



ANIMAL LAW REFORM
SOUTH AFRICA

**SUBMISSION IN RESPECT OF THE
DRAFT CLIMATE CHANGE BILL**



27 May 2022



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To: **The Department of Forestry, Fisheries and the Environment**
(hereinafter the “**Department**” or “**DFFE**” or “**DEA**”)

For the Attention of: **Ms Tyhileka Madubela**
Per e-mail: climatechangebill2022@parliament.gov.za
tmadubela@parliament.gov.za

27 May 2022

Dear Honourable Representatives,

RE: COMMENTS ON CLIMATE CHANGE BILL

Please find herewith the submission (the “**Submission**”) by Animal Law Reform South Africa (“**ALRSA**”) in respect of the call for submissions in GN1924 published in *Government Gazette* number 46088 of 25 March 2022 in respect of Climate Change Bill (the “**Bill**” or the “**Climate Change Bill**” or the “**Act**” with reference to the final act).

Kindly confirm receipt of this Submission and address further correspondence to the email address: amywilson@animallawreform.org.

We look forward to receiving a response to our Submission and are available to engage on any queries, comments, concerns which you may have in respect of the Submission.

Please note that this Submission is non-exhaustive and does not represent all the responses or objections to or comments on the issues and matters raised herein. We reserve the right to provide any further or additional information on aspects raised herein or in respect of this submission and related subjects.

Organisational Background and Declaration of Interest

This Submission is by Animal Law Reform South Africa (“**ALRSA**”) ¹, a non-profit company and a registered NPO (Number 238-234 NPO). We have a substantial interest in the issues to be considered by the Department. We have, for years, consistently expressed interest in these issues to DFFE, other government departments, NGOs, the South African public and other stakeholders – both privately and within the public domain.

We have furthermore requested engagement with and feedback from the relevant authorities in respect thereof. We have provided various formal submissions, sent letters, emails, and other correspondence, attended presentations and meetings, and otherwise engaged on these matters (where such engagement has been possible). We are interested stakeholders and representatives of

¹ Animal Law Reform South Africa Website: <https://www.animallawreform.org/>



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vulnerable populations within South Africa, including human as well as nonhuman animals. We have, within our core focus, concepts of social justice and appreciate the need for intersectionality in our approach.

ALRSA is composed of compassionate legal professionals and envisages a society and legal system that adequately protects humans, nonhuman animals and the environment. We work on connecting three core focus areas: Animal well-being, Social Justice and Law. We focus on a few key areas that we believe will bring about the most change. These focus areas include: Legislative and Policy Reform; Litigation and Legal Services and Education and Research.

Inclusion

We wish to note that in April 2021, we, together with the Environmental Law Association of South Africa (“**ELASA**”), submitted our initial comments on South Africa’s updated draft Nationally Determined Contribution (“**NDC**”)². There are a number of comments raised in that submission that apply equally to the Bill. We hereby incorporate by reference hereto our submission and comments on the NDC. We note that to date, the final NDC has not been published and we have not received responses to our submissions.

Endorsement

We also wish to endorse the Submissions made by (i) the EMS Foundation and the Wild Law Institute and (ii) the Centre for Environmental Rights respectively on the Climate Change Bill submitted on 27th May 2022. This includes their direct comments made on the Draft Bill as well as the Covering Submission to the extent that these are not in conflict with our Submission and can be read collaboratively.

We welcome the opportunity to make such Submission and look forward to it being properly considered by the Department more broadly.

We look forward to engaging further on the issues contained herein.

Yours sincerely,



Amy P. Wilson

Executive Director

Animal Law Reform South Africa

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² <https://www.animallawreform.org/wp-content/uploads/2021/04/NDC-Submission-ALRSA-and-ELA.pdf>



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PART I: OVERARCHING COMMENTS

I. Introduction

Climate Change has been called the “Biggest Threat Modern Humans Have Ever Faced.”³ It has profound implications for the future of humanity and all other life on Earth including nonhuman animals, plants, fungi and microorganisms. Its severity cannot be overemphasised – it is nothing less than an emergency which requires swift and decisive action. Addressing the climate crisis requires an effective, clear response, and failure to comply with relevant obligations should be harshly penalised.

We wish to commend the Department for introduction of a climate change bill as a positive step in relation to tackling the climate emergency currently facing us.

We support the introduction of such legislation however, we are of the view that in order for the Bill to achieve what it seeks to as well as to ensure the environmental right as contained in section 24 of the Constitution and all other rights therein guaranteed, the Bill needs to be strengthened and a number of provisions need to be introduced, amended or made more robust.

II. Constitutional Considerations

It must be stated that the climate crisis has an impact on all other rights contained in the Bill of Rights in South Africa’s supreme Constitution. Without an environment in which we can exist, all other rights become obsolete. Accordingly, the framing of the Bill must recognise that all other rights are dependent on the right to environment and therefore the importance of this Bill cannot be overstated.

The Bill fails to recognise this and centre the rights as contained in the Constitution as a core component and should reference human rights in the Constitution as appropriate, as well as their interpretation by relevant courts including the Constitutional Court.

III. Anthropocentric Framing

We are concerned with the overall anthropocentric framing of the Bill which flows into many of its provisions. It is apparent from the current state of the world that such an anthropocentric approach has so far failed to protect human interests, let alone all other life we share our planet Earth with. Continuing with such an approach will, accordingly, not help us effectively deal with the climate emergency.

³ United Nations: <https://www.un.org/press/en/2021/sc14445.doc.htm>



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According to the latest Report by the Intergovernmental Panel on Climate Change (IPCC) (the United Nations body for assessing the science related to climate change of 2022:⁴

*“This report recognizes the **interdependence of climate, ecosystems and biodiversity and human societies...** and integrates knowledge more strongly across the natural, ecological, social and economic sciences than earlier IPCC assessments. The assessment of climate change impacts and risks as well as adaptation is set against concurrently unfolding non-climatic global trends e.g., biodiversity loss, overall unsustainable consumption of natural resources, land and ecosystem degradation, rapid urbanisation, human demographic shifts, social and economic inequalities and a pandemic?”*

IV. Failure to include other members of Earth, including Nonhuman Animals, their intrinsic value and welfare in the Bill

According to judgment from the Constitutional Court⁵, the constitutionally protected environmental right includes the recognition of both the sentience and the intrinsic value of animals.

