

Memorandum

To: Pollution & Climate Change Programme; Brandon Abdinor
From: Danjelle Midgley
Topic: **Parliamentary legislative process, timeframes and role-players for the National Climate Change Bill**
Date: 11 October 2021

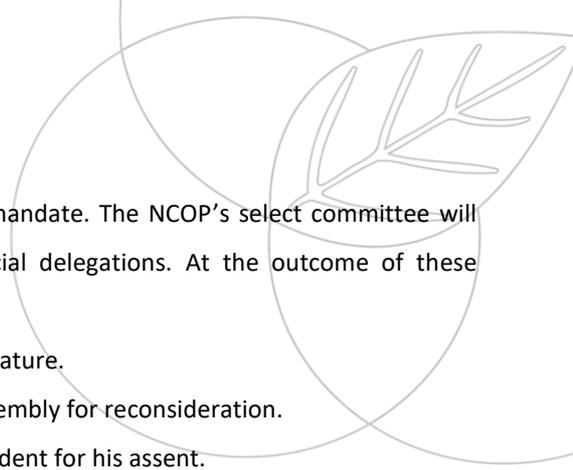
Introduction

1. Cabinet approved the submission of the National Climate Change Bill (the bill) to Parliament on 14 September, and on 11 October 2021 the Minister of Forestry, Fisheries and the Environment, Barbara Creecy, officially introduced the bill in Parliament.¹ The bill will now proceed through the Parliamentary legislative process provided for in the Constitution.
2. The Centre for Environmental Rights wishes to engage with role-players within this process in order to advance our climate change advocacy aims.
3. The legislative process, role players, opportunities for engagement and estimated timeframes are described below.

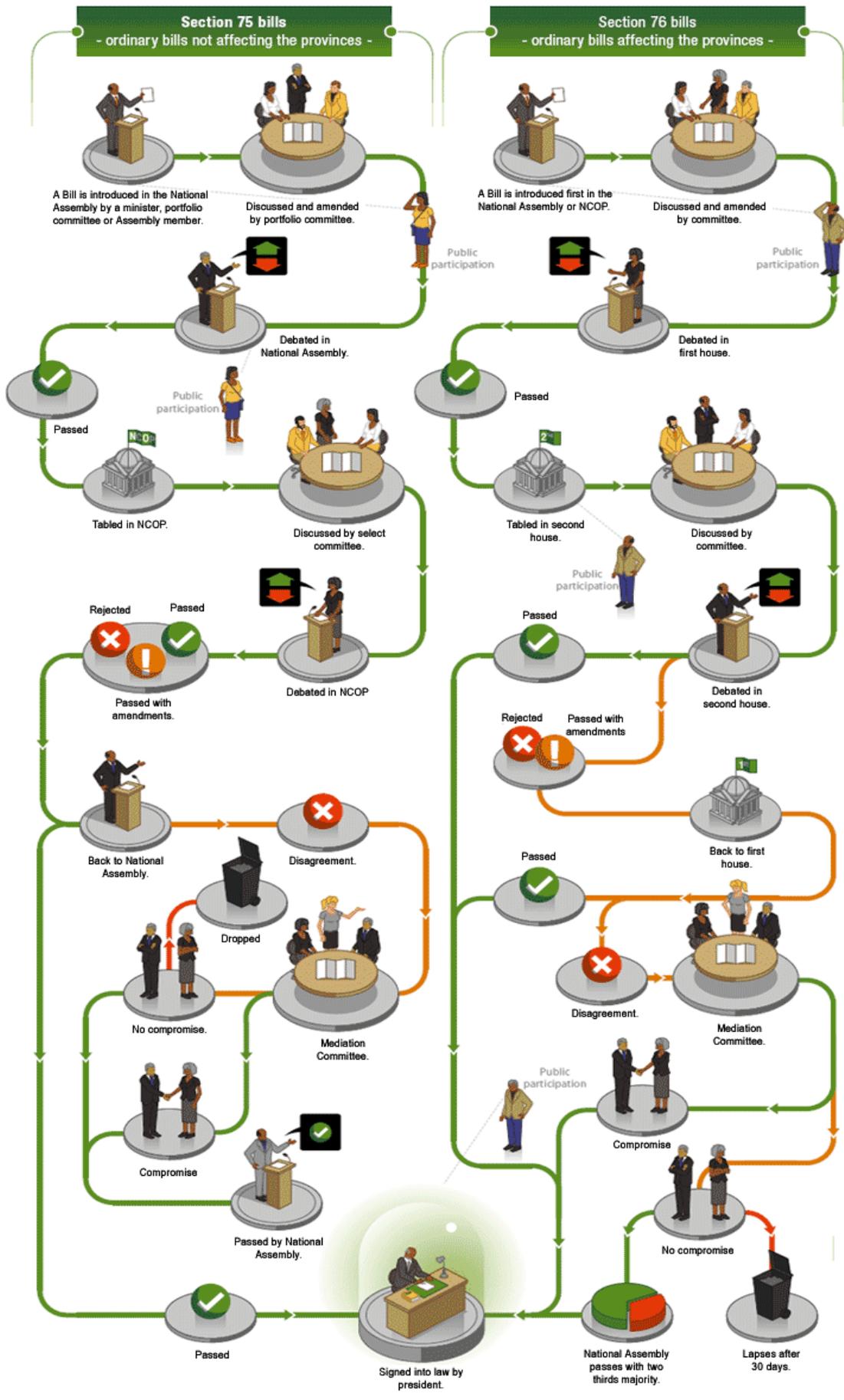
Legislative process for the Climate Change Bill through Parliament

