



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

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28 January 2020

Dear Sir

PRIORITISATION OF THE CLIMATE CHANGE BILL AND OTHER PRESSING CLIMATE CONCERNS FOR 2020

1. We write to you on behalf of the Life After Coal Campaign, in relation to a number of pressing matters for the Portfolio Committee's attention in the new year. The [Life After Coal Campaign](#) is a collaborative campaign made up of [groundWork](#), [Earthlife Africa](#) and the [Centre for Environmental Rights](#). It aims to: discourage the development of new 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.
2. We are deeply concerned over the absence of the urgent progress needed from government to tackle the climate crisis. For example, a primary concern in this regard is the delay in the promulgation of much-needed laws to set in motion the regulation of greenhouse gas (GHG) emission mitigation and climate change adaptation in South Africa.
3. We highlight the following as some of the steps and concerns that should be prioritised by the Portfolio Committee:
 - 3.1. an improved, more robust Climate Change Act and related regulations must be promulgated;
 - 3.2. GHG emission information and emission reduction plans must be automatically publicly accessible and available online;
 - 3.3. plans for new fossil fuel projects in South Africa must be abandoned – including the two “preferred bidder” independent coal power plants, Thabametsi and Khanyisa;

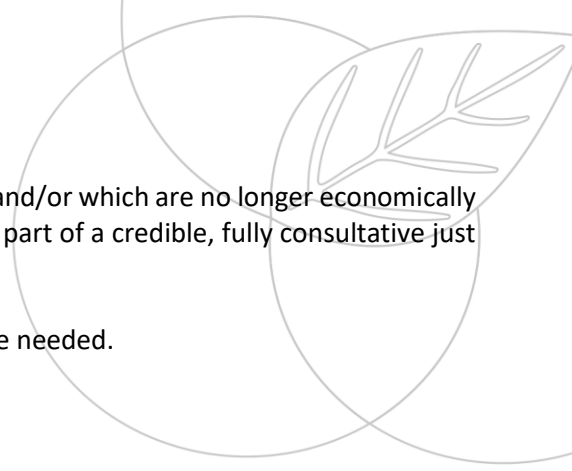
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- 3.4. existing coal-fired power stations that cannot comply with the law and/or which are no longer economically viable to run, must be decommissioned in accordance with, and as part of a credible, fully consultative just transition plan – which is also urgently needed; and
 - 3.5. much more ambitious commitments under the Paris Agreement are needed.
 4. These are addressed in more detail below.
 5. **Global coal use in electricity generation must fall by 80% below 2010 levels within the next 10 years** to avoid exceeding the 1.5 degree Celsius limit,¹ confirmed by the Intergovernmental Panel on Climate Change (IPCC) to be the tipping point for our climate, with severe consequences for Southern Africa.² These consequences will largely be felt through: significant warming (as high as 5–8°C, over the South African interior by the end of this century);³ impacts on water resources, such as changes in water availability; and a higher frequency of natural disasters (flooding and drought), with cross-sectoral effects on human settlements, health, disaster risk management and food security.⁴ Already the impacts of drought, extreme weather events, and fires in South Africa have cost the country billions.⁵ Virtually every province in the country has recently experienced, or is currently experiencing, severe drought, which is crippling livelihoods and jobs, and will have long-term impacts on food security and food prices. Government is having to subsidise these high costs, and will increasingly have to do so.⁶
 6. The World Economic Forum’s annual “Global Risks Report”⁷ lists the climate crisis and environmental threats as the top five global risks in terms of likelihood. These are the world’s top risks ranked by the likelihood of a global risk occurring over the course of the next 10 years. These are risks which have already materialised and will become more severe unless urgent meaningful action is taken.
 7. The government has accepted South Africa’s vulnerability to these impacts. It is the Constitutional imperative of government, including Parliament and the Portfolio Committee - to ensure that people in South Africa are protected against these impacts – that their rights enshrined in the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (“the Constitution”) are upheld and protected.
 8. In the next 10 years, significant ambition is needed to get South Africa where it needs to be.
 9. In acting to address these concerns, we recommend that the following be prioritised by the Portfolio Committee.

