



biowatch
SOUTH AFRICA

biodiversity | food sovereignty | agroecology | social justice

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Portfolio Committee on Environment, Forestry and Fisheries

Attention: Ms Tyhileka Madubela

By email: climatechangebill2022@parliament.gov.za

Biowatch SA submission on the Climate Change Bill [B9-2022]

Thank you for the opportunity to provide input on the Climate Change Bill [B9-2022].

Our submission follows below and consists of:

1. Introduction to Biowatch South Africa
2. Comments on the Climate Change Bill [B9-2022].

We also request the Department to organise a climate change public hearing on the Bill and would welcome the opportunity to present on climate change, agriculture, and the food system (please see motivation on page 4). Please also find attached Biowatch's recently published document "Climate Change and the Industrialised Food System".

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rose Williams', is shown on a light-colored background.

Rose Williams
Director

Trust No. IT 4212/99

Board Members: Dr David Fig (chairperson), Prof. Loretta Feris, Dr Mvu Ngcoya, Mr David Ntseng,
Ms Beni Williams, Ms Rose Williams, Prof. Rachel Wynberg, Ms Stha Yeni

1. Biowatch South Africa

Biowatch is a non-governmental organisation established in 1999, which strives for social and environmental justice within the context of food sovereignty. Biowatch works to challenge unsustainable agricultural practices and to advocate for agroecology as an ecologically viable alternative that safeguards people and land. This includes supporting smallholder farmers; working with civil society to create joint understanding and action; and constructively engaging with government in implementing policies and practices that promote, facilitate, and actively support agroecology and farmers' rights. We have a long track record of working on policy issues concerning agriculture, biodiversity, and indigenous knowledge systems.

2. Comments on the Climate Change Bill [B9 – 2022]

General comments

We support a Climate Change Bill

Biowatch supports the intention of this Bill to provide an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa.

The urgency of our climate response

We note the urgency of a coherent response given the threat that climate change poses to our prosperity and security as a nation; and the impacts of climate change that are already being experienced in the form of widespread droughts, and the increasing frequency of extreme weather events in the region.

Humanity has a very small window of time for reducing anthropogenic climate changing emissions to prevent negative impacts cascading through our human and ecological systems. Globally we have only till 2030 to cut emissions by 45% in order to keep climate change to 1,5°C above pre-industrial levels – estimated as the amount of climate change earth systems can 'safely' tolerate. Given that southern Africa will experience this change even more acutely we must act with urgency to reduce emissions and climate-proof our society.

We are concerned that the provisions of this draft Bill do not reflect this urgency. All government structures should already be responding to climate change. Departments should not be waiting for the promulgation of this Act to start work on the outputs envisaged in it and thus the time frames for preparing adaptation and climate response plans should be sooner than currently provided in the Bill. These are noted in detail in the detailed comments below.

The critical intersection between food systems, climate change and the Right to food

Internationally and in South Africa there has been a growing call for a fundamental transformation of the global food system. The way we produce and distribute food profoundly impacts the achievement (or not) of the sustainable development goals as well as the realisation of many human rights.

Climate change is also inextricably linked to the increasingly industrialised global food system. Globally our food system is the cause of **one-third of all human greenhouse gas emissions, contributing annually in the region of 31–34%**.¹The main gases it emits are carbon dioxide, methane and nitrous oxide, the latter two of which are significantly more potent than carbon dioxide in their contributions

¹ Cripps, M. et al. 2021. Food systems are responsible for a third of global anthropogenic GHG emissions, *Nature Food* 2, pp. 198–209.

to warming.² The largest share of 25% comes from agriculture – this includes 11% from land use change (such as deforestation to make way for crops or livestock grazing), and 14% from the production of the inputs used, and on-farm emissions including from energy use, livestock, tilling and fertiliser off-gassing. GHGs from farming alone almost doubled between 1961–2016, with most of this increase coming from increased synthetic fertiliser use, rice cultivation and livestock rearing.³

