

The Climate
Change Bill
South Africa



**NATURAL
JUSTICE**

LAWYERS FOR COMMUNITIES AND THE ENVIRONMENT



Climate Change Bill

- We support the main purpose of the Bill which is to “enable the development of an effective climate change response and a long-term transition to a low-carbon and climate-resilient economy and society for South Africa in the context of sustainable development”.
- The Bill aims to
 - (i) provide for a coordinated and integrated response to climate change,
 - (ii) provide for the effective management of climate change impacts,
 - (iii) make a fair contribution to the global effort to stabilize greenhouse gas (“GHG”) concentrations,
 - (iv) ensure a just transition towards a low carbon economy and society,
 - (v) give effect to South Africa’s international commitments and obligations in relation to climate change, and
 - (vi) protect and preserve the planet for the benefit of present and future generations of humankind.



Comments

- Lack of urgency – 5 years for plans
- Not set critical and ambitious emission reduction targets
- No reference to the Paris Agreement
- Weak or silent on fundamental transparency and access to information on climate change
- Not been proper consultation and participation of communities in the process leading to the writing of this Bill. Public participation and consultation are a constitutional right in South Africa (Section 33)
- Not recognize forest protection and restoration as a nature-based solution to climate change
- Not include sufficient penalties to ensure compliance with emissions reduction requirements.
- Weak on training and funding local, provincial, and national government bodies to implement effective climate response measures
- Not adequately look at climate change mitigation and adaptation in all government decision-making
- The current scope of the Bill must be expanded to facilitate a just transition to renewable energy sources

