30 May 2023

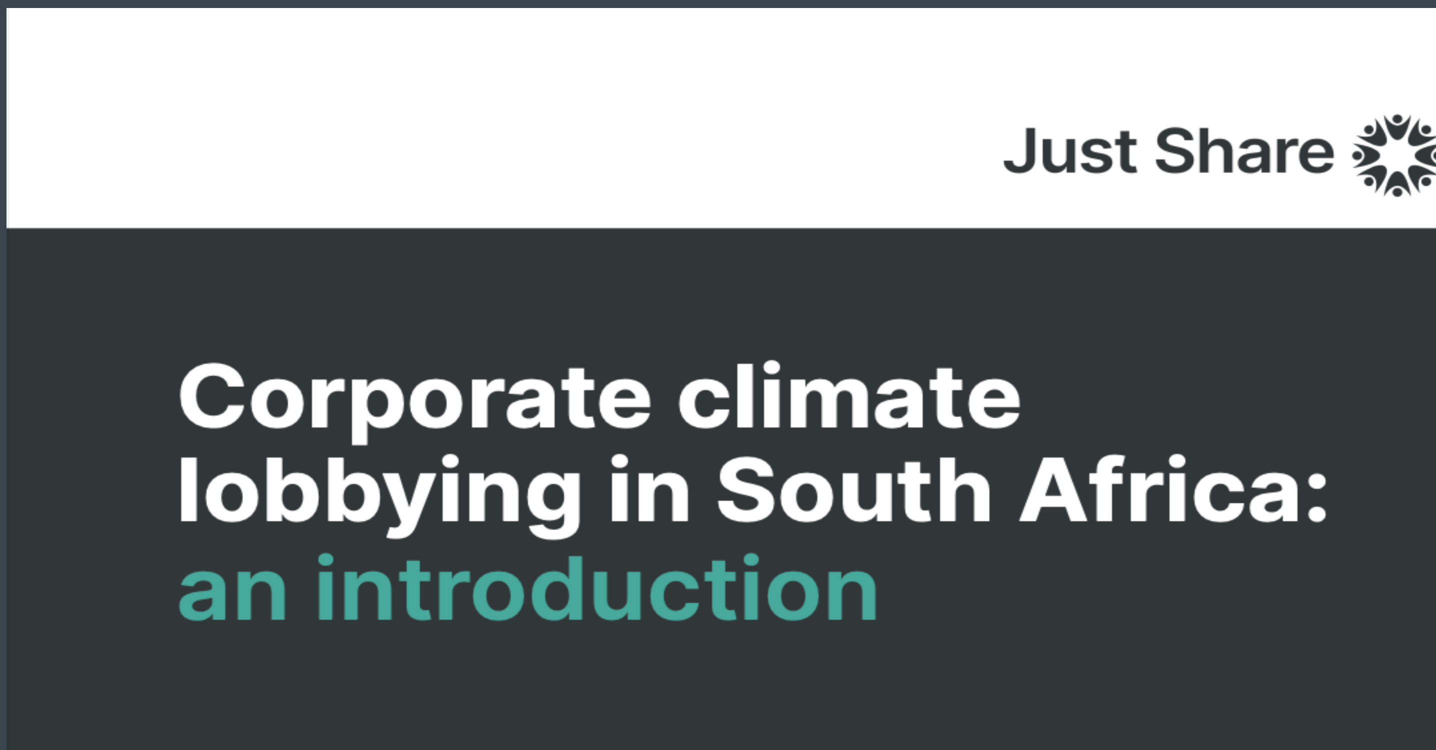
Climate Change Bill

Presentation to PC on Forestry, Fisheries & the Environment

Just Share

Introduction

- Focus: need for increased compliance & enforcement provisions – especially penalties
- Anti-climate corporate lobbying pervasive and powerful



https://justshare.org.za/media/news/climate-change/new-just-share-report-introduction-to-corporate-climate-lobbying-in-south-africa/


I LOBBY FOR RICH PEOPLE.
WE NEED TO LOBBY FOR THE FUTURE!
OK THEN, I'LL LOBBY FOR FUTURE RICH PEOPLE.

Responsible climate lobbying: The global standard

The Global Standard on Responsible Climate Lobbying is intended to achieve a step-change in the commitment of investors and companies to responsible climate lobbying in practice. Applying the Standard facilitates good governance and assessment of whether and to what extent corporate lobbying is aligned with the Paris Goals.

Where there is misalignment, corrective action should be taken.

