

To: The Portfolio Committee on Environment, Forestry and Fisheries

Attention: Ms AF Muthambi, MP Chairperson of the Portfolio Committee on Environment, Forestry and Fisheries

c/o Ms Tyhileka Madubela

By Email: climatechangebill2022@parliament.gov.za

27 May 2022

Re: THE GREEN CONNECTION - COMMENTS ON CLIMATE CHANGE BILL

Contents

1.	INTRODUCTION	2
2.	CONTEXT TO THE GREEN CONNECTION COMMENTS	2
2.1.	The Climate 'Crisis'	3
2.2.	South Africa's international climate change commitments	9
3.	THE GREEN CONNECTION COMMENTS.....	11
3.1.	Minister to exercise some mandatory powers 'in consultation with' other functionaries and bodies	11
3.2.	Lack of timeframes and/or lengthy timeframes.....	13
3.3.	Insufficient provision for offences and penalties	16
3.4.	National GHG emissions trajectory	17
3.5.	Public Participation.....	18
3.6.	Access to Information & Transparency	20
3.7.	Other Comments	23

1. INTRODUCTION

These comments are submitted on behalf of The Green Connection.

The Green Connection is a registered non-governmental organisation, that believes economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and non-governmental/civil society sectors, which are an integral part of sustainable development. The Green Connection is an environmental and social justice civil society organisation that promotes sustainable livelihoods and the achievement of environmental rights.

These comments are submitted in response to an invitation by the Portfolio Committee on Environment, Forestry and Fisheries to submit written comments on the Climate Change Bill [B9-2022].¹

The Green Connection is also interested in making a verbal presentation.

The Green Connection in principle also supports comments on the Climate Change Bill submitted by the Centre for Environmental Rights (CER).

2. CONTEXT TO THE GREEN CONNECTION COMMENTS

While the Green Connection welcomes the Department's development of a Climate Change Bill, it is concerned that – having regard to the climate change crisis - some aspects of the Bill are too weak to enable the development of an effective climate change response and a long-term, just transition to a low-carbon economy and society for South Africa in the context of sustainable development.

While the preamble to the Bill notes that everyone has the Constitutional right set out in

¹ https://pmg.org.za/call-for-comment/1152/?utm_source=transactional&utm_medium=email&utm_campaign=request-for-comment-from-parliament

section 24 of the Constitution, and that anthropogenic climate change represents an “urgent threat” to human societies and the planet (and requires an effective, progressive and incremental response), the Green Connection believes that the Bill in its current form will not achieve the response required to address this “urgent threat”.

2.1. The Climate ‘Crisis’

Internationally, climate change has been acknowledged as a ‘crisis’ with human-induced climate change impacts being experienced in every region. It is also recognised that the climate change ‘crisis’ requires immediate, rapid and large-scale reductions in greenhouse gas (GHG) emissions to limit climate warming.

In August 2021, the Intergovernmental Panel on Climate Change (IPCC) (an international body for assessing the science related to climate change) released its 6th Assessment Report (AR6).² In its summary for policymakers, the IPCC indicates (among other things) that:

- It is unequivocal that human influence has warmed the atmosphere, ocean and land, and that widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred;³
- The scale of recent changes across the climate system as a whole – and the present state of many aspects of the climate system – are unprecedented over many centuries to many thousands of years;⁴
- Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened since AR5;⁵
- Global surface temperature will continue to increase until at least mid-century under all emissions scenarios considered, and that global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO₂ and other GHG

² Climate Change 2021: The Physical Science Basis, available online at: <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/>

³ Para A.1

⁴ Para A.2

⁵ Para A.3

- emissions occur in the coming decades;⁶
- Many changes in the climate system become larger in direct relation to increasing global warming. They include increases in the frequency and intensity of hot extremes, marine heatwaves, heavy precipitation, and, in some regions, agricultural and ecological droughts; an increase in the proportion of intense tropical cyclones; and reductions in Arctic sea ice, snow cover and permafrost;⁷
 - Continued global warming is projected to further intensify the global water cycle, including its variability, global monsoon precipitation and the severity of wet and dry events;⁸
 - Many changes due to past and future GHG emissions are irreversible for centuries to millennia, especially changes in the ocean, ice sheets and global sea level;⁹
 - From a physical science perspective, limiting human-induced global warming to a specific level requires limiting cumulative CO₂ emissions, reaching at least net zero CO₂ emissions, along with strong reductions in other GHG emissions. Strong, rapid and sustained reductions in CH₄ emissions would also limit the warming effect resulting from declining aerosol pollution and would improve air quality.¹⁰

On 9 August 2021, the IPCC issued a press release relating to its AR6 report. It states that the report provides new estimates of the chances of crossing the global warming level of 1.5°C in the next decades, and finds that **unless there are immediate, rapid and large-scale reductions in GHG emissions, limiting warming to close to 1.5°C or even 2°C will be beyond reach.**¹¹

Also on 9 August 2021, UN Secretary-General António Guterres described the AR6 report as nothing less than "*a code red for humanity. The alarm bells are deafening, and the evidence is irrefutable*".

