



CER Climate Change Bill Webinar and Toolkit Launch

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INTRODUCTION - WHY IS THE CLIMATE CHANGE BILL IMPORTANT?



In his letter to the nation in October 2021, President Ramaphosa said that “It is no exaggeration to say that the world is facing a climate crisis of unprecedented proportions.” He has also gone on record acknowledging the role that climate change played in the recent and devastating KZN floods.

South and Southern Africa have been identified as a climate change hotspot, and a study has shown that Southern Africa is heating at twice the global average rate.

It is probably therefore safe to say that South Africa’s Climate Change Bill is one of the most important draft laws to cross the desks of our lawmakers.

This proposed law is intended to govern South Africa’s climate change response in terms of adaptation to, and mitigation of, climate change impacts. It also establishes the institutional arrangements necessary to empower and delegate responsibilities to various organs of state which need to play their part in ensuring an effective just transition to a climate resilient, low carbon economy and society.

While the world has woken up a lot more to the realities of the climate crisis in recent years, the struggle is far from over, in fact it looks like it’s just beginning:

- Greenhouse Gas (GHG) emissions continue to rise globally.
- Locally and globally, GHG emission reduction targets remain too weak to keep global warming within safe limits.

- Successive meetings of the United Nations Framework Convention on Climate Change (UNFCCC) - and the annual Conference of the Parties (COP) meetings, fail to deliver adequate agreements and actions that ensure safety.
- Our government continues to make decisions that contradict its statements on the need to take urgent climate action. It continues to support and drive climate harming activities such as:
 - Seeking to build new coal-fired power stations and coal mines;
 - Rolling out massive infrastructure for climate-harming fossil gas-to-power projects;
 - Supporting risky GHG emission-intensive industrial projects like the proposed Musina-Makhado Special Economic Zone (MMSEZ) to be developed in northern Limpopo; and
 - Exploring onshore and offshore fossil fuel deposits.

THE LAWMAKING PROCESS



The Climate Change Bill was drawn up by the Department of Forestry, Fisheries and the Environment, and the Minister has tabled it in Parliament. The Bill was formally tabled by Minister Creecy in Parliament on 18 February 2022. In March 2022, the Minister briefed the Parliamentary Portfolio Committee on Environment, Forestry and Fisheries.

This committee will now oversee the passage of the Bill through the public engagement process, and has called for written comments, or submissions, on the Bill. These are due on the 27th of May 2022.

The committee has the discretion to call for public hearings, and **this is why it is important that people call on the committee to hold public hearings on the Bill and necessary regulations to govern SA's climate response.**

Once this phase of the process is complete, the Bill will go through the National Council of Provinces (NCOP) and then be considered by each provincial NCOP's Select Committee on Land Reform, Environment, Mineral Resources and Energy. Each committee will receive a briefing on the bill so that its members can tell their respective provincial legislatures about its contents. The bill will then be considered by each of the nine provincial legislatures. There may be further public participation opportunities at this stage. After this, the Bill will go back to the NCOP.

If the NCOP passes the bill, it will go to the President for assent and signature. If the NCOP rejects or amends the bill it goes back to the National Assembly for reconsideration. If the National Assembly accepts the amended Bill, it will go to the President for his assent. 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. If the Mediation Committee is unable to agree or reach a solution within 30 days of the Bill's referral to it, the Bill lapses.

The Bill will become the Climate Change Act once it is assented to by the president and signed.

EXPLAINER: SOUTH AFRICA'S NATIONALLY DETERMINED CONTRIBUTION (NDC):

The NDC is a mechanism that came into being via the Paris Agreement - a global agreement on climate change response. Each country that is a party to the Paris Agreement is responsible for adopting and submitting an NDC. An NDC includes a target adopted by nations. The target is required to reflect their highest possible ambitions and commitments in terms of reducing GHG emissions.

Along with most of the 196 signatory nations, South Africa submitted its first NDC in 2015. This NDC had GHG emission reduction targets, which (if all states were to adopt a similar target) would put the world on track for a global 4°C temperature increase.

In 2021 the NDC was updated and now incorporates targets which bring the trajectory down to a 2°C increase, still well above the 1.5°C increase that science tells us is far less dangerous. So, while it is an improvement on the 2015 NDC commitment, the 2021 NDC is still not ambitious enough to ensure a safe and liveable climate for all.

GUIDELINES ON WRITTEN SUBMISSIONS



The South African Constitution makes provision for public involvement in law-making, oversight and other processes of Parliament. South Africa's democratic system not only provides for citizens to elect their representatives, but also allows citizens to have a say in matters that affect them.

