



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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Our ref: RH/NL
20 November 2018

Dear Minister Hanekom

REQUEST FOR UPDATE ON AND PRIORITISATION OF THE CLIMATE CHANGE BILL, 2018

1. We write to you with regard to the Climate Change Bill (“the Bill”), published on 8 June 2018 (GN 580 in Government Gazette 41689) for 60 days’ comment.
2. We submitted comments on the Bill on 8 August 2018 (some 3 months ago) on behalf of [groundWork](http://groundwork.org.za/)¹ and [Earthlife Africa](http://earthlife.org.za/),² and representing the [Life After Coal/Impilo Ngaphandle Kwamalahle Campaign](https://lifeaftercoal.org.za/) (“the Campaign”),³ a joint campaign by Earthlife Africa, groundWork, and the [Centre for Environmental Rights](https://cer.org.za/)⁴ in making these comments. The Campaign aims to discourage the development of new coal coal-fired power stations and mines; reduce emissions from existing coal infrastructure and encourage a coal phase-out; and enable a just transition to sustainable energy systems for the people. Our comments are attached.
3. We now write to you, on behalf of the Campaign, to ascertain the present status of the Bill, intended next steps, and envisaged timeframes for the Bill.
4. In particular, we write to request that you and your Department prioritise the Bill and ensure that its promulgation is treated with the urgency that is required, given that, *inter alia*:

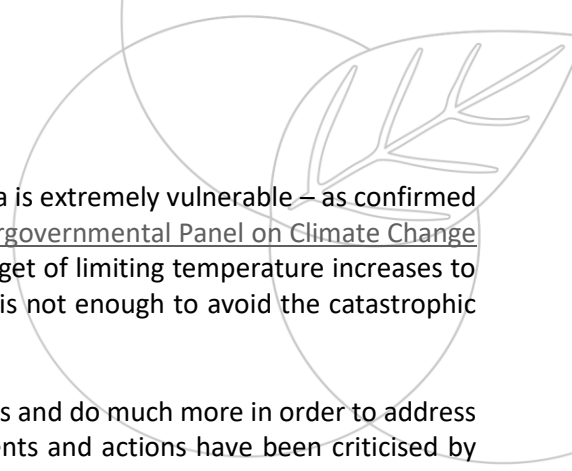
¹ See <http://www.groundwork.org.za/>.

² See <http://earthlife.org.za/>.

³ See <https://lifeaftercoal.org.za/>.

⁴ See <https://cer.org.za/>.

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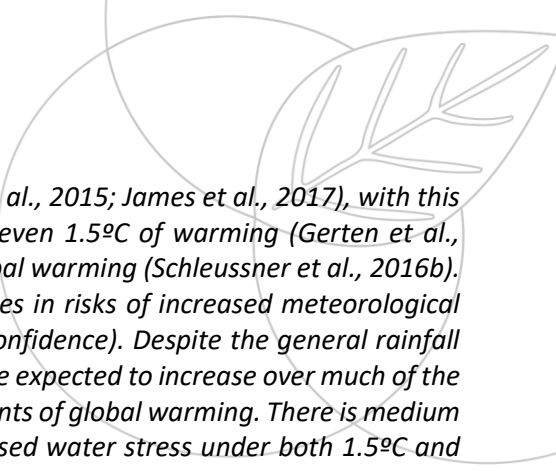
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- 4.1. climate change is an urgent and dire threat, to which South Africa is extremely vulnerable – as confirmed in government’s own climate policy.⁵ A recent report by the Intergovernmental Panel on Climate Change (IPCC) (“IPCC report”) shows that even meeting the intended target of limiting temperature increases to 2 °C above pre-industrial levels (as set by the Paris Agreement) is not enough to avoid the catastrophic effects of climate change;
 - 4.2. government needs to take **much** firmer and more ambitious steps and do much more in order to address the threat of climate change – the country’s current commitments and actions have been criticised by many, such as Climate Action Tracker and the Recent Brown to Green Report 2018, as being highly insufficient;⁶ and
 - 4.3. important mitigation and adaptation response action is being unreasonably delayed while the enactment of climate legislation, and the associated legal certainty, is awaited.
5. While we have raised numerous concerns with the Bill and have criticised the Bill as not going far enough to adequately address the threat of climate change, we emphasise that delaying the regulation of climate change and failing to take any action is even more unacceptable.
 6. The Bill already allows for significant time lapses and delays for the taking of various steps, such as for example the setting of the National Greenhouse Gas Emissions Trajectory and the publication of the National Adaptation Strategy. Further delays in the promulgation of this legislation simply cannot be permitted, particularly given the urgency of the threat of climate change.
 7. You will no doubt be aware that the IPCC report on global warming of 1.5 °C,⁷ confirms, *inter alia*, that:
 - 7.1. human activities have already caused approximately 1.0°C of global warming, resulting in increased natural disasters, droughts, and rising sea levels;
 - 7.2. the risks of allowing temperature increases to reach even 1.5 °C are dire (the Paris Agreement currently sets the target at well below 2 °C);
 - 7.3. limiting global warming to 1.5°C would require “**rapid and far-reaching**” (emphasis added) transitions in land, energy, industry, buildings, transport, and cities; and
 - 7.4. global net human-caused emissions of carbon dioxide (CO₂) must fall by about 45% from 2010 levels by 2030, reaching ‘net zero’ around 2050.
 8. The IPCC report also includes Southern Africa as one the “hot spots of change” when comparing a global warming of 1.5°C and 2° C. It states:

“The southern African region is projected to be a climate change hot spot in terms of both hot extremes (Figures 3.5 and 3.6) and drying (Figure 3.12). Indeed, temperatures have been rising in the subtropical regions of southern Africa at approximately twice the global rate over the last five decades (Engelbrecht et al., 2015). Associated elevated warming of the regional land-based hot extremes has occurred (Section 3.3; Seneviratne et al., 2016). Increases in the number of hot nights as well as longer and more frequent heat waves are projected even if the global temperature increase is constrained to 1.5°C (high confidence), with further increase at 2°C of global warming and beyond (high confidence) (Weber et al., 2018) ... Moreover, the region is likely to become generally drier with reduced water availability under

⁵ P8, National Climate Change Response White Paper.

