THE CLIMATE ACTION HANDBOOK

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FOR SOUTH AFRICA

A Tool for Building Climate Resilience through Legal Empowerment

MATURAL JUSTICE

HEINRICH BÖLL STIFTUNG CAPE TOWN South Africa | Namibia | Zimbabwe

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INTRODUCTION

Climate change is not just an abstract concept or something that will happen in the future. The impacts and consequences are happening now and affecting individuals and communities around the world. When communities understand these impacts, and the law that applies to climate change, the environment and human rights, they can take climate action to affirm and defend their rights and to protect the environment.

We are inviting you and your community to be part of a larger community who are taking climate action and contributing to a just, equal and healthy society.



Objectives

This workbook has the following objectives:

- 1. To help you understand climate change and how it affects you and your community, currently and in the future.
- 2. To help you use the law to respond to climate change.

The second objective is called LEGAL EMPOWERMENT. What is legal empowerment? The main goals of legal empowerment are to:

- · Build your knowledge of the law and your rights;
- · Help you to use the law to assert your rights; and
- Help you to shape or influence the law so that your rights are realised and respected.



Expected Outcomes

You can expect the following outcomes when you have completed this workbook with the assistance of a community facilitator or paralegal:

- to understand climate change, how it impacts communities and what climate vulnerabilities are;
- to understand how local (environmental, social and economic) conditions can protect communities or expose them to climate change impacts;
- to understand the need to build climate resilience and what the key features of a climate resilient community are;
- to use your own knowledge to inform public participation and decision-making in actions that can reduce potential climate change impacts or respond to climate change vulnerabilities;

- to record environmental and land changes that occurred in the past, and connect these changes to climate change, or to natural processes and other events happening today;
- to become informed of legal mechanisms in place and how you can use the law to take climate action;
- to know how to participate in decision-making and know what questions to ask in relation to land and environment;
- to create a representative body or learn to use existing structures to take matters of climate action further;
- to identify problems and solutions, plan actions and carry out those plans to increase confidence in your own abilities; and
- together with your community, to become less dependent on outside agencies and organisations to find solutions and solve problems.

Chapter 1 CLIMATE CHANGE AND MY COMMUNITY



What is climate change?

Climate change is the significant long-term change to normal weather patterns as a result of changes in the atmosphere.

Weather refers to conditions over **short periods of time**, **in certain geographical areas**, whereas climate refers to **long-term regional or even global conditions**. Climate change is about the abnormal changes to the climate and how these affect the planet.

For example, if you have less rainfall during summer than other years, and this lack of rainfall continues for a long period of time or over a few years, you will experience drought conditions. Sometimes this might follow a natural cycle, but scientists are telling us that the cycles of changing weather patterns are no longer following a "natural cycle". They are becoming more severe and changes to the weather are more extreme.



Why is the climate changing?

Climate change is caused by human-induced greenhouse gas emissions above what the environment can naturally cope with. Greenhouse gases (GHGs) include carbon dioxide and methane.

Although carbon dioxide is part of a natural cycle, humans are releasing carbon dioxide into the atmosphere in large quantities through the use of fossil fuels (by using oil and gas, for example). Carbon dioxide is a natural heat trap, but trapping too much heat is not a good thing! We do not want the earth's surface to heat too much as this disrupts this natural cycle and causes changes to the climate. In turn, we experience climate impacts in our everyday lives.

Already, scientists are telling us that we are too late, and the earth's natural system is heating up too quickly. This increase in heat is changing the climate over time and we are already seeing changes to weather patterns and extreme weather events happening all over the world. The 2021 International Panel on Climate Change (IPCC) report warns that global warming of 2°C will be exceeded during the 21st century, unless rapid and deep reductions in CO₂ and other greenhouse gas emissions occur in the coming decades.

See the illustration on the next page.

THE DISRUPTED GREENHOUSE CYCLE





What contributes to greenhouse gas emissions?

Any industries or actions that burn fossil fuels to create energy emit GHGs. The use of any energy source, such as using electricity and burning coal, wood or oil, causes emissions of carbon dioxide.

Here are some examples of industries and sectors that contribute to carbon emissions:



TRANSPORT

Transport is a significant producer of carbon emissions because vehicles, ships, buses and planes burn fossil fuels (petrol, for example, is made from crude oil).



ENERGY

The production of energy for electricity is also a major source of carbon emissions, especially in countries that produce their electricity from coal-fired power stations.



AGRICULTURE

Carbon is also emitted through livestock and factory farming: eating beef, lamb, mutton and chicken is one of the significant ways that humans contribute to greenhouse gas emissions.



LAND USE CHANGES

Plants and trees, oceans, glaciers and healthy soils can help to naturally remove carbon from the atmosphere and can also store carbon. However, we are cutting down forests to make land available for animal farming and to supply wood and materials. We are polluting our ocean by treating it as a dumping ground for our waste. We are destroying our soils through poor farming practices. We are extracting fossil fuels from mines and from ocean wells. We are not only emitting too much carbon into the atmosphere but also destroying the natural places where it is removed and stored. When we are thinking of land use change, we should also consider alternative uses of the land that may be better suited for climate resilience.



THE VICIOUS CYCLE

There is also another process placing us in a vicious cycle. Not only are human-created emissions a problem, but natural systems that have stored carbon for thousands of years are affected by increasing heat and release GHGs when these systems are warmed. For example, the hotter the atmosphere becomes, the more the oceans and glaciers heat up and the more carbon is released.

Therefore, we are creating a cycle where more and more human-created and naturallystored carbon is released into the atmosphere, and we are destroying the ways that carbon can be stored. Let us consider the global trends of GHG emissions. Let us consider the global trends of GHG emissions.

CARBON EMISSIONS WORLDWIDE

50,000 45.000 40.000 35,000 30,000 25,000 20.000 15.000 10,000 5,000 0 1850 1860 1870 1880 1890 1900 1910 1920 1930 1940 1950 1960 1970 1980 1990 2000 2010 2020 2030 2040 Million tons of CO2 (Historic) Million tons of CO2 (Projected)

Global Carbon Dioxide Emissions, 1850-2040

Sources: Carbon Dioxide Information Analysis Center (Oak Ridge National Laboratory, 2017); World Energy Outlook (International Energy Agency, 2019)



Global Manmade Greenhouse Gas Emissions by Sector, 2013

Source: Climate Analysis Indicators Tool (World Resources Institute, 2017)



How climate change affects you

In order to better understand how climate change affects you and your community, let us first consider relevant scientific terminology:

- **Exposure:** The nature and degree to which a system is exposed to significant climate variations.
- **Sensitivity:** Sensitivity is the degree to which a system is affected, either adversely or beneficially, by climate-related stimuli. The effect may be direct or indirect.
- **Potential Impact:** All impacts that may occur given a projected change in climate, without considering adaptation.
- Adaptive Capacity: The ability of a system to adjust to climate change (including climate variability and extremes) to moderate potential damages, to take advantage of opportunities, or to cope with the consequences.

Vulnerability: The degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the character, magnitude, and rate of climate variation to which a system is exposed, its sensitivity, and its adaptive capacity.

The following diagram illustrates how these are all connected.¹



¹The Interac

Intergovernmental Panel on Climate Change (IPCC), a United Nations body that South Africa is a member of, provides this glossary. See IPCC Working Group 2, 2001. Third Assessment Report, Annex B: Glossary of Terms.



Climate impact, action and vulnerability in communities

What does it mean to be "impacted by Climate Change"?

This means that changes to the environment (caused by climate change) begin to have negative (adverse) effects on you and your community.

For example, a drought in your area means you are unable to gather water, which in turn means that you are unable to water your food garden and your vegetables may die. You have less or no vegetables to eat or sell.

What does it mean to be Climate Vulnerable?

Being climate vulnerable means that you and your community are at risk of experiencing or feeling changes to your climate that affect your community and way of life.

For example, a drought in the area can affect your ability to get water from the tap and you may not have another source of water. Only having one source of water makes you vulnerable.

What does it mean to take Climate Action?

This means that you or your community start to do things such as using the law, participating in decision-making processes or organising your community to respond to either your vulnerabilities or respond to the effects that you already experience.