GLOBAL STANDARD ON RESPONSIBLE CORPORATE CLIMATE LOBBYING www.climate-lobbying.com

DEFINITIONS AND NOTES		
1.	Climate change lobbying (definition)	The term 'corporate climate lobbying' refers to those activities carried out by corporations or their agents to directly or indirectly influence climate-significant policy decision-making by political or bureaucratic actors. Climate-significant policy refers to any environmental or non-environmental public policy with non-trivial implications – positive or negative – for realising the temperature goals of the Paris Agreement. Such lobbying – also commonly known as advocacy – can have a significant impact on the stringency and effectiveness of public climate policy. It is not only a matter of societal concern, but also an issue of material, financial, significance for corporations and their investors.
2	Responsible climate change lobbying (definition)	'Responsible climate change lobbying' is defined as lobbying that aligns with the goal of limiting global temperature rise to 1.5 degrees Celsius above pre-industrial levels, and the ambition of greenhouse gas emissions peaking and reducing as soon as possible.

"Deep dive analysis finds that South African industry is putting the country's climate goals at risk through its policy engagement activities."

"There is a clear imbalance in industry engagement with flagship South African climate policies such as the Carbon Tax and the Climate Change Bill, with companies and industry groups opposed to ambitious outcomes advocating more than entities that have communicated more positive positions".

https://influencemap.org/report/Climate-Policy-Engagement-in-South-Africa-20575

"These dynamics are having clear impacts on policy development in the country."

Structure of submissions

- Why the Bill needs effective penalties – without consequences for non-compliance, the Bill cannot achieve its aims
- Why regulation and emission reductions are urgent and important – cannot be delayed by so-called need to align carbon tax and carbon budgets

BILL

To enable the development of an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa in the context of sustainable development; and to provide for matters connected therewith.

PREAMBLE

WHEREAS everyone has the Constitutional right to an environment that is not harmful to their health and well-being, and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development;

Effective penalties needed, incl for exceeding a carbon budget

- No timelines for list of activities and GHG emission thresholds used to identify which companies should be assigned carbon budgets and required to submit GHG mitigation plans.
- No timeframe for the GHG emissions trajectory to be determined.
- A company allocated a carbon budget must prepare and submit for the Minister's approval, a GHG mitigation plan which describes how it will remain within the budget.
    - **Failure to submit such plan is the only offence in the Bill**, attracting, on conviction, a maximum fine of R5 million and/or imprisonment for at most 5 years - these amounts are doubled for a second or subsequent conviction.
- Companies must: implement the GHG mitigation plan, monitor its annual implementation, and report annually to the Minister on progress against the allocated carbon budget.
- If this reporting indicates that the company "has failed, is failing, or will fail" to comply with the carbon budget, it must describe the measures to be implemented to remain within the budget.
    - **No provision** for how to address the situation where the person **has already failed** to comply with the budget, and **no penalty** attached to this failure.
- **No provision or penalty** for a **failure to "implement"** the plan.
- **No penalty for a failure to report, monitor or remedy non-compliance** with the plan.

Effective penalties needed, incl for exceeding a carbon budget

- Instead of a penalty for exceeding a carbon budget, the Bill gives the Minister the *discretion* to make regulations which *could* address the enforcement of an allocated carbon budget.
- Failure to comply with a carbon budget is an **egregious contravention, with significant consequences for climate action**. Should be an **offence, 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 when there is non-compliance with a carbon budget.
- **Without significant penalties, companies will simply "budget"** for any excess tax rate (if any) or other fine, and exceed their budgets. The **costs of non-compliance have to exceed the benefits**. Risk is exacerbated by the provision allowing application for the carbon budget to be cancelled or revised "under prescribed circumstances" (not prescribed in the Bill).
- Other penalties also required; for eg: for providing false and/or misleading information; for failing to comply with a sectoral emission target; and for failing to comply with plans to phase out/down synthetic GHGs (s25). Should also be listed as offences and/or be subject to administrative penalties (which avoid many of the main constraints of criminal enforcement), and the consequences of non-compliance must be significant.
- Offenders are **corporate entities, and substantial benefits accrue to offenders** that contravene its provisions. To serve as a sufficient deterrent, must be **additional penalties** and these **must be much higher** than those currently contemplated in the Bill.