⁶ Para B.1

⁷ Para B.2

⁸ Para B.3

⁹ Para B.5

¹⁰ Para D.1

¹¹ <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

Guterres is reported as noting that the internationally agreed threshold of 1.5 degrees above pre-industrial levels of global heating was perilously close, and that we are at imminent risk of hitting this threshold in the near term. Guterres is indicated as advising that the only way to prevent exceeding this threshold, is by urgently stepping up our efforts, and pursuing the most ambitious path. Guterres is reported as stating that solutions are clear: "*Inclusive and green economies, prosperity, cleaner air and better health are possible for all, if we respond to this crisis with solidarity and courage*". Ahead of the COP26 climate conference in Glasgow in November 2021, Guterres stated that all nations needed to join the net zero emissions coalition, and reinforce their promises on slowing down and reversing global heating "*with credible, concrete, and enhanced Nationally Determined Contributions (NDCs)*" that lay out detailed steps.

In April 2022, Guterres tweeted that *'[c]limate activists are sometimes depicted as dangerous radicals. But the truly dangerous radicals are the countries that are increasing the production of fossil fuels. Investing in new fossil fuels infrastructure is moral and economic madness'*.¹² Addressing graduate students in May 2022, Guterres expressed the view that Investing in fossil fuels is now "*a dead end - economically and environmentally. No amount of greenwashing or spin can change that. So, we must put them on notice: Accountability is coming for those who liquidate our future.*"¹³

The 26th Conference of the Parties of the UNFCCC (COP26) was held in Glasgow in the last quarter of 2021. Recognition of the climate 'crisis', as well as the urgent need to increase effort and to accelerate action to address climate change (including by developing nations), are reflected in the outcome of COP26 and recorded in the Glasgow Climate Pact. The Glasgow Climate Pact (among other things):

- Expresses alarm and utmost concern that human activities have caused around 1.1°C of global warming to date and that impacts are already being felt in every region;
- Reaffirms the long-term global goal to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit

¹² <https://twitter.com/antonioguterres/status/1511294073474367488?lang=en>

¹³ <https://news.un.org/en/story/2022/05/1118932>

- the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
- Recognizes that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C and resolves to pursue efforts to limit the temperature increase to 1.5°C;
 - Recognizes that limiting global warming to 1.5°C requires rapid, deep and sustained reductions in global GHG emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century as well as deep reductions in other GHGs;
 - Also recognizes that this requires accelerated action in this critical decade, on the basis of the best available scientific knowledge and equity, reflecting common but differentiated responsibilities and respective capabilities and in the context of sustainable development and efforts to eradicate poverty;
 - Invites Parties to consider further actions to reduce by 2030 non-carbon dioxide GHG emissions, including methane;
 - Calls upon Parties to accelerate the development, deployment and dissemination of technologies, and the adoption of policies, to transition towards low-emission energy systems, including by rapidly scaling up the deployment of clean power generation and energy efficiency measures, including accelerating efforts towards the phasedown of unabated coal power and phase-out of inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition;
 - Emphasizes the importance of protecting, conserving and restoring nature and ecosystems, including forests and other terrestrial and marine ecosystems, to achieve the long-term global goal of the Convention by acting as sinks and reservoirs of GHGs and protecting biodiversity, while ensuring social and environmental safeguards.

The climate 'crisis' is also recognised by the International Energy Agency (IEA), of which South Africa is an IEA associated country. During or about July 2021, the IEA published its *Net Zero by 2050 – A Roadmap for the Global Energy Sector* report. In the foreword to this report, the Executive Director of the IEA states (among other things) as follows:

We are approaching a decisive moment for international efforts to tackle the climate crisis – a great challenge of our times. The number of countries that have pledged to reach net-zero emissions by mid-century or soon after continues to grow, but so do global greenhouse gas emissions. This gap between rhetoric and action needs to close if we are to have a fighting chance of reaching net zero by 2050 and limiting the rise in global temperatures to 1.5 °C.