The prioritisation of adequate climate change legislation

10. A year and 6 months have passed since the Climate Change Bill’s comment process of August 2018. We have seen no progress on the Bill since then, and no steps to prioritise its finalisation, despite calls for this and the evident need to get the necessary regulatory framework in place as a start to regulating climate adaptation and mitigation in South Africa.

¹ See <https://climateanalytics.org/briefings/coal-phase-out/>.

² <https://www.ipcc.ch/sr15/chapter/spm/>.

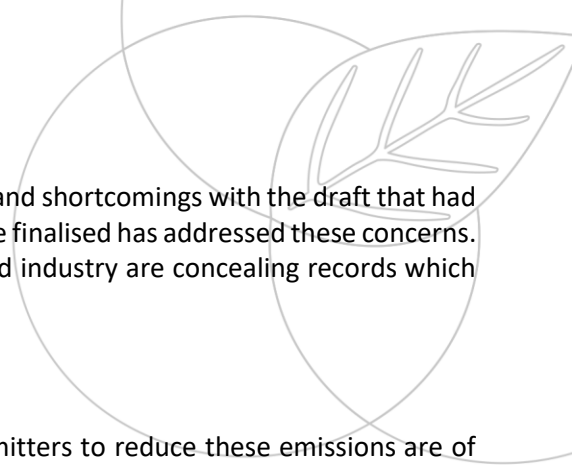
³ P128, Long Term Adaptation Scenarios: Climate Trends and Scenarios for South Africa.

⁴ P129, Long Term Adaptation Scenarios: Climate Trends and Scenarios for South Africa.

⁵ Western Cape Government: Environmental Affairs and Development Planning “Western Cape Climate Change Response Strategy 2nd Biennial Monitoring and Evaluation Report 2017/18” (March, 2018) available at https://www.westerncape.gov.za/eadp/files/atoms/files/WC%20Climate%20Change%20Response%20Strategy%20Biennial%20M%26E%20Report%20%282017-18%29_1.pdf.

⁶ See examples of the impacts of the country-wide droughts at <https://pmg.org.za/committee-meeting/29261/>; <https://www.sanews.gov.za/south-africa/kzn-roll-out-drought-emergency-plan>; and <https://www.politicsweb.co.za/politics/declare-nw-a-drought-disaster-area-to-assist-agris>

⁷ <https://www.weforum.org/global-risks/reports>.



11. The Campaign's comments⁸ on the Bill highlighted a number of concerns and shortcomings with the draft that had been published. We urge the Committee to ensure that the Bill that is to be finalised has addressed these concerns. In the interim, the climate crisis is ramping up, and both government and industry are concealing records which are crucial for the protection of human rights.

The need for transparency by making climate data publicly available

12. Records and information regarding GHG emissions and plans of large emitters to reduce these emissions are of significant public interest and of relevance for all the people of South Africa.

13. Despite this, we note, with concern, the Department of Environment, Forestry and Fisheries' (DEFF) lack of transparency in making basic and fundamental climate data publicly available.⁹ The DEFF has refused to publicly disclose, among other things, proposed GHG emission reductions of South Africa's biggest emitters, citing commercial confidentiality as the justification for withholding this information, but not providing any explanation as to why or how the disclosure of this information poses any harm to the commercial interests of the emitting companies (we submit that it does not, and the purpose of the secrecy is to conceal information from the public rather than from competitors).