4. On 11 October, the bill will formally be introduced in Parliament and tabled in the National Assembly by Minister Creecy in what is known as the First Reading. The bill and explanatory memorandum will also be published in the Government Gazette (not for comment). Once introduced in Parliament, the bill will be referred to the Portfolio Committee on Forestry, Fisheries and the Environment in the National Assembly.
5. The Minister and officials in the Climate Change directorate within the Department of Forestry, Fisheries and Environment will brief the Committee on the bill. This will be the first time members of the portfolio committee will have engaged with the text of the bill. The portfolio committee will then consider the bill and publish it for public comment. This will likely entail both invitations for written comment and an opportunity for verbal presentations from the public. Once the portfolio committee has debated the bill internally and completed its public participation process, the committee may agree to it, propose amendments or reject the bill.
6. Once the portfolio committee passes the bill or amends it, the bill (with any amendments) is referred to the National Council of Provinces (NCOP) where it is tabled. It will then be sent to the NCOP's Select Committee on Land Reform, Environment, Mineral Resources and Energy which will receive a briefing on the bill so that its members can tell their respective provincial legislatures about its contents. The bill is then considered by each of the nine provincial legislatures. The select committee members will consult their provinces so that they can participate in the debate in their own provincial legislatures.
7. Each provincial legislature will refer the bill to a provincial committee, which will consider the bill and may hold provincial public hearings on it. NCOP members get a voting mandate from their provincial legislatures. Each provincial delegation has one vote on each bill.

¹ See GN 1026 in GG 45299 of 11 October 2021.



8. The NCOP delegates then return to National Parliament with a negotiating mandate. The NCOP's select committee will consider the bill and negotiation will take place among the nine provincial delegations. At the outcome of these negotiations:
 - a. If the NCOP passes the bill, it goes to the President for assent and signature.
 - b. If the NCOP rejects or amends the bill it goes back to the National Assembly for reconsideration.
 - c. If the National Assembly accepts the amended Bill, it goes to the President for his assent.
 - d. If the National Assembly rejects the NCOP amendments, the Bill goes to a Mediation Committee comprising of Members from the National Assembly and Members of the NCOP.
 - e. If the Mediation Committee is unable to agree within 30 days of the Bill's referral to it, the Bill lapses.
9. A Mediation Committee may agree on
 - a. the bill as passed by the National Assembly;
 - b. the amended bill as passed by the NCOP;
 - c. another version of the bill
10. Below is a visual diagram summarising the Parliamentary processes involved in making a law – from introduction in Parliament, to being passed by the President.
11. Note the National Climate Change Bill is a section 76 bill because it affects the provinces (see the column on the right of the diagram) and currently the bill has only completed the first step in the process. Note the public participation processes provided for.