For example, to make sure that your local water sources are not polluted and can provide water for vegetable gardening, you ask the local municipality to clean up a local stream. Or, you ask the local municipality to dig a borehole in your area.

THE CLIMATE VULNERABILITY, IMPACT AND ACTION MATRIX



How does the climate impact influence the types of climate actions the community must take?

Looking at the graphic above, you can see that Action, Impact and Vulnerability are interrelated. In every community, we want the best outcome when it comes to climate impacts. To do this, we need to consider all three of these in this workbook, but ultimately it is the actions, knowledge and strength of the communities that will determine the best outcome.

Action and Vulnerability

- How does climate action respond to or reduce climate vulnerability?
- What conditions exist in the community that make it more likely to be impacted by climate change?

Impact and Vulnerability

- How does the climate impact make the community more vulnerable?
- Climate Action: What actions can the community take to respond to climate change?

Impacts and Actions

- How does the impact influence what types of actions the community must take?
- Climate Vulnerability: How is the community likely to be affected by climate change?

Exercise



SENSITIVITY AND IMPACTS ON YOUR COMMUNITY

Think of your community as a system. You have many parts to the system. First are physical parts: including infrastructure, roads, plants and animals, houses and people. We also have process parts: service delivery, leadership and decision-making, food systems and agricultural processes, as well as networks.

Now that we know what climate change is and how we are exposed to its impacts, take some time to think about the following questions:

What are the people, places, and processes that are most sensitive to climate impacts?

Why are they sensitive to climate change? For example: why would children be more sensitive to climate impacts than adults?



Potential impacts of climate change on communities

Keeping in mind how we are exposed to climate change and the unique sensitivities that specific communities or people may face, consider the following potential impacts of climate change:

Water restrictions

• Drought in areas where municipal dams are situated might mean that you experience water restrictions, or your taps run dry.

Irregular rainfall patterns

• Water availability due to changes in rainfall patterns means longer and more extreme periods of drought or flooding.

Flooding of homes and neighbourhoods

• You may find that your home or local community gets flooded more often due to greater rainfall or poor infrastructure.

Effects on crops

• Severe droughts will affect crops, livestock, and the livelihoods of farmers.

Disasters in the form of cyclones or more intense storms

• You may find that you experience cyclones (very strong winds and rains) for the first time.

Shack and veld fires

- Hot, dry and windy conditions might lead to more frequent fires in the surrounding veld.
- Colder conditions or more expensive energy sources might lead to people using fires/candles or gas more often in their shacks and increase the frequency of fires.

Impacts on food prices

• Droughts in agricultural areas might result in food shortages or increases in the price of food.

Marine life and fishing

 Changes to ocean currents or sea temperatures can reduce fish populations, because these changes affect the breeding patterns of fish, or result in fish migrating elsewhere.

Heat stress

• Besides the effect of heat waves on crops and animals, heat stress in humans results in lower productivity and fertility, as well as negative impacts on the immune system.

Threats to animal numbers

- Changes to biodiversity or landscapes because of changing temperatures, as well as droughts or flooding, may kill animals or affect their habitats so much that they cannot survive.
- Temperature changes may also bring pests or diseases that kill animals.

Effects on livelihoods

- Severe weather may kill animals and plants, which might affect people's livelihoods.
- Lack of access to necessary services may make it harder to recover from a severe storm.

Bodily health

- Air pollution will result in more breathing problems.
- Food insecurity can lead to hunger and malnutrition, along with water scarcity and poor water quality
- The spread of more or different diseases may result due to changes in climate such as humidity or heat.

Cultural threats

• Impacts to the natural plants and animals in your area might mean that it will become more difficult to practice certain rituals, or earn a livelihood.

Exercise



EXAMPLES OF OTHER TYPES OF IMPACTS

Can you think of impacts other than the ones listed?

For example: environmental or physical (overcrowding of spaces), social conditions (breakdown of community structures, people moving away), impacts on culture or traditions

Chapter 2 CLIMATE RESILIENT COMMUNITIES

Certain conditions can make a community more vulnerable to climate change impacts, but there are ways to reduce that vulnerability.

When a community is "climate resilient" it means that a community and its natural environment can AVOID and ABSORB some of the impacts of climate change, and also that it can RESPOND and ADAPT to climate change impacts.

Resilience means strengthening the ability of human and non-human systems to withstand and respond to changes in the earth's climate.



Resilience is not just developed by making changes to your physical environment or working together as a community, but also by using legal empowerment to know your rights, use the law to make changes to your community and environment, and influence what decisions are made by government or decision-makers that might respond to climate change and its impacts.

In South Africa and other developing countries, the focus is on how communities can adapt to climate impacts. As discussed previously, this means making adjustments to the environment, to the physical infrastructure, to economic systems or to social policies/ systems, in order to be able to withstand climate change impacts.

This workbook is not going to focus on how to make physical, environmental or economic changes. Instead, it is focused on ways in which communities can use the law to build resilience. We call this "Climate Action".

Let us begin by considering what it means to take adaptation action, and how this contributes to building a "climate resilient community" and a "legally empowered" one.



Climate adaptation

Climate adaptation aims to lower the risks that result from climate change, as people adapt their physical environment, houses, lifestyles, livelihoods and ways of working. Adaptation measures can be planned in advance or put in place spontaneously to deal with immediate impacts. These adaptation measures can include large-scale infrastructure changes such as defending buildings and homes against rising sea levels, or improving the quality of roads to better handle hot temperatures. Adaptation measures can also be behavioural, such as encouraging people to use less water or encouraging farmers to plant different crops. Adaptation is a shared responsibility amongst governments, businesses, households, communities, and individuals.

Therefore, climate adaptation is a response to potential impacts of climate change that can help reduce a community's vulnerability (i.e. the true measure of how at risk a community is). Climate adaptation helps individuals, communities, and organisations deal with the effects of climate change that cannot be avoided by taking practical actions and strengthening their resilience.



CASE STUDY: CLIMATE ADAPTATION

Have you heard about **The Boy Who Harnessed the Wind**? This film is adapted from a true-life account by William Kamkwamba and Bryan Mealer. This is the synopsis from Wikipedia:²

"Born in Kasungu, Malawi, William Kamkwamba is a young schoolboy who comes from a family of farmers who live in the nearby village of Wimbe. William also dabbles in fixing radios for his friends and neighbours and spends his free time looking through the local junkyard for salvageable electronic components. Although he is soon banned from attending school due to his parents' inability to pay his tuition fees, William blackmails his science teacher (who is in a secret relationship with William's sister) into letting him continue attending his class and have access to the school's library where he learns about electrical engineering and energy production.

By the mid-2000s, failing crops due to drought and the resulting famine have devastated William's village, leading to riots over government rationing and William's family being robbed of their already meagre grain stores. People soon begin abandoning the village, and William's sister elopes with his former teacher in order to leave her family "one less mouth to feed".

Seeking to save his village from the drought, William devises a plan to build a windmill to power an electric water pump that he had scavenged earlier. William builds a small proof of concept prototype which works successfully, but to build a larger windmill, William requires his father, Trywell, to give permission to dismantle the family bicycle for parts, which is the only bicycle in the village and the family's last major asset. His father believes the exercise futile and destroys the prototype and forces William to toil in the fields. After William's dog dies of starvation and hope seems lost, William's mother, Agnes, intervenes and urges his father to reconsider. William and his father reconcile after William buries his dog. With the help of his friends and the few remaining members of the village, they build a full-size wind turbine which leads to a successful crop being sown.

Word of William's windmill spreads and he is awarded a scholarship to attend school, ultimately receiving a degree from Dartmouth College."

²See https:// en.wikipedia.org/ wiki/The_Boy_Who_ Harnessed_the_Wind.

Can you identify what actions were taken by William and his friends to make the community more resilient?

Exercise



ADAPTATION STRATEGIES

Based on some of the potential impacts of climate change discussed above, what are examples of adaptation strategies that can reduce the effects experienced?

Potential Impact	Adaptation Strategy



A CLIMATE RESILIENT COMMUNITY IS A COMMUNITY THAT...