Doing so requires nothing short of a total transformation of the energy systems that underpin our economies...

Despite the current gap between rhetoric and reality on emissions, our Roadmap shows that there are still pathways to reach net zero by 2050. The one on which we focus is – in our analysis – the most technically feasible, cost-effective and socially acceptable. Even so, that pathway remains narrow and extremely challenging, requiring all stakeholders – governments, businesses, investors and citizens – to take action this year and every year after so that the goal does not slip out of reach.

This report sets out clear milestones – more than 400 in total, spanning all sectors and technologies – for what needs to happen, and when, to transform the global economy from one dominated by fossil fuels into one powered predominantly by renewable energy like solar and wind. Our pathway requires vast amounts of investment, innovation, skilful policy design and implementation, technology deployment, infrastructure building, international co-operation and efforts across many other areas.

Since the IEA's founding in 1974, one of its core missions has been to promote secure and affordable energy supplies to foster economic growth. This has remained a key concern of our Roadmap, drawing on special analysis carried out with the International Monetary Fund and the International Institute for Applied Systems Analysis. It shows that the enormous challenge of transforming our energy systems is also a huge opportunity for our economies, with the potential to create millions of new jobs and boost economic growth. Another guiding principle of the Roadmap is that clean energy transitions must be fair and inclusive, leaving nobody behind. We have to ensure that developing economies receive the financing and technological know-how they need to continue building their energy systems to meet the needs of their expanding populations and economies in a sustainable way. It is a moral imperative to bring electricity to the hundreds of millions of people who currently re deprived of access to it, the majority in of them in Africa...

On fossil fuels used in energy production, the report states that:

There is no need for investment in new fossil fuel supply in our net zero pathway.

Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required’.

It is of particular concern to the Green Connection that, notwithstanding the climate change ‘crisis’ and the reality that the extraction and use of fossil fuels (including natural gas) will inevitably add to GHG emissions, the Department of Mineral Resources and Energy remains committed to accelerated offshore oil and gas exploration (including marine seismic surveys to identify oil and gas ‘resources’) and to the development and rollout of a gas economy.

Offshore oil and gas exploration activities pose a threat to functioning marine ecosystems (oceans play a critical role in regulating the climate and mitigating global warming by absorbing carbon dioxide) and to communities that depend upon the oceans for their livelihoods. Small-scale fishers and fishing-dependent communities are particularly vulnerable to the negative impacts of offshore oil and gas exploration activities which could (among other things) lead to a depletion in the fish stocks upon which the livelihoods of these small-scale fishers and fishing communities depend. Such impacts include marine ecosystem impacts resulting from marine seismic surveys, as well as impacts arising from any catastrophic oil spills that could occur as a result of an uncontrolled wellhead blowout related to offshore oil and gas exploration and/or production drilling).

While the increased use of gas as a ‘transitional fuel’ is promoted by government and vested interest groups, the Green Connection is concerned that the increased use of gas (especially in electricity generation) will lead to increased emissions of climate warming GHGs, and methane (CH₄) in particular. While natural gas combustion is less carbon-intensive than that of coal, fugitive emissions arising from the production, transport, storage and use of natural gas have a much greater climate impact than CO₂. In particular, over a 20-year period (which is particularly relevant since the next 20 years are a critical window for addressing the climate crisis) methane emissions, which make up approximately 70-90% of natural gas emissions,

are projected to be 82.5 times as impactful as those of CO₂.¹⁴ The desirability of using gas as a ‘transitional’ fuel is also questionable having regard to volatile international gas prices, as well as the potential risk of Carbon Border Taxes being introduced in the future.

The Green Connection is of the view that in order to effectively address the climate change crisis and achieve the rapid, deep and sustained reductions in GHG emissions that are required to limit global warming to 1.5°C (including accelerated action in this decade to reduce global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century), it is imperative that the Climate Change Act (once promulgated) empowers the Minister responsible for environmental affairs to rapidly take the necessary actions required. As is explained in more detail in the comments on the Climate Change Bill in section 3 below, the Green Connection is of the view that the Climate Change Bill in its current form does not do so.

2.2. South Africa’s international climate change commitments

South Africa is a Party to the UN Framework Convention on Climate Change (UNFCCC), which enjoins State Parties to take precautionary measures to anticipate, prevent or minimize the causes of climate change (Article 3.3).