The Bill fails to properly consider nonhuman animals in its ambit and they are only referenced directly as part of “ecosystems”. The Constitutional Court has explicitly recognised that animals are sentient beings with intrinsic value and that in interpreting section 24 of the Constitution, animal welfare must be considered.

This recognition is omitted throughout the Bill with **no mention of the intrinsic value** of animals nor biodiversity, nor their contributions to tackling the climate crisis. Intrinsic value is the value that an entity possesses of itself, for itself, regardless of the interest or utility of others. Intrinsic value of individual organisms manifests itself into distinct, albeit related forms namely good-of-its-on and a good-of-its kind.⁶

The *NSPCA* case⁷ recognised that the rationale behind protecting animal welfare has shifted from the safeguarding of the sensibilities of humans to placing intrinsic value on animals as individuals. In the *Lemthongthai* case it was further held that constitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general. *Lemthongthai* further confirmed that animal welfare and section 24(b) of the Constitution are connected and the integrative approach linking the suffering of individual animals to conservation.⁹

⁴ IPCC Report 2022: <https://www.ipcc.ch/report/ar6/wg2/>

⁵ *NSPCA v Minister of Justice and Constitutional Development and Another* 2017 (4) BCLR 517 (CC). <http://www.saflii.org/za/cases/ZACC/2016/46.html> at para 57.

⁶ Schaffner, Joan, Value, wild animals and law in Scholtz, Werner, *Animal Welfare and International Environmental Law: From Conservation to Compassion* (2019) at 10.

⁷ *NSPCA v Minister of Justice and Constitutional Development and Another* 2017 (4) BCLR 517 (CC) para 54-7.

⁸ *S v Lemthongthai* [2014] ZASCA 131 para 20.

⁹ *Lemthongthai* at para 58.



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The Constitutional Court, Supreme Court of Appeal¹⁰, the Supreme Court and the High Court have connected biodiversity to animal welfare.

In August 2019, the High Court¹¹ confirmed that animal welfare is inextricably linked to the right to environment:

*“In addition and from an environmental perspective the treatment of lions in captivity as an environmental issue and its relationship with the commercial activities that arise from the operations of lion breeders in this case the export of lion bone) **is inextricably linked to the constitutional issue of what may constitute the elements of the right to an environment** and the right to have it protected for the benefit of this and future generations that Section 24 of the Constitution articulates.”¹² (emphasis added)*

As aforementioned, in the landmark 2016 Constitutional Court case brought by the NSPCA,¹³ the Constitutional Court referred with approval to the earlier statements of the Supreme Court of appeal in the *Lemthongthai*¹⁴ case that “[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general”. It held that “[a]nimal welfare and animal conservation together reflect two intertwined values.”

We propose that there be express inclusions in the Preamble, Objects, Principles and other relevant sections with regard to the above as appropriate, including for example that:

- A. animals are separately defined and included in the Bill;
- B. that the recognition of the intrinsic value of animals as well as biodiversity be incorporated into the Climate Change the Bill;
- C. the recognition of the key role which animals as well as biodiversity play in tackling climate change;
- D. the recognition that protecting animals as well as biodiversity and their habitats can play a critical role in the achievement of the objects and purpose of the Bill;
- E. the misuse, exploitation and other infringement of the interests of animals (such as through harmful activities including but not limited to animal agriculture and fishing) contribute to climate change, greenhouse gas emissions and have many negative consequences; and
- F. other relevant inclusions in recognition of the importance of the intrinsic value of animals as well as biodiversity and their role as appropriate in the Bill.

The proper revision and implementation of the Climate Change Bill is necessary and urgent to re-align conservation measures relating to all forms of biodiversity and mitigate the effects of climate change with the Constitutional imperative of adopting an integrative approach towards the environmental right which we have outlined above.

¹⁰ *Lemthongthai v S* (849/2013) [2014] ZASCA 131; 2015 (1) SACR 353 (SCA) (25 September 2014).

¹¹ *National Council of The Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others* (86515/2017) [2019] ZAGPPHC 367; [2019] 4 All SA 193 (GP) (26 August 2019)

¹² *Ibid* at paragraph 45.

¹³ *National Society for the Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* (CCT1/2017).

¹⁴ *S v Lemthongthai* [2014] ZASCA 131; 2015 (1) SACR 353 (SCA).



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The constitutional environmental right provides for the securing of ecological sustainable development. This has traditionally been done by means of balancing the social, economic and environmental in granting the authorisation of activities. It bears mention here that the Constitution requires ‘ecologically sustainable development’ which entails a type of sustainable development that places emphasis on environmental considerations and as such places the environmental value centre-stage.¹⁵ Ecological sustainable development entails a systematic acknowledgment of environmental concerns conceptualised as a set of interconnected ecological pressures that require a similarity interconnected economic, social and political response.¹⁶

In order to protect the environment, the abovementioned environmental right envisages that reasonable legislative and other measures be put in place to secure ecologically sustainable development, whilst ensuring the further promotion of justifiable social and economic development.¹⁷ These legislative and other measures should, as a minimum, ensure the protection of ecological protection of individual animals, ecosystems and biodiversity at large. Furthermore, we submit that in an instance where significant risk is placed on the sustainability of the environment, the State has an obligation to not only ensure the ecological integrity of the potentially affected environment, but take active measures to mitigate said impact over time while balancing it with justifiable economic and social development.

V. Inclusion of Key Sectors and Activities

While we recognise and acknowledge that there are a vast number of industries and entities which conduct extremely harmful activities which cause greenhouse gas emissions and contribute to climate change, to date there has been a massive gap in the recognition of certain activities and industries being that of animal agriculture (terrestrial and aquatic) as well as fishing activities. This can be seen clearly from South Africa’s NDC released in 2021.

Food production, processing, distribution, consumption, and waste account for nearly a third of total global greenhouse gas emissions. According to new research, changing the way we produce and consume food could cut at least one-fifth of the emissions needed to avoid catastrophic climate change.¹⁸ The maize crop, for instance, is likely to be substantially reduced if climate change goes

¹⁵ Feris 2008 CCR 252. Also see Murcott *Introducing Transformative Environmental Constitutionalism* 291-292.