- Has identified how they may be vulnerable to climate change and can access support and services to help them overcome their vulnerabilities.
- Has ownership and access to the land that they are living on.
- Has strong leadership figures and good decision-making structures.
- 🥨 Uses their traditional knowledge and oral histories.
- Has access to resources and funding to invest in responding to the damaging effects of climate change.
- Has representative bodies or structures to assist in climate action.
- Works together to support each other and collectively responds to damaging effects of climate change.
- Has common climate values and ways of working to address its impacts. For example, a community that shares responsibilities, or has different skills and resources that are shared.
- Is able to access affordable sources of food (which may be grown by themselves or purchased from others) and has access to water sources for farming and household use.
- Is able to access non-polluting energy sources and can access energy sources in emergencies.
- 🦉 Is legally empowered.



A LEGALLY EMPOWERED COMMUNITY IS A COMMUNITY THAT...

- Knows their legal rights and has strategies for realising those rights.
- Feels empowered and confident to participate in legal processes and decisionmaking.
- Has access to political or institutional structures that can respond to and resolve the community's climate vulnerabilities and emergencies.
- Can continually provide information and feedback on these structures.
- May choose to join other movements and struggles challenging environmental polluters and those contributing to the climate crisis.
- Is aware of different resources and organisations that can assist them.
- Has the ability to give informed and prior consent in participation processes where the outcomes may affect their vulnerabilities or ability to adapt.
- Is able to get involved or engage with elected representatives.
- Is able to access government and other resources for climate adaptation and climate emergencies.
- Is able to hold government and institutions accountable when they do not provide the support and resources they are required to under the law to assist communities to take climate action.
- Is able to hold government accountable for the decisions that they make.

AN EMPOWERED & RESILIENT COMMUNITY



Reflection

EXAMPLES OF OTHER TYPES OF IMPACTS

Consider each of the elements of R.E.S.I.L.I.E.N.T. communities to take stock of how resilient you and your community are at this stage. This will help you to identify areas you may wish to understand in more detail, or where you might wish to take specific action. You can revisit this exercise at a later stage to see if anything has changed.

- 1. Have you assessed your vulnerabilities and your strengths?
- 2. Do you know your rights and how to use them?
- **3**. Does your community have shared values? Do community members share their knowledge and resources with each other?
- **4**. Before an important decision is made by authorities, are you given access to all information, and can you ask questions? Do the authorities or developers seek your permission to go ahead?
- 5. Does somebody in your community keep up to date with changes in the law? Is your community participating in public processes regarding developments or other threats to your human or environmental rights?
- 6. Is your community invested in the future of the community and the earth? If not, how do you think the community can do better?
- 7. Is your community engaged with decision-makers?
- 8. Does your community have an understanding of how the relevant institutional structures work, and does your community utilise these structures?
- 9. Does your community take climate action?



SOUTH AFRICA AND CLIMATE CHANGE



South Africa's vulnerabilities to climate change

Because of its unique global position, South Africa is more vulnerable to climate change impacts than other countries. There is evidence that extreme weather events in South Africa are continuing to increase in frequency and scale. In 2017, for example, the South African Weather Service predicted that the country will warm twice as fast as the global average. In other words, South Africa can expect more disasters if nothing is done about adapting to climate change impacts and focusing efforts on sustainable development.

It is good to know that the country is taking measures to plan for and respond to climate change impacts. In particular, there is urgent action with respect to managing water resources, planning for the potential impact on agricultural production, and ensuring that local governments are able to anticipate and reduce the risk of extreme events such as floods and droughts.



What is South Africa doing about carbon emissions?

With the exception of nuclear power, some gas and some renewables, South Africa still relies heavily on coal-fired power stations to generate energy. The country now faces the challenge of being one of the leading contributors of greenhouse gas emissions in the world. South Africa's carbon emissions are the fourteenth highest in the world according to 2017 figures (*http://www.globalcarbonatlas.org/en/CO2-emissions*).

Despite the need to reduce its greenhouse gas emissions, the government continues to support a path reliant on coal extraction and the burning of fossil fuels to meet its energy needs. There is also a trend towards increasing oil and gas investments.



Do you live near a coal mine or coal-fired power station?

Are you aware of any oil or gas developments near you, or which may affect you?

Climate action could represent an opportunity for South Africa to respond to meeting its international commitments, as well as other development needs. South Africa is also one of the most unequal societies in the world, and addressing poverty remains one of the biggest challenges. A just transition, with an emphasis on climate adaptation and green

jobs, would address the challenges of poverty, unemployment and inequality. While the government is formulating policies and plans, we must focus on public participation to ensure effective implementation of these plans within communities.



CASE STUDY: "DAY ZERO" IN CAPE TOWN

Not that long ago, the Western Cape experienced a water crisis after a sustained period of water shortages and poor rainfall in the Western Cape, most notably affecting the City of Cape Town. Although dam water levels had been decreasing since 2015, the crisis peaked between mid-2017 and 2018. Late in 2017, plans for "Day Zero" were first mentioned, a reference to the day when the water level of the major dams supplying the City would fall below a critical percentage. "Day Zero" would mark the start of Level 7 water restrictions, which meant municipal water supplies would largely be switched off and residents would need to queue for a daily ration of water, making Cape Town the first major city in the world to potentially run out of water.

The City implemented significant water restrictions to control water usage, and succeeded in reducing its daily water usage by more than half (to around 500 million litres per day) in March 2018. The fall in water usage, combined with strong rains in June 2018, finally helped to increase dam levels and the City was able to delay its estimate for "Day Zero". Water restrictions began easing in September 2018 once dam levels were at 70% capacity. It was determined that the worst of the crisis was over.



Picture of Theewaterskloof Dam, a major supply dam to the City of Cape Town. Photo by Ashraf Hendricks from GroundUp. https://www.groundup.org.za/article/photos-cape-towns-water-crisis/



IS A "DAY ZERO" POSSIBLE IN YOUR COMMUNITY?

In what ways do you think a "Day Zero" water crisis could impact you and your community? Do you think a water crisis is likely? If a crisis were to happen, how are you and your community prepared? What do you think the government can do to plan for and prevent something similar happening again? What do you think citizens can do?



South Africa's international climate commitments

South Africa has signed and ratified the 1992 United Nations Framework Convention on Climate Change (UNFCCC), the 1997 Kyoto Protocol, and the 2016 Paris Agreement. Under these frameworks, the country has set certain pledges and targets, which includes significantly reducing its carbon emissions by 2030. However, the organisation Climate Action Tracker has rated South Africa's Nationally Determined Contributions target as "Highly Insufficient" (https://climateactiontracker.org/countries/south-africa/).

International laws are not binding unless incorporated into the local law through legislation or court decisions. International law can be useful when argued in court and lawyers will often refer to the decisions of other countries when trying to win a case. In South Africa, we have a number of laws and regulations which have been passed, partly to give effect to the country's international commitments. For example, there are limits on the level of greenhouse gas emissions which can be released, and industries have to register and report on their emissions.

However, there may also be political consequences (e.g., sanctions) if a country does not meet its international commitments.



CASE STUDY: USING INTERNATIONAL OBLIGATIONS TO FORCE DUTCH GOVERNMENT TO REDUCE EMISSIONS

Until 2011, the Dutch government pursued a policy that required a 30% reduction of greenhouse gas emissions by 2020. Later, the government changed the policy and lowered its reduction target to 20%. No explanation was provided for this change.

In 2015, the Urgenda Foundation, a Dutch environmental group that is committed to a sustainable society, together with 900 Dutch citizens, took the Dutch government to court. They argued that the government's new climate change policy was unambitious and insufficient. Therefore, they gathered scientific evidence to demonstrate that higher reduction targets are necessary to tackle climate change effectively. With this strong scientific evidence, they approached the District Court in The Hague and asked the judge to order the government to increase its reduction target.

The District Court ruled that the Dutch government has a legal duty to protect its citizens from the present and future dangers of climate change. It ordered the government to take immediate action and reduce greenhouse gas emissions by 25% by 2020.

The government refused to accept this order and appealed the judgment to the Court of Appeal. The Court of Appeal agreed with the District Court and upheld the first judgment, saying that the government would violate human rights if it did not reduce emissions by 25% by 2020. The government unsuccessfully appealed this second judgment to the Supreme Court, who ordered the State to adopt a more ambitious target, finding that the government's failure to take responsibility for the Netherlands' contribution to the climate crisis is a breach of its obligations under the European Convention on Human Rights (ECHR).