South Africa, as a Party to the UNFCCC that ratified the Kyoto Protocol and adopted the Paris Agreement, has committed to *‘working with others to ensure temperature increases are kept well below 2°C above pre-industrial levels, which could include a further revision of the temperature goal to below 1.5°C in light of emerging science’* by reducing GHG emissions. South Africa has also committed (among other things) to:

- Preparing, communicating and maintaining nationally determined contributions (NDCs) that it intends to achieve reach global peaking of GHG emissions as soon as possible, and to undertake rapid reductions thereafter;¹⁵ and

¹⁴ See the IPCC’s 6th Assessment Report (AR6), Working Group 1, Chapter 6 *The Earth’s Energy Budget, Climate Feedbacks and Climate Sensitivity*, Table 7.15 at p1017. Available online at:

https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Chapter07.pdf

¹⁵ Paris Agreement, Article 4.1 – 4.3.

- Striving to formulate and communicate long-term GHG emission development strategies.¹⁶

There have been various Conferences of the Parties and meetings since, with decisions related to Nationally Determined Contributions (NDCs) contained in decisions 4/CMA.1 and 18/CMA.1 and their annexes.

South Africa revised its NDC in 2021¹⁷:

Table 2 - South Africa's updated NDC mitigation targets

Year	Target	Corresponding period of implementation
2025	South Africa's annual GHG emissions will be in a range from 398-510 Mt CO ₂ -eq.	2021-2025
2030	South Africa's annual GHG emissions will be in a range from 350-420 Mt CO ₂ -eq.	2026-2030

South Africa's energy sector is estimated at contributing about 84% percent to the country's overall GHG emissions (including Carbon Dioxide and Methane).

In February 2020, South Africa submitted to the UNFCCC its first long-term low GHG emission development strategy titled *South Africa's Low Emission Development Strategy 2050*. It is indicated in the executive summary of this strategy that South Africa, as one of the top 20 global GHG emitters and with a high dependency on fossil fuels, will need to make substantial emission cuts to contribute its fair share to global GHG emission reductions, and that *'[t]he rapid transition that will be required presents a potential risk to economic growth and sustainable development if not managed properly'*.¹⁸

¹⁶ Paris Agreement, Article 4.19

¹⁷ Available online at:

https://www.dffe.gov.za/sites/default/files/reports/draftnationallydeterminedcontributions_2021updated.pdf#:~:text=South%20Africa%E2%80%99s%20intended%20nationally%20determined%20contribution%20%28INDC%29%28RSA%2C%20n.d.%29,Agreement.%20The%20INDC%20and%20first%20NDC%20are%20identical.

¹⁸ South Africa's Low Emission Development Strategy 2050, pviii.

3. THE GREEN CONNECTION COMMENTS

3.1. Minister to exercise some mandatory powers 'in consultation with' other functionaries and bodies

The Green Connection notes that a number of the empowering provisions in the Climate Change Bill make provision for the Minister responsible for environmental affairs to exercise her powers or perform mandatory functions 'in consultation with' the Ministers listed in Schedule 2, the Ministers who are responsible for the GHG emitting sectors and sub-sectors, Cabinet, and - in one instance (somewhat bizarrely) - with affected persons.

As was pointed out in *Van Rooyen and Others v The State and Others*:

The meaning of the phrases "in consultation with" and "after consultation with" are now well established. "In consultation with" requires the concurrence of the other functionary (or person) and if a body of persons, that concurrence must be expressed in accordance with its own decision-making procedures. "After consultation with" requires that the decision be taken in good faith after consulting and giving serious consideration to the views of the other functionary (or person).¹⁹

The relevant sections where the Minister requires concurrence include (but are not necessarily limited to) the following:

- Section 18(2), which provides that the Minister must, in consultation with the Ministers responsible for the functions listed in Schedule 2, develop and publish a National Adaptation Strategy and Plan (NASP) by notice in the *Gazette* within two years of the coming into operation of this Act.
- Section 21(1), which provides that the Minister must, in consultation with Cabinet, by notice in the *Gazette* determine a national GHG emissions trajectory for the Republic.
- Section 21(4), which provides that the Minister, in consultation with Cabinet, must review the national GHG emissions trajectory every five years, and may review same when national circumstances require such a review (when such a review is demonstrated by various factors listed).

¹⁹ *Van Rooyen and Others v The State and Others* 2001 (9) BCLR 915 (T), at page 961.