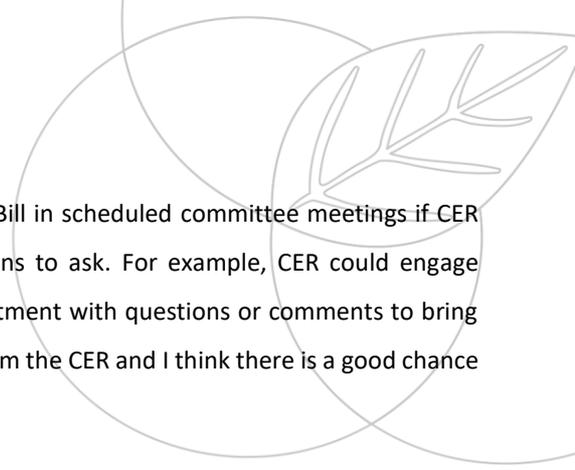
Role-players

12. The key role-players in the Parliamentary legislative process are the following:
 - a. Members of the National Assembly's Portfolio Committee on Forestry, Fisheries and Environment;
 - b. Members of the National Council of Province's Select Committee on Land Reform, Environment, Mineral Resources and Energy;
 - c. Environmental committees in each of South Africa's nine provincial legislatures (for instance Gauteng's Committee on Economic Development, Environment, Agriculture and Rural Development, Limpopo's Committee on Economic Development, Environmental Affairs and Tourism and Western Cape's Standing Committee on Agriculture, Environmental Affairs and Development Planning).
13. Note also that political parties (of whose members comprise the Parliamentary committees) are also role-players. In South Africa's Parliament, committee members are extremely likely to approach discussions and any votes in accordance with their political party's line which is generally pre-determined before a committee meeting. It may therefore be useful to engage directly with political parties or perhaps their leaders in each committee.²
14. The content of the Climate Change Bill is officially out of the control of the executive and officials in the Department of Forestry, Fisheries and the Environment, but nonetheless the Climate Change directorate within the Department is still a vital role-player in relation to the Climate Change Bill as the organ tasked with implementing it once it becomes an Act, and also because the Department will draft vital Regulations under the Climate Change Act.

Opportunities for engagement

15. There will be a number of formal public participation processes conducted as the Bill makes its way through the Parliamentary process during which CER will be able to submit comments and make presentations. In addition to the formal opportunities for engagement on the Bill, it is possible that CER with its established reputation as an expert in the field and with insights which the committee members are keen to hear will be able to request additional opportunities.
16. The likely formal opportunities for consultation on the Bill:
 - a. Written comments on the Bill addressed to the Portfolio Committee followed by an opportunity to present them verbally (usually at a later stage and only after all written comments have been received and processed);
 - b. Written comments to the Select Committee followed by an opportunity to verbally address the committee; and
 - c. Each provincial legislature will also likely conduct its own public participation process – this could be an opportunity for comment and to bring in voices with particular interest or expertise in a region (for instance community organisations or NGOs dealing with climate change issues in Limpopo).
17. In terms of informal engagements, CER would be able to request an opportunity to present to both houses of Parliament – perhaps outside of the prescribed public participation processes through engaging the committee secretaries and chairpersons. In our experience, the portfolio committee (through its secretary) has always expressed great interest in our work and requested our input on various issues. However, the committee's busy scheduling often means our proposed programme gets postponed or indefinitely delayed - so there is no guarantee that we would be provided with an additional opportunity to present outside of the formal public participation processes.

² For example the EFF's leader in the environment portfolio committee is Nazier Paulsen, the DA's leader is Dave Bryant, Bantu Holomisa represents the UDM, Pieter Mey represents the Freedom Front Plus, Narend Singh is the IFP's leader and Mandlenkosi Galo represents the African Independent Congress.



18. In addition, it could strengthen the discussions or provide clarity around the Bill in scheduled committee meetings if CER were to engage with particular committee members with pertinent questions to ask. For example, CER could engage portfolio committee members prior to the introductory briefing by the Department with questions or comments to bring up while officials are present. In my experience, members are eager to hear from the CER and I think there is a good chance that questions we pose them will be asked.

Timeframes

- 19. There are many variables in looking at how long the Parliamentary process for the Bill to be assented to by both the National Assembly and the NCOP. The complexity of a bill, whether it is an election year, the workload of the committee and the timing of when a bill is introduced in the year play a significant role in determining timeframes for processing.
- 20. It is not always a good thing for a bill to progress very quickly through Parliament – meaningful debate, consideration and participation are vital to ensuring quality legislation. Our courts have struck down several laws because Parliament failed to conduct the required level of public participation.
- 21. The Parliamentary Monitoring Group (PMG) has conducted research looking into [Legislative Performance/Output in Parliament](#) in which data was collected on the number of Bills introduced and adopted by Parliament between 2006 and 2018. Below is a table from the PMG report showing the “efficiency percentage” which reflects what proportion of Bills introduced made their way through all Parliamentary processes and were adopted. 76% of bills which affect the provinces (such as the Climate Change Bill) were successfully adopted by Parliament between 2006 and 2018.
- 22. Whether it is an election year has a significant impact on volumes of bills introduced and adopted - many are adopted and Parliament’s efficiency spikes in election years, but only a few are introduced as members focus on campaigning, orientation and swearing in.