In addition to mitigating this enormous impact on the climate, we must also adapt our food production to be more resilient to the impacts of climate change. Southern Africa as a region is more vulnerable than average to climate change in that it is difficult for natural and human systems to adapt to rapid change and the region is experiencing warming at twice the rate of the global average. Even if global average surface temperature change is contained at 1.5-2 °C above pre-industrial temperatures, the region could experience 3-4°C increases in temperature with more extreme weather events, including flash flooding, extreme wind and especially extended drought and more frequent severe heat waves. In these conditions dryland farming will be increasingly difficult, with cattle and maize farming becoming impossible in a large portion of the region.⁴

With some of the highest global rates of food insecurity, the potential decline in food production as we know it is alarming. The last two years in particular, have shown how intersecting crises can cause food and water insecurity to rise. Prior to the COVID-19 pandemic, the percentage of South Africans suffering inadequate or severely inadequate access to food was 19.5%⁵ with diet related health issues such as diabetes⁶ and obesity⁷ soaring. With COVID-19 in 2020 acute food insecurity extended to 16% of the population, and it was anticipated that this would rise to 20% of the population in early 2021. The intersecting causes of this extreme rise in hunger were the ongoing drought, COVID-19 lockdowns, consequent unemployment and economic decline, and rising food prices.⁸ Unfortunately, as the effects of climate change worsen, there is also likely to be an increase in disease burdens and more potential for conflict and unrest.

The Right to food and water are enshrined in the South African Constitution: “everyone has the right to have access to sufficient food and water” (Section 27(1)(b)) and every child also has the right to “basic nutrition, shelter, basic health care services and social services” (28(1)(c)).

We believe it is vital that this Act include the meaningful transformation of the food system as part of the ‘just transition’ underpinned by human rights for the well-being of all South Africans and the planet. **We therefore suggest the inclusion of an additional guiding principle: ‘the need for an intersectoral approach to transform our food and agricultural systems using agroecological approaches to mitigate and be more resilient to climate change while ensuring the Right of all South Africans to adequate healthy and nutritious food and safe drinking water.’**

Public consultation on the Bill

² Tubiello, F.N. et al. 2021. Greenhouse gas emissions from food systems: building the evidence base, *Environmental Research Letters* 16, pp. 1–13.

³ Ibid.

⁴ Scholes, B., Engelbrecht, F. & Vogel, C. 2020. ‘Climate Change: Effective action based on Enhanced understanding,’ *Emancipatory Futures Studies*, Climate Science Think Piece, available at https://www.safsc.org.za/wp-content/uploads/2020/06/Climate-Science-Doc_June-2020.pdf

⁵ Stats SA 2019

⁶ According to International Diabetes Federation from 4.5% in 2010 to 12.7% of the population in 2019. See <https://www.indexmundi.com/facts/south-africa/indicator/SH.STA.DIAB.ZS>

⁷ See <https://heala.org/wp-content/uploads/2021/02/HEALA-Fact-sheet-Evidence-to-support-increasing-South-Africas-Health-Promotion-Levy-to-20percent-in-2021.pdf> and the country profile for South Africa in World Health Organization - Noncommunicable Diseases (NCD) Country Profiles, 2018.

⁸ https://reliefweb.int/sites/reliefweb.int/files/resources/IPC_South_Africa_AcuteFoodInsec_2020Nov2021Mar_Report.pdf

Given the impact of climate change on all sectors of our society we welcome robust and widespread public consultation on the Bill, necessary regulations and the specific plans that determine our actual mitigation and adaptation responses including through:

- the holding of accessible public hearings in all provinces;
- translation of the Bill, and still to be developed regulations, plans and strategies into all of South Africa's languages, and sharing of this on accessible platforms including community radio, in public libraries, and social media.

However, more than hearings on the Bill are needed. A review of the outdated mitigation and adaptation responses, outlined in the 2018 National Climate Change Response White Paper that underpins the Bill, are needed as the Bill is setting up the framework under which the more tangible plans to act on climate change in South Africa can be developed. The climate response plans envisaged in Chapter 3 need to be based on up-to-date analysis. In this regard **Biowatch would welcome the opportunity to present at a public hearing on climate change in relation to agriculture and the food system.**

Engaging South Africans on sectoral mitigation and adaptation strategies, such as the food system, is critical to the systemic change that is needed. We cannot get out of the crisis we face through technological quick fixes that perpetuate deep systemic problems.