- Section 22(3), which provides that the Minister must, in consultation with the Ministers responsible for each sector and 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.
- Section 22(7), which provides that the Minister must, in consultation with the Ministers responsible for each sector and sub-sector listed in terms of subsections (1) and (2), every five years, review the sectoral emissions targets and, when the outcome of the review or national circumstances require it, revise and amend the sectoral emissions targets.
- Section 25(1), which provides that the Minister, in consultation with the Ministers responsible for the GHG emitting sectors and sub-sectors contemplated in section 22, must by notice in the *Gazette* declare certain GHGs to be synthetic GHGs, specify whether such gases are required to be phased out or phased down, prescribe thresholds for the use of synthetic GHGs, and include timeframes for the phase-down or phase-out of synthetic GHGs.
- Section 25(2), which provides that the Minister, in consultation with the Ministers responsible for the GHG emitting sectors and sub-sectors contemplated in section 22, and any affected party, in the prescribed manner, must develop a plan to phase down or phase out declared synthetic GHGs, and review and update the plan every five years.

On the face of it, this means that the Minister will not be able to exercise the abovementioned powers without obtaining the concurrence of Cabinet or the Ministers referred to (as may be applicable). Given the urgent need to address the climate change crisis, it is of concern to the Green Connection that the exercising of the Minister's mandatory powers may be frustrated or delayed by the requirement for the Minister to obtain the concurrence of Cabinet and other Ministers (including the Ministers of subsectors responsible for significant GHG emissions, such as the Minister of Energy).

The use of the phrase 'in consultation with' in the various provisions of the Bill (and the resultant requirement for concurrence) does not readily reconcile with section 28(1), which

stipulates (in relation to the Minister exercising the abovementioned and other powers) that Minister must follow such consultative processes as may be appropriate in the circumstances. It also seems to conflict with section 28(2)(a), which stipulates that when conducting such consultations the Minister must consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power.

Recommendation:

The Green Connection recommends that references to the Minister exercising mandatory powers ‘in consultation with’ Cabinet, other Ministers and affected parties be amended to read ‘after consultation with’.

3.2. Lack of timeframes and/or lengthy timeframes

The Green Connection notes that a number of important provisions in the Bill do not include timeframes for performance or implementation, alternatively include lengthy multi-stage timeframes. This increases the risk that these provisions will not be performed or implemented in a manner:

- Appropriate to the “urgent threat” that anthropogenic climate change represents to human societies and the planet;
- That achieves the immediate, rapid and large-scale reductions in GHG emissions required to limit climate warming; and
- Which will result in the rapid, deep and sustained reductions in GHG emissions that are required to limit global warming to 1.5°C, including accelerated action in this decade to reduce global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century.

The Green Connection highlights below some of the important provisions of the Bill that do not have timeframes included:

- Section 7(1), which requires that every organ of state that exercises a power or performs a function that is affected by climate change or is entrusted with powers and duties aimed at the achievement, promotion and protection of a sustainable

environment, must review and if necessary revise, amend, coordinate and harmonise their policies and measures, programmes and decisions in order to ensure that the risks of climate change impacts and associated vulnerabilities are taken into consideration, and give effect to the principles and objects set out in the Act.

- Section 21(1), which stipulates that the Minister must (in consultation with Cabinet) by notice in the *Gazette* determine a national GHG emissions trajectory for the Republic. While it is noted that until such time as the Minister publishes the national GHG emissions trajectory, the trajectory in Schedule 3 serves as the national GHG emissions trajectory for the Republic, the trajectory in Schedule 3 is based on government's first Nationally Determined Contribution (NDC) and is already out of date (see also paragraph 3.4 below).
- Section 22(3), which stipulates that the Minister must (in consultation with the Ministers responsible for each sector and sub-sector listed) determine by notice in the *Gazette* the prescribed framework and the sectoral emissions targets (SETs) for sectors and sub-sectors. Other provisions are in turn dependent on the determination of these SETs. For example: section 22(11), which requires that the Minister responsible for each sector and sub-sector for which SETs have been determined must annually report to The Presidency on progress towards the achievement of the relevant SETs; and section 22(12), which requires that the Minister must collate, compile and synthesize the reports provided and submit progress reports on the implementation of the sectoral emissions targets to Cabinet on an annual basis.
- Section 22(6), which requires the Minister responsible for each sector or sub-sector for which SETs have been determined to adopt policies and measures towards the achievement of the sectoral emissions targets.
- Section 23(1), which provides that the Minister must, by notice in the *Gazette*, publish a list of GHGs which the Minister reasonably believes cause or are likely to cause or exacerbate climate change.