There is no need to align carbon budgets & carbon tax

FOR SUBSCRIBERS 15 Sep

Sasol says carbon tax threatens its financial viability, risks closure of SA operations

news24 Lameez Omarjee

SHARE

22 Aug

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

Bloomberg NEWS Paul Burkhardt

SHARE

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

By David McKay - Sep 14 2022

OIL & GAS / AFRICA

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

22ND SEPTEMBER 2022

ARTICLE ENQUIRY SAVE THIS ARTICLE EMAIL THIS ARTICLE

FOR SUBSCRIBERS 14 Sep

ANALYSIS | Business wants Treasury to ease up on carbon tax hikes. But is that a bad idea?

news24 Lameez Omarjee

SHARE

Treasury says business's carbon tax call shows a lack of vision

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

JAMES REELER: Business plea to soften carbon tax is a false economy

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

There is no need to align carbon budgets & carbon tax

BUSA BUSINESS UNITY SOUTH AFRICA | ENERGY COUNCIL OF SOUTH AFRICA | MINERALS COUNCIL SOUTH AFRICA | BUSINESS LEADERSHIP SOUTH AFRICA | EIUG Energy Intensive Users Group SA Est. 1999

27 October 2022

JOINT POSITION ON THE PIVOTAL NEED FOR THE CLIMATE CHANGE BILL

Alignment of policy: Optimal policy coherence and alignment will create greater business confidence and investment opportunity. In this regard, the carbon budget and the carbon tax have been tabled as two different instruments adopted by the Department of Forestry Fisheries and Environment (DFFE) and the National Treasury (NT). Although these policy instruments have the same objectives of enabling a national transition to a low carbon economy, they have varying rates of emission penalties without integration and lack associated mitigation mechanisms and enabling incentives that will allow business to sustainably achieve such legislated targets. We believe a holistic framework of penalties, incentives, and mitigation is critical to mitigating the risk of non-compliance and de-industrialisation of our economy, as businesses, and the country will not be able to transition sustainably. Business thus calls for more comprehensive engagement with government and a more empirical-based assessment of economic and social consequences of policy misalignment. Business cautions that obligations borne from the Climate Change Bill should not undermine and curtail rights derived from already granted licenses, authorisations and permits, it is therefore imperative that comprehensive policy and legislative alignment is undertaken.

There is no need to align carbon budgets & carbon tax

- Aligned incentives?
  - Incentive to comply with the law?
  - Reduced carbon tax
  - No need for integration/alignment

- Aligned mitigation measures?
  - Reduced emissions = easier to comply with carbon tax & less tax payable
  - No need for integration/alignment

- Aligned penalties?
  - Currently no penalties in Bill for non-compliance, but should be
  - No basis for integration/alignment to delay implementation

- DFFE & Treasury: mandatory carbon budgets to apply retrospectively from January 2023, as soon as Climate Change Act (CCA) enacted.
- Treasury: higher carbon tax rate to apply to GHG emissions exceeding the carbon budget, legislated once CCA enacted.

There is no need to align carbon budgets & carbon tax

- Timing alignment: filing of carbon tax returns and payment of tax liability occurs 6-months after tax period ends. 2023 tax filing done in July 2024 - ample time for CCA and mandatory budgets.

- Organised business assertion that no existing authorisations and emissions can be impacted by CCA indicates intention to continue “business-as-usual” emissions for as long as possible, **unless doing so is adequately disincentivised, including with a stringent carbon tax and significant penalties**.

- Alignment re policy integration and alignment gives the impression of being sensible & practical. However, **no reason for either the carbon budgets or the carbon tax to be delayed**.

    - Mandatory carbon budgets will apply from January 2023, as soon as CCA enacted; and

    - National Treasury very publicly ejected the call by organised business to delay carbon tax increases.

Conclusion

- Climate change will exacerbate and intensify the country's already significant socio-economic challenges, with radical implications not only for SA's prosperity and security, but for all aspects of life on earth. Poor and marginalised communities are - and will be – worst impacted.

- Voluntary action has dismally failed to ensure adequate levels of protection: robust regulation is essential and urgent, and **polluters must be strongly disincentivised from continuing their emissions.**

- Skilful corporate lobbying has created and reinforced harmful and false arguments that serve to avoid and delay climate action and to preserve the status quo.

- Bill does not go far enough to ensure accountability for those who contribute significantly to and/or exacerbate the impacts of the climate crisis.

- Committee called upon to introduce meaningful penalties, and other compliance & enforcement provisions.

Conclusion

- Failing to take more significant steps to reduce emissions in the short and medium term will require **steeper, deeper emission reduction cuts** in future, with **more severe consequences for our economy and the majority of people** in SA.

SIXTH ASSESSMENT REPORT

Working Group I – The Physical Science Basis

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

THANK YOU

rhugo@justshare.org.za