SOUTH AFRICAN PARLIAMENT: WHAT THE DATA SHOWS

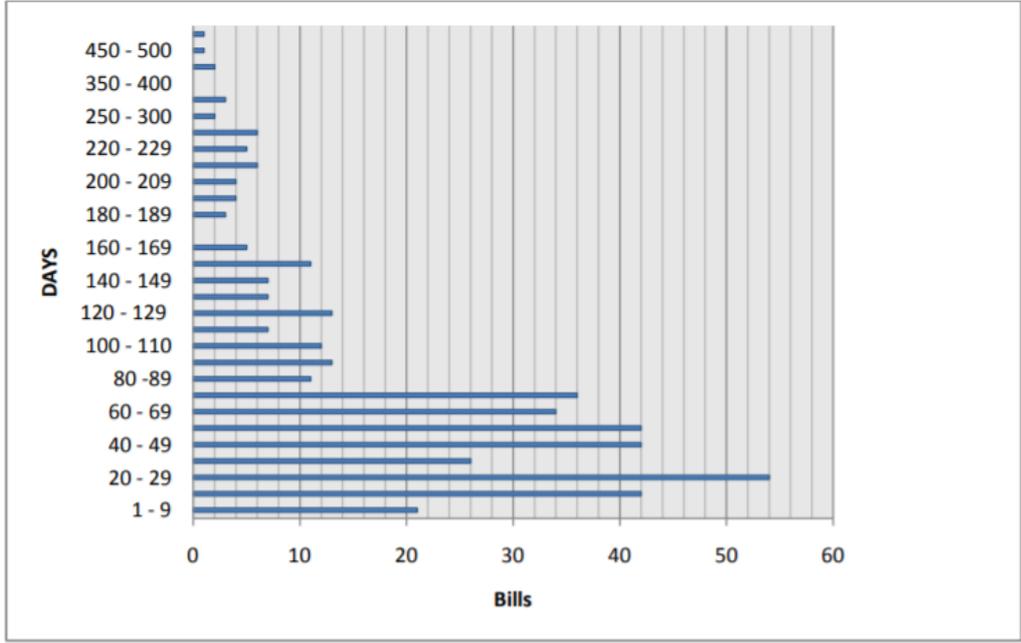
FIGURE 2: LEGISLATION ACTIVITY & EFFICIENCY

YEAR	NO. OF BILLS INTRODUCED THAT YEAR	NO. OF BILLS ADOPTED THAT WERE INTRODUCED IN THAT YEAR	NO. OF BILLS ADOPTED FROM PREVIOUS YEARS	TOTAL NUMBER OF BILLS ADOPTED	EFFICIENCY PERCENTAGE
2017	37	10	6	16	43%
2016**	24	11	6	17	71%
2015	45	20	5	25	55%
2014*	21	12	30	42	200%
2013	64	26	23	49	76%
2012	45	19	6	25	55%
2011**	26	13	14	27	104%
2010	41	23	3	26	63%
2009*	15	10	14	24	160%
2008	82	56	21	77	94%
2007	51	31	13	44	86%
2006**	35	22	6	28	80%

*National & Provincial Election / **Municipal Election

23. PMG’s research indicates that on average it takes Parliament 201 days from when a bill is introduced to it being adopted by both houses. The table below shows the number of parliamentary days (this means taking into account only the time Parliament is in session, excluding holidays, weekends, constituency days and recess) in between introduction and adoption of a Bill.³ The research indicates that on average it takes Parliament 73 parliamentary days to adopt a Bill – or 55% of a year. Generally a bill should be introduced before June if it is to be processed in the same year. Most bills are adopted in November of each year.

