



## SUBMISSION ON THE SOUTH AFRICAN CLIMATE CHANGE BILL

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The Institute for Economic Justice (IEJ) prepared this submission. The IEJ's mission is to advance economic justice by collaborating in the provision and sharing of rigorous, accessible research and policy alternatives that empower progressive social forces, partners, policymakers and the public to create systemic change from above and below in South Africa and on the continent.

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The opportunity to comment on the Climate Change Bill (herewith the 'Bill') is welcome. However, the current draft amendments in the Bill fail in certain places to reflect serious recognition of, and a serious response to, the urgency of the climate emergency and the need for a just transition in South Africa. A number of concerns raised in this submission, if not addressed could render these regulations vulnerable to legal challenge.

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### Framings

1. The Bill recognises in its Preamble that climate change will contribute to "increased frequency and intensity of extreme weather events, will affect, amongst other things, human health, access to food and water, biodiversity, habitats and ecosystems, the coast and coastal infrastructure and human settlements".
  - This demonstrates that South Africa has accepted the weight of scientific understanding and places the country among progressive nations that are trying to deal with the complex causes and effects of climate change.
  - **But to be a leader, the Bill needs to declare a Climate Emergency in its preamble.** The declaration of a climate emergency will reflect global calls for the declaration of a climate emergency that stem from a recognition that to avoid dangerous climate change and to keep temperature increases within the 1.5°C temperature rise deemed necessary to survive, a rapid and ambitious transformation is needed.
2. Section 1 of the Bill defines the Paris Agreement and Nationally Determined Contributions

- (NDCs). Another reference to the Paris Agreement is made in the definition of another term, namely “policies and measures”. Both the Paris Agreement and the NDC are referred to in the preamble to the Bill.
- The Paris Agreement and the NDCs were developed in acknowledgement that all countries have a common but differentiated response to the climate emergency that will have to be met. The South African government’s ratification of the Paris Agreement implies that the government acknowledges the importance of meeting its common but differentiated responsibilities as prescribed by the Paris Agreement, particularly through its NDCs.
  - However, while the importance of the Paris Agreement and the NDC are acknowledged in the preamble of the Climate Change Bill, such an appearance in the preamble is insufficient grounds for ensuring that the country honours its commitments to the Paris Agreement and implements its NDC. This is because a preamble is a declaratory, non-legal part of a legal statute that states the reasons for the passing of a proposed legal statute. Therefore, the aims set out in the preamble come into force through the substantive provisions made in the actual legal statute.
  - **Therefore, to ensure the development and implementation of the country’s NDC, an additional set of provisions is required in the body of the Bill** that provide for:
    - The Minister to prepare, communicate and maintain successive NDCs with set timelines; and
    - Ensure that mitigation and adaptation strategies/policies etc. are in alignment with the country’s successive NDCs.
3. The Bill defines a just transition as “... a shift towards a low-carbon, climate-resilient economy and society and ecologically sustainable economies and societies which contribute toward the creation of decent work for all, social inclusion and the eradication of poverty”
- The definition employed for a just transition meets key characteristics of what a just transition should look like.
  - However, the current definition is not an adequate response to the structural change that needs to take place in order to shift towards a low carbon and climate resilient economy. Inequality reduction should also be included in the definition to ensure that a just transition is associated with a society that ensures human and planetary wellbeing.
  - **We recommend that the definition for just transition include inequality eradication.**
4. Section 1 of the Bill defines a broad range of key concepts that are used throughout the Bill. However, there are notable absences in definitions for certain terms in spite of their use in several instances.
- The Bill does not define resilience, yet the Bill mentions the word resilience in several instances (see pages 14, 15 and pgs 23-26, 41). Resilience is taken to be something that needs to be strengthened as part of an adaptation response. The omission of a definition of resilience is of major concern as it is a contested term. And each definition has implications on the type of adaptation pathway that is selected. For instance, the original and widely used definition for resilience sees resilience as a way of preserving the core functions of a current system (i.e. ecosystem) after a climate disturbance. The problem with this definition is that the core functions of the current system may be extremely destructive to the climate, e.g. extractive industries, therefore such a definition limits resilience to a mere coping mechanism for repeated climate crises inflicted by the maintenance of the

