



Briefing Paper 460

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The Long-Awaited Climate Change Bill

1. Introduction

Climate change represents one of the most globally urgent challenges of our time, with far-reaching environmental, social, economic and political implications. There is almost complete consensus that the rise in global temperatures is primarily due to greenhouse gases (GHGs), emitted into the atmosphere through human activities, and that this is causing rapid climate change. Developed countries contribute far more significantly towards climate change, while less developed countries contribute to a lesser degree but bear the consequences much more severely. Similar disparities can be observed at country and society level, where the rich are responsible for perpetuating the emission of GHGs (through high levels of resource and electricity consumption, and vehicle use, for example), and the poor on the other hand suffer the effects of climate change, with little or no access to resources to help them adapt.

Faced with this threat, the international community came to realise that there was a need for globally integrated approaches and partnerships to address issues of climate change. Under the United Nations Framework Convention on Climate Change (UNFCCC), the Paris climate change agreement was adopted in 2015, and brought nations together in a shared cause to combat climate change and adapt to its effects, with enhanced support for developing countries to do so.¹ Since its adoption in 2015, over 140 countries/parties have ratified the Paris agreement.

This agreement continues to provide guiding principles, financial assistance, and policy instruments for countries to be able to develop strategies and programmes suitable to their contexts, which will help them and their populations to respond to the impacts of climate

change. Different countries have adopted different regulatory approaches: Some rely on acts of parliament and others on executive orders, whereas South Africa on the other hand is amongst those which have for years depended on strategic policy documents. Until, that is, the recent development of a 'Draft Climate Change Bill, 2018', which is discussed in this paper.

2. Why Do We Need a Climate Change Bill?

The Bill is a proposed law that seeks to give effect to our national climate change response efforts, and to promote a just transition to a climate-resilient and lower carbon society. It seeks to provide co-ordination for all spheres of government, helping them to work together in achieving climate change goals, in alignment with the country's development priorities. This is because the main focus for developing countries such as South Africa, where people continue to live in vulnerable and poor conditions, is to build adaptive capacity and to improve the lives of people.

As much as the Bill is going to be used as an instrument for government to effectively manage climate change impacts across sectors, it will also be used to enforce regulations holding South Africans liable for their GHG emissions at all levels of society, including: businesses, industries, members of the public, and government departments and entities. The Bill will also help the country to contribute to the global effort of stabilising GHG concentrations.

Matters pertaining to climate change and other environmental issues are currently addressed and regulated under the guiding principles of the National Environmental Management Act (NEMA), Specific Environmental Management Acts (SEMAs)² developed under the NEMA, and

various regulations under these Acts. There are currently five SEMAs, drafted with the objective of addressing matters pertaining to specific environmental concerns, which are not provided for under the NEMA:

- The Air Quality Act (39 of 2004)
- The Protected Areas Act (57 of 2003)
- The Biodiversity Act (10 of 2004)
- The Integrated Coastal Management Act (39 of 2004)
- The Waste Act (59 of 2004)

Climate change considerations are not explicitly provided for in the NEMA, which means that there are no legal obligations directly provided for climate change. Thus, it has been merely a matter of choice whether or not to include climate change responses in operations by businesses, companies, industries, etc. As a result, there has been a great lack of commitment in responding to climate change, either because people feel it is unreal, or because of a lack of will or, most significantly, due to policy uncertainty. This lack of policy certainty, in turn, has brought about environmental injustices as far as development is concerned, and various development projects continue to be implemented without proper consideration of their climate change implications.

Under the guiding principles of NEMA, the Climate Change Bill will give a legal mandate to all climate change response policies and regulations. Its objectives are to co-ordinate climate change response efforts across all government sectors, and to ensure that companies, institutions, government organs and individuals are held accountable for their climate change actions. It is important to note that the Bill comes at a stage where numerous programmes and actions in response to climate change are under way; which means that the Bill has an integrative role to play, in harmonising policies to create a single vision for a response.

