



Centre for Environmental Rights

Advancing Environmental Rights in South Africa

To:
The Minister of Forestry, Fisheries and the Environment
Hon Barbara Creecy
Per email: bmbuli@environment.gov.za

And to:
The Acting Deputy Director-General Climate Change and Air Quality
Mr Jongikhaya Witi
Per email: jwiti@environment.gov.za

And to:
Chief Directorate - International Climate Change Relations and Negotiations
Mr Maesela Kekana
Per email: mjkekana@environment.gov.za

And to:
Chief Directorate – Climate Change Adaptation
Mr Tlou Ramaru
Per email: tramaru@environment.gov.za

Our ref: BA/NL
5 August 2022

Dear Honourable Minister Creecy, and Messrs Witi, Kekana and Ramaru

SOUTH AFRICA'S NATIONALLY DETERMINED CONTRIBUTION

1. We address you on behalf of [groundWork](http://www.groundwork.org.za/)¹ and [Earthlife Africa](http://earthlife.org.za/),² and represent 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 addressing you on the issues contained herein. 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.
2. We write to you with reference to South Africa's Nationally Determined Contribution (NDC), and partly as a follow-on to certain issues raised in our letter to you dated 18 May 2022, and your response thereto dated 25 May 2022.

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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The Glasgow Climate Pact request to parties to revisit and strengthen 2030 NDC targets

3. We refer to paragraph 29 of the Glasgow Climate Pact⁵ - Decision 1/CMA.3 adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement – which:

“Recalls Article 3 and Article 4, paragraphs 3, 4, 5 and 11, of the Paris Agreement and requests Parties to revisit and strengthen the 2030 targets in their nationally determined contributions as necessary to align with the Paris Agreement temperature goal by the end of 2022, taking into account different national circumstances”

4. We hereby enquire whether it is your decision to revisit and strengthen the 2030 targets in South Africa’s Nationally Determined Contribution (as updated in 2021) as requested by the Conference decision. We also request any further information and reasons that inform such decision, or lack thereof, or refusal.
5. We submit that, for the reasons stated below, it is imperative to utilise this opportunity to strengthen the said targets as set out in South Africa’s 2021 NDC update.

The deficiency of the targets in the 2021 NDC update

6. One of our, and our clients’, core concerns arises out of the choice to express emissions as a range, rather than a certain and absolute value. The Climate Action Tracker⁶ – a well-recognised and leading consortium of scientific analysis tracking government action against the Paris Agreement – says the following about its analysis of South Africa:

South Africa’s 2030 NDC target has a range, of which we rate the upper end, because reaching that would comply with the NDC.⁷

7. Based on the reasoning of Climate Action Tracker in this regard, we can assume that it is therefore the upper end of the range against which, South Africa’s progress will be measured and determined for purposes of assessing compliance with its NDC. In noting this however, we do not agree that the lower end of the 2021 NDC range bears no relevance and that it need not be complied with. On the contrary, we submit that it is imperative that the lower end of the 2021 NDC is regarded as the target for compliance – as submitted below.
8. The 2021 NDC update is insufficient to meet the necessary criteria of ensuring a safe limit to global warming; a safe climate path for South Africa and an adequate contribution in terms of South Africa’s international obligations. An independent climate science initiative – the Climate Equity Reference Project (CERP)⁸ - was appointed by Earthjustice and the CER to compare the 2030 mitigation targets in South Africa’s 2021 NDC update to its fair share of the global mitigation effort to limit climate change. The initiative is also referenced in the 2021 NDC update as providing a basis for the targets contained therein. According to the findings,⁹ South Africa’s fair share is:

274 to 352Mt CO₂-eq for a 1.5°C pathway; and
350 to 401Mt CO₂-eq for a 2°C pathway (but not ‘well below’ 2°C as required by the Paris Agreement).

We can therefore see that the upper limit of our NDC does not satisfy the fair share for even a 2°C pathway, let alone a “well below” 2°C or a 1.5°C pathway. Even the lower range number is only just within the range for a 1.5°C pathway.

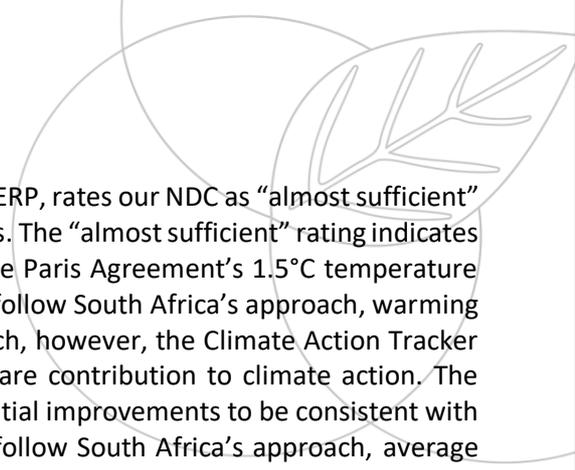
⁵ https://unfccc.int/sites/default/files/resource/cma2021_10a01E.pdf