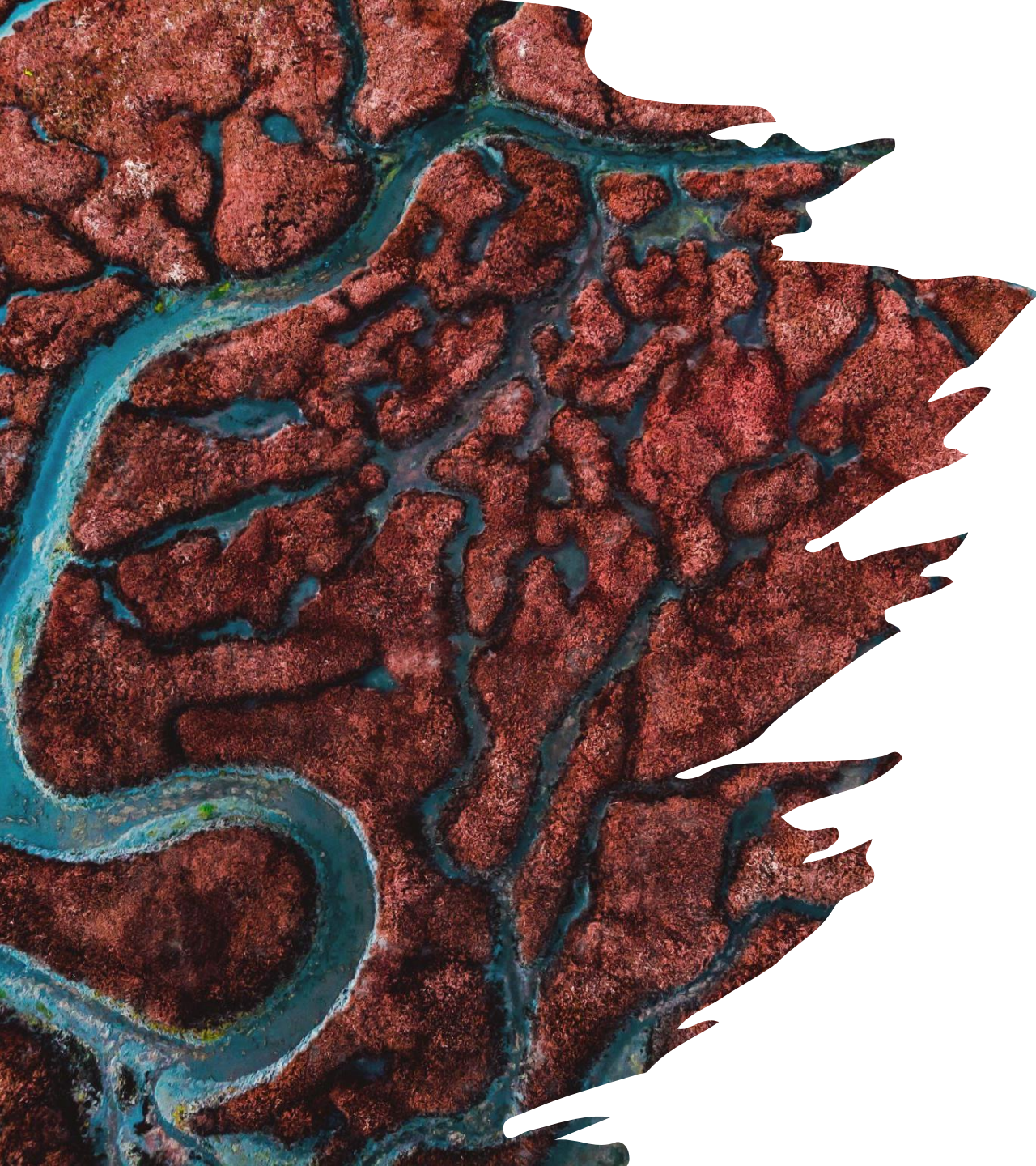
Climate Change Bill

We extend our gratitude to the Portfolio Committee on Environment, Forestry and Fisheries for the opportunity to comment on this bill.

We applaud the Minister of Forestry, Fisheries, and the Environment for introducing the Bill. South Africa is already experiencing the devastating effects of climate change, more frequent floods, droughts, and fires. It therefore cannot be stressed enough how important the Climate Change Bill is, both to implement South Africa's commitments under the Paris Agreement (2015) and to protect the rights of all South Africans guaranteed in the Constitution of the Republic of South Africa.

However, we have concerns on the Bill, its text and provisions and believe more can be done to strengthen it

