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NATURAL JUSTICE COMMENTS ON THE DRAFT CLIMATE CHANGE BILL

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A. INTRODUCTION

1. We submit these comments on the Climate Change Bill, 2022 (“the Bill”) introduced on 18 February 2022 (B9-2022) to the Portfolio Committee on Environment, Forestry and Fisheries, on behalf of Natural Justice, a registered South African non-profit organization. Our mission is to facilitate the full and effective participation of indigenous peoples and local communities in the development and implementation of laws and policies that relate to the conservation and customary uses of biodiversity and the protection of associated cultural heritage.
2. We extend our gratitude to the Portfolio Committee on Environment, Forestry and Fisheries for the opportunity to comment on this bill. The Commentary is set out as follows: general comments, specific comments, recommendations, and the conclusion.
3. While we applaud the Minister of Forestry, Fisheries, and the Environment for introducing the Bill, we are deeply concerned that the Bill as drafted falls far short of addressing the urgency of the climate crisis with measures and timelines that can effectively drive climate mitigation and adaptation action in South Africa in this decisive decade for climate action.
4. South Africa is already experiencing the devastating effects of climate change, more frequent floods, droughts, and fires. The latest report of the Intergovernmental Panel on Climate Change (IPCC), Climate Change 2022: Mitigation, stated that Africa is among the smallest contributors to the world’s greenhouse gas emissions (GHG) yet suffers some of the worst devastation. Climate change has damaged food production from crops and livestock across Africa, while also causing water shortages, extreme variability in rainfall and reduced economic growth. These trends are compounded by poor infrastructure and poor housing that leave communities in danger. In response to the devastating floods in KwaZulu-Natal, President Cyril Ramaphosa stated: “We need to increase our investment in climate adaptation measures to better safeguard communities against the effects of climate change,” while floods afflict KwaZulu-Natal, a climate crisis-driven drought is driving a water crisis in Nelson Mandela Bay.¹

¹ https://www.dailymaverick.co.za/article/2022-05-19-the-crisis-water-armageddon-loading-as-day-zero-looms-for-nelson-mandela-bay/?utm_medium=email&utm_campaign=Weekend%20Thing%2021%20May%202022&utm_content=Weekend%20Thing%2021%20May%202022+CID_df2154136346b69d21c54cf741c9edc2&utm_source=TouchBasePro&utm_term=ravaging.

B. THE CLIMATE CRISIS

5. Climate change is a global challenge requiring both international and domestic solutions. The global climate change response in which South Africa participates imposes obligations on developed and developing countries to mitigate greenhouse gasses emissions and adapt to climate change impacts.
6. The science is clear. The United Nations Intergovernmental Panel on Climate Change (IPCC) has, in the second half of 2021 and in 2022, published reports comprising its Sixth Assessment Report (“IPCC AR6”) on climate change. These reports and other IPCC reports written by teams of world-class global experts based on vast literature reviews reflect “the best available science, evidence and information” as required under the Bill.
7. The IPCC AR6 Working Group report (“IPCC AR6 WG1”) – The Physical Science Basis, August 2021² – includes the following findings:
 - 7.1. Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO₂ and other greenhouse gas emissions occur in the coming decades.
 - 7.2. South Africa is experiencing a decrease in average rainfall, but an increase in flooding due to changing rainfall patterns (more intense and over a shorter period). There is an increase in heatwaves, droughts, aridity, and soil dryness. These events are made more frequent and intense because of human-induced climate change.
8. The 2018 IPCC SR1.5 Special Report on Global Warming of 1.5°C³ states that to limit warming to 1.5°C over pre-industrial levels, requires a reduction in GHG emissions of 45% by 2030, over 2010 levels, and achievement of net zero emissions by 2050. This gives South Africa and the world a short timeframe in which to take action to reduce GHG emission to avoid the most catastrophic climate change impacts.
9. At COP 26 in November 2021, the global community agreed to the Glasgow Pact⁴ which requests nations to submit stronger Nationally Determined Contributions (NDCs) and GHG emissions reduction targets by the end of 2022. (This reflects the strongly felt urgency of the climate crisis; previously, the Paris Agreement requested stronger NDCs every five years).