One of the ways that the public can make their voices heard is by making submissions to the National Assembly Committees, the National Council of Provinces Committees or Joint Committees.

For submissions from the public to be effective, content and format need to be considered carefully when making comments.

It is important that a submission is easily read and understood by the Members of committees – any objections and recommendations should be clearly stated upfront.

WHAT IS A SUBMISSION?

A submission is the presentation of views or opinions on a matter or piece of legislation under consideration by a committee of Parliament.

Submissions may be presented in your language and tone of your choice. A submission does not need to be technical in nature.

Submissions are usually in written form. They can be reinforced through oral representation to the committees, if the person or group who has made the submission is invited to make an oral presentation.

Making submissions creates an opportunity for any member of the public to propose changes or suggest possible actions to ensure that the laws passed by Parliament, or any other matter being considered by Parliament, serve their purpose and are in the public interest.

HOW TO WRITE A SUBMISSION?

While there is no set format for a submission to a committee, it should be well thought out and easy to read.

The following suggestions may help to achieve this:

- **Heading** – Head your submission with the name of the committee to which it is addressed and the full title of the Bill or topic.
- **Who is it from?** – Clearly state whom the submission is from. State your name or give the name of the organisation you represent.
- **Contact Details** – Include a contact address and daytime telephone number. If for private reasons you do not wish those details to be publicly released with your submission, state this in a covering letter and leave it off the submission itself.
- **Do you wish to appear before the Committee?** – Clearly indicate whether you would like the opportunity to address the committee in person. If you represent an organisation and you wish others to appear with you before the committee, either for support or to speak, include their names and roles.
- **Your organisation** – If you are writing on behalf of an organisation, give brief details of the organisation's aims, membership and structure. Make sure that you have the authority to do so and note your position within the organisation.
- **Who else supports you?** – You may note how widely you have consulted during the writing of the submission. Your submission may have more standing if it has a wide support base.

Tell your story:

- Share your concerns, objections and questions and link them to the Bill or issue in question.
- Tell your personal story and describe your circumstances and how the climate change, and Bill impact on you.
- Be appropriately respectful in your tone, this is a formal document, but at the same time feel free to express any strong concerns or objections that you may have.
- Be relevant, keeping your comments relevant to the Bill, although you can express your general concerns about climate change to explain your specific concerns or objections about the Bill
- REMEMBER: Your comments and input may not result in changes to the Bill, but they will be heard or read, and considered by the portfolio committee. And in this way committee members will be conscientised about the concerns of the people on climate change and South Africa's response.

THIS SUBMISSION

This will be a written submission on the Climate Change Bill that was tabled in Parliament in February 2022.

Submissions are made to the Parliamentary Portfolio Committee on Environment, Forestry and Fisheries:

- E-mail comments to: Ms Tyhileka Madubela at climatechangebill2022@parliament.gov.za by no later than **Friday, 27 May 2022**
- Enquires to Ms Tyhileka Madubela at tmadubela@parliament.gov.za and cell 083 709 840
- Call for comments issued by: Ms AF Muthambi, MP Chairperson of the Portfolio Committee on Environment, Forestry and Fisheries



TOOLKIT

Notes and Disclaimer:

- *This is a guideline to offer ideas and information for you to use when you create a submission.*
- *Ensure that what you say aligns with your own views, and is true for you and your situation. You may be asked to explain your comments in more detail if invited to do a presentation.*
- *Use your own words as much as possible.*
- *The information in this toolkit, and any statement made or views expressed by the CER, do not constitute legal advice.*

The law-making procedure for the Bill.

1. Requesting or demanding extensive, appropriate and effective public participation hearings during the law-making process of the Bill.

The Need: The Climate crisis affects everyone, and the Climate Change Bill will profoundly influence how effective or ineffective South Africa's climate change response is. It is important that many and diverse voices are heard raising questions and concerns about the Bill so that it can be strong, effective, just and fit for purpose. Public participation hearings are an effective way of doing this, and an exercise in sound democracy.

It is also important that these hearings are conducted properly to ensure that they are meaningful and ensure effective democratic involvement in this law-making process.