3. South Africa's Climate Change Response Policy Framework

South Africa has come a long way in developing policies and programmes towards combating climate change. There is a policy basis from which the Climate Change Bill has been drafted, including sectoral and provincial climate change response strategies. Firstly, following the UNFCCC commitments, through its Department of

Environmental Affairs, South Africa published the National Climate Change Response Policy (NCCRP) in 2011.³ This draws its principles from section 24 of South Africa's Constitution, on environmental rights and responsibilities. The NCCRP outlines short and long term goals for both mitigation (reducing carbon emissions) and adaptation (climate resilience) in South Africa. It was developed in alignment with the National Development Plan's (NDP) 2030 vision, which is the country's blueprint driving development.

Secondly, the Intended National Determined Contributions (INDCs) were published as the country's effort in reducing GHG emission into the atmosphere.⁴ The INDCs detail:

- the commitments that the country is making to reduce its GHG emissions
- measures that would be used to achieve such reductions
- binding timeframes in which these measures would be implemented.

From the above-mentioned frameworks, there are numerous strategies which were developed in response to guidelines provided by both the NCCRP and INDCs. The two frameworks have played a crucial role in shaping our climate change interventions, though no legal obligations were provided for in either of the frameworks, which left a space for disregarding climate change.

4. Discussions on the Draft Bill

The Department of Environmental Affairs hosted a round of stakeholder consultation workshops throughout the country, and invited public comments in writing. This opportunity gave members of the public a platform to analyse the Bill and to make meaningful representations. Following these consultations, civil society organisations (CSOs) and academics who had participated in the consultations organised a meeting amongst themselves, the main purpose of which was to discuss the Bill and to draft comments to the department. This conversation yielded great results, allowing each organisation to give inputs and reflections on the Bill in their individual capacity.

In a recent article, Nicole Loser, an attorney at the Centre for Environmental Rights, who took part in the discussions, outlines what she dubs the "eight must haves" of South Africa's Climate Change Bill.⁵ She argues that if the following points are not

considered in the Bill, it would not serve much of a purpose:

- full mandatory disclosure and public access to reports, assessments and records
- a clear target and strict emissions trajectory
- provision for funds, capacity-building and oversight
- firmer obligations and liability of emitters
- provision for the duty of care and climate justice
- adequate compliance-monitoring and enforcement provisions, and strong penalties for non-compliance
- clear guiding principles
- strong institutional structures to regulate, implement and monitor implementation

As much as there is enthusiasm about the fact that the Bill has been drafted, there is considerable concern that the Bill should be stronger than what the Department has currently presented. Organisations and members of the public are looking forward to giving their inputs, many of which were shared at the Western Cape provincial stakeholder consultation. This highlights the level

of commitment from civil society to working together with government to combat climate change and its implications.

5. Conclusion

South Africa is a developing country, and there is relentless pressure for economic growth and activities that require energy and, in turn, the generation of emissions. Efforts made to reduce emissions, energy-efficiency initiatives, renewable power, and improved public transport are at risk of being rendered ineffective or even cancelled, as economic growth models are implemented. There is thus a great need for integrating climate change considerations into development plans and operations. We need a national target to aim at and work towards, and hopefully the Climate Change Bill will serve its purposes of legally enshrining such a target, and of ensuring that capacity is provided for people, institutions, infrastructure, and development plans to withstand the inevitable impacts of climate change.

Lovedonia Mkansi
Project Co-ordinator

¹ <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>

² <https://www.environment.gov.za/legislation/actsregulations>

³ <https://www.environment.gov.za/legislation/whitepapers>

⁴ <http://www4.unfccc.int/ndcregistry/PublishedDocuments/South%20Africa%20First/South%20Africa>

⁵ <https://www.dailymaverick.co.za/article/2018-07-19-eight-must-haves-for-sas-new-climate-bill/>