core structures. A much improved definition, therefore, would also incorporate to its definition the need for the transformation of problematic core functions of a system that cause climate change. The IPCC definition takes “the capacity of interconnected social, economic and ecological systems to cope with a hazardous event, trend or disturbance, responding or reorganising in ways that maintain their essential function, identity and structure. **Resilience is a positive attribute when it maintains capacity for adaptation, learning and/or transformation**” (xxx). In simpler terms, it is the ability for social, economic and ecological systems to a) bounce back from a climate disturbance by maintaining the systems’ core functions and b) to also bounce back better through learning, adaptation and/transformation for better outcomes for people and the environment.

### Mitigation: Greenhouse Gas Emissions Reduction

5. Section 21.3 of the Bill sets the interim national Greenhouse Gas (GHG) emissions trajectory at between 398 Mt CO<sub>2</sub> and 614 Mt for 2020-2030 and as specified in Schedule 3.
  - This is an outdated target which South Africa pledged in 2016 that is misaligned to the country’s recently approved NDC by Cabinet that was submitted to COP26 in 2021.
  - **We recommend that the Bill set its interim GHG target to the revised GHG NDC target submitted which is at 350 Mt CO<sub>2</sub> - 420 Mt CO<sub>2</sub>.**
  
6. Section 22.5 states that “When determining the sectoral emissions targets, the Minister must take all relevant considerations into account including, amongst others, the following— (a) the socio-economic impacts of introducing the sectoral emissions targets; and (b) the best available science, evidence and information.
  - The Bill should require the Minister to state how all relevant considerations were taken into account.
  - Transitional risks associated with proposed sectoral emissions targets should also be included amongst the Minister’s considerations when setting sectoral emissions targets. This will ensure that the mitigation of climate risk through reduced emissions, is accompanied by transition plans that ensure that vulnerable and impacted workers and communities are not left behind.
  
7. Section 22.3 states that “The Minister must in consultation with the relevant Ministers responsible for each sector or sub-sector listed in terms of subsections (1) and (2), determine by notice in the Gazette the prescribed framework and the sectoral emissions targets for sectors and sub-sectors”.
  - This is an important clause as it sets the targets for the sector and sub-sector emissions targets.
  - However, while provision 22 sets the basis upon which emissions targets are to be determined in subsection 22.5, the provision does not disclose the purpose of the prescribed framework nor does it set the basis upon which this prescribed framework is to be determined.
  - **We recommend that the purpose of the prescribed framework, and how it is to be determined, be provided for in the Bill. We also recommend that the prescribed framework must also include measures to ensure a just transition associated with the sectoral emissions targets for the sectors and subsectors.**

8. Section 23.1 of the Bill states that the, “Minister must by notice in the Gazette, publish a list of greenhouse gases which the Minister reasonably believes cause or are likely to cause or exacerbate climate change”.
  - This is an important clause because it provides the basis upon which activities due for emissions reductions are identified.
  - However, it is not clear on what the Minister’s belief in which GHGs are likely to cause or exacerbate climate change will be based. The basis upon which the Minister identifies the GHGs that cause climate change is important to ensure the legitimacy of the process.
  - **To maintain the legitimacy of the process, we recommend that the basis upon which the Minister determines the list of GHGs and determines reasonableness should be stated explicitly and the Bill should require this to be based on trusted and up to date science as determined in IPCC reports.**
  
9. Section 24.4 of the Bill states that a “A person to whom a carbon budget has been allocated in terms of subsection must prepare and submit to the Minister, for approval, a greenhouse gas mitigation plan” and also states what the mitigation plan must contain in subsection 24.4 a and b.
  - This provision is important to ensure that persons are taking steps to reduce their carbon emissions.
  - However, absent from the requirements of the mitigation plan are the person’s plans to ensure a just transition for workers that are directly affected by reduced emissions of the activities.
  - **We recommend a provision that stipulates that mitigation plans must also contain just transition plans for workers and vulnerable communities directly affected by reduced emissions. These just transition plans must be negotiated with the workers and vulnerable communities directly affected by the reduced emissions.**
  - **We also recommend that the definition for just transition plan, is a strategy document that details the steps that are to be taken to arrive at a just transition in a sector and subsector. The document must include details of the timelines and stakeholders that must be involved in the implementation of the just transition plan.**
  