Access to information (clause 31)

Due to the importance of climate change mitigation and adaptation for every person in South Africa, all information regarding carbon budgets and mitigation strategies; as well as sector, national, provincial, and especially municipal adaptation plans should be easily accessible to the public.

We propose a one-stop web portal for climate change information in South Africa, which includes these mitigation and adaptation plans, and that is easy to navigate and provides both summarised and more technical information including in local languages.

Polluting industries must not be able to keep relevant information away from the public by defaulting to the Public Access to Information Act request processes, or by withholding information as 'confidential business information'. While confidentiality of personal information is respected, the access to information clause should include the principle of transparency in ensuring our country and society responds with urgency to climate change.

DETAILED COMMENTS ON THE BILL

Chapter 1

Objects of the Act (Section 2)

In developing climate mitigation and adaptation plans there are bound to be conflicts of interest between sectors, private sector, and society at large, one area compared to another, etc. Another objective of this Act should be to put mechanisms in place to resolve these conflicts where these arise.

Therefore, add an objective:

‘Outline conflict resolution mechanisms to ensure that the objectives and principles of this Act are realised in support of a just transition that enables a good life for all South Africans, in the context of climate resilient and zero-emissions development.’

Principles (Section 3)

The climate crisis has largely been caused by an approach to the economy and development based on the idea that natural resources are indefinitely exploitable, abundant and able to recover. While there is increasing appreciation that this is not the case; our approach to economic development and service provision continues to rely on an extractivist and industrial approach in all aspects of the economy and production. As a consequence, we are fast approaching the overshoot of several planetary boundaries, from which it will be impossible to recover. An example of such an approach is the continued disposal of sewage effluent mixed with industrial wastes to sea in KwaZulu-Natal, assuming that the ocean can dilute and absorb the pollutants.

We therefore suggest a principle as follows: ‘Climate mitigation and adaptation plans should contribute to the regeneration of our natural resource base and well-being of all communities; and avoid investments, public programmes and subsidies that create path dependencies that lock our society and economy into development that continues to be based on extractivism and that causes harm to ecosystems and society.’

Chapter 2

Alignment of policies

Clause 7 (2)

We support that civil society and labour are able to advise on South Africa’s climate response, however, this clause doesn’t outline how this will be enabled, and qualifies the statement with ‘may’ advise. Looking through all the provisions of the Bill, the only provision for representation is through the Presidential Climate Commission where appointment is at the President’s discretion.

Provinces, and to a greater extent municipalities, are directly responsive to the impacts of climate change (as we have seen in the April 2022 flooding in Durban) and are the crucial first step in providing services and planning that enables resilience to climate impacts. The Bill proposes designating the existing Premiers Intergovernmental Fora and the District Intergovernmental Fora as the Provincial and Municipal Forums on Climate Change respectively. We agree that coordinating mechanisms shouldn’t be duplicated and given the cross-cutting nature of climate change these are appropriate bodies. However, both of these structures as they are defined in the Intergovernmental Relations Framework Act, have no provision for civil society participation. This is of great concern given the grave impact of climate change, and the experience that organisations on the ground can offer in developing

appropriate and responsive plans. Active participation of civil society in developing mitigation and adaptation responses is essential.

Additions

It is also a concern that local municipalities sit with the greatest responsibility for ensuring climate responsiveness and resilience on the ground where communities are directly impacted. It is no secret that municipalities across the country do not have adequate resources and skills to manage and maintain current infrastructure, let alone being able to creatively respond to climate change. The Bill must make provision to ensure that both officials and decision-makers are adequately skilled and supported with resources and knowledge to grapple with this challenge.

Although climate responsiveness cuts across all organs of government, the Minister and Department of Forestry, Fisheries and Environment must be adequately empowered to be able to issue necessary guidelines and monitor and evaluate the extent to which all organs of government are implementing their part in the climate change response.