Presentation on general comments and some recommendations

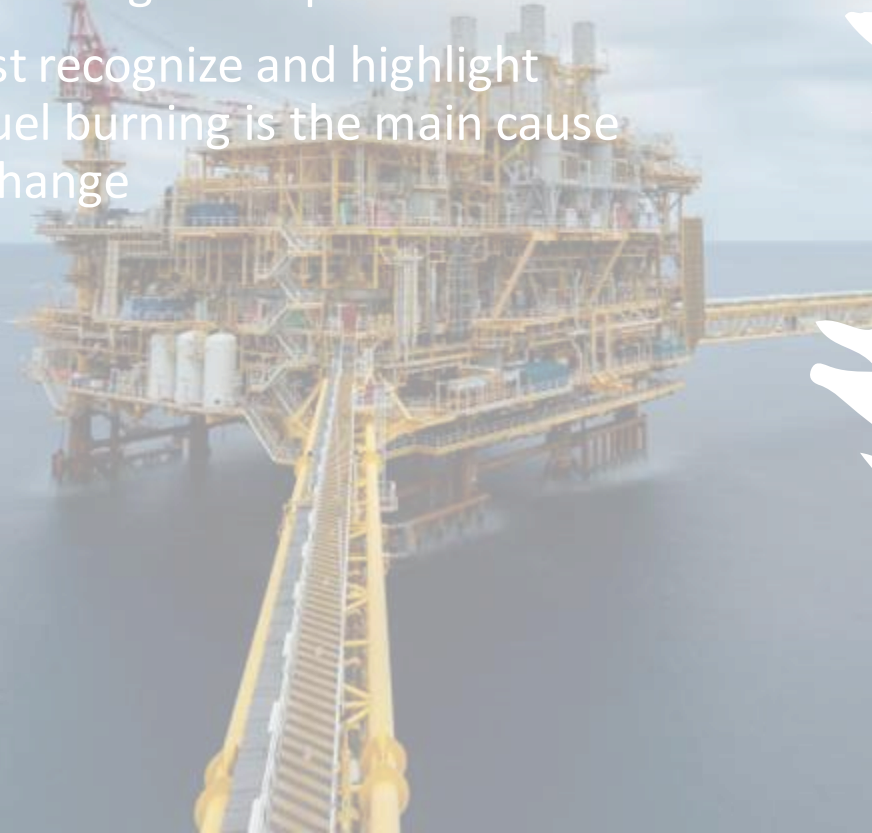


Climate Change Bill

- Climate change is a human rights issue as well as an environmental, social, and economic issue.
- South Africa's response to the climate crisis therefore requires a whole-of-government approach.

Two systems running

- JET law
- Fossil fuel push – gas and petroleum
- The Bill must recognize and highlight that fossil fuel burning is the main cause of climate change



1 EMISSIONS

Select one emission type and a unit.