14. On 11 February 2019, the CER submitted a request in terms of the Promotion of Access to Information Act (PAIA),¹⁰ to DEFF for access to the following records:

- 14.1. the database or list of data providers registered in terms of regulation 5 of the National Greenhouse Gas Emission Reporting Regulations, GN 275 of 2017;
- 14.2. the latest reports submitted in terms of regulation 7(1) of the GHG Reporting Regulations for 16 companies - some of the largest emitters in South Africa, including Eskom, Sasol, and ArcelorMittal;¹¹
- 14.3. the database of or list of persons that have submitted pollution prevention plans under regulation 4(1) of the National Pollution Prevention Plan Regulations, GN 712 of 2017;
- 14.4. the pollution prevention plans submitted by the 16 companies for the period up to 31 December 2020 in terms of regulation 3(2) of the Pollution Prevention Plan Regulations; and

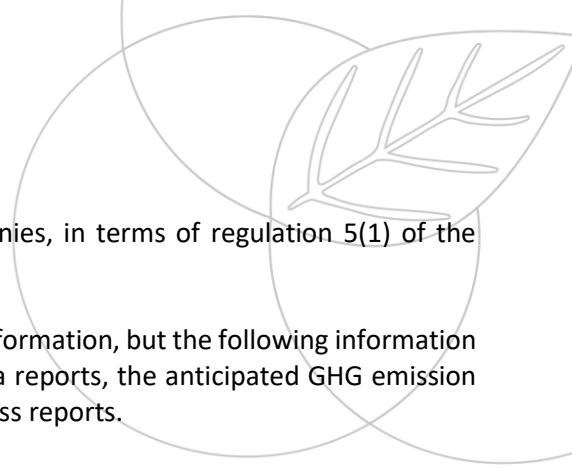
⁸ CER letter addressed to the Minister of Environmental Affairs "Comments on the Climate Change Bill" (8 August 2018) available at https://cer.org.za/wp-content/uploads/2018/08/Life-After-Coal-Comments-on-CC-Bill_8-August-18.docx-1.pdf.

⁹ See <https://cer.org.za/news/cer-challenges-government-secrecy-on-climate-emissions>.

¹⁰ Act 2 of 2000.

¹¹ Reports concerning the following companies were requested from DEFF:

1. Eskom Holdings SOC Ltd;
2. Sasol Ltd;
3. ArcelorMittal South Africa Ltd;
4. Exxaro Resources Ltd;
5. Glencore Plc;
6. African Rainbow Minerals Ltd;
7. Anglo American Plc;
8. Anglo Operations Ltd;
9. South 32 Ltd;
10. Seriti Resources Holdings (Pty) Ltd;
11. Petmin Ltd;
12. Mbuyelo Coal (Pty) Ltd;
13. Kuyasa Mining (Pty) Ltd;
14. Sappi Ltd;
15. PPC Ltd; and
16. Gold Fields Ltd.

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- 14.5. the latest annual progress reports submitted by the 16 companies, in terms of regulation 5(1) of the Pollution Prevention Plan Regulations.
15. On 5 April 2019, DEFF granted the CER partial access to the requested information, but the following information was redacted: usage and production rates from the GHG emission data reports, the anticipated GHG emission reductions from the pollution prevention plans, and some of the progress reports.
16. The CER appealed¹² DEFF's PAIA decision in December 2019 on the basis that the provisions of PAIA, properly interpreted, promote transparency in favour of disclosure and the public interest in the disclosure of GHG emission data and plans to mitigate emissions, clearly outweighs any harm contemplated in making the redacted information available. The Minister's appeal decision is awaited.
17. PAIA allows, with exceptions, information to be withheld where there is a genuine threat to commercial interests. However it does not allow the withholding of information to avoid commercial losses linked with reputational damage. For example, the reputational damage associated with companies polluting, or a failure to sufficiently reduce GHG emissions. Further, no information can be withheld (even for commercial reasons) if the request was made in the public interest and disclosure of the requested documents may reveal evidence of an imminent and serious public safety or environmental risk. If the public interest in the disclosure of the records clearly outweighs the harm contemplated in the provision in question, it must be made available, irrespective of commercial interests of the companies concerned.
18. Full transparency is a crucial component in holding polluters and government accountable - ensuring the country is moving in the direction that is needed for a liveable future. In many jurisdictions, this kind of information is made publicly available as a default. And some of the companies in respect of which the PAIA request was made have provided the records, without redactions.
19. The public cannot be kept in the dark over companies' GHG emissions – something which is of major public interest and affects us all.
20. Provision must be made for an online, publicly-accessible, and up-to-date database showing full details of all GHG-emitting facilities in South Africa – their current GHG emissions per facility and intended future emission reductions. As a basic minimum and first step, this is where South Africa should be in terms of climate transparency, if we are to have any hope of tackling the climate crisis. This would be in line with the 2014 judgment of the Supreme Court of Appeal in the case of *Company Secretary of ArcelorMittal South Africa v Vaal Environmental Justice Alliance*,¹³ where it was held that “Corporations operating within our borders... must be left in no doubt that, in relation to the environment ... there is no room for secrecy and that constitutional values will be enforced”.