Issues to think about for your submission:

- Urge the Portfolio Committee to ensure that there are meaningful public participation meetings to hear concerns and question about the Bill.
- Request, urge or demand that hearings are held in your city, town or area BUT that they must also be held widely across the country so that diverse people, and people and communities that are often overlooked, also have an opportunity to be heard.
- Given that youth and women are most exposed to the impacts of climate change, it is important that their voices are heard and that they have an adequate opportunity to participate in these processes.
- Hearings must be conducted in a spirit of ensuring that views and voices are listened to.
- Knowledgeable interpreters need to be available so that participants can express themselves in a language of their choice.
- Technical information must be made sufficiently understandable, and clear and accurate explanations should be given.
- Venues need to be accessible.
- Clear and timeous notice for hearing must be given, at least 2 weeks' notice is necessary
- The committee should ensure resources (data and transport costs) are provided as much as is reasonably possible to ensure participation.
- Facilitators should be chosen who are able to provide answers to questions during the hearings as far as possible.
- All questions (as well as answers to the questions), views and objections should be recorded and made public.

General comments on the Bill



2. Requesting or demanding adequate access to information and transparency for all important matters regulated by the Bill.

The Need: Because the climate crisis impacts on every person, community, business and social activity, people need information in order to understand how the country's climate response is progressing, and how the different role-players are responding in terms of exercising their mandates and responsibilities.

What the Bill says: The Bill says that any information that is provided to government must be made available to the public subject to the Promotion of Access to Information Act (PAIA) and the Protection of Personal Information Act (POPIA).

The Concern: This provision in the Bill is weak, in that both PAIA and POPIA have grounds on which the providing of information can be refused, for example on commercial grounds. These grounds have been known to be abused by entities not wishing to disclose certain information needed for the protection of rights. Furthermore, the processes required by PAIA and POPIA are time-consuming and can be costly and overly burdensome – not conducive to easily and quickly obtaining real-time information on issues of SA's climate response and progress in relation to GHG emission reductions – information which should be readily accessible by default. The wording of the clause also suggests that information generated by the Minister or Department of the Environment does not need to be made publicly available.

Issues to think about for your submission:

- Request or demand that information is provided in an easy to understand format, is comprehensive and is easily available to members of the public without having to request it or go overcome complicated hurdles or procedures.
- In particular, we need access to information on the performance of emitters regarding GHG emissions reduction responsibilities – what carbon budgets are assigned to them, if there are any exemptions and if they are complying.
- We also need access to information on adaptation and climate response plans from different sectors and ministries (example energy, agriculture, transport, water) as well as from municipalities and provinces. Climate adaptation is necessary to keep us safe, and will often involve changes to the way we live and work. We need to know what is planned so that we can respond adequately, and we also need to be able to make informed input into these plans. Without information we cannot participate in the protection of our rights and our lives and livelihoods.

- Some climate change laws around the world (for example Fiji and Guatemala) provide for a web-based information platform that anyone can access in order to see these and other key pieces of information relating to the country's climate response.

3. **Requesting or demanding that the timeframes and deadlines in the Bill reflect the urgency of the climate crisis and the need to respond effectively.**

The Need: The science tells us that this is a decade where decisive action in terms of GHG emissions reduction needs to be taken in order to prevent or minimise climate risk and harmful impacts. We need to reduce GHG emissions by 45% by 2030 to stay within 1,5°C “safe” level of global warming. The United Nations Intergovernmental Panel on Climate Change (IPCC) has released most of its 6th assessment report, which presents the latest and widely accepted science around climate change adaptation, mitigation and the physical impacts of climate change. See <https://www.ipcc.ch/assessment-report/ar6/> for the reports including summaries. The Bill must enable and compel this action.

We are also seeing that the impacts of climate change are intensifying and causing a lot of damage, including the recent floods in KZN and the droughts that have recently been experienced in parts of South Africa. We need to see adaptation measure being implemented urgently and as a top priority.

What the Bill says: There are no timeframes or deadlines for important provisions such as assigning carbon budgets to emitters (how much companies and entities are allowed to emit in terms of GHGs) or Sectoral Emissions Targets (how much each sector – such as energy, agriculture, transport – is allowed to emit). There are also no timeframes compelling the Minister to set an emissions trajectory (the pathway that plots and manages GHG emissions reduction over time).

On the adaptation side, many of the important climate change response plans are not required to have to be completed for a number of years in terms of the Bill. In the case of different ministries, the deadline for adaptation plans is 4 years after the Climate Change Act comes into being, and in the case of municipalities and provinces, this deadline is a full 5 years away.

Issues to think about for your submission:

- Urge the government to include deadlines on the determination of an emissions reduction trajectory, the assignment of carbon budgets and the completion of sectoral emission targets.
- Express concern that the long lead times on adaptation and climate response plans leaves people, communities and businesses at risk from climate change impacts. While some of this planning is complicated and will take time, climate adaptation should be on the top of the agenda for organs of state now already.