¹⁶ Curran and Hollander 2015 *Australas J Environmental Management* 3. Also see Murcott *Introduction Transformative Constitutionalism* 292.

¹⁷ Ndlela T & Murcott M 2021 *Innovate Regulation of Meat Consumption in South Africa: An Environmental Rights Perspective* PER/PERJ (24) at 6.

¹⁸ Global Alliance for the Future of Food Social Media Pack - NDC Assessment Report & Toolkit [Future of Food: social plan for allies.docx](#) (accessed on 05 May 2022).



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unchecked.¹⁹ This is further compounded by the above-mentioned issues of a lack of water resources, heatwaves and droughts respectively.

Not only does climate change affect the yield and viability of these sectors, scientific research has revealed that globally, these sectors represent a significant climate change mitigation challenge.

As stated by Vinnari and Vinnari:²⁰

“The agricultural sector utilizes the majority of the ice-free land area; it is the largest consumer of freshwater and has a substantial impact on biodiversity. Moreover, animal agriculture produces large amounts of greenhouse gases, both directly through rumination and indirectly through deforestation and desertification. Such problems are expected to become more pronounced over the next 50 years.”

Our primary concern is that the fishing and agricultural sectors have previously not been and risk not being specifically and properly addressed as key contributors to greenhouse gas emissions and climate change. However, the fishing and agricultural sectors, which form part of our food systems, account for substantial use of natural resources and are a major contributor globally to environmental degradation and climate change. Meat production in industrial agricultural practices in particular is a significant contributor to socio-ecological harms, especially the emission of GHGs and contribution of climate change.²¹

In view of such scientific research, the United Nations Food and Agricultural Organisation (“**FAO**”) reported in 2006 that industrialized livestock production is unsustainable. Notwithstanding the FAO’s findings, meat consumption in South Africa is not only increasing, but is being actively promoted and supported by the government, ignoring ecological realities. South Africans are responsible for the highest levels of meat consumption on the continent and have been globally ranked 8th in terms of the highest level of poultry consumption per capita, and 16th with regard to beef consumption per capita.

An IPCC Special Report²² on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems provides key information for policy makers and indicates that:

¹⁹ Scholes R & Engelbrecht F (2021) Climate impacts in southern Africa during the 21st Century: Report for the Centre for Environmental Rights available at <https://cer.org.za/reports/climate-impacts-in-southern-africa-during-the-21st-century> (Accessed on 05 May 2022).

²⁰ Vinnari, M., Vinnari, E. A Framework for Sustainability Transition: The Case of Plant-Based Diets. *J Agric Environ Ethics* **27**, 369–396 (2014). <https://doi.org/10.1007/s10806-013-9468-5>
<https://link.springer.com/article/10.1007/s10806-013-9468-5>

²¹ Poore and Nemecek 2019 *Science* 360 1-2; Petrovic et al 2015 *Procedia Food Science* 235-237; FAO State of Food and Agriculture 53-71; Tuomisto and Teixeira de Mattos 2011 *Environ Sci Technol* 6117-6123.

²² IPCC Special Report <https://www.ipcc.ch/srccl/chapter/summary-for-policymakers/>



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“By 2050, dietary changes could free several million km² (medium confidence) of land and provide a technical mitigation potential of 0.7 to 8.0 GtCO₂eq yr⁻¹, relative to business-as-usual projections (high confidence).”

According to Harwatt 2018,²³ animal to plant-sourced protein shifts offer substantial potential for GHG emission reductions. Unabated, the livestock sector could take between 37% and 49% of the GHG budget allowable under the 2°C and 1.5°C targets, respectively, by 2030.

According to the Aquatic Life Institute:

“Reducing the amount of wild fish required for aquaculture feed is directly linked to climate change. One method in which fishes are caught to feed farmed fish is through bottom trawling, which produces a significant amount of carbon emissions. Reverseely, aquaculture will be increasingly affected by climate change in many ways, for example, through increasing ocean acidity, dissolved oxygen, and temperature, as well as more intense and unpredictable weather events.”²⁴

Around the globe, leaders and governments (at all levels) are taking proactive measures to curb emissions from the agricultural, aquaculture and fishing sectors and transition to less harmful alternatives. Scientific studies are illustrating the fundamental link between reducing GHG emissions and transforming current food systems – specifically a shift away from industrialised animal agriculture and fishing. Yet, South Africa continues to promote and support these sectors and has not comprehensively or coherently addressed their harmful impacts in efforts to tackle emissions and climate change.

It is accordingly deeply concerning that government continues to actively promote extremely harmful activities, sectors and industries despite knowing that these are major emitters of GHG emissions and contribute significantly to climate change and the climate emergency. This includes for example:

- A. The Poultry Sector Master Plan by the Department of Trade Industry and Competition; and**
- B. Operation Phakisa and particularly the promotion of aquaculture, fishing and offshore oil and gas activities by the Department.**

It is submitted that such policies are fundamentally in contradistinction to the objects of the Bill and should such policies and plans continue to be promoted and implemented by government- this could be seen as a direct breach of the Bill and governments obligations in terms of the Constitution, and environmental legislation.

There should accordingly be direct obligations on government to find alternatives to such policies and plans which can aim to achieve the objectives of such plans and policies in a less harmful way in order to promote the objects of the Bill.

²³ Helen Harwatt (2019) Including animal to plant protein shifts in climate change mitigation policy: a proposed three-step strategy, Climate Policy, 19:5, 533-541, DOI: [10.1080/14693062.2018.1528965](https://doi.org/10.1080/14693062.2018.1528965)

²⁴ Aquatic Life Institute: <https://drive.google.com/file/d/1LjmZ-JRMVTcxYW7RocLdv4WqllYt2Z91/view>



In addition, mechanisms to reduce GHGs must be incorporated into the relevant environmental and animal (and other) regulation as appropriate. One example would be a “*ban on bottom trawling to reduce bycatch, use of ghost gear, fish mortality, destruction of seabed habitats and carbon emissions...Promote regenerative ocean and seaweed farming, both of which can provide benefits of carbon sequestration, restoration of ocean ecosystems, and addressing the global plastics crisis.*”²⁵

This could for example be implemented through provisions of the Marine Living Resources Act, 1998 or other regulation. The Bill must not only empower such amendments to legislation, but require them, in order to achieve its purpose.