⁶ See <https://climateactiontracker.org/countries/south-africa/> and <https://www.climate-transparency.org/g20-climate-performance/g20report2018>.

⁷ <http://www.ipcc.ch/report/sr15/>.



low mitigation (Niang et al., 2014; Engelbrecht et al., 2015; Karl et al., 2015; James et al., 2017), with this particular risk also prominent under 2°C of global warming and even 1.5°C of warming (Gerten et al., 2013). Risks are significantly reduced, however, under 1.5°C of global warming (Schleussner et al., 2016b). There are consistent and statistically significant projected increases in risks of increased meteorological drought in southern Africa at 2°C vs 1.5°C of warming (medium confidence). Despite the general rainfall reductions projected for southern Africa, daily rainfall intensities are expected to increase over much of the region (medium confidence), and increasingly so with further amounts of global warming. There is medium confidence that livestock in southern Africa will experience increased water stress under both 1.5°C and 2°C of global warming, with negative economic consequences (e.g., Boone et al., 2017). The region is also projected to experience reduced maize, sorghum and cocoa cropping area suitability as well as yield losses under 1.5°C of warming, with further decreases towards 2°C of warming (World Bank, 2013). **Generally, there is high confidence that vulnerability to decreases in water and food availability is reduced at 1.5°C versus 2°C for southern Africa** (Betts et al., 2018), whilst at 2°C these are expected to be higher (Lehner et al., 2017; Betts et al., 2018; Byers et al., 2018; Rosenzweig et al., 2018) (high confidence)” (emphasis added).⁸

9. In short, without immediate action the 1.5 °C mark may be crossed within 12 years. Beyond this, even half a degree will significantly worsen the risks of drought, floods, extreme heat and poverty for many people, including the people of South Africa. Taking **urgent action to avoid these impacts is thus a Constitutional imperative**.
10. It is the obligation of the state to implement urgent and effective steps to address climate change. **At the very least**, this requires the promulgation of the Climate Change Act, even though its provisions should be much more robust. We reserve our rights in relation to the adequacy of the content of the Bill, and emphasise again that the Bill must be substantially amended in line with our recommendations in order to pass Constitutional muster. We point out that a failure to promulgate any legislation to address climate change would be a blatant violation of government’s obligation to protect and uphold the right to an environment not harmful to health or wellbeing and to have the environment protected for the benefit of present and future generations,⁹ and of the duty of care – to take reasonable measures to prevent pollution or environmental degradation (including climate change) from occurring, continuing or recurring – as set out in the National Environmental Management Act, 1998 (NEMA).
11. A Dutch appeal court, in the case of the *State of the Netherlands v the Urgenda Foundation*, on 9 October 2018 confirmed¹⁰ that the state was acting unlawfully, and in contravention of the duty of care by failing to pursue a more ambitious GHG emission reduction plan. The court held, *inter alia*, that:
 - 11.1. **“the State has a positive obligation to protect the lives of citizens within its jurisdiction This obligation applies to all activities, public and non-public, which could endanger the rights protected ..., and **certainly in the face of industrial activities which by their very nature are dangerous**”** (emphasis added);¹¹
 - 11.2. **“the Court believes that it is *appropriate to speak of a real threat of dangerous climate change*, resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life.[T]he State has a duty to protect against this real threat”** (emphasis added);¹² and
 - 11.3. **“up till now the State has done too little to prevent a dangerous climate change and is doing too little to catch up, or at least in the short term (up to end-2020). Targets for 2030 and beyond do not take away from the fact that a dangerous situation is imminent, which requires interventions being taken now. In addition to the risks in that context, the social costs also come into play. The later actions are taken to**

⁸ IPCC Special Report on “Global Warming of 1.5 °C” at page 3-145

⁹ S24 of the Constitution of RSA, 1996.

¹⁰ <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:2610&showbutton=true&keyword=urgenda>.

¹¹ Para 43.

¹² Para 45.

reduce, the quicker the available carbon budget will diminish, which in turn would require taking considerably more ambitious measures at a later stage...., to eventually achieve the desired level of 95% reduction by 2050” (emphasis added).¹³

12. The findings of the court in this instance are relevant and could also be applied in a South African context.
13. In line with the above, we confirm that **adopting effective and adequate climate change mitigation measures is in fact a legal – and Constitutional - obligation on the state. This includes an obligation to ensure that adequate climate change legislation to ensure effective mitigation of GHG emissions and adaptation to climate change impacts, is urgently adopted.**
14. We therefore call upon you and your Department to ensure that the Climate Change Bill (with necessary amendments as recommended) be progressed for promulgation without delay and we await your response to our queries set out in paragraph 3 above regarding the current status of, and timelines for, the Bill.
15. We again, request that the Bill (as published in June 2018) be substantially amended in line with the recommendations in our comments in order to adequately address climate change adaptation and mitigation, and comply with the Constitution.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS



per:

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¹³ Para 71.