TYPE

UNITS

2 COUNTRIES

Select countries or group of countries

221

ALL

REGIONS

GROUP

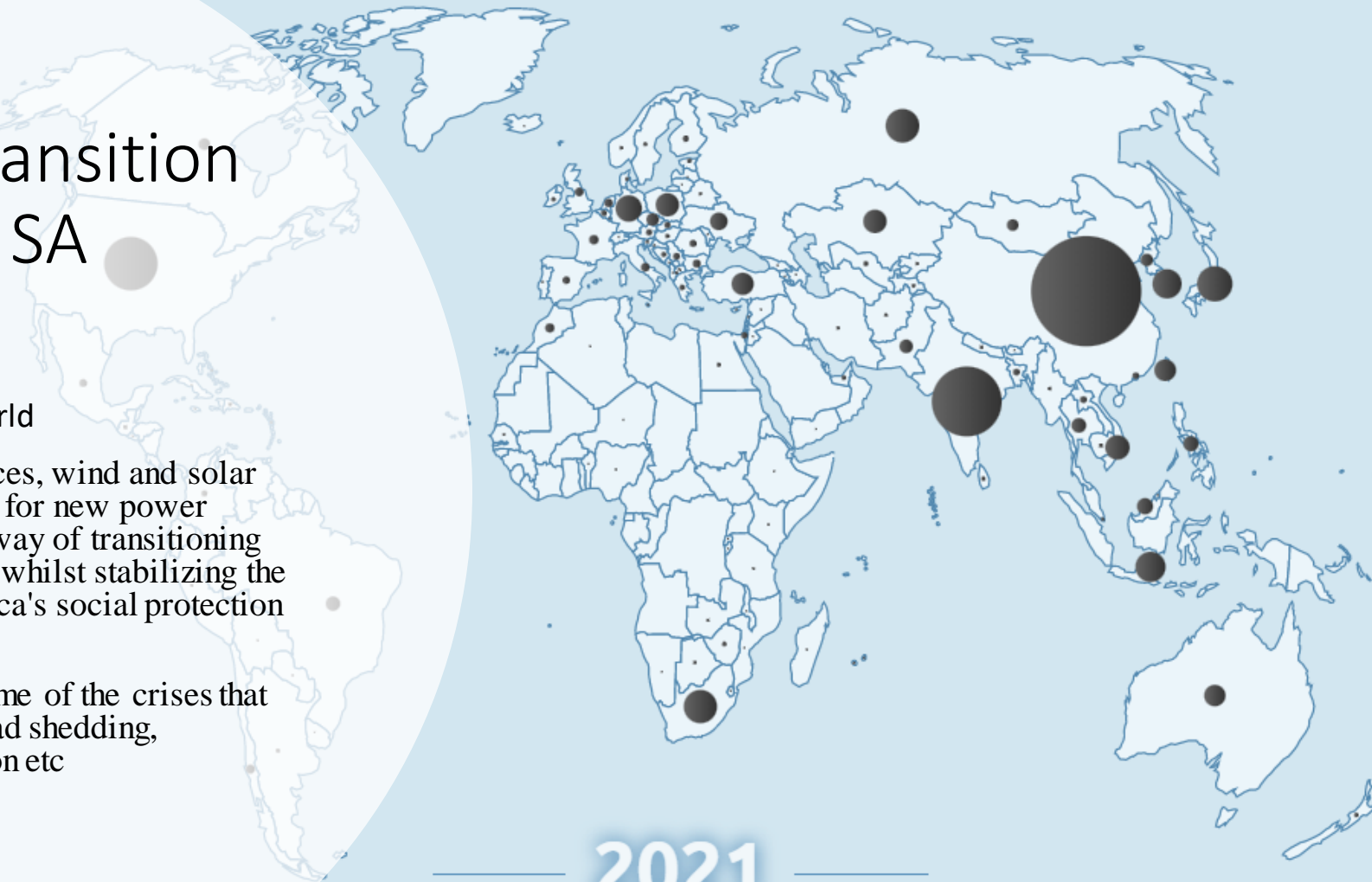
RANK

Clear all selections

Designed by
WEDODATA

A just energy transition needed in SA

- 7th largest coal producer
- Among top 15 emitters in the world
- Compared to other natural resources, wind and solar PV are now the least-cost options for new power plants and represent an effective way of transitioning the country to a net zero pathway whilst stabilizing the economy and securing South Africa's social protection policies
- JET could be a real solution to some of the crises that South Africa is facing, such as load shedding, unemployment, poverty alleviation etc



2021

World Total: 14980 MtCO₂

Fossil Fuels Emissions

EMISSIONS:
Coal

UNIT:
MtCO₂

COUNTRIES:

Africa (56)
Asia (36)
Central America (32)
Europe (45)
Middle East (15)
North America (5)
Oceania (18)
South America (14)



No new oil, gas or coal development if world is to reach net zero by 2050, says world energy body

Governments must close gap between net zero rhetoric and reality, says International Energy Agency head

Statement IEA - 2021



The Just Energy Transition

- A just transition would also reduce energy poverty and air pollution, and drive job creation in new sectors.
- Inexplicably, the Bill doesn't mention the urgent need to reform regulatory barriers that limit national and municipal climate mitigation, especially restrictions on the generation of procurement of renewable energy capacity via power purchase agreements. South Africa, like many countries, urgently needs the government to send the right signals to the market to support investment in renewable energy by embracing strong emission reduction measures and to dissuade via regulation the expansion and/or continued operation of carbon intensive fossil fuels such as coal and gas.
- The Climate Change Bill must harmonise government's approach to achieving sustainable development at the same time protecting the environment. It is not a question of one or the other, for sustainable development does not need to come at the expense of livelihoods and the environment.
- The Climate Change Bill must incentivise and enable a just transition from climate-harming to clean energy and ensure that no-one gets left behind. The Climate Change Bill must ensure urgent, transparent, and effective climate adaptation to protect vulnerable people, sectors and communities from climate change impacts.

Constitutional protection of rights

The Bill does not affirmatively acknowledge the government's fundamental obligation to safeguard South Africans' constitutional rights.

Climate change has devastating impacts on the realization of human and constitutional rights. The rights to life, dignity, access to food and water, and to an environment not harmful to health or well-being is guaranteed in the South African Constitution and Bill of Rights. Women and children are at the front line, with respect to climate change negative impacts, implicating the rights to equality and rights of children

Centering the Bill appropriately on the constitution ensures inclusion of appropriate measures of protection

The Constitution

of the Republic of South Africa, 1996



Constitution protecting future generations

- Section 24. Everyone has the right— (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The Constitution