© image via the Guardian



South Africa's constitutional rights

South Africa's Constitution is the supreme law of the country. All other laws and policies, as well as anything done by the government, must align with it. We have already looked at the many constitutional rights that may be affected by climate change. To give effect to these rights, many laws and regulations exist, which are informed and supported by plans and policies. In addition, the courts often rule on the way in which these laws are implemented, and these judgments form part of our law.

The Constitution sets out a number of fundamental rights held by ALL people living in South Africa, as well as a few laws that apply only to citizens. The impacts of climate change may threaten the realisation of some of these rights:

Environmental right (section 24)

Everyone has the right to an environment not harmful to people's health and wellbeing. The government is required to take action to give effect to this right.

The way that this right is framed, it follows a people-centred approach, and the environment does not hold its own right to be protected. However, in order for the environment to function optimally, and to ensure that it still functions well in the future, it needs to be healthy in its own right too.

Around the world, citizens are challenging this people-centred approach, and have been asking courts and governments to recognise that the environment, and parts of the environment (such as forests and rivers), hold their own rights to be protected. This is known as "**the rights of nature**".

See the case study below about the rights of the Amazon Forest.

Right to life (section 11)

Everyone has the right to life.

🖞 Right to dignity (section 10)

Everyone has dignity and the right to have their dignity respected and protected.

${f \Psi}$ Right to health care, food, water and social security (section 27)

Everyone has the right to have access to health care services, sufficient food and water and social security. The government is required to take action to give effect to this right.

Children's rights (section 28)

Amongst other things, every child has the right to basic nutrition, shelter, basic health care services and social services.

Right to protest (section 17)

Everyone has the right to assemble, demonstrate, picket and to present petitions, peacefully and unarmed.

Freedoms

- Everyone has the right to freedom of conscience, religion, thought, belief and opinion (section 15)
- Everyone has the right to freedom of expression, including the freedom to receive information (Section 16)
- Everyone has the right to freedom of association (section 18).
- Everyone has the right to freedom of movement (section 21).
- Every citizen has the right to choose their trade, occupation or profession (section 22).

Exercise



IMPACT OF CLIMATE CHANGE ON RIGHTS

Take some time to think about the possible impacts of climate change on each of these rights. How are your own rights most likely to be affected?



CASE STUDY: RIGHTS OF THE COLOMBIAN AMAZON

Deforestation contributes to climate change. There are two ways it does this: 1) Trees which naturally pull harmful greenhouse gases out of the atmosphere are lost during deforestation; 2) When trees are burned, harmful emissions are released into the atmosphere. Therefore, deforestation reduces the natural process of storing carbon and also releases carbon into the atmosphere. This then speeds up the process of climate change.

A court case was filed after the Colombian government had committed itself internationally and nationally to reduce greenhouse gases. It had further committed to ensuring that whenever greenhouse gases are emitted in the process of deforestation, the same amount of greenhouse gases would be pulled out of the atmosphere (known as carbon offset).

Despite these commitments, deforestation increased by 44% in Colombia in the following years. This prompted a group of 25 children and young adults, aged 7-25, to take the matter to court and sue the President of Colombia along with several ministries and municipalities for their failure to reduce deforestation in the Colombian Amazon. In front of a district court, they argued that deforestation violates their constitutional rights to a healthy environment, life, food and water.

The district court rejected the case. The youth group then challenged this decision in front of the Colombian Supreme Court, which agreed with their claims. It found that the increasing destruction of the environment, including the on-going deforestation of the Amazon, constitutes a serious attack on present and future life. It held that deforestation contributes to climate change, which causes damage to the environment itself and the people who live in it.

In order to protect the Amazon, the Court recognised the Amazon as a "subject of rights". This means that the Amazon, just like a person, holds certain rights. One of these rights is the right to be protected by the State. The Court issued several orders to the government and local municipalities that are aimed at reducing deforestation. Although the orders remain largely unfulfilled, the outcome of the court case has been viewed as a success because it has contributed to the recognition of the rights of nature and is hoped to strengthen nature's position in court.



© Columbian youths who successfully sued the government. Image via Change Generation Rising



An overview of South Africa's laws relating to climate change

The section provides a summary of laws that you may need to know about to take climate action. Some of the details are discussed in the next Chapter.

LEGISLATION

There are many laws in South Africa that impact whether climate-influencing projects can go ahead, and some that hold people and companies to specific standards. These laws also provide for enforcement action if there is non-compliance.

While having these laws in place is necessary, many people question whether they are good enough, whether the standards are high enough, and whether the laws are appropriately implemented and enforced.

Legislation	How it protects our climate and ecosystems
National Environmental Management Act, 107 of 1998 (NEMA)	 Umbrella legislation for environmental management.
	 Creates a general duty of care to protect the environment.
	 Requires environmental impact assessments for certain activity developments (such as mining, power stations, wind farms, air polluting activities).
	 Creates an enforcement system through environmental management inspectors.
National Environmental Management: Air	 Sets emission limits for air polluting activities.
Quality Act, 39 of 2004 (NEM:AQA). Includes the following Regulations:	 Requires atmospheric emission licenses for air polluting activities.
 Regulations Regarding Air Dispersion Modelling 	 Requires certain emitters to report their greenhouse gas emissions.
 National Pollution Prevention Plans Regulations 	
 National Atmospheric Emissions Reporting Regulations 	
 National Greenhouses Gases Reporting Emission Regulations 	
- Regulations related to listed activities	

 National Environmental Management: Waste Act, 59 of 2008 (NEM:WA). Includes the following Regulations: List of Waste Management Activities National Waste Information Regulations Waste Classification and Management Regulations Various Norms and Standards Waste Tyre Regulations 	 Regulates waste activities, which cause environmental pollution and degradation and impact community resilience. Requires waste management licences or adherence to norms and standards. Provides for a waste information reporting system.
National Environmental Management Protected Areas Act, 57 of 2003 (NEM:PAA)	 Creates a system of protected areas to protect land and biodiversity.
National Environmental Management: Biodiversity Act, 10 of 2004 (NEM:BA)	 Protects ecosystems and species. Protects indigenous knowledge. Requires permits for restricted activities involving protected species. Places obligations on owners of land to contro and eradicate alien and invasive species.
National Water Act, 36 of 1998	 Creates a general duty of care to protect water resources. Requires a water use licence or registration for some activities using water.
Carbon Tax Act, 15 of 2019	 Places a tax on emission of carbon into the atmosphere above a set limit.
Disaster Management Act, 57 of 2002	 Provides for disaster response mechanisms an resources.
National Environmental Management Act: Integrated Coastal Management Act, 24 of 2008 (NEM:ICMA)	 Provides for special management of the coast. Regulates pollution of the sea. Requires a permit for discharging effluent to the ocean.
Climate Change Bill (Not yet in force)	 Will require more government plans and policies. Provides for a national greenhouse gas emissions trajectory and Sectoral Emission Targets (SETs) and a Sector Emissions Reduction Plan (SERP) that prescribes how each sector will meet the SETs within 5 years. Provides for carbon budgets and mitigation plans. Provides for a plan for the phase down or phase out of synthetic (i.e. man-made) greenhouse gases such as hydrofluorocarbons

PLANS AND POLICIES

The South African government has in place a number of plans and policies relating to climate change. These plans and policies are not directly enforceable, but set a framework for implementation and the development of laws.

Policy	How it protects our climate and ecosystems
National Development Plan and Medium-Term Strategic Framework	 Dedicated to framing a plan for a just transition in terms of climate change.
Integrated Resource Plan	 Determines the energy mix for South Africa's future (i.e. what percentage of coal, nuclear and renewable energy the government will purchase to provide electricity).
National Climate Change Response White Paper	 Outlines the government's vision regarding South Africa's response to climate change, including its approach to adaptation and mitigation measures.
National Climate Change Adaptation Strategy	 Sets out the government's climate change adaptation objectives. Defines the country's vulnerabilities and plans to reduce vulnerability and strengthen opportunities.
National Energy Efficiency Strategy, 2016	 This policy sets a framework for reducing energy consumption across South Africa.

* Some provinces and municipalities also have their own climate adaptation plans and policies.