- Section 23(2), which provides that the Minister must, by notice in the *Gazette*, publish a list of activities which emit one or more of the GHGs listed and which the Minister reasonably believes causes or are likely to cause or exacerbate climate change.
- Section 24(1), which provides that the Minister must allocate a carbon budget to any person that conducts an activity listed in terms of section 23(2).
- Section 24(1)(a), which provides that a person to whom a carbon budget has been allocated must prepare and submit to the Minister, for approval, a GHG mitigation plan.
- Section 25(1), which provides that the Minister (in consultation with the Ministers responsible for the GHG emitting sectors and sub-sectors contemplated in section 22) must by notice in the *Gazette* declare certain GHGs to be synthetic GHGs, specify whether such gases are required to be phased out or phased down, prescribe thresholds for the use of synthetic GHGs, and include timeframes for the phase-down or phase-out of synthetic GHGs.
- Section 25(2)(a), which provides that the Minister (in consultation with the Ministers responsible for the GHG emitting sectors and sub-sectors contemplated in section 22, and any affected party, in the prescribed manner) must develop a plan to phase down or phase out declared synthetic GHGs.
- Section 26(1), which provides that the Minister must establish an institutional arrangement to facilitate a national system of data collection for the creation of a National GHG Inventory and the annual compilation of the National GHG Inventory Report.
- Section 27(2), which provides that the Minister must make regulations: in relation to the management of climate change response (including: the determination, review, revision, compliance with and enforcement of an allocated carbon budget, amendment and cancellation of a carbon budget allocation, the content, implementation and operation of a GHG mitigation plan, and all matters related thereto; and the phasing down or phasing out of synthetic GHGs, including the development of timeframes, inventories and mechanisms for reporting); and that will promote the effective

monitoring, evaluation and assessment of national progress in relation to climate change matters and climate change data and information, including information relating to direct and indirect GHG emissions, for the purposes of planning, analysis and monitoring and the compilation of the National GHG Inventory, and that will inform how the Republic may comply with any international obligations.

The Green Connection is also concerned that some of the timeframes that have been provided delay the effective and timely implementation of important provisions of the Bill. For example, in terms of section 18, the Minister is required to develop and publish a NASP within two years of the Act coming into operation. In terms of sections 19(1)(a) and (b), a Minister responsible for functions listed in Schedule 2 has: one year from the date the NASP is published to conduct an assessment with a view to developing a Sector Adaptation Strategy and Plan (SASP) (i.e. three years from the date the Act comes into operation); and two years from the date the NASP is published to develop and implement a SASP (i.e. four years from the date the Act comes into operation). In terms of section 19(2), the Ministers responsible for functions listed in Schedule 2 have five years from the date of publication of the SASP to report to the Minister on progress – in other words, it will be nine years before the Minister receives a report on progress made in relation to the implementation of SASPs.

Recommendations:

- *The Green Connection recommends that timeframes be included for the exercising of all mandatory powers contained in the Bill.*
- *The Green Connection recommends that the timeframes that are included in the Bill be shortened in order to ensure that they are appropriate to address the “urgent threat” that that anthropogenic climate change represents to human societies and the planet.*

3.3. Insufficient provision for offences and penalties

It is noted that the only offence and penalty provided for in the Bill is contained in section 32, which makes it an offence if a person fails to prepare and submit a GHG mitigation plan to the Minister in terms of section 24(4).

It is unclear why the Bill does not make it an offence to fail to comply with certain other provisions of the Act. For example, while it is an offence to fail to prepare and submit a GHG mitigation plan to the Minister in terms of section 24(4), it is not currently an offence should a person to whom a carbon budget has been allocated fail to:

- implement the approved GHG mitigation plan (section 24(6)(a));
- monitor annual implementation of the plan (section 24(6)(b));
- annually report on progress against the allocated carbon budget (section 24(6)(d)); or
- comply with its allocated carbon budget (section 24(6)(e)).

While it is noted that section 27(3) of the Bill provides that a regulation made in terms of the Act may provide that any person who contravenes or fails to comply with a provision thereof commits an offence and will be liable to the specified penalty upon conviction, is not clear whether the reference to 'a provision thereof' refers to the regulation and or the Act. If it refers to 'a provision of the regulation', the Minister will not be empowered through regulations to make it an offence to contravene or fail to comply with provisions of the Act.

Recommendation:

The Green Connection recommends that section 32 be revised to make it an offence if a person to whom a carbon budget has been allocated fails to implement the approved GHG mitigation plan (section 24(6)(a)), fails to monitor annual implementation of the plan (section 24(6)(b)), fails to annually report on progress against the allocated carbon budget (section 24(6)(d)), or fails to comply with its allocated carbon budget (section 24(6)(e)).