The necessity to abandon any plans for new fossil fuel infrastructure

21. The United Nation's Secretary-General, António Guterres, recently called for the abandonment of new coal plants in his address at the UN Climate Change Conference COP25. He stated that: “*For the past year, I have been saying we need to make progress on carbon pricing, shift taxation from income to carbon, ensure **no new coal plants are built after 2020**, and end the allocation of taxpayers' money for perverse fossil fuel subsidies. We must also ensure that the transition to a green economy is a just transition – one that recognizes the need to care for*

¹² The appeal has been accessed here <https://cer.org.za/wp-content/uploads/2020/01/Annexure-A-PAIA-Appeal-CER-13-12-19.docx.pdf>.

¹³ Judgment available at <http://www.saflii.org/za/cases/ZASCA/2014/184.html>.

the future of negatively impacted workers, in terms of new jobs, lifelong education, and social safety nets” (emphasis added).¹⁴

22. In this regard, and with the full knowledge of the climate risks that South Africa is exposed to, it is unacceptable that the Integrated Resource Plan for Electricity 2019 (IRP) makes provision for 1500 MW of new coal capacity and 3000 MW of new gas capacity. It is also unacceptable, and in contravention of the Constitution: that the DEFF continues to authorise and issue licences to the 2 proposed, and highly GHG emission-intensive independent power producer (IPP) coal-fired power stations – Thabametsi and Khanyisa (60% more emission-intensive than existing Eskom coal plants on average);¹⁵ and that the DEFF is supporting plans for the establishment of a 3300 MW new coal plant that would supply a new and highly emission-intensive coal plant in Makhado in the Limpopo.¹⁶
23. We also note with concern that DEFF has recently issued an authorisation for a 3000 MW combined cycle gas power plant in Richards Bay KwaZulu-Natal. The GHG emissions of this project will be very high – 4.6 million tonnes of CO₂ equivalent annually (0.85% of national emissions each year), not counting emissions from leaks, venting and flaring upstream. Further, environmental authorisations for oil and gas exploration have been issued without regard for marine impacts or climate change.
24. There are also a number of economic risks linked with locking the country into fossil fuel infrastructure that will soon be obsolete and unable to operate for its full anticipated lifespan. In addition to becoming stranded assets and aside from their external costs, the coal IPPs alone are set to cost South Africa an additional R20 billion in comparison to a least-cost electricity system.¹⁷
25. Thus, we reiterate that it is unacceptable that government is even considering building new fossil fuel infrastructure in light of the global evidence and urgency of getting out of fossil fuels.
26. We also emphasise that proposed new legislation which seeks to facilitate the exploitation of fossil fuel petroleum – oil and gas – resources in South Africa, namely the Upstream Petroleum Resources Development Bill,¹⁸ should be abandoned as this would severely prejudice the necessary efforts to reduce GHG emissions.