² See <https://www.ipcc.ch/report/ar6/wg1/>.

³ <https://www.ipcc.ch/sr15/>.

⁴ https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf.

10. As climate change laws, carbon taxes, carbon border adjustments, and international pressure to reduce GHG emissions increase, there is a significant risk fossil fuel infrastructure will become an economic drag on the national economy, for example generating electricity at an uncompetitive, high cost, long before the end of the project's technical lifespan. In addition to crowding out renewable energy generation that is competitive now in many jurisdictions, and will be globally competitive in short order, these projects may result in stranded assets that will burden government with support to prop up these stranded assets or decommissioning costs.⁵
11. Climate change is a global challenge requiring both international and domestic solutions. The global climate change response in which South Africa participates imposes obligations on developed and developing countries to mitigate greenhouse gases emissions and adapt to climate change impacts.
12. According to the Intergovernmental Panel on Climate Change (IPCC), climate change will increasingly put pressure on food production, access to water and water security, human settlements, migration, biodiversity, energy security and industry. The poor and vulnerable groups and nations will be most severely affected. South Africa's ability to meet its development and economic growth goals, including job creation and poverty reduction, will be severely impacted, as will the realisation of South Africans' constitutional rights to a healthy environment, health, food, water, and housing.
13. Climate change is a human right, a poverty eradication and sustainable development issues, as well as environmental issues. Legislation needs to facilitate sound adaptation measures to help create a climate-resilient society and economy. There is a need to accelerate climate adaptation strategies. The Climate Change Bill ("the Bill") must continue to empower South Africans and South Africa to adapt and mitigate climate change. Mitigating the effects of climate change should be core to setting emission limits and decision-making, whilst adaptation should become central in government policy and strategic planning.

C. GENERAL COMMENTARY

14. This Bill is critical both to implement South Africa's commitments under the Paris Agreement (2015) and to protect the rights of all South Africans guaranteed in the Constitution of the Republic of South Africa, 1996. Climate change is a human rights issue as well as an environmental, social, and economic issue. The South African Constitution established the responsibility of the government to take all

⁵ <https://oilprice.com/Energy/Crude-Oil/A-Third-Of-Fossil-Fuel-Assets-May-Soon-Be-Stranded>.

necessary measures to protect the people and environment of South Africa from the worst effects of climate change. South Africa's response to the climate crisis requires a whole-of-government approach.

15. If we do not take steps now to avoid these impacts (such as water scarcity, increased extreme weather events, and temperature increases) they will become significantly worse with devastating impacts particularly in the poor and marginalised communities of South Africa, and for women and children.
16. Accelerating the deployment of renewable energy, increased programs for energy efficiency, and implementing regulatory tools such as demand management, are immediate and urgent steps within the context of a just energy transition from fossil fuels to renewables. A just transition would also reduce energy poverty and air pollution, and drive job creation in new sectors. Conversely, locking South Africa into high GHG-emitting infrastructure, which will be uncompetitive soon, will have severe negative economic implications, resulting in, *inter alia*: stranded assets; expensive electricity; and water and food insecurity for the people of South Africa.
17. Against this background, we present our most pressing concerns about the Bill as drafted.

I. LACK OF URGENCY

18. The Bill as drafted in no way reflects the urgency of the climate crisis and its impacts on South Africans. The Bill includes unreasonably long-time frames for implementation of various provisions and/or omits time frames altogether.
19. The climate crisis is already upon us, and South African citizens and communities are already being harmed by increases in frequency and severity of floods, drought, and high temperature, among other impacts. Hence, we strongly urge significantly shorter timeframes for all requirements in the act, including, *inter alia*, the promulgation of implanting regulations, carbon budgets, adaptation response plans.
20. Examples include, *inter alia*:
 - i. The Bill directs the Minister to allocate carbon budgets and sectoral emissions targets,⁶ as key elements to implement the country's mitigation action but does not include any deadlines for their promulgation. We strongly urge that promulgation be required within one calendar year of the entry into force of the Bill: and

⁶ Climate Change Bill, section 22 and § 24.