LICENCES AND PERMITS

Developments that may contribute to climate change, or worsen climate change impacts, usually require licences or permits to operate. It is important to understand what licences and permits are needed, so that you can participate in or object to the application if you want to, and hold developers accountable when they do not have the necessary approvals.

Depending on what development is proposed, different licences and permits are required. Some of these are:

- Environmental authorisation: for activities listed under NEMA (such as mining, power stations, wind farms, air polluting activities).
- Atmospheric emission licence: for air polluting activities listed under NEM:AQA (such as an oil refinery or coal power plant).
- Waste management licence or registration: for waste activities listed under NEM:WA (such as a landfill or waste storage facility).
- Heritage approval: for activities which may impact on heritage (for example, development where heritage resources may be affected).
- Water use licence or registration: for water uses specified in the National Water Act (such as building a bridge over a water course or extracting water from a borehole or river).
- **Prospecting or mining right or permit:** for prospecting and mining activities under the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA).
- Exploration or production right: for oil and gas extraction activities under the MPRDA.
- Effluent permit: for disposing of industrial effluent into municipal sewers.

Chapter 4 USE THE LAW





1. Strengthen the community

Create or use leadership structures within your community to support actions.

Exercise							
IS MY COMMUNITY ORGANISED? My community knows about climate change.							
Strong No	No	Maybe	Yes	Strong Yes			
My community is aware of how climate change could affect them.							
Strong No	Νο	Maybe	Yes	Strong Yes			
In my community, we know our neighbours and help one another in emergencies.							
Strong No	No	Maybe	Yes	Strong Yes			
My community has good leadership structures that I can trust to make decisions in the best interests of the community.							
Strong No	No	Maybe	Yes	Strong Yes			
Members of my community are welcome to attend and participate in meetings with councillors or government representatives on various issues.							
Strong No	No	Maybe	Yes	Strong Yes			



CASE STUDY: ENVIRONMENTAL DESTRUCTION SPARKS SAVE LAMU

In 2008, the Kenyan government began preparations for a major transport and infrastructure project to connect Kenya, South Sudan and Ethiopia. The project includes a port, railway lines, a coal power plant, a road network, oil pipelines, an oil refinery, three international airports, and three resort cities. Several of these components were to be located in the Lamu region of Kenya.

The project was expected to bring economic development to the region. At the same time, indigenous communities were concerned about the negative effects the project might have on their livelihood, culture, and environment.

These concerns prompted a community initiative to unite local groups and residents in a campaign to save the region. Out of this initiative grew Save Lamu. At first, it only had 12 members, but with the help of organisations like Natural Justice, Save Lamu became a registered organisation with over 40 members. These members include representatives of indigenous communities in the Lamu region.

The Lamu Port project officially launched in 2012. It immediately forced some Lamu residents to leave their homes. Most of the indigenous population in the Lamu region earn a livelihood from fishing along the coastline. However, mangrove forests, a breeding ground for fish, were removed to make room for the Lamu Port. This resulted in a declining fish population and reduced opportunity to make a living from fishing.

Save Lamu and other like-minded individuals and organisations filed a court case with the High Court of Kenya. The case was directed against the parties involved in the development of the project. Save Lamu argued that the project's design and implementation violated national law, including the Kenyan Constitution. In their opinion, it violated their right to a clean and healthy environment, their cultural and traditional fishing rights, and their right to information.

The Court sided with Save Lamu. It issued numerous orders to the project developers, which included an order to involve the Lamu communities throughout the development process. The Court found that the communities must be provided with information about the project, and they must be given the opportunity to share how the project affects their culture and how these negative effects can be reduced. Additionally, the Court awarded the local fisher community financial compensation for the loss of their livelihoods.


Exercise



IS MY COMMUNITY ORGANISED?

Consider the answers to your first exercise in this section. Also read through the Lamu case study. Can you answer the following questions?

- Who are my community leaders?
- What is their role in assisting me in climate action?
- What decisions have they made in the past that may or may not influence my community's climate change resilience?
- Are there political structures in the community?
- Are there traditional structures in the community?
- How are these structures governed and what kind of decisions do they or can they make?
- Is my community part of collective decision-making?
- How can I participate?
- What strategic actions have other communities taken that I can take inspiration from?

Now consider what specific things you and your community can do to strengthen your local leadership structures.



2. Advocate

Communicate about climate action and invite others to support you.

Advocacy is the ability to express your needs and make informed decisions about the support and tools you can access to meet those needs. Advocacy seeks to ensure that all people, especially those that are the most vulnerable in a community, are able to have their voices meaningfully heard.



STEP 1) Plan your action

STEP 2) Get the facts

Learn all you can about the law, your community context, how climate change will affect you and what the government is or isn't planning. Keep your documents and evidence in a safe place. Your power will be in information.



STEP 3) Create awareness

Hold community meetings to discuss climate change. Reach out to media outlets like newspapers and radio stations. Speak publicly about climate impacts felt by you and your community. Talk to school children or other groups of people. If you can, gather photographs and stories from your community. Actively engage on social media platforms like Twitter and Facebook to invite others to join the discussion on climate action. Create an inclusive space for everyone to voice their views.



STEP 4) Build engagement

Once you have a strong support base in your community, who are now knowledgeable and mobilised, you can start to build engagement with relevant authorities or people who you seek to influence. Consider petitions, submissions and letters. Write to newspapers and make public statements.



STEP 5) Encourage joint action

Reach out to different communities, non-governmental organisations, non-profit organisations, movements and campaigns and ask them to support your actions.

STEP 6) Keep going!

Examples of platforms or tools for advocacy include (this list is NOT comprehensive):

- Radio and television
- Posters, pamphlets, and newspapers
- Speeches and public presentations
- Public meetings
- Lobbying national and local politicians
- Public demonstrations such as marches, protests and parades
- Forming coalitions or alliances with local, state, and national organisations
- Strikes or boycotts
- YouTube, Facebook and other social media

Exercise



ADVOCACY TOOLS

Can you think of more examples than the ones listed?



CASE STUDY: FRACKING IN THE KAROO

In 2010, the oil company Shell applied for a licence to explore natural gas resources in the Karoo, a desert region of South Africa. If granted, the licence would allow Shell to carry out fracking, a process used to extract gas. Fracking involves pumping large amounts of water mixed with chemicals under high pressure into deep wells. Through this, the shale rock cracks and releases the gas.

The well-researched threat of fracking and its negative impacts on the environment and society united communities and organisations in a movement to halt the issuance of the licence. At first, only a few communities were represented at public meetings held by Shell's consultants. To increase participation of communities in the proceedings, two environmental organisations offered a series of workshops to community-based organisations in the Karoo where they provided them with information on fracking and environmental rights.

Informed of their rights and the potential consequences of fracking, communities organised numerous rallies. On Global Anti-Fracking Day, community members gathered in the village of Nieu Bethseda in the Karoo. They carried anti-fracking banners to express their views and several participants raised their voice, and publicly spoke out against fracking. Another time, communities protested in front of Parliament in Cape Town to draw attention to their concerns.

Additionally, community-based organisations pursued legal means. They challenged the validity of regulations allowing the government to grant licences for the exploration of shale gas. After years of litigation, the Supreme Court of Appeal declared the regulations unlawful and thereby halted Shell's plans for fracking in South Africa.



© Protestors march against the planned fracking in the Karoo: Image via WHISNews21



3. Gather Information

Collect information and evidence for current and future purposes.

Information and evidence can come in the form of oral histories, customary knowledge, photographs, maps, government publications, newspaper/television reports, and academic papers/studies/reports regarding climate change effects. The evidence gathered should be able to prove that the impact is caused due to non-compliance or violation of particular laws or rights.

Think about:

- What kind of information could be useful?
- Is there someone in your community who is a knowledge-holder?
- If there is a local extractives or infrastructure development (such as mine, a pipeline or industry) is there a way to monitor and record pollution events, or a way to track compliance with licence conditions?
- Is there a way for you to collect and store information about violations when they happen?
- Can you use technology and other tools to help you to gather and store information?

For example, TIMBY, which stands for **This Is My Back Yard** is an application for your cellphone which is a tool that helps activists and communities report, verify and tell stories safely.