The need for existing coal-fired power stations to comply with the law or shut down

27. The required 80% reduction of coal-fired power generation within 10 years will also require the decommissioning of existing coal-fired power stations. With current circumstances around Eskom’s financial situation as well as the severe public health impacts (and violations of Constitutional rights) caused by its stations’ air pollution, in addition to the climate and other environmental impacts, urgent, credible plans must be put in place for a smooth decommissioning and transition for Eskom’s dirty, ageing, legally non-compliant coal fleet.
28. We have long maintained that coal-fired power stations which are unable to comply with legislated health-based standards must be retrofitted or shut down. Compliance with the law is not optional. In any event, long lead times have been provided to industries to afford them ample time to take the necessary steps to ensure compliance with pollution standards. For example, Eskom has had certainty of the minimum emission standards (MES) that would apply to its stations since 31 March 2010 – a decade. Despite obtaining multiple postponements of MES compliance, Eskom continues to seek leniency and, in fact, exemptions from these standards, with

¹⁴ António Guterres “Secretary-General’s remarks at opening ceremony of UN Climate Change Conference COP25 [as delivered]:” (2 December 2019) available at <https://www.un.org/sg/en/content/sg/statement/2019-12-02/secretary-generals-remarks-opening-ceremony-of-un-climate-change-conference-cop25-delivered>.

¹⁵ <https://cer.org.za/wp-content/uploads/2018/05/ERC-Coal-IPP-Study-Report-Finalv2-290518.pdf>

¹⁶ <https://cer.org.za/wp-content/uploads/2020/01/CER-letter-to-DEFF-re-EMSEZ.pdf> and https://cer.org.za/wp-content/uploads/2020/01/DEFF-response-to-EMSEZ_Oct-2019.pdf

¹⁷ <https://cer.org.za/wp-content/uploads/2018/05/ERC-Coal-IPP-Study-Report-Finalv2-290518.pdf>

¹⁸ See https://www.gov.za/sites/default/files/gcis_document/201912/42931gon1706.pdf.

devastating consequences for human health and wellbeing.¹⁹ In addition, it does not even comply with the far more lenient standards in its atmospheric emission licences.²⁰

29. We have a history of engagements, over several years, with the Portfolio Committee on the public health issues related to air pollution in Priority Areas, designated under the National Environmental Management: Air Quality Act,²¹ and Eskom's role in this regard – particularly in relation to the Highveld Priority Area where 12 of Eskom's 15 coal-fired power stations are located.²² In June 2019, groundWork, and the Vukani Environmental Movement, represented by the CER, launched Constitutional litigation against the government. The applicants have asked the Court to acknowledge that the poor ambient air quality in the Highveld Priority Area (HPA) constitutes a violation of the right to an environment not harmful to health or well-being as enshrined in section 24 of the Constitution, and to order the government to promulgate regulations to give effect to the Highveld Air Quality Management Plan.²³
30. This litigation points out that Eskom (and Sasol) are the major sources of pollution in the HPA, with devastating impacts on human health and wellbeing.²⁴ This highlights the need to ensure that Eskom's coal-fired power stations are retrofitted to ensure compliance with air quality laws and that those Eskom power stations that fail to comply should be shut down following a fair and inclusive process.
31. Finally, shutting down non-compliant Eskom power stations enables a just transition from coal-fired power to sustainable renewable energy as the primary source of energy. The National Planning Commission's (NPC) final proposal on a just transition²⁵ highlights the fact that during this transition to a low carbon, climate-resilient economy and society, the approach adopted *"includes defending and protecting the rights of the most vulnerable, including women, children, people with disabilities, those that are poor and the working class more broadly"*.²⁶ This means, despite the job losses associated with shutting down Eskom power stations, by supporting the NPC's approach, the needs of workers and the most vulnerable will be at the forefront of the necessary transition away from fossil fuels. What is now urgently needed is a credible, well-resourced and expertly-executed just transition plan.
32. In addition, the Portfolio Committee should call for and support the urgent procurement of new renewable (solar and wind) generation capacity; local government deployment of clean electricity; and a move towards decentralised local electricity systems, to address supply constraints.