In our submission in April 2021, together with the Environmental Law Association of South Africa, we submitted our initial comments on South Africa’s updated draft Nationally Determined Contribution (“NDC”)²⁶. There are a number of comments raised in that submission that apply equally to the Bill. We hereby incorporate by reference hereto our submission and comments on the NDC. We note that to date, the final NDC has not been published and we have not received responses to our submissions.

VI. Failure to Recognise the Climate Emergency / Crisis

The Bill fails to recognise that we are in a **climate emergency and crisis** and that a “business as usual” or “slap on the wrist” type approach in dealing with climate change and GHG emissions is simply not enough. The Bill does not adequately address the current calamity we are heading for should urgent action not be taken. We have included in Appendix I hereto some information relating to examples of such emergency, however we are of the view that consulting the IPCC Report (or the plethora of other scientific information on the subject) should easily illustrate some of the relevant information in this regard.

The lack of recognition of climate change as **an emergency or crisis** and lack of urgency can be seen in the absence of specific timeframes contained in the Bill. A number of provisions completely lack any indication of timing – leaving these open-ended and apparently
In other instances where timelines are included, these are unduly long and unreasonable – particularly with regard to the purposes of the Bill. In such instances, these timelines must be reduced as appropriate in recognition of the need for imminent and urgent responses.

VII. Protection of Natural Climate Change Tools

While reducing GHGs it critical in tackling climate change, the importance of protecting carbon sinks must be included. These include but are not limited to the ocean, forests and soil. There should be

²⁵ *Ibid.*

²⁶ ALRSA and ELASA NDC Submission (2021) <https://www.animallawreform.org/wp-content/uploads/2021/04/NDC-Submission-ALRSA-and-ELA.pdf>.



express obligations to ensure the preservation and protection of carbon sinks and appropriate powers to do so. Additionally, further carbon sinks should be created where possible.

Harm caused to such carbon sinks and activities which negatively impact these need to be adequately addressed as offences and penalised.

VIII. Failure to Recognise Impacts on Vulnerable Groups

In addition to nonhuman animals as further set above, currently, the Bill fails to adequately address the impact of climate change on other vulnerable groups. This includes but is not limited to those who are disproportionately impacted by the effects of climate change including already vulnerable social populations.

IX. Lack of Transparency, Accountability and Action

The Bill lacks appropriate measures to insure transparency and access to critical information. Given that the climate crisis impacts on the public and guaranteed constitutional rights, it is in the public interest to have appropriate mechanisms and forced disclosures of activities and omissions that fall within the ambit of the Bill. These transparency requirements should apply to all relevant actors including the state, private sector and public to the extent appropriate. This will ensure proper accountability and action in the face of the climate emergency.

The public has a legitimate interest in knowing whether or not the State is complying with its Constitutional obligations to take reasonable measures to protect the environment for the benefit of present and future generations and whether emitters are in compliance with the Bill. Section 32(1) of the Constitution guarantees the right to any information held by the State and other parties. Section 32(2) of the Constitution mandates the enactment of national legislation to give effect to the right in section 32(1).

Access to information serves as an integral gateway for civil society organisations and communities to access information relating to a range of rights and issues. Furthermore, the realisation of section 24 of the Constitution is dependent on the ability of individuals, communities, civil society organisations and others to access information about the state of the environment.

The objects of PAIA expressly include that procedures and mechanisms must be developed to allow the public to obtain access to records of public bodies as “swiftly, inexpensively and effortlessly as reasonably possible” as well as “generally, to promote transparency, accountability and effective governance of all public ...bodies”.²⁷ However, given the timelines and other issues associated with PAIA requests, these transparency mechanisms need to be built into the Bill. There therefore needs

²⁷ PAIA, section 9.



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to be automatic disclosure obligations in terms of issues relating to the Bill and these need to be accessible by the public.

Further, section 2 principles of NEMA, which serve as guidelines by reference to which DFFE is required to exercise any function relating to the protection of the environment, incorporate the principles that “the participation of all interested and affected parties in environmental governance must be promoted”,²⁸ that “decisions must take into account the interests, needs and values of all interested and affected parties”²⁹ and that “decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law”.³⁰

X. Insufficient Targets and Obligations

In order to achieve the purposes of the Bill, there needs to be clear targets to reduce emissions. A contemplated in the Paris Agreement, there needs to be reductions to achieve the targets of limiting global warming to well below 2, preferably to 1.5 degrees Celsius, compared to pre-industrial levels.³¹

Other countries to the Paris Agreement have included specific targets in their national laws and policies in pursuit of achieving their obligations in the Paris Agreement – and South Africa must to the same.

Without clear targets, the Bill is vague and open to interpretation and abuse and lacks the strength needed to achieve its purpose.

XI. Inadequate Enforcement and Compliance Mechanisms

The Bill lacks proper enforcement mechanisms to ensure compliance. This can be seen in the penalties and list of offences. Given the importance of non-compliance with the Bill and the far-reaching consequences, the offences and penalties need to be expanded. There are many issues for which there are no penalties – including exceeding carbon budgets.

There should be administrative penalties relating to the permits and licensing of activities – which should be revocable based on non-compliance and other failures. In addition, there needs to be further criminal penalties.

In the interests of not hiding behind the corporate veil, in certain circumstances, personal liability should be included as appropriate.

²⁸Section 2(4)(f) of NEMA.

²⁹Section 2(4)(g) of NEMA.

³⁰Section 2(4)(k) of NEMA.

³¹ UNFCCC Paris Agreement: <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>



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There are major issues with the enforcement of current environmental regulation, particularly insofar as it relates to climate change as well as the authorisation of carbon budgets.

Inadequate resourcing of government departments and agencies is commonplace within the country and as a result this creates skepticism in respect of the practical enforcement and monitoring of mitigation measures where responsibility for these activities sits with the government.³²

In respect of financing, success for climate change depends crucially on companies being held responsible for generating sufficient compensatory biodiversity gains, irrespective of the costs of such activity.³³ This is an imperative in relation to mitigation of climate change.