You can read more about TIMBY here: https://timby.org/features/



TRADITIONAL KNOWLEDGE AND CLIMATE ACTION

The skills, experiences, and knowledge of indigenous peoples and local communities, which is developed over years while coping and adapting to changing and variable environments, provides lessons and practices that can be developed into strategies that can help communities to adapt to climate change.

Traditional knowledge, also known as indigenous or local knowledge, is:

- Collective knowledge or theories of practice.
- Shown through communal values and social conventions, ethical principles, religious beliefs, ritual taboos, customs, innovations and other cultural practices.
- Part of the identity of a cultural or indigenous community.
- The foundation upon which communities connect to their land and its natural resources for the purposes of building sustainable livelihoods.
- Kept by and passed on through specific members of the community. These members include designated lineages, respected elders, expert hunters or community healers.
- Transmitted through customary and traditional norms and laws which set out the procedures to be followed to access such knowledge.
- Living knowledge developed and refined over time and responsive to changes in the social, political and natural environment.

Traditional knowledge responds to local circumstances, and is respectful of the environment, aimed at sustainable practices that ensure that biodiversity is protected and the environment can continue to provide for the nutritional, material and other needs of the community. For those communities dependent on the local environment, traditional knowledge can be their best response to climate change. It must be respected, but also promoted. Indigenous peoples and local communities are essential agents of climate action.

Common and creative adaptation practices informed by traditional knowledge can include:

- shoreline reinforcement
- improved construction technologies
- improved water quality testing; harvesting of rainwater
- supplementary irrigation
- agricultural strategies for the protection of rainwater and watersheds
- changing practices and times of hunting and gathering
- diversification of crops and livelihoods
- the use of new materials



CASE STUDY: THE KHWE AND FIRE MANAGEMENT

The Khwe, an indigenous community living in the Bwabwata National Park in Namibia, use fire as an indigenous land management practice and strategy. Currently, traditional fire management practices result in an early dry season burn, which is beneficial for the growth of the grass and various local plants. The plants are harvested and eaten, or used for local materials, while the grass is used for grazing by both cattle and local wildlife living in the park.

These fire management practices are central to their cultural values. It is also essential to the overall management of the Park. The burning is also adapted over time as the climate changes and the Khwe have been recognised as essential actors within the Park, not only for their way of using traditional knowledge to take climate action, but also because of how their traditional practices protect the rich biodiversity of the Park more generally.

Exercise

ADVOCACY TOOLS

Can you think of examples of people in your community that might hold traditional, indigenous or local knowledge? Now consider the following questions:

What kind of knowledge might this be (farming practices, water harvesting etc.)?

How can this knowledge contribute to climate action?

How can you access this knowledge?



4. Access Information

Request information about decisions, processes and systems that impact your rights.

The Constitution gives everyone a right to access information held by government and corporations (section 32). The **Promotion of Access to Information Act, 2 of 2000 (PAIA)** is the law which gives effect to this right.

Under PAIA, you can request any information from:

- 1. a public body (government institution, department, municipality etc.)
- 2. a private body (company, NGO etc.)

Your right to access information is not dependent on the reasons for needing the information but when requesting information from a private body, you must set out what right is affected and why you need the information to protect that right.

Public bodies (and some private bodies) should have a manual that sets out

- what information is available; and
- who a request should be sent to.

You also have a right to appeal against the decision as to whether you should be granted access to the information.

WHAT INFORMATION WILL BE PROVIDED?

The general rule is that information must be provided, but there are exceptions.

Access to information will be refused to protect:

- privacy of a third party;
- commercial information of a third party;
- confidential information;
- information in legal proceedings; or
- research information.

Access to information may be refused where requirements are met and where it is not in the public interest to disclose the information:

- South African defence, security and international relations
- economic, financial and commercial interest of South Africa
- operations of public bodies
- "frivolous or vexatious requests, or substantial and unreasonable diversion of resources"

However, there is a **public interest override** where the release of information is in the public interest

Does the information demonstrate a serious breach of a law?

OR

Do the records in question contain information relating to an imminent and serious public safety or environmental risk?

AND

Does the public interest in disclosing the information clearly outweigh the potential harm?

GETTING INFORMATION IN PUBLIC PROCESSES

Often, public participation processes (discussed in the next section) provide a mechanism to request and access information. When you are participating in decision-making processes (Environmental Impact Assessments (EIAs)) it is important to know what questions to ask, so that you can evaluate the proposal properly and how it will impact you.

Exercise



GETTING INFORMATION

Can you think of examples of people in your community that might hold traditional, indigenous or local knowledge? Now consider the following questions:

Can you think of information that you might need in an EIA process for a proposed coal-fired power station in your area?

GETTING INFORMATION FROM GOVERNMENT AND CORPORATIONS

If you are requesting information outside of public participation processes, you can use the mechanisms provided for in PAIA. The South African Human Rights Commission can assist citizens where reasonably possible to exercise their right to information.

A request for access to information is made by completing Form A for public bodies and Form C for private bodies. These requests must be responded to within 30 days. Forms can be found at: *www.sahrc.org.za.*

When requesting information, remember:

- 1. Be as specific as you can about the information you are requesting.
- 2. Include a "catch-all" request in case there is information you do not know about.

A helpful document about how to request information can be found here: https://www.sahrc.org.za/home/21/files/Section%2010%20guide%202014.pdf

How to request information

- 1. Remember, any person can request information.
- 2. Fill in the form:
 - Make sure that you describe clearly what information you want
 - Specify in what form you would like the information (e.g. in hard copy or electronic form)
- 3. Pay the request fee (or motivate why you can't pay it).
- 4. Send the request to the information officer of the public or private body.
- 5. When the information officer tells you how much it will cost, pay for the documents available (e.g. for printing).



5. Participate

Be part of public participation processes and decision-making.

Different laws give you rights to participate in decision-making processes.

1. The Constitution -

Section 33 - right to lawful, reasonable and procedurally fair decisions. Section 195 - the public must be encouraged to participate in policy-making.

2. The Promotion of Administrative Justice Act, 3 of 2000 -

Decisions must be taken in a procedurally fair manner. Where your rights are affected, you have a right to:

- a) make representations before a decision is made;
- b) be told of the decision; and
- c) be provided with reasons for the decision.

3. Environmental laws -

Environmental laws have procedural requirements for interested and affected parties to participate in decisions. For example, when environmental impact assessments are conducted, the public has a right to:

- a) be informed of proposed projects;
- b) be provided with access to documents;
- c) give comments on these documents;
- d) be informed of the decision; and
- e) appeal against a decision that has been taken.

4. Other laws and policies

Sometimes, other laws and policies also set out where interested and affected parties have a right to participate.

In this section, we consider public participation processes in licencing processes, such as environmental impact assessments, as well as other consultation processes, such as when government is formulating plans and policies.

ENVIRONMENTAL IMPACT ASSESSMENTS

Environmental impact assessments (EIAs) are processes where the future environmental, social and economic impacts of proposed developments are assessed and, where possible, impact mitigation measures are proposed. Relevant government authorities use assessment results to decide whether permission should be given for the development. If the impacts are acceptable, then an environmental authorisation (or waste management licence or atmospheric emission licence) is granted to the developer, with conditions attached.

EIA processes consider impacts on:

- water resources (such as rivers, streams, wetlands and underground water)
- biodiversity
- the ocean

- heritage
- agriculture
- air quality
- soil
- surrounding communities
- the local and broader economy

Listed Activities

In the EIA process activities are listed in either Listing 1 or Listing 2 which will both require environmental authorisation. Activities that are listed in listing 1 must be subjected to Basic Assessment. An example of a listing 1 activity would be the construction of a bridge.

Activities that are in listing 2 must be subjected to a Scoping and EIA report. An example of a listing 2 activity would be the construction of a refinery.





CASE STUDY: KARPOWERSHIP WAS REFUSED AUTHORISATION

In 2020 Karpowership, a Turkish based Karadeniz Energy Group was named as a successful bidder to supply a portion of the 2,000MW required to supplement South Africa's power grid. The Powerships are floating power plants which produce energy from liquefied natural gas, which were said to be procured to ease the pressure on Eskom. These powerships were going to be moored at Saldanha, Richards Bay and Gqeberha. The South African Karpowership contracts, which were to last over 20 years at more than R200-billion. The Karpowership project will cause many indirect and direct environmental and social impacts. Environmental groups around South Africa did extensive lobbying and participation during the EIA process which paid off as the Department of Fisheries, Forestry's and Environment refused to grant authorisation.