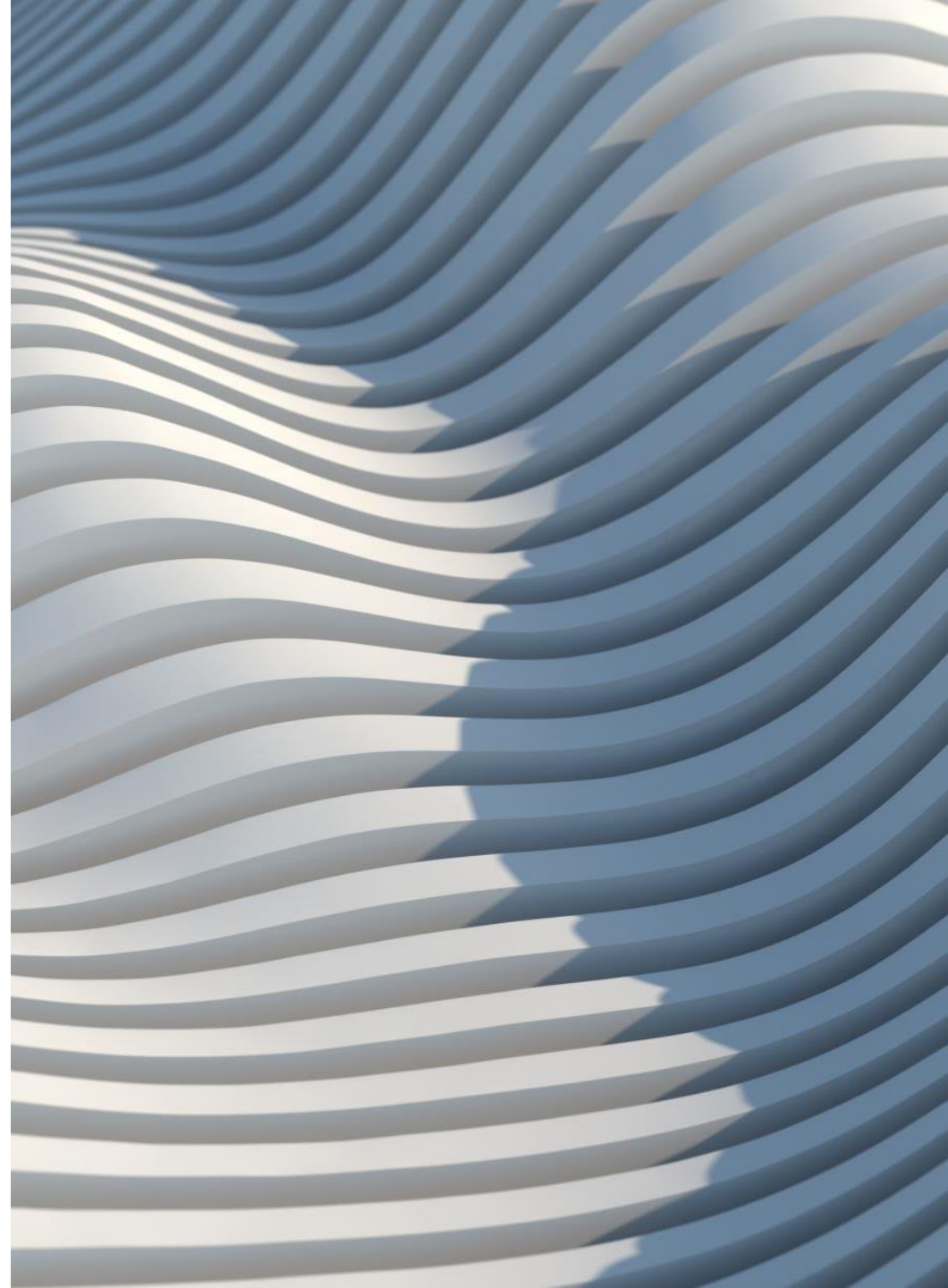
of the Republic of South Africa, 1996



International commitment of South Africa

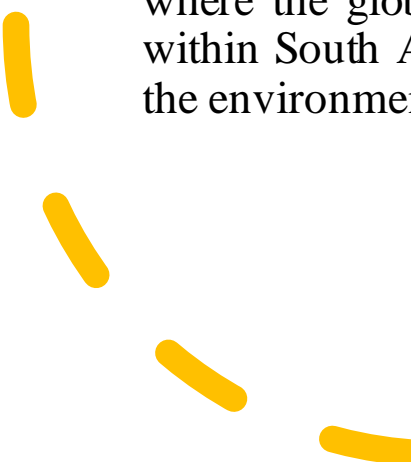
The Paris Agreement is a legally binding international treaty on climate change. It was adopted by 196 Parties at COP 21 in Paris, on 12 December 2015 and entered into force on 4 November 2016.