3.4. National GHG emissions trajectory

Section 21(1) stipulates that the Minister must (in consultation with Cabinet) by notice in the *Gazette* determine a national GHG emissions trajectory for the Republic.

Section 21(3) provides that until such time as the Minister publishes the national GHG emissions trajectory, the trajectory in Schedule 3 serves as the national GHG emissions trajectory for the Republic.

The emissions trajectory set out in Schedule 3 corresponds with the ‘peak, plateau, decline’ mitigation targets included in South Africa’s first Nationally Determined Contribution (NDC) under the Paris Agreement. These mitigation targets were updated in 2021 and resulted in the upper end of the target range for 2025 being reduced by 17%, and the upper-end of the target range for 2030 being reduced by 28%.

The Green Connection submits that, having regard to the climate crisis and the need to take urgent action required to limit global warming to 1.5°C, the Bill should at the very least include the updated mitigation targets in Schedule 3 as the interim national GHG emissions trajectory. Relying on the outdated mitigation targets contained in the first NDC (2016) as the interim national GHG trajectory is not rational, and runs against the objects²⁰ and principles²¹ set out in the Bill.

Recommendation:

Amend Schedule 3 to reflect the mitigation targets set out in South Africa’s updated NDC.

3.5. Public Participation

The Green Connection welcomes the requirement for notice and comment procedures to be followed before various powers listed in section 29(1) of the Bill are exercised.

However, the Green Connection is concerned that that the provision for notice and comment is not included in respect of some of the empowering provisions, and is further concerned that the notice and comment procedure does not adequately make provision for meaningful consultation with historically disadvantaged and vulnerable communities.

²⁰ For example the stated object to make a fair contribution to the global effort to stabilise GHG concentrations in the atmosphere at a level that avoids dangerous anthropogenic interference with the climate system (section 2(c)).

²¹ For example the principle that the interpretation and application of the Act must be guided by (among other things) the need for climate change mitigation and adaptation responses to be informed by evolving climate change scientific knowledge and decisions which should be based on the best available science, evidence and information (section 3(h)).

Of particular concern, section 29(1) does not include reference to powers exercised under section 24 relating to Carbon Budgets and related GHG mitigation plans. Members of the public are thus excluded from commenting on same.

In addition, section 29(1) does not include reference to powers exercised under the following sections of the Bill (and thus members of the public are excluded from commenting on same):

- Section 17(3), which empowers the Minister to periodically review and amend national adaptation scenarios;
- Section 18(3), which empowers the Minister to review and amend the NASP at 5-yearly intervals;
- Section 19(1)(a), which requires Ministers responsible for functions under Schedule 2 to (among other things) conduct an assessment of the functions under the Minister's operational control which: identifies and spatially maps risks and vulnerabilities, areas, ecosystems and communities that will arise and that are vulnerable to the impacts of climate change; and determines measures and mechanisms to manage and implement the required adaptation response; and
- Section 22(6), which requires the Minister responsible for each sector or sub-sector for which SETs have been determined to adopt policies and measures towards the achievement of the SETs.

The Bill also fails to make provision for meaningful consultation with communities potentially affected by climate change, and especially historically disadvantaged and vulnerable communities that do not have access to the *Gazette* or newspapers (such as small-scale fishing communities), and who are unlikely to have the necessary means or knowledge to participate meaningfully by way of a notice and comment public participation process.

The Green Connection submits that the absence of specific provisions to ensure meaningful participation by such communities is inconsistent with:

- The principle set out in section 3(f) of the Bill, which requires that the interpretation and application of the Act must be guided by *'the need for decision-making to consider*

the special needs and circumstance of localities and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women, especially poor and rural women, children, especially infants and child-headed families, the aged, the poor, the sick and the physically challenged';

- The principle set out in section 3(k) of the Bill, which requires that the interpretation and application of the Act must be guided by *'an integrated climate change response which requires the enhancement of public awareness of climate change causes and impacts and the promotion of participation and action at all level*'; and
- The environmental management principle set out in section 2(4)(f) of the National Environmental Management Act²² (NEMA), which provides that *'the participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured*'.