**XII. Lack of Obligations, Duties, Powers, Responsibilities and Assistance on State/
Government**

There are various provisions in the Bill which require governments at different levels to undertake certain activities, provides for duties or powers. However, in order to comply with such obligations there needs to be appropriate capacity and assistance to the relevant state entities to perform such duties. Capacity building, education and training and provision of resources are key components in ensuring the achievement of obligations. In addition, there needs to be dedicated funding to ensure enforcement in terms of the Bill.

Given the far-reaching nature of the impacts on climate change, which as aforementioned impact on virtually every other constitutional right, it shall be an express requirement and responsibility on all state departments at all levels to properly consider the Bill and the impacts on climate change when undertaking administrative action and performing their duties, including in decision-making. There should be an express provision indicating that the Bill and its relevant sections are binding on all state entities, which are required to give due consideration to the Bill.

This needs to include legally binding duties on state to, for example, not authorise new activities which cause or exacerbate climate change. There needs to also be an obligation to phase out activities which do so.

Furthermore, there are a number of examples in the Bill which reference certain obligations being non-obligatory through the words of “may”. It is submitted that in many instances – those provisions should be changed to mandatory requirements and duties – through the use of the word “must”.

³² Jenner N and Balmforth Z (September 2015) Biodiversity offsets: Lessons learnt from Policy and Practice Country Summary Report: South Africa Business & Biodiversity Programme Fauna & Flora International available at https://www.fauna-flora.org/app/uploads/2017/12/FFI_2015_Biodiversity-Offsets-South-Africa.pdf (accessed on 22 April 2022).

³³ Ibid.



XIII. Public and Civil Society Consultation and Engagement on the Bill and All Aspects Thereof including the Presidential Climate Commission

Give the far-reaching and immense impact of the Bill on the South African population, the very short timeframe for commenting on the Bill (30 days) and the rights of consultation and just administrative action (among others) as contained in the South African Constitution and other relevant legislation, it is submitted that there needs to be proper and adequate public consultation and engagement on the Bill.

Furthermore, NGOs and representatives of civil society, including those who represent vulnerable groups of humans, nonhuman animals and the environment, should be invited to participate in all relevant aspects relating to the Bill (Act). In order for the Bill to achieve its aims, there must be representatives from all interested parties.

One example is the Presidential Climate Commission which must include among its representatives from civil society, those involved in the protection of nonhuman animals and biodiversity.

Furthermore, in the implementation of the Bill (Act), the public and groups representing civil society as aforementioned shall be granted similar rights of consultation.

XIV. Application of the Bill

The Bill must out of necessity apply to all state departments, private entities as well as natural persons. This should apply to all actions which have an impact on climate change and aspects covered in the Bill and must be included as appropriate throughout.

XV. Best-Practices and Provisions and Progressive Inclusions from Other Countries

Given that a number of countries have enacted climate legislation to comply with their obligations in terms of the Paris Agreement as well as to tackle the climate crisis, South Africa could incorporate some of the best practices from other countries and adapt these accordingly into the Bill.

South Africa has an opportunity to be a leader in the African continent with its response to the climate emergency, which we know will impact the continent immensely. Such provisions could be applied across many of the current sections in the Bill but could also include progressive incorporations such as those relating to education and including climate change into school curriculum to empower future generations with the necessary knowledge and skills to protect the planet.

Part II: Selected Objections to and Issues with The Climate Change Bill (Non-exhaustive)

I. Introduction

As provided for in Part I one, there are a number of general comments which apply to the entirety of the Bill or specific sections. For purposes of this Part II, we have provided a few selected examples (non-exhaustive) of certain sections where such proposals could be included in particular sections of the Bill.

Please note that the specificity of this section should not derogate from the general comments made in Part I which apply to all relevant sections of the Bill as appropriate.

In addition, as per our endorsement of: the Submissions made by (i) the Wild Law Institute and the EMS Foundation and (ii) the Centre for Environmental Rights on the Climate Change Bill submitted on 27th May 2022 respectively, we wish to note their specific amendments represented on the Bill - to the extent that these are not in conflict with our Submission, and can be read in the context of one another in a cooperative way.

II. Preamble

The preamble to the Bill should include additional recordals including that:

- A. It is not only human societies who are impacted by climate change – but all life on Earth including animal societies and life, plant life, fungi and microorganisms (or a similar inclusion such as that aligned to NEMA);
- B. There should be an explicit inclusion of human rights as contained in the Constitution, and as interpreted by the South African courts;
- C. We are in a climate emergency and crisis (i.e., not just referencing climate change) – and that urgent action is required (i.e. not just “incremental” as currently included);
- D. Animal agriculture and fishing should be included as key industries and activities which cause greenhouse gas emissions, and which contribute to climate change;

III. Objects

In section 2 of the Act, a number of important objectives are set out. However, it is problematic that one of the objects in section 2j is: “*protect and preserve the planet for the benefit of present and future generations of humankind*.” (emphasis added).



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Firstly, this wording is not reflective of the wording in section 24 of the Constitution which refers to “*to have the environment protected, for the benefit of present and future generations*”. There is no mention of this only applying to humankind. In fact, if we are to ensure any of the objects in the Bill are fulfilled, **we must out of necessity** look to preserving current and future generations of all life – including nonhuman animals, plants, fungi, microorganisms and others.

In addition, we note that Section 24 includes such entities in its ambit – which can be seen in legislation such as the National Environmental Management Act, 1998. In addition, the Constitutional Court, the Supreme Court of Appeal and others have explicitly stated that section 24 includes animals – as well as their welfare.

Accordingly, this wording should be amended to remove reference to “of humankind” altogether or include “present and future generations of life on Earth”.

IV. Principles

Section 3b must similarly be amended to remove reference only to humankind and to include all life on Earth and not only humankind.

The intrinsic value of animals as individuals and biodiversity, must be included as a key principle of the Climate Change Bill.

V. Application of Act

Although we commend the recognition in section 4 of the obligation on the state in respect to addressing climate change, the state is not the only actor that has obligations and duties in respect of the Bill nor climate change. On this basis, the climate change Bill must apply to all organs of State, the private sector as well as natural persons, as applicable. Lastly, we believe that the emitter can be any person conducting an emitting activity and as such should apply to ‘any person conducting an emitting activity as contemplated within this Bill’.