10. Section 24.7e of the Bill states that “A person to whom a carbon budget has been allocated must, ... in the event that such reporting indicates that the person has failed, is failing or will fail to comply with the allocated carbon budget, provide a description of measures the person will implement in order to remain within the allocated carbon budget”.
  - While this provision requests that the person describe the steps they will take to adhere to the prescribed carbon budget, such a request stops short of being enforceable.
  - Enforcement is extremely weak here. The use of an inspectorate and sanctions that ensure the implementation of these carbon budgets is crucial.
  - **We recommend that punitive measures be included to sanction those persons that do not honour their committed carbon budget allocation.**
  
11. Section 25 of the Bill empowers the Minister, in consultation with Ministers responsible for GHG emitting sectors and subsectors, to declare synthetic GHGs and ensure that they are either phased down or phased out entirely.
  - Synthetic greenhouse gas emissions are defined in the Bill as man-made greenhouse

gasses. This is an important step to reduce synthetic emissions which significantly intensifies global warming when its gas particles are trapped in the atmosphere.

- The clause, however, makes no mention of prescribed limits and uses for synthetic gasses. It also does not mention any specific timeline for phasing out synthetic emissions.
- **We recommend that the Minister be empowered to set prescribed limits and uses for synthetic gasses, and to also specify timelines for phasing out synthetic emissions, in consultation with Ministers responsible for GHG emitting sectors and subsectors.**

12. Section 26.1 states that “The Minister must establish an institutional arrangement to facilitate a national system of data collection for the creation of a National Greenhouse Gas Inventory and the annual compilation of the National Greenhouse Gas Inventory Report.”

- **In addition to a GHG Inventory Report, the Minister should also release a report that explains how its mitigation measures directly benefited communities, women and workers.**

## Adaptation

13. Section 16.1.a of the Bill states that “The Minister must, within one year of the coming into operation of this Act, determine by notice in the *Gazette*... national adaptation objectives which will guide the Republic’s adaptation to climate change impacts, the development of resilience and sustainable development”.

- This clause is important as the objectives will guide the country’s adaptation plans to climate impacts.
- However, absent from the clause or its sub-clauses is the information or data that informs the setting of these objectives. Also absent is whether or not the setting of these objectives will be done through a consultative process.
- Socio-economic rights provided for in Chapter 2 of the Constitution, such as the right to clean water, health, energy access, and housing are central to building adaptation capacity, ensuring transformative resilience and sustainable development.
- **We therefore recommend a provision, amongst others, that states that adaptation objectives should be informed by the socio-economic rights provided for in the Constitution in order to strengthen the Bills measures.**

14. Section 16.2 of the Bill states that “The Minister may, periodically, review and amend the national adaptation objectives contemplated in subsection (1)(a)”.

- The basis and timing upon which the minister reviews and amends these objectives is unclear. **We therefore recommend a provision that clarifies these issues.**

15. Provision 18.2 of Act states that the “Minister must, in consultation with the relevant Ministers responsible for the functions listed in Schedule 2, and, within two years of the coming into operation of this Act, develop and publish a National Adaptation Strategy and Plan by notice in the *Gazette*” and Provision 18.5 states that *The National Adaptation Strategy and Plan must include” a range of factors that are to be considered.*

- One of the factors absent from the Bill are provisions for relocation of communities affected by climate change, which might result in the communities being permanently displaced.
- **The Bill is recommended to set in place relocation guidelines that will be**

**implemented by a Task Team selected by the Minister.** The guidelines should set out how affected communities should be relocated and provide a coordination mechanism that guarantees a minimum standard of protection and enables the engagement of all stakeholders affected to manage the relocation.