Its goal is to **limit global warming** to well below 2, preferably to 1.5 degrees Celsius, compared to pre-industrial levels.





Reference to international obligations

- The Bill does not properly situate the legislation in the context of international law and policy, and there is inadequate discussion of whether and how the Bill will allow South Africa to meet its international climate obligations.
 - Further, because there are not clear requirements and legally enforceable obligations set forth in the Bill, it is unlikely that the Bill as currently drafted will ensure South Africa's compliance with its current international commitments or provide the necessary tools for South Africa to formulate and abide by future greenhouse gas mitigation targets.
 - The Bill does not address issues of financing and arrangements for transition to clean and renewable energy, or where the global issue of loss and damage by countries who contributed the most to climate change is situated within South Africa's legal framework, and the financing of reparations required for the damage already caused to the environment in the local context
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Lack of urgency

1. The Bill as drafted in no way reflects the urgency of the climate crisis and its impacts on South Africans. The Bill includes unreasonably long-time frames for implementation of various provisions and/or omits time frames altogether. For example,
2. Adaptation, ...requires various steps to be taken by national, provincial and local government to assess climate change needs and then produce response plans. For provincial and local governments, the obligation to produce a climate change response implementation plan only becomes mandatory a full five years after the Climate Change Act comes into operation
3. Mitigation, no timeframes for the allocation of carbon budgets or for sectoral GHG emissions, or the listing of GHGs⁴¹ and activities that cause or exacerbate climate change, no timeframes or deadlines are attached to these activities at all. This may result in delays or no action at all; both of which we cannot afford

Lack of urgency

1. Section 15 gives a 5-year period to the provincial and local government for promulgation of a climate change response implementation plan. This is too long, for a crisis that we are facing now. We need shorter and urgent turn around times to be set for climate response implementation times. We propose periods of between 6months to a year.
2. With regards to the provision dealing with the listed greenhouse gas and activities (section 23(1) supports the publication of listed greenhouse gas activities by the Minister based on his/her own "reasonable" beliefs. The criteria should not be as based on the Minister discretion or subjective parameters but should rather be supported by the latest climate change science which objectively quantifies which greenhouse gasses and which activities exacerbate climate change.
3. With regards to section 23(2), the current text should extend its scope to not only consider the publication of listed activities that emit greenhouse gasses, but also address and include sectors/industries and private companies which through their conduct emit greenhouse gasses to secure transparency and adequate oversight and accountability

Lack of urgency

The Bill requires the Minister to set the national GHG emissions trajectory and to determine a GHG emission threshold but does not provide a timeframe at all.

Equally confounding, the interim trajectory contained in Schedule 3 of the Bill appears to be drawn from the now obsolete South Africa's 2015 Nationally Determined Contribution (NDC) emission trajectory rather than South Africa's more updated 2021 Nationally Determined Contribution (NDC).

Given the scientific consensus on the urgency of reducing global GHG emissions 45% by 2030 the Bill should require the Minister to promulgate ambitious 2030 GHG emissions reduction targets. Without interim targets, there is a significant risk that action on emissions reductions will be postponed

Weak Ambitions

1. The Bill does not have a set of targets which are based on the latest and available science. The Bill does not set out ambitious sound targets, further it does not have long-term plans and interim targets. It also has no targets for the Minister on how and when certain obligations need to be filled and finished. There are also no net-zero targets that have been afforded in this Climate Change Bill. The Bill does not set critical and ambitious emission reduction targets
2. The Climate Change Act will not be effective unless it includes ambitious emissions reduction targets for 2030 and mid-century. The Bill makes no reference to Article 2 (1) (a) of the Paris Agreement target of keeping 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.
3. Both its climate ambitions and climate action are inadequate to meet the challenge.