VI. Greenhouse Gas Emissions and Removals: Natural Greenhouse gas emissions trajectory

Due to the abovementioned urgency of the issue of climate change, the wording in section 21(4)(b) be altered to ‘must’. This places an obligation on the State to ensure that the national GHG trajectory is updated regularly. This, we note, is made throughout the Bill in its totality and requires urgent revision and addressing.



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VII. Sectoral Emissions Targets

Section 22(2) of the Bill is unqualified and incomplete. The Bill contains the considerations that the Minister will take in consideration when varying the respective sectors and sub-sectors subject to sectoral emissions targets. Furthermore, as stated above, due to the urgency of the identification of sectors and sub-sectors that are, in the eyes of the State, subject to sectoral emission targets, provide the considering factors in respect to which sectors and sub-sectors are indeed subject to these emission targets.

VIII. Listed Greenhouse Gases and Activities

With reference to Sections 23(1) and (2) of the Bill, we submit that the list of greenhouse gases further explicitly include the various industries highlighted in Part I of this Submission with specific GHG gases released in each respective industry. This should include specific GHGs released in relation to animal agriculture, fossil fuel combustion, etc.

Section 23(3)(d) is vague, and we require clarity in respect of the scope of these transitional provisions and specific arrangements to listed activities including aspects of timeframe for transitions for these activities; monitoring of reduction/transition away from the release of these GHGs.

IX. Carbon Budgets

The listed considerations in section 24(2) of the Bill must include the environmental damage in respect of the proposed activity and short-, medium- and long-term effects of the activity on the climate as well as the present and future generations as already specified. As it stands, the budget seems to be the focus of the socio-economic impacts, i.e. will allocating a hefty budget will affect the people. This is a highly anthropocentric approach.

Furthermore, we submit that (e) is insufficient and leaves room for inaction on the part of those conducting these emitting activities.

This should further include reasonableness in relation to the impact posed by these sectors and sub-sectors respectively. This, we believe, will further ensure accountability and application in relation to those who contribute towards climate change from the state down to individual emitters.

We request the state to provide a reasoning as to the length of a specific allocation, i.e why does a carbon budget receive **at least** three successive five-year periods in duration, with no maximum period for an allocation being included.



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The mitigation plan should not only obligate actors to stay within the allocated limit but further obligate those active steps be taken in order for them to prove how they will further reduce their carbon footprint. This should be a condition and express provision in every mitigation plan.

In respect of section 6(e), what exactly is being done in order to address the aspect of mitigation and reduction of GHG emissions by these persons?

Furthermore, failure to comply with an allocated carbon budget should have serious repercussions. We propose that a further subsection be added providing:

“(f) reporting should show measures taken in order to further reduce GHG emissions and progress in this respect.”

X. Short title and commencement

Due to the urgency of the climate change issue and the slow process in enacting and promulgating this act, (in terms of Section 35) the Act should commence upon assent by the president and immediate publication in the Gazette, not on a date fixed by him. His assent should automatically bring this into operation without any delay.



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Appendix I

The Climate Crisis

I. The rate of global climate change is largely due to human action

The primary causes of global warming and climate change is the burning of fossil fuels and the transformation of the global land surface from natural vegetation to croplands, pastures and human settlements.³⁴ Human behaviour is regarded as being responsible for the progression of many environmental harms, including climate change, which has been proven to be a tremendous threat to the environment and survival of human and non-human animals.³⁵ It is estimated that nearly three-quarters of the global warming effects are derived from fossil fuel combustion³⁶.

As mentioned in previous submissions made by ALRSA on South Africa's Nationally Determined Contributions (NDCs), the NDC states that the Integrated Resource Plan (IRP 2019) 'requires' a 'shift away from coal', yet Decision 6 of the IRP 2019 states that 'South Africa should not sterilise the development of its coal resources for purposes of power generation, instead all new coal power projects must be based on high efficiency, low emission technologies and other cleaner coal technologies'. Decision 6 suggests that there is no real intention to 'shift away from coal' – instead, South Africa appears to be locking itself into an inefficient energy source that will soon become more expensive than alternative and cleaner energy sources.

It bears mention here that the Constitution requires 'ecologically sustainable development', and a commitment to an energy source that undermines this constitutional mandate is disconcerting. As such, the inclusion of the significantly impactful industry of fossil fuel combustion is of paramount importance in addressing climate change within the country.

II. Southern Africa's vulnerability to the effects of climate change

According to IPCC reports on climate change, Southern Africa has been identified as a climate change 'hotspot' where the impacts of climate change are abnormally high in a global context. This has already become evident in South Africa. On 11-13 April 2022, severe flooding and landslides caused by heavy rainfall affected southern and south-eastern South Africa, particularly the Provinces

³⁴Scholes R & Engelbrecht F (2021) Climate impacts in southern Africa during the 21st Century: Report for the Centre for Environmental Rights available at <https://cer.org.za/reports/climate-impacts-in-southern-africa-during-the-21st-century> (Accessed on 05 May 2022).

³⁵Vlek and Steg 2007 JSI 1-2. In Vumbhoni Critical Analysis of the Law on Duty of Care to the Environment 15.

³⁶2010-2019 for CO₂, 2008-2017 CH₄, 2007-2016 for N₂O. These data are from the Global Carbon Project 2020 summaries (<https://www.globalcarbonproject.org/carbonbudget/20>) (accessed on 10 May 2022)



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of KwaZulu-Natal and Eastern Cape. According to national authorities, 443 people died in KwaZulu-Natal and over 40,000 are reported as missing.³⁷ It is further alarming to note that as a result of this flood, more than 40,000 people have been displaced, while nearly 4,000 houses were destroyed and more than 8,000 others were damaged, mostly across Durban City and its surrounding areas.³⁸ The risk of severe storms, including intense tropical cyclones and very intense thunderstorms, increases with climate change in southern Africa. As a result, loss of life, injury and damage to infrastructure also increases.

III. The reduction of freshwater resources in South Africa as a result of climate change

According to the Second National Climate Change Report 2017 it was stated that:

“Water is the primary medium through which the impacts of climate change are being felt in South Africa according to the National Water Resource Strategy.... Increases in climate variability and climatic extremes are impacting both water quality and availability through changes in rainfall patterns, with more-intense storms, floods and droughts; changes in soil moisture and runoff; and the effects of increasing evaporation and changing temperatures on aquatic systems.”

