

Stronger Penalties Needed In Climate Change Bill

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Earlier this year, the United Nations (UN) Intergovernmental Panel on Climate Change (IPCC) published its Sixth Assessment Report, also known as "AR6". *The Guardian* called AR6 the IPCC's "starkest warning yet" while UN Secretary-General, António Guterres described it as a "code red for humanity".

The AR6 warned that unless substantial and immediate reductions in greenhouse gas (GHG) emissions are made, the goals agreed by the international community under the 2015 Paris Agreement, which South Africa has ratified, would not be reached.

National climate change mitigation plans

The Paris Agreement set a goal of keeping the global rise in temperature to well below 2°C and ideally to under 1.5°C above pre-industrial levels. Signatories must determine, plan, and report on their nationally determined contributions (NDC) – national climate change mitigation plans and policies which include targets for GHG emissions reductions.

South Africa is the world's 14th largest emitter of GHGs and the largest emitter in Africa. This can be attributed in part to South Africa's heavy reliance on Eskom's coal-fired power plants, which produce over 80% of South Africa's electricity and account for 42% of its GHG emissions.

There are growing calls for Eskom's aging and failing grid to be supplemented with renewable energy, given South Africa's excellent opportunities for wind and solar energy – one of the best in the world. A report developed by researchers at the University of Stellenbosch envisions the installation of 5 GW of renewable energy each year until 2050 to both alleviate the pressure on Eskom and to support a just transition to a low-carbon economy.

Climate change mitigation goals

While South Africa has made tremendous strides in its climate change response, its mitigation efforts have been described as "insufficient" and require substantial improvements to meet the Paris Agreement 1.5°C goal. At present, South Africa is highly reliant on international financing for implementation of its climate change mitigation goals. Last year, donor governments pledged \$8.5 billion towards South Africa's just energy transition at COP26 in Glasgow – but South Africa requires approximately \$250 billion to effectively transition to a low-carbon economy.

As a developing economy with low economic growth, high levels of unemployment and a widening poverty gap, a high reliance on coal and a haemorrhaging national electricity provider, we face significant challenges in transitioning to a low-carbon economy.

However, as a significant GHG emitter and a leading economy in Africa with constitutionally entrenched environmental rights, South Africa has an important role to play in addressing climate change and has recently taken several steps to bolster its climate change response. The September 2021 revised NDC contained updated emissions targets for South Africa. In 2019, South Africa passed the Carbon Tax Act No. 15 of 2019 (Carbon Tax Act).

Emitters meeting certain thresholds are required to pay tax, but there are significant allowances (up to 95%) which limit the scope of the Carbon Tax Act. The Presidential Climate Commission, which was formed in December 2020, also recently published the on 27 May 2022, which aims to address the social and economic consequences of South Africa's climate change policies, particularly on our most vulnerable communities.

Climate Change Bill B9-2022

On 18 February 2022, the Minister of the Environment, Forestry and Fisheries (Minister) introduced the Climate Change Bill B9-2022 (the Bill). The Bill is a reworked version of an earlier 2018 draft, and aims to coordinate South Africa's climate change response in accordance with the principles of cooperative governance; to build social and economic resilience to climate change; to ensure a just transition to a low-carbon economy; and to give

effect to South Africa's international climate change commitments. The Bill is currently being considered by the National Assembly and is the first of its kind in South Africa.

This highly-anticipated Bill, if passed, will form an integral part of South Africa's environmental law framework and will have far-reaching effects on all spheres of government, as well as on businesses.

Adaptation to the effects of climate change is an important part of any climate change mitigation strategy. As such, the Bill also envisages the creation of National and Sector Adaptation Strategies and Plans. These will be informed by adaptation scenarios to be developed by the Minister, which will anticipate the impacts and vulnerabilities associated with climate change in South Africa.

The purpose of these measures is to reduce the vulnerability of our economy, society and environment and to strengthen our resilience and adaptive capacity to the adverse impacts of climate change.

National GHG emissions reduction target

The Bill will also affect business on a large scale. The Minister will develop a national GHG emissions trajectory, which will specify a national GHG emissions reduction target. Based on this trajectory, the Minister, in consultation with the relevant ministers for each sector, will publish a list of GHG emitting sectors and sub-sectors which will be subject to sectoral emissions targets.

The Minister must also publish a list of GHG emitting activities. Persons who conduct GHG emitting activities and exceed a threshold to be determined by the Minister will be assigned a carbon budget (i.e. an allowed quantity of GHG emissions over a prescribed period) and must submit a GHG mitigation plan for approval by the Minister.

However, the Bill's enforcement provisions are ineffective. While the failure to submit a GHG mitigation plan may result in a fine of up to R5 million or imprisonment of up to 5 years on a first offence; and up to R10 million or imprisonment up to 10 years on a second offence, these fines are inconsequential to many of South Africa's largest emitters.

Penalty for exceeding a carbon budget

There is also no penalty for exceeding a carbon budget. Organs of state, provinces and municipalities also face no express consequences for failing to implement the duties the Bill places on them.

If South Africa is serious about addressing climate change and transitioning to a low-carbon economy, it needs a Bill that will be realistic and sensitive to our developmental challenges, but which can also be effectively enforced. Our climate change response has made important strides in the past years. However, the scientific consensus is that the world can no longer afford to be lax on mitigation measures.

South Africa has tremendous opportunities for renewable energy, but it needs a Bill that is not toothless, with stronger penalties for non-compliance in GHG emissions and mitigation plans.



Thomas Karberg