Presidential Climate Commission (PCC)

Clause 10 (2)

The Act should stipulate the period of appointment and renewal of the PCC members so that potential Commissioners can make the necessary commitment.

Process of appointment Section 12 (1)

The process of appointing the PCC should include an open and transparent mechanism for sectors to nominate and recall Commissioners to ensure that those appointed are trusted representatives of their sector.

Chapter 4

General comment

There is need to act swiftly to mitigate climate change and respond to the numerous impacts that are already being experienced. It is therefore a concern that it will still take some time before the Bill is published as an Act and following the publication as an Act it will take another 2 years to develop and publish a National Adaptation Strategy and Plan, and another 2 years after that to develop Sector Adaptation Strategies and Plans and another 3 years after the publication of a national adaptation strategy and plan to develop and implement a climate change response implementation plan. This means that it will likely be at least 5 years before sectors can start implementing adaptation strategies. This is a very slow response to an urgent situation. Also, we have committed to dropping emissions from 2026 – how will this be achieved if we are only starting to put plans into action from 2025/6?

Clause 15 (3)

The climate change response implementation plan should also include mechanisms for resolving conflicts of interest between sectors so that where allowances are made for high GHG emissions sectors these trade-offs are fairly weighed against the damage to society and the environment.

Adaptation information and Synthesis Adaptation Report

Clause 20 (1)

This clause is not clear. What are the purposes of the National Climate Change Response White Paper that require data, information, documents, or samples? Either make these purposes clear in this paragraph or consider rephrasing: 'The Minister may to the Minister that are reasonably required for *collating, compiling and synthesising information that has bearing on the Republics climate change responsiveness.*'

Chapter 5

National greenhouse gas emissions trajectory

The curbing of greenhouse gas (GHG) emissions is at the heart of this Act and our urgent and necessary action is needed to prevent further climate change; however, this Section in the Bill is totally inadequate to this task for the reasons described below.

Clause 21 (1)

The Minister is required to determine a national greenhouse gas emissions trajectory for the Republic, but on this most crucial aspect no time frames are given by which the Minister should do this. We propose that this should be published within no more than six months of the coming into operation of this Act.

Clause 21 (3)

This clause provides that until such time as a national GHG emissions trajectory is published by the Minister, that the trajectory described in Schedule 3 of the document will serve as the National GHG emissions trajectory. However, the current Schedule 3 describes South Africa's Nationally Determined Contribution under the Paris Agreement (NDC) from 2015, instead of South Africa's updated NDC of September 2021. This is totally unacceptable as this provides for an inadequate 'required by science' response to emissions reductions, equating to an average 4-degree Celsius increase in global temperatures.

At the very least Schedule 3 in the Act must be replaced by South Africa's updated NDC from September 2021 which aims for the Republic's greenhouse gas emissions to

- a) Peak in the period 2021-2025 in a range with a lower limit of 398 Mt CO₂-eq. and upper limits of 510 Mt CO₂-eq.
- b) From 2026 to 2030 to reduce South Africa's annual GHG emissions to a range from 350-420 Mt CO₂-eq.

The upper limits of the NDC from 2021 will still result in global warming of 2 degrees on average, so even this is not an adequate response given that South Africa appears to be warming at twice the global average. The National greenhouse gas emissions trajectory that is published by the Minister to replace Schedule 3 after the Act comes into operation must consider more ambitious emissions reductions.

Sectoral emissions targets

Clause 22 (1) and (3)

There must be a time frame for the setting of sectoral emissions targets, as the need to reduce GHG emissions is urgent.

We suggest that the time frame in 22 (1) for listing GHG emitting sectors and sub-sectors subject to emissions targets is reduced to 6 months from the Act coming into operation and that a time frame of a maximum of one year is introduced in 22 (3) for the determining the prescribed framework and sectoral emissions targets for sectors and sub-sectors.

Clause 22 (4)(b)

One assumes that the cumulative sectoral GHG emissions are not equivalent to the national GHG emissions trajectory because not all emissions are included in the sectoral targets. However, this should be clarified, and the clause should say that cumulative sectoral emissions are not equivalent but should never exceed the targets in the national greenhouse gas emissions trajectory.