Biodiversity protection/restoration

- Ecosystems such as forests, peatlands and wetlands represent globally significant carbon stores. Their conservation, restoration and sustainability are critical to achieving the targets of the Paris Agreement. By working with nature, emissions can be reduced by up to 11.7 gigatons of carbon dioxide equivalent per year by 2030, over 40 per cent of what is needed to limit global warming.
- The Paris Agreement, Article 5, has recognized that forests play a huge part in mitigation and adaptation strategies. Forests also play a protective service in reducing floods and protecting the fertile soil. Both the Intergovernmental Panel on Climate Change (IPCC) and the Intergovernmental Panel on Biodiversity and Ecosystem Services (IPBES) are impressing the importance of taking immediate action to combat climate change and the decline of nature, with data demonstrating that humanity has less than 10 years – until 2030 – to prevent planetary warming from exceeding 1.5 degrees Celsius.
- The Bill does not recognize forest protection and restoration as a nature-based solution to climate change
- There is need to mainstream and harmonise climate responses towards all identified causes of climate change, particularly addressing the causes of climate change and biodiversity loss.

Insufficient penalties/compliance measures

1. The Bill does not include sufficient penalties to ensure compliance with emissions reduction requirements.
2. Section 32 lacks adequate compliance and enforcement provisions (section 32). This section should be strengthened by including stronger enforcement and compliance measures to deter companies and individuals from shirking their emissions reduction obligations.
3. The Bill provides for only a single offence, for the failure to prepare and submit a GHG mitigation plan to the Minister; and does not provide any penalties for failing to implement such plan, nor for exceeding an allocated carbon budget.
4. All provisions in previous drafts linking non-compliance with the obligation to pay a higher carbon tax have been removed in the draft introduced in Parliament – deferring consequences of violations to regulations to be made by the Minister at an undetermined point in the future.

Training and Funding

The Bill needs strengthening on training and funding local, provincial, and national government bodies to implement effective climate response measures, for example;

The Bill places a large burden on municipalities, provinces, and ministerial departments, without making adequate provision for capacity-building and funding.

The Bill requires provinces and municipalities to take a lead on climate change adaptation planning but lacks provisions on how local jurisdictions will be provided with the necessary training, expertise and funding to carry out their duties.

Financial support, and capacity-building are fundamental to the implementation of the Climate Change Act yet are entirely absent from the Bill as currently drafted.

Mitigation and adaptation

The Bill as it is does not adequately mainstream climate change mitigation and adaptation in all government decision-making.

We propose the establishing an inter-departmental Climate Change Directorate to oversee multi-sectoral implementation of the Bill. This committee should be co-chaired by the minister for environment and the minister responsible for planning, and the minister for finance/treasury, and include representatives of provincial and municipal government as well as other relevant national government officials,

Or requiring the Minister to report to parliament bi-annually, or at least annually, on progress made with implementing all key provisions in the Bill by all relevant government bodies.

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Mitigation and adaptation

- Comprehensive needs assessments to understand the vulnerability to climate change impacts and climate change-related human rights harms within the context of the National Adaptation Strategy plan and the Sector adaptation Strategy plan, must be assessed within the scope of understanding and addressing the special needs and circumstances of localities, economic sectors and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women – especially poor and rural women – children, especially infants and child-headed families, the aged, the poor, the sick and physically challenged.
- Section 17(c), stronger language should be incorporated that requires the prioritization of the consideration of most severe actual or potential human rights risks and associated vulnerabilities, as well as prioritize focus on impacts on individuals and groups at heightened risk of vulnerability and marginalization. This will ensure a prioritization of environmental and social protection interventions which promote distributive justice (i.e., fair allocation of the costs and benefits of a transition) by broadening adaptation efforts to support vulnerable stakeholders.

Conclusion

We request that the Bill be amended in line with the above comments and suggested revisions.

We trust that the Portfolio Committee will give due consideration to these comments and work to ensure that the Bill so amended is promulgated as soon as possible given the urgency of climate change mitigation and adaptation in South Africa.

Thank You!

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