- ii. The Bill gives an unreasonably long 5-year period to the provincial and local government for promulgation of a climate change response implementation plan.⁷ In five years, the impacts of climate change, and the cost of adaptation, will be much greater. The Bill should stipulate promulgation of these key plans by provincial and local governments within one year of entry into force of the Bill. The Bill includes no timeframes for carbon budgets or the GHG emission trajectory. The Bill should have set out a climate trajectory requiring certain climate responses and measures to be in place within set timeframes. There are several other critical provisions, such as setting carbon budgets and sectoral emissions targets, that have no deadlines attached to them, leading to concerns that meaningful action may be further delayed. The climate crisis is upon us, but the Bill does not yet reflect the urgency or severity of the situation.
21. South Africa has ratified the United Nations Framework Convention on Climate Change (“UNFCCC”) and the Paris Agreement, which provide for meeting emission targets and carbon budgets within specified time periods. The Act must set urgent timeframes for South Africa to meet these deadlines for international climate obligations.

II. EMISSION REDUCTION LIMITS

22. The Bill does not set critical and ambitious emission reduction targets
23. The Climate Change Act will not be effective unless it includes ambitious emissions reduction targets for 2030 and mid-century. The Bill makes no reference to the Paris Agreement target of keeping the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.⁸
24. The Bill requires the Minister to set the national GHG emissions trajectory and to determine a GHG emission threshold but does not provide a timeframe at all. Equally confounding, we don’t understand why the interim trajectory contained in Schedule 3 of the Bill appears to be drawn from South Africa’s 2015 NDCs emission trajectory rather than South Africa’s more updated 2021 NDCs.
25. Given the scientific consensus on the urgency of reducing global GHG emissions 45% by 2030 the Bill should require the Minister to promulgate ambitious 2030 GHG emissions reduction targets. Without interim targets, there is a significant risk that action on emissions reductions will be postponed to a year closer to mid-century, at which time the climate crisis will be even more devastating for South Africans,

⁷ Climate Change Bill, section 15.

⁸ Article 2(1)(a), Paris Agreement.

and the cost of mitigation and adaptation will have risen dramatically. We must not burden our children and grandchildren with a worsening climate crisis and budget-busting climate mitigation and adaptation costs.

26. While government officials claim that South Africa is working toward “net-zero” emissions, the Bill fails to indicate a concrete plan of action to achieve this goal. In addition, there is a need to provide more information on the climate planning stages South Africa will take. There is also a need to make policies and regulations that have set out and clear timeframes, and the actions that need to happen.
27. The Bill does not have a set of targets which are based on the latest and available science. The Bill does not set out ambitious sound targets, further it does not have long-term plans and interim targets. It also has no targets for the Minister on how and when certain obligations need to be filled and finished. There are also no net-zero targets that have been afforded in this Climate Change Bill.
28. With regards to the provision dealing with the listed greenhouse gas and activities (section 23(1)), this section is problematic in that it supports the publication of listed greenhouse gas activities by the Minister based on his/her own "reasonable" beliefs. The Minister's belief should not be left to subjective criteria to be determined by the Minister but should rather be supported by the latest climate change science which objectively quantifies which greenhouse gasses and which activities exacerbate climate change.
29. With regards to section 23(2), the current text should extend its scope to not only consider the publication of listed activities that emit greenhouse gasses, but also address and include sectors/industries and private companies which through their conduct emit greenhouse gasses to secure transparency and adequate oversight and accountability

III. CONSTITUTIONAL RIGHTS

30. The Bill does not affirmatively acknowledge the government’s fundamental obligation to safeguard South Africans’ constitutional rights.
31. Climate change has devastating impacts on the realization of human and constitutional rights. The rights to life, dignity, access to food and water, and to an environment not harmful to health or well-being is guaranteed in the South African Constitution and Bill of Rights. The Bill should affirmatively recognize the government’s responsibility to take strong action on climate change to protect the realization of these Constitutional Rights.

