

The Climate Change Bill of 2022 [B9-2022]: IRR oral presentation, 16 May 2023

Presentation to the Portfolio Committee on
Environment, Forestry and Fisheries
by **Dr Anthea Jeffery**

1. Vague and uncertain wording

- The Constitution identifies the ‘supremacy of the rule of law’ as a founding value, while the rule of law requires that legislation be clear and certain
- Many clauses in the Bill are uncertain or so meaningless as to be void for vagueness
- Eg, the Bill defines climate change as ‘a change of climate that is attributed *directly or indirectly to human activity* that alters the composition of the global atmosphere *and that is in addition to natural climate variability* observed over comparable time periods’.
- Not even scientists can accurately distinguish between man-made change and natural climate variability from the Sun, etc

2. Infringing the ‘separation of powers’ doctrine

- Parliament is responsible for making laws while the executive is confined to implementing the laws so made
- The Constitution guarantees a ‘multiparty democracy’, in which Parliament must also hold the executive to account
- The Bill empowers the minister to decide what the total amount of greenhouse gas emissions should be for SA for decades to come. This will be an arbitrary limit for which there is no adequate scientific foundation – either at the national level or at the international one.
- Yet the minister is to decide on this limit simply with Cabinet approval – and without reference to Parliament at all.

3. Infringing the ‘separation of powers’ doctrine, cont

- The minister is also to decide what the maximum greenhouse gas emissions should be in different sectors.
- These sectoral targets will be just as arbitrary, yet the minister need consult only with the ministers responsible for relevant sectors. Parliament is again bypassed.
- The minister must also decide what greenhouse gases and activities to list as ‘likely to cause’ man-made climate change in her ‘reasonable belief’
- Yet no ‘belief’ in this regard can be ‘reasonable’ in the absence of accurate scientific assessment of the extent to which human activity is in fact changing the climate

4. Infringing the ‘separation of powers’ doctrine, cont

- Here, the minister need not even consult other ministers or the cabinet. All she need do is publish a list of gases and activities in the Government Gazette, while Parliament is again bypassed
- The minister must also decide what ‘carbon budgets’ to ‘allocate’ to ‘persons’ involved in listed activities.
- These persons – including companies, SOEs, and individuals – will be obliged to reduce their carbon emissions accordingly, again without regard to Parliament
- Penalties for non-compliance could be severe: up to R5m or 5 years’ in jail on a first offence; and up to R10m or ten years’ imprisonment on any subsequent one

5. Likely damaging consequences of 'carbon budgets'

- Eskom could be compelled to close down most coal-fired power stations well before reliable, affordable alternatives are available
- Reduced electricity supply and carbon budgets imposed on other companies could close down much of the mining industry; compel a switch to unaffordable electric cars; and hobble the road transport and taxi industries on which millions depend
- This will turn coal towns into ghost towns and end many jobs in affected sectors and support industries (retail and many services, for eg)

6. Ousting the jurisdiction of the courts

- Under Clause 33, any person may appeal to the environmental Minister against a decision taken under a power delegated by the Minister
- A similar clause applies to decisions taken by environmental MECs at the provincial level
- This limits the normal jurisdiction of the courts; contradicts the *nemo iudex in sua causa* principle
- It is also inconsistent with Section 34 of the Constitution, which gives everyone a right of access to the courts

7. No final SEIA report attached to the Bill

- The 2017 SEIA report is outdated and inadequate
- It assumes that jobs lost because of carbon budgets will soon be replaced by 'green' jobs, but this is most unlikely
- It claims that the costs of renewables are diminishing but this is not true, as a FCOE analysis makes clear
- It assumes the Bill's bureaucratic, complex and costly processes will be effective in improving adaptation. But adaptation needs increased revenue, innovation, and efficiency – which the Bill will instead reduce
- It ignores the fact that adaptation has been steadily improving for centuries as countries have grown wealthier – and that deaths from extreme climate events have declined by at least 92% over the past 100 years.

8. No proper public consultation, as Constitution demands

- The public must be given a reasonable chance to ‘know about’ a bill, as the Constitutional Court has said
- A comprehensive, balanced, accurate SEIA report is needed for this, but no updated SEIA report was released
- Accurate costing is also impossible because the Bill is a framework law, with all relevant rules to be added by regulation by the minister, MECs, mayors over time
- Citizens can never adequately ‘know about’ such a measure. Bills should be clearly written and specific as to what policy changes they seek, so that people can be properly informed about the costs and consequences of what is proposed.