South Africa is already a water-scarce country, due to the combination of an inherently low and variable rainfall, high evaporative demand, and a rapidly rising demand for water for activities such as agriculture, industries and urban areas.³⁹ Freshwater availability, already critically limited in southern Africa, will be reduced in future as a result of decreasing rainfall and increasing evaporation. These impacts will amplify as the level of global warming increases. Water quality also decreases in a warmer, drier southern Africa, increasing the risk of water-borne diseases. The impacts of climate change on freshwater resources availability in southern Africa are projected to become increasingly negative as the level of global warming increases.⁴⁰

As the average temperature of surface water bodies rises, it leads to a deterioration in water quality through processes such as increased biological oxygen demand, algal blooms and the proliferation of pathogenic microbes.⁴¹ Ongoing issue of water pollution coupled with the impacts of climate change, resulting in reduced river flows which serve to dilute the pollutants and flushing them out of the natural water system, has a detrimental effect on humans and aquatic ecosystems.

³⁷ South Africa: Floods and Landslides - Apr 2022 | ReliefWeb (accessed on 05 May 2022).

³⁸ *Ibid.*

³⁹ Scholes R & Engelbrecht F (2021) Climate impacts in southern Africa during the 21st Century: Report for the Centre for Environmental Rights available at <https://cer.org.za/reports/climate-impacts-in-southern-africa-during-the-21st-century> (Accessed on 05 May 2022).

⁴⁰ *Ibid.*

⁴¹ *Ibid.*



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IV. The increase of long-duration droughts as a result of climate change

Southern Africa is particularly vulnerable to climate change because of its geographical location and socioeconomic development state. It is an already warm and dry region, projected to become warmer and drier, and has many demands on its institutions and finances in addition to climate change.⁴² Warming in the interior of Southern Africa is occurring at about twice the global average rate. Furthermore, systematic increases in extreme temperature events such as heat-waves and high fire-danger have also been recorded over years.⁴³ In 2015-2017, Cape Town has already experienced a reduction in water resources deriving from droughts and has increased by a factor of three due to climate change and, if left unchecked, will increase further as global warming intensifies.⁴⁴ Droughts such as these cost the country millions in drought relief expenditure. The most recent drought in the country cost R2.5 billion. These costs will only increase as climate change increases.

The likelihood of long-duration droughts increases in the future because of two fundamental mechanisms resulting from global warming: the strengthening of subsidence over southern Africa, and the poleward movement of frontal systems. The increase of the duration, severity and frequency of droughts places pressure on agricultural and water supply systems within the country.⁴⁵

V. An increase of the number, intensity and duration of heat waves

Substantial changes in the number of extreme temperature and weather events in southern Africa have already been detected and the number, intensity and duration of heat waves in South Africa will increase steeply in future as a result of global warming. The capacity to perform manual labour out of doors decreases dramatically as the occurrence of heat waves increases. Human mortality increases, particularly in urban areas with inadequate housing, but may in some locations be offset by decreases in mortality as a result of fewer cold spells.

VI. The impact of climate change on the yield, viability of major agricultural and aquaculture production

All crops also have a requirement for a minimum period of adequate soil moisture to complete their life cycles. Extremely drought-tolerant crops such as millet and sorghum need about 60 days, while maize needs 90 to 120 days, and some tropical fruits need moisture throughout the year. Generally, within their lower to upper tolerance ranges, crop yields in South Africa increase more-or-less linearly with increasing soil moisture duration in the growing season.⁴⁶

⁴² *Ibid.*

⁴³ Kruger A.C. and Sekele S.S. (2013). Trends in extreme temperature indices in South Africa: 1962–2009. *Int. J. Climatol.* 33 661–676.

⁴⁴ Otto F.E.L. et al. (2018). Anthropogenic influence on the drivers of the Western Cape drought 2015–2017. *Env. Res. Letters* 13 124010.

⁴⁵ *Ibid.*

⁴⁶ *Supra note 39.*



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The continued decrease of soil moisture and rising temperatures further decrease crop yields for most crops within the country. The capacity to compensate by increasing irrigation is limited by the shrinking water supply within the country. Overall, agriculture as an economic sector (including downstream value addition) in South Africa is already under climate stress. The stress increases with global warming, bearing in mind that temperatures over the interior of South Africa rise at an above-average rate, and the net trend in the region is towards drier soils. In 2019, 6.5 million South Africans (11% of the population) were classified as food insecure. The risk of food insecurity, and in particular national food sovereignty, increases in Southern Africa for a 1.5 °C global mean temperature rise, and increasingly so for warming above that level.⁴⁷

VII. The risk of damage to infrastructure from increasingly severe storms and flooding

As previously mentioned, the most recent floods occurring in KwaZulu Natal have not only resulted in the loss of human life, but severe damage of the area's infrastructure: roads, health centres and schools.⁴⁸ The high winds, elevated sea levels and extreme precipitation associated with cyclones result in loss of life, injury and major damage to coastal infrastructure, such as buildings, roads and bridges. They also pose risks far inland, after they have weakened to tropical depressions, which nevertheless result in flooding. Cyclone Idai in March 2019 affected 2.2 million people, caused more than 2000 deaths, damaged about 100 000 homes and crop and infrastructure losses in excess of USD 773 million.⁴⁹ The increase in frequency of extreme weather events such as rainfall, floods, hail and damaging winds associated with thunderstorms are the risk of hail damage to crops, people, property, livestock, infrastructure and landscapes. This would result in further expenditure and cost to a vulnerable country like South Africa in order to address the impacts of such extreme weather conditions.

VIII. The increased risk of premature extinction to biodiversity as a result of climate change

South Africa is one of 17 'mega biodiverse' countries worldwide. The emerging 'green' economy is built on this biological richness and diversity. South Africa, principally due to habitat loss and degradation, 14% of plants, 17% of mammals and 15% of birds are currently classified as threatened with extinction. Human wellbeing in turn crucially depends on the continued existence of well-functioning and sustainable ecosystems to provide services such as clean water, breathable air, a well-regulated climate and control of pests and diseases.