32. The Climate Change Bill should have done more to recognise the principle of intergenerational equity. The principle of intergenerational equity states that every generation holds the Earth in common with members of the present generation and with other generations, past and future. This principle is designed to protect natural resource diversity, the quality of the environment, and the ability of future generations to equitably access the benefits therefrom, are translated into the obligations to prevent and mitigate climate change, together with the obligation to provide adaptation assistance. The principle articulates a concept of fairness among generations in the use and conservation of the environment and its natural resources. The principle is the foundation of sustainable development. It has also been applied to cultural resources and to economic and social problems.

IV. TRANSPARENCY AND ACCESS TO INFORMATION

33. The Bill is weak or silent on fundamental transparency and access to information on climate change
34. The Bill as currently drafted undermines South Africa's Constitutional right to access to information (§ 32) and must be amended to provide for automatic public access to all climate change information and records provided for in the Bill. The Bill should make express provision for data and reports generated under provisions of the Bill to be available online upon request.
35. To fulfil the Constitutional requirement, the Bill should authorize the creation of a web-based climate change information portal that makes publicly available all information on climate change impacts and responses including, inter alia, all government plans, programs, reports, international commitments, laws, regulation, and guidance. Other countries have already done this. For example, the Kenya Climate Change Knowledge Portal (KCKKP)⁹ is a one stop repository of climate change information in Kenya. The Kenyan Climate Change Directorate (CCD), the lead agency of the government on national climate change plans and actions serves as the national knowledge and information management centre for collating, verifying, refining, and disseminating knowledge and information on climate change.
36. Section 31 concerns the right of access to information and states that information must be provided subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). The Bill does not make it clear how information will be shared in the arms of the government or communities. Information related to

⁹ <https://www.landportal.org/organization/kenya-climate-change-knowledge-portal#:~:text=The%20Kenya%20Climate%20Change%20Knowledge,climate%20change%20plans%20and%20actions.>

greenhouse gas mitigation and climate adaptation be freely available to all interested communities, organisations, and individuals.

37. Especially considering the complex nature of climate change, the Bill must ensure that the information provided is easily accessible and conveyed in a language, manner, and medium that makes the information understandable and usable for all South Africans, including speakers of all languages, as well those who cannot read. In South Africa every citizen has a right to be informed when a decision is to be taken that affects them or their rights; the Bill must include specific provisions to guarantee the realisation of this right to information.
38. The Bill does not state any procedure or processes that can be used to access information. The access to information in the field of climate change is of fundamental importance since this information can be used to read rainfall, droughts and other natural disasters caused by climate change (also adaptation strategies). The Bill should have done more to create an institute or server with climate information that can be accessed by individuals/communities or companies. The Climate Change Bill currently does not provide for adequate transparency and access to information.
39. There is a need for an independent scientific committee that focuses on climate change and liaises with the National Treasury for funding. This independent scientific body needs to provide the government with the best available and latest science on climate change and the responses required to address it. Many of the targets and responses of this Bill are political in nature and do not conform to the findings and dictates of current climate science. It is important that the Bill requires decision-makers to stay abreast of the ever-evolving scientific knowledge in this field and to ensure that all decisions made pursuant to this legislation and corresponding regulations are grounded in the best available climate science. The Bill must also explicitly incorporate the precautionary principle, which requires decision-makers to adopt a cautious and risk-averse approach to decision-making and which dictates that lack of scientific certainty does not absolve government officials from their duty to act against climate change.
40. The National Treasury must also play a significant role in funding most of the mitigation and adaptation programmes. It is also vital that the National Treasury provides for oversight to reduce corruption and misuse of funds.