16. The subsections contained in Section 18.4 lists the purpose of the National Adaptation Strategy and Plan (NASP).
  - All the sub-provisions contemplated from subsection 18.4a-e are correct.
  - However, we see that absent from these sub-provisions is what the purpose of the NASP is to support just transition efforts.
  - **Therefore, we recommend that a sub-provision be included that the purpose of the NASP is to support just transition efforts.**
  
17. Section 18 provides for the development and implementation of the NASP. Sub-section 18.5c states that “The National Adaptation Strategy and Plan must include—a plan that details the implementation of adaptation responses informed by the objectives and indicators contemplated in section 16”.
  - However, it is unclear who is responsible for the implementation of the NASP.
  - **We recommend that the plan details those responsible for the implementation of the NASP.**

#### **Accountability, enforcement and monitoring**

18. The Bill does not define, nor does it contain provisions for a) public and private entities to disclose their climate risk exposure and b) for them to take accountability for that exposure. The IPCC defines “exposure” as *the presence of people; livelihoods; species or ecosystems; environmental functions, services and resources; infrastructure; or economic, social or cultural assets in places and settings that could be adversely affected.*
  - This absence is significant as it should be part of a risk assessment framework that identifies vulnerability of various groups and plans for adaptation and resilience.
  - The Bill does not have a transparent framework that requires public and private entities to disclose climate change risk and prepare for those risks and opportunities. This lack of transparency thus reduces better decision making on which communities are most vulnerable to the effects of climate change and it further reduces government’s response to climate change and public awareness of the issues.
  - **To improve accountability, the Bill should require the disclosure by public and private entities of their exposure to climate risks and the measures they are taking through investment decisions to reduce them. In addition, the Bill should make provisions for the development of an online publicly available registry of adaptation projects. This registry will house all projects in the country that address adaptation.**
  
19. The Bill does not include measures that sanction non-compliance with the provisions of the Bill nor does it include adequate enforcement mechanisms to ensure compliance to the mitigation and adaptation provisions.
  - The mitigation chapter (Chapter 5) of the Bill does not adequately ensure that large polluters are penalised or taxed, in fact the entire mitigation section does not even explicitly mention any tax measures. Therefore, it is still unclear what the

implications will be for companies that, for example, exceed the prescribed carbon budget threshold.

- The Bill does not have a transparent framework for monitoring, measuring, verifying reporting certain mitigation and adaptation measures.
- The Bill does not make provision for loss and damage.
- **We recommend that the following provisions be included in the Bill.**
  - **A punitive fine (imprisonment or other sanctions in certain cases) be implemented for those in breach of the Bill.**
  - **That the Bill contain provisions for a carbon tax**
  - **That a person suffering loss or damage as a consequence of a breach to the Bill may pursue a civil claim in court for damages suffered.**
  - **That a well-resourced forensic inspectorate be instituted to ensure the enforcement of obligations of the Bill.**

## Financing

20. The Bill does not include provisions for sustainable finance.

- The absence of provisions for sustainable finance renders the Bill ineffective at meeting any of its objectives given the need for urgent and adequate climate finance as stipulated by the IPPC.
- **We make the following recommendations for the Minister of Finance:**
- **Develop and implement a Sustainable Finance Taxonomy with the purpose of a) setting public standards that identify the impact of financial products on the environment, b) identifies and distinguishes between economic activities that support sustainable development and those economic activities that do not support sustainable development c) provide thresholds that render an activity sustainable to support the public financing of sustainable development,**
- **oversee South Africa's interactions with multilateral development banks to support access to sustainable finance flows,**
- **be a channel between donors and sector recipients of climate finance to ensure that there is a collaborative approach in the design of proposals, implementation arrangements and the leveraging of co-benefits, and**
- **be involved in national budget processes that are mandated to implement climate budget coding and tracking systems and the integration of these systems into the national public financial management system.**

## Gender and priority groups

21. Mitigation measures barely refer to the gendered nature of the impact of climate change and does not specify strategies for gender responsive mitigation. The Department of Women, Youth and People with Disabilities was not consulted around either adaptation or mitigation strategies.