⁴⁷ Thornton, P. K. and M. Herrero, 2015: Adapting to climate change in the mixed crop and livestock farming systems in sub-Saharan Africa. *Nature Climate Change*, 5(9), 830-836, doi:10.1038/nclimate2754, 105(1-2), pp.61-68.

⁴⁸ [South Africa: Floods and Landslides - Apr 2022 | ReliefWeb](#) (accessed on 05 May 2022)

⁴⁹ Fitchett, FM 2018. Recent emergence of CAT5 tropical cyclones in the South Indian Ocean. *S. Afr. j. sci.* vol.114 n.11-12 Pretoria Nov./Dec. 2018 <http://dx.doi.org/10.17159/sajs.2018/4426> (Accessed on 10 May 2022).



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Thousands of species, many occurring only in southern Africa, are at increased risk of premature extinction as a result of human-caused climate change. This loss has negative consequences for human wellbeing and the economy, as well as weakening the capacity to adapt to climate change.⁵⁰ Although wild species have adapted to past climate changes, this occurred at a slower rate than currently experienced due to Anthropogenic climate change. The risk of extinction rises even more steeply with climate change and its related effects. As evident from the above, the rapid effects of human activity, and the fragmentation of habitats by humans means that organisms and ecosystems cannot easily adapt to or mitigate the effects of climate change.

To this effect, we posit that the Climate Change Bill encompasses the vision of intrinsic value of biodiversity and mitigation measures in order to achieve this goal throughout the bill. Environmental degradation and the impacts on sustained life for all on Earth has become a global concern. Climate change is one of the Anthropocene effects on continued life for both humans and non-humans. Climate change is having a detrimental impact on the biodiversity and structure of global ecosystems.⁵¹

The Earth's climate system has changed since the pre-industrial revolution, relative to the pre-industrial climate, is beyond scientific doubt. Climate change impacts include but are not limited to increases in the temperature over land and oceans and the rise in the sea level.⁵² Climate change is already a measurable reality posing significant social, economic and environmental risks and challenges globally. Like many other developing countries, South Africa is especially vulnerable to the impacts of climate change.⁵³

The cumulative effects of climate change have already begun to take hold in Africa.⁵⁴ This has had human impacts due to severe weather changes, such as the most recent case of KwaZulu-Natal.⁵⁵ Various international and national assessments and research papers have stated that South Africa is likely to be vulnerable to the adverse effects of climate change.⁵⁶

There is no scientific doubt that the climate of southern Africa is becoming warmer, the atmospheric concentration of greenhouse gases is increasing and the sea level surrounding the continent is rising.⁵⁷ South Africa remains committed to making a fair contribution towards addressing GHG emissions

⁵⁰ *Supra note 39.*

⁵¹ Imbert J et al, Synergies between Climate Change, Biodiversity, Ecosystem function and Services, Indirect Drivers of Change and Human Well-being in forests (2020). Retrieved from www.link.springer.com/chapter/10.1007/978-981-15-7301-9_12.

⁵² *Supra note 39.*

⁵³ South Africa Second National Climate Change Report 2017 at page 7.

⁵⁴ Intergovernmental Panel on Climate Change Synthesis Report (2014:90)

⁵⁵ See [South Africa: Floods and Landslides - Apr 2022 | ReliefWeb](#) (accessed on 05 May 2022).

⁵⁶ Midgley G 'Scientific Aspects of Climate Change and their Impacts in South Africa' in Humby et al 'Climate Change, Law and Governance in South Africa' (2016) 2-1.

⁵⁷ *Supra note 39.*



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however this is done subject to its developmental objectives in light of poverty elimination and the eradication of inequality.⁵⁸

South Africa has announced that it would act voluntarily to reduce domestic GHG emissions.⁵⁹ This is evident from the statement that the country will contribute its fair share towards the common responsibility for the future and commit itself to having its actions be measurable, reportable and verifiable.⁶⁰ This stems from arguments made by countries that are at-risk, including South Africa, that restricting global warming to 2 degrees Celsius will be insufficient in the prevention of dangerous climate change effects to be felt within the country.⁶¹

South Africa refers to climate change as an ongoing trend of change in the Earth's general weather conditions as a result of an average rise in the temperature of the Earth's surface often referred to as global warming.⁶² Climate change seriously threatens to undermine many of the sustainable development advances being made in South Africa.⁶³ The state has expressed its vulnerability to the impacts of climate change, particularly in respect of water and food security as well as health, human settlements, infrastructure and ecosystem services.⁶⁴

South Africa has stated that the key challenge for South Africa is to drive, at an economy-wide scale, financing of and investing in the transition to a low carbon and climate resilient economy and society.⁶⁵ The strengthening of domestic institutions in developing countries is imperative towards addressing climate change and its effects.⁶⁶

The world has made various commitments to mitigate climate change and the degree of future global warming largely depends directly on international and national policy in order to address this global issue.

⁵⁸ South Africa's Intended Nationally Determined Contribution 2. Also see Kotze L et al 'Climate Change Law and Governance in South Africa – Setting the Scene' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 1-24.

⁵⁹ Statement by South Africa to the UNFCCC COP 13 Plenary, 12 December 2007 available at www.environment.gov.za accessed (07 March 2020).

⁶⁰ Official letter to the UNFCCC dated 29 January 2010 available at https://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/southafricacphaccord_app2.pdf accessed (07 March 2020). Also see Brown DA, Glider A & Kotze L 'South Africa and Climate Change Ethics' in Humby T et al 'Climate Change Law and Governance in South Africa' (2016) 7-6.

⁶¹ *Supra note 39*.

⁶² The National Climate Change Response White Paper, 2011 8.

⁶³ Midgley G 'Scientific Aspects of Climate Change and their Impacts in South Africa' in Humby et al 'Climate Change, Law and Governance in South Africa' (2016) 2-12.

⁶⁴ South Africa Intended National Contribution to the UNFCCC p1 available at <https://www4.unfccc.int> (accessed 25 March 2020)

⁶⁵ *Ibid*.

⁶⁶ Wang X et al 'Research and scholarship on climate change law in developing countries' in Farber DA and Peeters M (eds.) 'Climate Change Law' (2016) 122.