⁶ <https://climateactiontracker.org/>

⁷ <https://climateactiontracker.org/countries/south-africa/>

⁸ <https://climateequityreference.org/>

⁹ <https://cer.org.za/wp-content/uploads/2021/05/NDC-vs-fair-share-memo-v04-corrected-version.pdf>

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9. The Climate Action Tracker, using different rating methodologies to the CERP, rates our NDC as “almost sufficient” when it comes to domestic targets based on modelled emissions pathways. The “almost sufficient” rating indicates that South Africa’s domestic target in 2030 is not yet consistent with the Paris Agreement’s 1.5°C temperature limit but could be with moderate improvements. If all countries were to follow South Africa’s approach, warming could be held at—but not well below—2°C. Utilising a fair share approach, however, the Climate Action Tracker rates our NDC update as “insufficient” when compared with its fair-share contribution to climate action. The “Insufficient” rating indicates that fair share targets in 2030 need substantial improvements to be consistent with the Paris Agreement’s 1.5°C temperature limit. If all countries were to follow South Africa’s approach, average warming globally would reach over 2°C and up to 3°C. It is important here to note that, as South Africa warms at twice the global average rate, global temperature increases of such magnitude would equate to 4 to 6°C for South Africa, and likely render many parts of the country uninhabitable.
10. In either case, the material upper end of the 2030 target in all described scenarios falls short of the 1.5°C safe limit urged by the Intergovernmental Panel on Climate Change (IPCC)¹⁰ and reflected in the Paris Agreement.¹¹ We contend that maintaining an NDC thus characterised, in circumstances where government acknowledges that South Africa is extremely vulnerable to the impacts of climate change,¹² is contrary to the state’s obligations to protect various constitutional rights,¹³ the duty of care found in S28 of the National Environmental Management Act, 1998 (NEMA) as well as South Africa’s international commitments to ensure that our NDC reflects our highest possible ambition, even when taking into account our common but differentiated responsibilities and respective capacities.

Compliance with our current NDC

11. What is the status of compliance with the 2021 NDC, as it currently stands, in terms of greenhouse gas emissions in South Africa? We submit that ensuring a safe and adequate NDC, as well as ensuring adherence thereto, is an existing obligation of the state based on the reasoning in paragraph 10 above.
12. We request that you kindly advise:
- 12.1. What measures and mechanisms are in place to monitor and track South Africa’s compliance with its NDC greenhouse gas emission reduction commitments? Kindly share these with us.
- 12.2. What plans are in place to ensure that South Africa meets its 2021 NDC update commitments (both upper and lower end of the range) in 2025 and 2030? Kindly share these with us.
- 12.3. What is the status of South Africa’s compliance with its NDC greenhouse gas emission commitments (upper and lower ranges) for 2025 and 2030? At present trajectories, is South Africa on track to meeting its NDC emission targets (upper and lower ends of the range) for 2025 and 2030?
13. Further to this, we request Information as to whether there is a system in place that evaluates the impacts of new developments, in particular GHG emission-intensive activities, on the national carbon budget and the NDC? We contend that state decision-making cannot responsibly take place without consideration as to the impact of such decisions on the NDC. While we glean that the sectoral emissions targets (SETs) as envisaged in the Climate Change Bill are to form a basis on managing such decision-making, we note with concern that there are no timeframes for the finalisation of the SETs, and in the meantime there remains the imperative to ensure sound management of

¹⁰ IPCC Special Report: Global Warming of 1.5° C - <https://www.ipcc.ch/sr15/>

¹¹ Article 2(1)(a)

¹² As acknowledged in the National Climate Change Response White Paper, and confirmed in the Nationally Determined Contribution update of 2021.

¹³ Including the rights to life (s11), dignity (s10), access to food and water (s27),¹³ an environment not harmful to health or well-being (s24), equality (s9) and the rights of children (s28).

adherence to the NDC, as an international as well as a constitutional obligation. We are in a period where decisive mitigation action needs to be taken by all states and actors.

14. We submit the information above, and similar information pertaining to South Africa's climate response, should be proactively made publicly available in order that society-at-large can be aware of our progress in adhering to the NDC. Such information affects us all and is in the public interest. Further motivation and detail in this regard can be found in our May 2022¹⁴ written comments on the Climate Change Bill.

Conclusion

15. We look forward to receipt of the requested information.
16. We would also appreciate a meeting with yourselves to discuss these issues in further detail.

Yours faithfully

CENTRE FOR ENVIRONMENTAL RIGHTS



per:

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¹⁴ https://cer.org.za/wp-content/uploads/2022/05/Life-After-Coal-comments-Climate-Change-Bill-2022_27_May_2022.pdf ad para 47.