Recommendations:

- *The Green Connection recommends that section 29(1) be revised to make reference to section 24, as well as to sections 17(3), 18(3), 19(1)(a) and 22(6).*
- *The Green Connection recommends that section 29 be revised to make specific provision for meaningful consultation with communities potentially affected by climate change, and especially historically vulnerable and disadvantaged communities that do not have access to the Gazette or newspapers (such as small-scale fishing communities), and who are unlikely to have the necessary means or knowledge to participate meaningfully by way of a notice and comment public participation process.*

3.6. Access to Information & Transparency

The Green Connection notes that section 29(2)(b) stipulates that notices inviting members of the public to submit written representations or objections to the proposed exercise of the

²² 107 of 1998.

powers listed in section 29(1) must '*contain sufficient information to enable members of the public to submit meaningful representations or objections*'.

It is noted further that section 31 requires that information provided to the Minister must be made available by the Minister subject to the provisions of the Promotion of Access to Information Act, 2000 (PAIA) and the Protection of Personal Information Act, 2013 (POPI).

However, the Bill does not make specific provision for access to information that will be generated through the implementation of the provisions of the Act, which information should – in the Green Connection's view - be made available to members of the public to enhance accountability and transparency (which are foundational Constitutional principles), and to enable civil society to monitor and remain informed on progress being made.

Examples of information that the Green Connection believes should automatically be made available on a public information platform includes (but is not necessarily limited to):

- Reports by Provincial Forums on Climate Change to the President's Coordinating Council (section 8(3)(b));
- Reports by Municipal Forums on Climate change to the relevant Provincial Forums on Climate Change (section 9(3)(b));
- Reports by the Presidential Climate Commission (PCC) to government in terms of section 11(b), which section stipulates that the functions of the PCC are to advise government on the mitigation of climate change impacts, including through the reduction of emissions of greenhouse gases, and adapting to the effects of climate change (section 13);
- Periodic reviews and assessments by the Minister of the national adaptation objectives contemplated in section 16(1(a) (section 17(3));
- Periodic reviews and amendments by the Minister of the national adaptation scenarios contemplated in section 17(1) (section 17(3));
- Any five-yearly reviews and amendments by the Minister of the NASP (section 18(3);
- Assessments by the Minister responsible for functions listed in Schedule 2 of the functions under the Minister's operational control (section 19(1)(a));

- Five-yearly reports by Ministers responsible for functions listed in Schedule 2 submitted to the Minister on progress made in relation to implementation of the relevant SASP (section 19(2));
- Any reviews of the national GHG trajectory (section 21(4));
- Policies and measures adopted by Ministers responsible for each sector or sub-sector for which sectoral emissions targets have been determined (section 22(6));
- Annual reports submitted by Ministers responsible for each sector or sub-sector for which sectoral emissions targets have been determined to The Presidency on progress towards the achievement of the relevant sectoral emissions targets (section 22(11));
- Annual progress reports by the Minister to Cabinet on the implementation of the sectoral emissions targets (section 22(12));
- Carbon Budgets allocated by the Minister to any person conducting an activity listed in terms of section 23(2) (section 24(1));
- GHG mitigation plans prepared and submitted to the Minister for approval (section 24(4));
- Annual reports by persons to whom Carbon Budgets have been allocated to the Minister on progress against the allocated carbon budget (section 24(6)d));
- Revisions of Carbon Budgets by the Minister (section 24(8));
- Amendments of allocated Carbon Budgets that are transferred or acquired, and the reallocated Carbon Budgets by the Minister (section 24(9));
- Plans (and reviews thereof) developed by the Minister in consultation with the Ministers responsible for GHG emitting sectors and sub-sectors and any affected party (section 25(2)); and
- The National GHG Inventory and annual National GHG Inventory Report, which report is required to: set out and analyse emissions trends (including detailed reports on changes in the GHG emissions intensity in the economy); and compare actual GHG emissions against the national GHG emissions trajectory and national and international climate change mitigation commitments and obligations (section 26(1) and (2)).

Recommendation:

The Green Connection recommends that information that will be generated through the implementation of the provisions of the Act should automatically be made available on

a public information platform. Examples of such information are set out above.

3.7. Other Comments

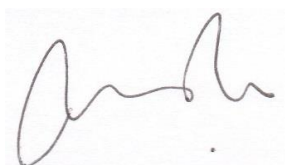
Section 19

It is noted that the word 'must' appears to have been omitted from section 19(2).

Schedule 2

It is noted that Schedule 2 does not include the Department of Mineral Resources as one of the National Departments responsible for certain functions required to develop a SASP. While the Department of Energy is listed, and while both Energy and Mineral Resources are listed in Schedule 1 relating to the functions relevant to the development of SETs, it is unclear why the Department of Mineral Resources (which would include Petroleum Resources) is not included in Schedule 2.

Yours sincerely



Adrian Leonard Pole