations may provide that any person who contravenes them commits an offence and will be liable to the s49B(2) NEMA penalties,

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- Failure to ensure compliance with a carbon budget is an egregious contravention, with significant consequences for climate action. But no penalty attached to this failure in the Bill, nor any Ministerial obligation to publish regulations to provide any penalty.
- It is unacceptable to defer consequences of violating carbon budgets to potential future regulations. This should be made an offence, significantly penalised, and clearly linked to the requirement to pay additional carbon tax on excess emissions.
- Provision should also be clearly made for personal director liability and for authorisations to be revoked.
- Unless significant penalties are attached to this failure, companies to which carbon budgets have been allocated will simply build in financial provision for any excess tax rate or other fine, and exceed their carbon

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budgets with minimal consequences. The costs of non-compliance have to exceed the benefits, to give the Bill “teeth”. (This problem is worsened by the provision for an emitter to apply for a carbon budget to be cancelled or revised “under prescribed circumstances” (s24(7)(b); especially since such circumstances are not prescribed in the Bill)).

- Given that the implementation of a more effective carbon tax has been deferred until at least 2026, it is even more important that violations relating to GHG mitigation plans and carbon budgets be severely penalised.
- It is also unacceptable that the failure to implement a GHG mitigation plan is no longer an offence, nor does it attract any other penalty. It is clearly meaningless to penalise the failure to *submit* such plan, but not the failure to implement it.
- Penalties should also be introduced in the Bill; for example:

- for providing false and/or misleading information under the Bill;
- for failing to comply with a sectoral emissions target (s22); and
- for failing to comply with plans to phase out or phase down synthetic GHGs (s25).

- These contraventions should also be listed as offences and/or be subject to administrative penalties, and the consequences of non-compliance must be significant.
- Substantial benefits can accrue to an offender who contravenes the Bill.

- Such benefits can and have already accrued to corporate entities which have never, to date, been penalised for their GHG emissions.
- For example, in the first quarter of this year, the world's largest energy companies made almost $100 billion in profit.

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Sasol warns carbon tax poses big risk to its business, and it may have to scale back

"...it would not make sense for us to decarbonise our operations"

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Sasol profit surges on higher oil, chemicals prices

Sasol posted a 147% jump in full-year core profit

- Not only should the number of violations in the Bill be increased, but to serve as a sufficient deterrent, penalties should be much higher than the only penalty currently contemplated in the Bill.

- For instance, penalties could be linked to a meaningful percentage of the activity's commercial value; such as a percentage of annual turnover or exports.
- In addition, enabling legislation for administrative penalties should be prioritised and expedited.

- The Bill's purpose is to "protect and preserve the planet for the benefit of present and future generations". S24 of the Constitution guarantees everyone the right to an environment that is not harmful to their health or well-being; and the right to have the

environment protected, for the benefit of present and future generations.

- The Bill does not go far enough to ensure accountability for those who contribute significantly to and/or exacerbate the impacts of the climate crisis.
- Failing to take more significant steps to reduce emissions in the short and medium term, will require steeper and deeper emission reduction cuts in future, with more severe consequences for our economy and the majority of people in SA.

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> "The climate we experience in the future depends on our decisions now.

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