The need for more ambitious climate action

33. South Africa has been heavily criticised for inadequate climate commitments under the Paris Agreement. The commitments fall outside the fair share range; and are not consistent with the Paris Agreement 2 degrees Celsius

¹⁹ See, for example: <https://cer.org.za/wp-content/uploads/2019/10/8a84b69a-air-quality-and-health-impacts-of-eskoms-non-compliance.pdf>, which evaluates the impacts of the leniency and exemptions sought for only 10 stations. These application outcomes are still pending, and Eskom is in the process of at least two further applications for additional stations.

²⁰ <https://cer.org.za/wp-content/uploads/2019/04/Ron-Sahu-Eskom-Exceedances-Report-updated-March-22-2019.pdf>; <https://cer.org.za/wp-content/uploads/2019/07/CER-letter-to-Minister-Creecy-Kendal-enforcement-action-22-July-2019.pdf>

²¹ Act 39 of 2004.

²² Published under GN 1123 in GG 30518 dated 23 November 2007.

²³ The Trustees for the Time Being of Groundwork Trust and Another v The Minister of Environmental Affairs and Others (Case no: 39724/19). The litigation documents can be accessed here: <https://cer.org.za/programmes/pollution-climate-change/litigation/litigation-in-relation-to-the-highveld-priority-area-hpa>.

²⁴ <https://cer.org.za/wp-content/uploads/2019/06/Andy-Gray-Report.pdf>; <https://cer.org.za/wp-content/uploads/2019/06/Peter-Orris-Report.pdf>

²⁵ National Planning Commission "2050 Vision and Pathways for a Just Transition to a low carbon, climate resilient economy and society" (Revised proposal following the outcomes of the Concluding Conference held on 29 May 2019) available at: <https://oneworldgroup.co.za/wp-content/uploads/2019/10/NPC-JT-Vision-and-Pathways-draft-2-final.pdf>. Hereafter "NPC: 2050 Vision and Pathway for a Just Transition".

²⁶ NPC: 2050 Vision and Pathways for a Just Transition see note 16 above at p 4.

target – let alone the 1.5 degree benchmark set by the IPCC. If all government targets were in this range, warming would reach between 3 and 4 degrees Celsius.²⁷

34. In statements at the September summit and at COP25, South Africa indicated that it plans to enhance its climate change plans by 2020, in line with the Paris Agreement and in line with IPCC science.
35. Although well over 100 governments have signaled to the United Nations that they will submit new climate plans in 2020,²⁸ yet South Africa is not among them, despite its significant contribution to GHG emissions. Notwithstanding this, some South African cities, Tshwane, Johannesburg, Durban, and Cape Town are working towards achieving net-zero CO2 emissions by 2050.
36. President Ramaphosa recently stated at a Business Unity South Africa (BUSA) Business Economic Indaba that: *“As South Africans, we need to up our own game when it comes to being more and more aware of climate change.”*²⁹
37. In light of all these indications, and in light of government’s Constitutional obligations, **the country needs much more ambitious climate action and urgently**. The much-needed revision of South Africa’s nationally determined contribution must be accompanied by country-wide public hearings.
38. We hope that the Portfolio Committee will take these submissions into consideration. Please advise if you require any further information. The Campaign has particular expertise in various of the issues raised in these submissions and would welcome an opportunity to address the Committee at any public hearing called on these matters.
39. Kindly acknowledge receipt of this letter.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS

per:



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²⁷ <https://climateactiontracker.org/countries/south-africa/>.

²⁸ <https://s3-sa-east-1.amazonaws.com/cop25.cl/documents/eng/1312+Annex+Alliance+ENGLISH.pdf>.

²⁹ <https://www.enca.com/news/livestream-ramaphosa-addresses-busa-indaba>