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ENVIRONMENTAL

The Climate Change Act has a crucial role to play in the fight against the climate crisis in South Africa

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1. Frequent and intense weather events and devastating effects of climate change are being experienced all over the world. According to the United Nations Development Programme (UNDP), over the past 50 years, extreme weather events have caused two million deaths and cost USD4 trillion in economic losses.[i] Some of the recent notable natural disasters in South Africa due to climate change include the 2022 floods in KwaZulu-Natal which are reported to have caused an estimated R7 billion worth of damage to businesses, infrastructure and communities, and the heavy snow in parts of KwaZulu Natal and Free State in late September 2024. These are just a few examples which demonstrate the magnitude of the climate crisis and therefore the urgent need to intensify efforts to fight climate change. According to Milambo, "*these interrelated problems are spiralling precisely because of our continuing underinvestment in climate adaptation and resilience measures and in real, lasting solutions*."[1]
2. Great work is being done to counter the effects of climate change but more still needs to be done. Key challenges that have been identified as hindering progress in the development and implementation of mitigation and adaptation solutions to climate change in the developing world include, *inter alia*, lack of finance for such projects, lack of political will and clear coordinated and cooperative regulation of climate responses by Governments.[2]
3. In response to the climate crisis, on 23 July 2024, President Cyril Ramaphosa signed the long awaited Climate Change Act ("Act") into law. However this Act has not yet come into effect. Certain measures, such as, *inter alia*, the publication of regulations and setting of targets required to make the Act enforceable, need to be put in place before the Act can be operationalised. The Act is intended to, *inter alia*, "*enable the development of an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa in the context of sustainable development*". Simply the Act provides a legal framework for the regulation of our country's response to climate change and gives effect to South Africa's commitment to reduce greenhouse gas emissions and achieve net-zero by 2050.
4. The Act deals with three broad areas, namely policy alignment and institutional arrangements, mitigation and adaptation measures. Noteworthy provisions of the Act relating to mitigation include, *inter alia*, that–
    - the Cabinet Minister responsible for environmental affairs ("Minister") must determine a national greenhouse gas emissions trajectory for South Africa. In this regard, the Minister must list the greenhouse gas emitting sectors and sub-sectors that are subject to sectoral emissions targets, within one year of the commencement of the Act;
    - the Minister responsible for each greenhouse gas emitting sector and sub sector must develop policies and measures for which that Minister is responsible relating to the achievement of the sectoral emissions targets and implement, and monitor the effectiveness of the policies and measures pertaining to the relevant sector and sub sectors;
    - the Minister is required to allocate a carbon budget to any person that conducts any activity which emits or has potential to emit greenhouse gases listed in the Act. A person who has been allocated a carbon budget must prepare and submit to the Minister for approval a greenhouse mitigation plan, implement the approved mitigation plan, evaluate progress and annually report against the allocated carbon budget to the Minister.[3]
5. With respect to adaptation, the Act requires the Minister, in consultation with the Ministers responsible for functions relevant to the development of sectoral emission targets, to develop and publish the National Adaptation Strategy and Plan (the Plan) within two years of the coming into effect of the Act.[4] The purpose of the Plan is to, *inter alia*, provide a strategic and policy directive for adaptation to

the impacts of climate change and, strengthen the resilience of the socio-economic and environmental system and enhance the adaptive capacity of society, the environment and economy to the impacts climate. In addition, an MEC and a mayor of a metropolitan or district municipality, as the case may be, must, *inter alia*–

- at least within one year of the publication of the National Adaptation Strategy and Plan, undertake a climate change needs and response assessment for the province, metropolitan or district municipality, as the case may be;
- assess the extent to which its constitutionally mandated functions are affected by climate change and formulate steps to address these effects in the performance of its function;
- review and, to the extent necessary, amend and publish in the Government Gazette the climate change needs and response assessment at least once every five years;
- within two years of undertaking the climate change needs and response assessment, develop, implement and publish a climate change response implementation plan which is to be reviewed every five years.

6. As noted above, a significant amount of work needs to be done to give effect to the Act. At the same time, the Act requires national Government, provinces and municipalities to actively engage, collaborate and co-ordinate their responses to climate change as informed by the Plan. This is doable even though it may be challenging. Furthermore, it is important to note that the Act is not without shortcomings for example it does not create an offence for failure to comply with the allocated carbon budget (but merely requires such person to provide a description of measures that the person will implement in order to remain within the allocated carbon budget) and it is thin on detail with regards to mechanism of funding the proposed mitigation and adaptation initiatives.
7. That said, it is important to acknowledge that the Act is a critical piece of legislation for South Africa, the implementation of which will mark a significant step forward in South Africa's fight against climate change. It provides much needed regulatory direction and will assist in accelerating investment in decarbonisation efforts and capacity building of adaptation measures to create climate change resilience in South Africa. Clearly the Act will play a crucial role in the war against the climate crisis, and in this context, Government is urged to prioritise taking the necessary steps required to operationalise the Act so that the work of implementing this important Act can be commenced.

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[i] United Nations Development Programme (UNDP) website.

[1] Chola Milambo, "The outcome document of the Fourth International Conference on Financing for Development".

[2] UNDP website.

[3] See section 24, 25 and 27 of the Climate Change Act.

[4] See section 21 of The Climate Change Act.



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