Due to the national importance of reducing emissions, the progress on implementing sectoral emissions targets should be public information. Add a clause (13) to this section:

(13) Synthesized Reports provided to Cabinet in terms of subsection (12) must be made available to the public on a national public climate change web portal.

Listed greenhouse gas activities

Clause 23. (3)(c)

It is not clear why the notice wouldn't apply to **all** listed activities which emit GHG. Even if a person/company is emitting GHG below a threshold amount, these amounts still add up and need to be monitored by the Department to ensure that South Africa continues to reduce emissions, and to balance the overall carbon budget we have as a country. The notice should apply to all listed activities but could make allowance for a different and less onerous reporting system for those facilities that emit under the specified threshold.

Clause (4) (b)

We disagree with the emphasis in this clause on technology. While technology may be a crucial factor in some industrial processes, in other sectors mitigation can be achieved through a different approach and redesign of processes. This clause encourages 'technological fixes' instead of the systemic change that is needed and provides a loophole for emissions reduction avoidance.

Change the clause to: *'should consider ability to redesign systems and processes, and the availability of feasible mitigation technology where appropriate.'*

Carbon budgets

Clause 24. (1) and 24 (4)

The allocation of carbon budgets is a key tool for ensuring that specific persons and companies reduce emissions. It is necessary that the deadlines for allocating carbon budgets for listed activities reflect the urgency required of us to ensure our climate change emissions are curbed.

Clause 24 (2)(e)

As with Clause 22(4)(C) one assumes that the carbon budgets assigned to individuals and companies do not include all possible emissions and therefore are not equivalent to the national GHG emissions trajectory. However, this should be clarified, and the clause should say that cumulative carbon budgets for listed activities are not equivalent but should never exceed the targets in the national greenhouse gas emissions trajectory.

Clause 24 (3)

Add a clause (c): carbon budgets for the second and third 5-year periods will be set on completion of the previous period and adjusted taking into account compliance with the previous budget assessed against the realisation of South Africa's national greenhouse gas emissions targets.

Clause 24 (5)

While it does make administrative sense to transpose air pollution prevention plans as greenhouse gas mitigation plans, we are concerned that not all of these are adequate to achieving emissions reduction. Highly polluting entities – for example Eskom - which are crucial to lowering our carbon emissions continue to apply for exemptions to the requirements of the Air Quality Act. It is unacceptable that these entities continue being allowed to pollute, so that the burden of overall emissions reduction are carried by compliant entities. Pollution prevention plans should only be deemed to be GHG mitigation plans where these are compliant in meeting the minimum requirements of the Air Quality Act and National Pollution Prevention Regulations.

Clause 24 (7) (b)

The Act should give some guidance as to what 'prescribed circumstances' may include so that this clause doesn't provide another loophole to avoid emissions reduction.

Chapter 6

Access to information

Clause 31. Amend to read: Information provided to the Minister or the Department in terms of this Act must be made available by the Minister *in the interests of transparency and public accountability. Although* subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), *these should not be used to unreasonably withhold information on progress and plans for emissions reduction from the public.*

Offences and Penalties

It is a concern that penalties for non-compliance of any of the provisions of the Act are delegated to Regulations which *may* be made, according to the penalties contemplated in section 49 B (2) of the National Environment Management Act. Penalties must be made to ensure compliance. Depending on the size of the entity, a maximum penalty of R5 million as contemplated in section 49 b (2) of NEMA, is not a strong deterrent. Penalties should rather be determined according to a sliding scale based on the size and profits of the entity so that polluting industries do not simply pay penalties as a means to continue polluting.

The only offence specifically mentioned in the draft Bill is in Clause 32 (1) for failure to prepare and submit a GHG mitigation plan to the Minister. We agree with this offence, but it should also be an offence to provide false or misleading information (so as to continue with higher emissions) and fail to implement GHG mitigation plans and keep GHG emissions within the allocated carbon budget! Without strong sanction for failure to reduce emissions we will just have many hollow plans that add an administrative burden to the State while having little impact on actual GHG emissions.