FIGURE 4: PARLIAMENTARY DAYS BETWEEN INTRODUCTION AND ADOPTION 2006-2017



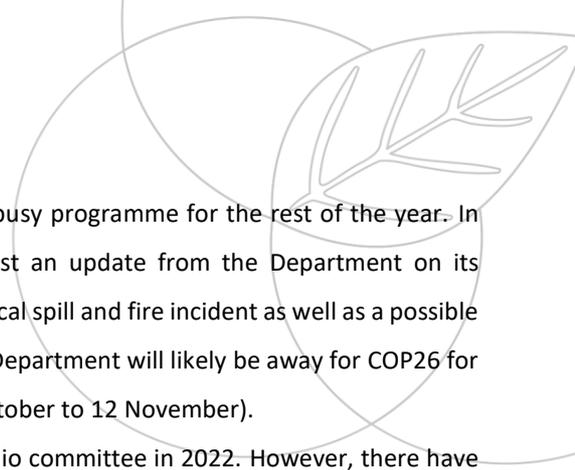
24. Considering that it is late in the year and that Parliament will only return to session in November, it is likely that the Climate Change Bill will only be processed in 2022 although initial steps may be taken in November by the portfolio committee such as being briefed by the Department on the bill.

Timeframes in the National Assembly/Portfolio Committee

25. No timeframes are prescribed for the processes conducted by the Portfolio Committee. This means that we do not know exactly when the Portfolio Committee will schedule the briefing by the Department and publish the bill for comment. Parliament will only reconvene in November and usually rises for the year after the first week of December. The portfolio committee usually meets once a week (sometimes twice). This leaves 5 or 6 occasions for the briefing on the bill by the Department following which the committee will request public comment.

26. The period provided by the committee for written comment varies, but we can expect around a month in which to submit representations (for example the committee gave from 23 March to 19 April for comment on the extensive National Environmental Management Laws Amendment Bill in 2018 which was the last time this committee held a public participation process on a bill).

³ To illustrate parliamentary days in respect of the Climate Change Bill - even though the Bill was introduced on 11 October, Parliament is currently in recess due to the local government elections and only when MPs return on 2 November would the next Parliamentary day be calculated.

- 
27. Prior to the scheduling of the local elections, the portfolio committee had a busy programme for the rest of the year. In addition to the items previously on the agenda, it is likely they will request an update from the Department on its investigation into UPL South Africa (Pty) Limited in Durban regarding the chemical spill and fire incident as well as a possible update on COP26. Minister Creecy and the Climate Change directorate in the Department will likely be away for COP26 for some time in the beginning of November (the meeting will be held from 31 October to 12 November).
 28. The factors above militate towards the bill only being processed by the portfolio committee in 2022. However, there have been indications from committee members previously in meetings expressing their frustration with the bill's slow progress and other pressures such as President Ramaphosa's statements about the urgency of the climate crisis as well as the media and civil society's interest in the matter that would push for the bill being processed sooner rather than later.
 29. Therefore, I believe it will likely that the Department will only brief the committee towards the end of November, and that the committee's public participation process will either commence in December 2021 or when Parliament reopens in 2022. I think it is highly likely that the verbal presentations to the portfolio committee will only happen after February next year.

Timeframes in the NCOP/Select Committee

30. Unlike the portfolio committee, the NCOP's select committee is bound by timeframes when considering and passing legislation. There is a six-week cycle for section 76 legislation (such as the Climate Change Bill) which speaks directly to provincial competences. The process involves the Select Committees meeting with the relevant departments for briefings and permanent delegates in the NCOP briefing their provinces on the legislation. Provinces are empowered to propose amendments to the Bill and will provide the permanent delegate with a negotiating mandate to indicate whether that province accepts or rejects the Bill and whatever changes it may propose. Included in the cycle is the Select Committee considering amendments proposed by the nine provinces. In the final week of the cycle, the NCOP Committee will consider the final mandate – five out of nine provinces are needed to support a Bill (with or without proposed amendments) for it to be adopted. It is likely that the select committee will only start its processing of the bill in the second half of 2022.

Conclusion

31. There are many steps in the parliamentary legislative process and at least four prescribed opportunities to engage with members of Parliament on the bill, in addition to public participation that will be conducted by the provincial legislatures.
32. The portfolio committee will only return from recess on 2 November. Because COP26 will be happening in the first 2 weeks of November it is likely that the Department will only brief the committee either late in November or when Parliament returns in 2022.
33. I believe the public participation process conducted by the portfolio committee will only commence either in December or more likely in 2022.
34. In my opinion, due to the complexities of the bill, the interest in its content by members of the public, the busy schedule of the committees and the fact that it was introduced late in the year that is an election year – the entire process from introduction to adoption by both houses of Parliament is likely to take more than 12 months.

Danjelle Midgley

Environmental Law Specialist

Email: dmidgley@cer.org.za