The DFFE raised several reasons why it had opted to reject the applications as they said there were significant gaps and limitations in the EIA's from Karpowership including:

- The power company had failed to carry out a proper public engagement process. "The purpose of public engagement is not only to promote informed decision making, but also to promote the legitimacy and acceptance of an outcome or decision and to promote participatory democracy".
- The actual and potential impacts on the environment as well as socio-economic impacts, particularly on small-scale fisheries, could not be fully evaluated, owing to an absence of proper underwater noise impact studies.
- In the Ngqura case, for instance, the EIA failed to pay proper attention to the impact of ship noise on the marine ecology.
- At Richards Bay, there was a lack of work on the underwater noise study. The EIA failed to investigate the impact of noise on the threatened Indian Ocean Humpback Dolphin.
- Most of the specialists indicated limitations to their respective studies, including that they had limited time to apply their minds or that the studies were undertaken in the wrong season.

For more information: https://mg.co.za/environment/2021-06-25-karpowership-decision-shows-peoples-voices-do-count/

Exercise



PARTICIPATION IN EIA PROCESSES

Why do you think it is important to be involved in EIA processes for proposed developments affecting your community?

PLANS, LAWS AND POLICIES

From time-to-time, the government will invite you to be part of a decision-making or public participation process. In terms of climate resilience, look for any chances to influence development processes, climate change, service delivery, environmental planning, water, infrastructure and planning, education, public security, health issues or anything that might impact your community resilience that was discussed previously.

The public participation process includes participating in oversight activities such as strategic plans, annual performance plans, annual budgets and quarterly or annual reports. You can also make submissions for these oversight activities.

TIPS FOR PARTICIPATION

Public participation requires you to be vigilant. Look out for public notices in libraries and other spaces, in newspapers and online. It will be up to you and your community to monitor these spaces and we suggest you assign this role to specific people and also maintain close connections to your ward councillors or local government representatives, as well as NGOs in your area that might be able to help you to track these. The following are ways to participate.

NOTE: What you can do in public participation may look similar to lobbying. However, in public participation the government invites you to participate in the process, while in lobbying you invite yourself.

- Attend any public hearings, the schedule of which can be found on provincial legislatures' websites.
- Attend sittings of the house or meetings of Parliamentary committees, all of which are open to the public.
 - These schedules can be difficult to find, but you should not hesitate to contact legislatures directly for information.
- Make well-researched written submissions that properly reflect your views and opinions on the climate issue, and request to present them orally.
- Lodge a formal petition the format of official petitions can also be found on provincial legislature websites.
- Contact your elected representative.

For example, Integrated Development Planning processes (IDPs) are part of Spatial Development Frameworks and are a common way that municipalities invite public participation.

Local municipalities in South Africa use IDPs as a method to plan future development in their areas. This approach to planning involves the entire municipality and its citizens in finding the best solutions for long-term development, not just land development but also the distribution of limited resources according to municipal needs. This is especially important to overcome the impacts of apartheid and the unfair distribution of development and resources that resulted. Public participation in IDP forums is highly encouraged to ensure that your climate action suggestions are heard for long-term development of your municipality and that you are able to keep your local governments accountable.

HOW TO MAKE THE MOST OF YOUR PUBLIC PARTICIPATION

The following are some of the ways you can ensure that you understand what is happening and contribute in a meaningful and effective way when attending a public participation session:

- Make sure that everyone you think is important to the subject matter is in the room. Councillors, local officials, NGOs and different community groups must be present.
- Invite people from different groups in your community, such as youth, women and leadership to attend and ask them to present their views.
- Provision must be made for marginalised groups, e.g., illiterate people must be able to participate in the process
- Try to access the documents that will be presented at the meeting beforehand and look through them, with the help of your local sub-committees or community organisation partners.
- Very often in the EIA process, people are not notified of the development, therefore notifications must be advertised widely.
- Make sure that an interpreter is present if the presentations are in a language that you have difficulty understanding.
- Make sure that the documents for distribution are translated into a language you are more familiar with.
- Interested and Affected Parties (I&APs) have the right to ask for documentation and information pertaining to employment, acquirement of licences, shareholders, financial information, etc.
- Make sure you sign the register and that it reflects the right theme of the meeting, date and place.
- Request copies of the meeting minutes and follow up to make sure you receive them.
- Take your own notes and compare the minutes to your notes, noting anything that is missing or not written in a way that reflects the content of the meeting.
- Ask to record the session and record it on your phone, if possible.
- Make sure that the people at the meeting are given enough time to ask questions and present their views.



6. Lobby Governments

Promote your rights to be heard in government spaces, such as Parliament and legislatures.

Although ordinary citizens may not submit bills to Parliament, they may lobby MPs or committees to introduce legislation that deals with their concerns.

Lobbying activities include:

- Submitting position papers or memoranda to parliamentary portfolio committees and government officials on behalf of your community or organisation.
- Requesting to make oral presentations to parliamentary portfolio committee hearings if possible.
- Requesting parliamentarians to raise these issues on your behalf.
- Conducting research and collecting data to back up the proposals made in your position papers/submission.
- Issuing media reports and press releases on behalf of your community or organisation.
- Monitoring parliamentary debates and committee hearings to stay up to date on issues.
- Signing and collecting petitions that are delivered to a political figure. See point 8.

Exercise



LOBBY FOR CLIMATE ACTION

In your community, are there issues that you can think of that you may want to lobby government about – issues related to climate change specifically? Perhaps your neighbourhood or community has been flooded a few times in the past and you would like government to build better drainage systems, for example. Think of more.



7. Protest

Gather peacefully to draw attention to climate change.

- Identify or nominate someone to be in charge of a peaceful protest.
- If there are more than 15 people protesting or if you are protesting in front of Parliament, union buildings, or any courts, then you must notify local authorities by completing a Notice Form under the Regulation of Gatherings Act (205 of 1993):
 - The notice assures the conveners that the police cannot restrict the protest under section 9(1)(c) of the Gatherings Act.
 - The failure to notify local authorities of an intended protest of more than 15 people is NOT a criminal offence (see case study below).
- Determine who the relevant local authority is and submit the form.
- Give at least one week's notice.
- Local authorities (whether the municipality or the police) should meet with you after submitting the notice form to discuss details and arrangements.
- Singing, chanting, and marching are all forms of lawful protest. Vandalising public or private property, or causing bodily harm to others is not.







CASE STUDY: PROTESTING WITHOUT NOTICE

In 2018, the Constitutional Court of South Africa decided a case that concerned a criminal conviction of peaceful protesters. In 2013, these protesters had chained themselves to the railings at the Cape Town Civic Centre to protest against the City's failure to provide access to sanitation facilities in Khayelitsha, a township settlement of a few hundred thousand people.

At that time and according to South African law, the convener of a protest of more than 15 persons must notify local authorities prior to the intended protest. The failure to do so constitutes a criminal offence pursuant to section 12(1)(a) of the Regulation of Gatherings Act 205 of 1993.

A group of 15 people initiated the protest at the Cape Town Civic Centre. Prior notice was not given to the local authorities. Other sympathisers later joined the group. Even though they protested peacefully, the police requested the group, which at that time consisted of more than 15 persons, to disperse. When the protesters refused, a group of ten protesters was arrested, charged, and convicted for convening a gathering without giving prior notice.

The protesters challenged their conviction in court. Eventually, the Constitutional Court had to decide on the matter as the question had arisen whether section 12(1)(a) of the Gatherings Act was constitutional. The Constitutional Court found that the right to assembly is a cornerstone of any democracy as it allows for public participation. It held that the criminalisation of peaceful protesters violates their constitutional right to assemble freely, peacefully and unarmed. No justification could be provided for this severe limitation. The Court therefore declared section 12(1)(a) of the Gatherings Act unconstitutional and void.

Read more about the case here: https://www.groundup.org.za/article/what-doesconstitutional-courts-judgment-protests-mean/



© Photo of the Social Justice Coalition protestors: from Groundup.org



8. Petition

Collect signatures to support your climate actions.