4. **The Bill must contain the safest and most cautious targets according the latest and best available science.**

The Need: South Africa, like all other nations, needs solid and suitably ambitious targets in order to reduce GHG emissions sufficiently to avoid dangerous global warming levels. South Africa is warming at twice the global average rate – meaning. For example, that a 2°C temperature increase globally equates to a dangerous 4°C warming in SA. For this reason, South Africa and its government have a Constitutional imperative to reduce GHG emissions and limit temperature increases and the associate climate impacts.

What the Bill says: The Bill provides that the Minister must set a GHG emissions trajectory – a target for GHG emissions in South Africa, in other words. There is, however, no timeframe stipulated for her to do that. The Bill further says that the 2015 NDC (not the 2021 NDC update) will be deemed to the emission trajectory until such time as the Minister determines a new one, leaving us in a very precarious position, with an outdated and unacceptable GHG emissions target (weaker than our international commitment in the current 2021 NDC) being set in national legislation. The Bill is silent on any Net Zero by 2050 targets, which have also been urged by the science (note comment on Net Zero under “Issues to think about” below), along with a 45% decrease in emissions by 2030, in order to stay within the “safe” 1,5°C of warming.

Issues to think about for your submission:

- The inclusion of the 2015 NDC as an interim emissions trajectory is not acceptable. This trajectory puts us on a very dangerous path of an up to 4°C global temperature increase (up to 8°C for South Africa). In addition, it will lead to South Africa being seen globally as unambitious, compromising our ability to access climate finance and international support for our climate response. At the very least, the 2021 NDC update should be included for now, even though this too needs to be strengthened.
- There should be a long term target of net zero by 2050 included in the Bill, including interim targets that are progressively more ambitious. There also needs to be a clear definition of net zero and an understanding of conditions for its application – for example in light of the unproven removal technologies. And it should not be a crutch to be relied upon by the fossil fuel sector where carbon free alternatives exist.
- There should be an independent body of scientists and experts to provide objective advice on scientific knowledge to inform climate response.

5. Penalties, compliance and enforcement must be strong and provide and effective deterrent against excessive GHG emissions and other activities which are harmful to an effective climate response.

The Need: A key characteristic of the climate struggle is that many emitters, and certain government roleplayers, are reluctant or unwilling to undertake the central and vital action of steadily and urgently reducing GHG emissions. If there are inadequate measures to compel this reduction, the Bill runs the risk of being ineffective, or 'toothless', and insufficient change happens where it is most needed.

What the Bill says: Companies and entities ('persons' in the Bill) will be assigned carbon budgets (for which there is no timeframe prescribed). Earlier versions of the Bill provided that persons exceeding their carbon budgets would be subject to a higher carbon tax rate for those excessive emissions, but this has been removed. Statement in the 2022 Budget speech by the Finance Minister, as well as by Minister Creecy, have indicated that this will still be the measure that will be used to encourage emissions reduction.

The only offence in the Bill relates to a failure to provide a GHG mitigation plan.

Issues to think about for your submission:

- Emitting carbon emissions in excess of the carbon budget should be made an offence, so that those emitters who are negligently or intentionally exceeding their carbon budgets are subject to penalties and able to be prohibited from doing so.
- Providing false, misleading or incomplete information in terms of provisions of the Bill, should also be an offence.

6. The co-operative governance provided for the Bill must be clear, strong and effective

The Need: The climate change response that is needed, and that the Bill seeks to facilitate, requires unprecedented level of effective and efficient collaboration by most of the different ministries, as well as the 3 tiers of government (national, provincial and local). Each of these organs of state have an important role to play, and must have clear mandates and support to enable them to exercise their responsibilities.

What the Bill says: The Bill does prescribe responsibilities for the various organs of state, but the provisions are broad and general, and could be strengthened in order to create the desired result.

Issues to think about for your submission:

- The obligations of state entities should be strengthened to ensure that decision-makers comply with sectoral emissions targets and carbon budgets.
- Ministries should create a focal point, or dedicated office, which is responsible for climate considerations and response, to ensure accountability and adequate performance.
- The Minister and Department of Forestry, Fisheries and Environment must be adequately empowered to co-ordinate, issues guidelines and monitor and evaluate the climate response measures and actions of other state entities.
- There should be an obligation to report regularly and comprehensively to Parliament on progress made with all key aspects in the Bill.
- National Treasury should specifically report on climate change related financial matters.
- There should be strengthened empowerment of provincial and local government – including financial, technical and knowledge support.
- Provincial and local government risk assessments and response plans must be required to be submitted for meaningful evaluation to DFFE and available to public.

Have your say!