A petition is a formal written request, typically one signed by many people, appealing to an authority in respect of a particular cause. Many petitions can take place online, but sometimes you might decide to use the face-to-face approach of going door-to-door in your neighbourhood, explaining the issues and asking for a person's signature to support your call to government.

According to the Republic of South Africa parliamentary website, a petition should comply with the following requirements:

- Be in a form prescribed by the Speaker of the National Assembly (NA) or the Chairperson of the National Council of Provinces (NCOP);
- Include the name/s and contact details of the petitioners;
- Clearly indicate the intended recipient of the petition (to whom is the petition being addressed);
- Clearly indicate the nature of the request being made (the subject of the petition);
- Include a clear motivation for the petition;
- The petition must be in any of the official languages of South Africa;
- Be signed by the petitioner(s) themselves (unless the Speaker or Chairperson decides otherwise);
- Not contain improper or disrespectful language; and
- Must indicate the nature of the relief (assistance) asked from Parliament.

Make sure to contact your elected representative or a Member of Parliament to assist with the format or content of your petition. More information can be found on national or provincial government websites.



CASE STUDY: CHALLENGING MINING IN XOLOBENI

The Xolobeni community on the Wild Coast in the Eastern Cape found its environment and community threatened by an Australian company that planned to mine titanium in the area. To fight these plans, the villagers organised themselves and formed the Amadiba Crisis Committee (ACC).

The ACC took action in various ways: they organised several peaceful protests, lodged an objection to the company's application for mining rights, and presented a petition of over 4,000 signatures of those who rejected the mining project. In addition to this, they initiated court proceedings.

In front of the North Gauteng High Court in Pretoria, the ACC argued that the Xolobeni community has lived on the land for centuries and, therefore, should get to decide whether mining activities can take place. Many other organisations, including community-based organisations, supported the fight of the Xolobeni community by launching an online petition for the right to reject mining.

In 2018, the High Court in Pretoria delivered a historic ruling stating that the government must obtain consent from the Xolobeni community prior to issuing the mining license.



9. Report

Report environmental wrongdoings to the appropriate authorities.

Everyone has a duty to ensure that they do not cause significant pollution or degradation of the environment, including individuals, companies and government agencies. Holders of authorisations, licences and permits must comply with the conditions of that authorisation.

Pollution (e.g. release of chemicals into a river or air) or degradation of the environment (e.g. dumping of waste or illegal mining) should be reported to Environmental Management Inspectors ("the Green Scorpions").

It is best to report a transgression to all of the relevant environmental authorities. This includes the national Department of Forestry, Fisheries and the Environment, the provincial environmental department, and your municipality. Keep their contact details safe, in a place where you remember you have recorded them!

Many authorities are notorious for not responding, or not responding adequately to complaints. Keep following up and keep a record of the follow-ups. If this is by telephone, record the call somewhere. Even if they do not respond, if you find yourself in a position that you need to take other action, such as going to court, this paper trail will be very important.

An action letter, for example, encourages or discourages a specific action or outcome and holds others accountable to the impacts of climate change. You can send a letter to anyone who can make change happen or influence a change. See following page for a sample letter.



NATIONAL HOTLINE 08600 205 005

SAMPLE ACTION LETTER (1-2 PAGES)

Your name Full address All contact information

Date

Recipient's Title/Name Full address

Dear [Recipient's Name],

1st Paragraph: Introduce yourself and who you are, which community or area you may be writing from. State your reason for writing (what you want and why). If the letter concerns a specific issue such as a bill or legislation, make sure to briefly and simply outline this.

2nd Paragraph: Support the specific climate issue you are addressing, use the most important facts or statistics and background information. Offer to provide additional material if requested.

3rd Paragraph: Share your personal story to clarify your position and why this climate issue affects you and your community. Do not overly exaggerate as it is better to stick to facts and personal lived experiences.

4th Paragraph: Summarise and restate your position and request. State the different and specific ways that your recipient can assist with your climate concerns.

5th Paragraph: Thank your recipient for reading your letter and ask for them to respond to you with how they can address your concerns. Be polite and courteous. Provide them a way to respond to you letter.

Sincerely,

[Signature] Your Name

Remember:

Keep the original yourself, if possible.

- Make copies to distribute.
- If you are hand delivering, make an extra copy and ask the recipient to sign and date the copy as proof of receipt.
- Acknowledge any response you may receive, even if it is not the response you were hoping for.



10. Take Legal Action

Use regulated processes, such as objections and appeals, and go to court as a means of last resort.

APPEALS

Most laws have an appeal procedure, which allows you to challenge a decision on whether or not to approve a development or issue a licence. When deciding to challenge a decision, you should consider:

- What timeframe you have to appeal the decision;
- Whether you have to pay a fee (or motivate why you can't pay the fee);
- Who the appeal must be submitted to;
- How the appeal must be submitted (e.g., if it can be emailed or must be delivered);
- Whether there is a form you must fill in; and
- Whether specific documents must be included (e.g. your authority to act on behalf of a community).

For appeals against decisions to grant environmental authorisations, the appeal procedure is set out in the National Appeal Regulations. The appeal must be submitted in 20 days on the required form to the competent authority's appeals division. It is best to ask the authority who made the decision to send you the correct form to fill in. Copies must also be sent to the applicant and all other registered interested and affected parties. This can be a time-consuming task, and it important to plan this carefully so that you do not run out of time.

REVIEWS

If you are not satisfied with a decision on an appeal, you also have a right to challenge the decision in court, through a judicial review. You will need legal representation for this, so find a rights centre or other legal organisation to assist you. Alternatively, you might want to fundraise for money to pay a legal representative. Remember, the **judicial review** process must be started in court as soon as possible after the decision, but not more than **180 days** after the decision was taken or you were informed of the decision.

INTERDICT / INJUNCTION

You can also approach a court to request it to stop somebody polluting or damaging to the environment, or to make them take specific action. It is best to find lawyers to help you with this process, as a small mistake in procedure or failure to provide required information can result in the case being lost.

USE THE LAW

Climate change impacts will be increasingly felt from now on and they will be disproportionately felt by climate vulnerable communities, which include communities that are from low-income areas where there is poor infrastructure and service delivery. Communities without access to food, water and other essential services will need to be supported.

We hope that this workbook has provided you with a sense of hope that, although your community may have certain weaknesses, that you can start to build its resilience through asserting your rights and understanding and enforcing the law. We hope that you are inspired to be more active in the law and that, over the longer term, will start to feel like your community has a better chance of withstanding the shocks that we are expecting.

We do not expect you to act alone. It is important to build capacity from within, but also reach out to networks of support. Natural Justice, who designed this workbook, is one of the organisations offering support and solidarity with communities. The most important feature of our work is the legal empowerment programme which seeks to train and support communities to understand, influence and use the law.

Although the path ahead will be a challenge, we hope we can walk it together.



Concluding checklist

Tick those outcomes of the workbook that are true for you.

- I understand what climate change is.
- I can recognise what causes climate change.
- I am more aware of the effects of climate change and am starting to understand why we need to act.
- I am starting to understand some of the structures in my community that need strengthening.
- I understand the Environmental Impact Assessment and public participation frameworks better.
- I have a better understanding of why leadership is important and have recognised the challenges in my local leadership structures.
- I understand that my government has certain international obligations and know what they are.
- I have knowledge of the different laws, policies and plans that my community and I function within.
- I can identify ways to be more active in promoting climate resilience in my community through using the law.
- I have some ideas of my next steps (see below)



Next steps

Below are some ideas for next steps to making climate action a reality in your community:

- Gather different groups together in your community and do the exercises in this workbook to start to collect information on your community.
- Form a committee or sub-committee on climate change. Task them with educating people, finding information and building a case for climate action as needed, using any of the suggestions in this workbook or elsewhere.
- Invite an organisation, government representative, educator or anyone else to do a workshop on climate change within your community.
- Speak to local councillors and teachers about their knowledge of climate change and how to raise awareness amongst communities and school learners.
- Start identifying people in your community with special knowledge of weather changes, government decisions and anything else that can be used as evidence or can help you with climate actions, and document this knowledge.
- Start accessing government documents like strategies and plans and discuss them in groups to understand what government is doing or planning to do about climate impacts in your community.
- Start raising the issue of climate change in any and all community meetings, government meetings and public spaces.

Can you think of more?

Notes		