V. PUBLIC CONSULTATION AND PARTICIPATION IN THE PROMULGATION OF THE BILL

41. There has not been proper consultation and participation of communities in the process leading to the writing of this Bill. Public participation and consultation are a constitutional right in South Africa (§ 33 Constitution of the Republic of South Africa, 1996).
42. The government must ensure meaningful public participation on the Bill for all citizens, including those in remote, rural, and/or poor communities that are the most vulnerable to the impacts of climate change.
43. The government should launch consultations in all metropolitan and rural areas, with special consideration given to the participation of women, youth, and disabled people and to indigenous and remote communities. There must be adequate notice of hearing, including through local radio and other locally accepted means of communication, and provision of relevant information in the local language.
44. There is a need for the department to continuously engage with all communities in South Africa. The consultation process serves to hear the communities' concerns and as a public awareness platform for those communities' needing education, information and training on various issues or laws and policies that affect their lives.
45. Many of the most affected communities are among South Africa's poorest, where climate change will impact the activities and environment on which these communities rely for subsistence and livelihoods. There is no evidence that the Department of Environment, Forestry and Fisheries (DEFF) have undertaken any meaningful consultation with the communities whose lives, livelihoods, culture, and heritage will be most impacted by the policies that will flow from this Bill.
46. Furthermore, youth participation in climate change consultations is crucial, because ultimately, it is the youth that must bear the full brunt of climate change in the future. There should have been youth climate change public meetings in high schools and universities to ensure effective youth participation.
47. The public comment period for this Bill has been insufficient to enable meaningful engagement by all sectors of society. More effort should have been expended to ensure effective public participation, particularly in respect of assisting low income and rural communities to participate, many of whom are susceptible to climate change. The government should have distributed pamphlets or put notices to inform people of the bill. There should have been public hearings in every district of South Africa for the public to share their views. The public should be given further reasonable and adequate opportunity to understand and engage with the Bill, and a safe platform to effectively participate.

VI. FOREST PROTECTION AND RESTORATION

48. The Bill does not recognize forest protection and restoration as a nature-based solution to climate change
49. Forests sequester about 25% of the carbon from the atmosphere. They play a huge part in reducing carbon emissions. The Paris Agreement, Article 5, has recognized that forests play a huge part in mitigation and adaptation strategies. Forests also play a protective service in reducing floods and protecting the fertile soil. However, the Bill does not affirmatively recognize this nature-based solution to climate change. The Bill should be amended to include reference to nature-based solutions to climate change as effective, low-cost climate mitigation and adaptation measures.

VII. SANCTIONS AND PENALTIES

50. The Bill does not include sufficient penalties to ensure compliance with emissions reduction requirements.
51. The Bill lacks adequate compliance and enforcement provisions (section 32). The Bill should include stronger enforcement and compliance measures to deter companies and individuals from shirking their emissions reduction obligations. The Bill provides for only a single offence, for the failure to prepare and submit a GHG mitigation plan to the Minister;¹⁰ and does not provide any penalties for failing to implement such plan, nor for exceeding an allocated carbon budget.¹¹
52. It is critical that the Bill include strong measures to encourage compliance. Penalties could include a higher carbon tax on emissions exceeding the allocated carbon budget, or withdrawal of operating licenses and permits, and personal liability for corporate officers, among other measures which should be listed in this Bill.
53. Additionally, all entities and persons who exceed their allocated carbon budget should suffer reputational risk via the publishing on a public website of their failure to adequately reduce emissions. And the Bill should reference the Companies Act No. 71 of 2008 and require financial disclosures to further leverage private sector climate action.
54. Whilst there are several other sanctions, such as criminal and administrative sanctions, in other laws that can be used to deter environmental degradation, they are not stringent enough. There is a need for

¹⁰ Climate Change Bill, section 32.

¹¹ Climate Change, section 24.

the Bill to introduce other innovative sanctions and corporate social responsibility strategies to reduce emissions in South Africa. The Bill lacks adequate compliance and enforcement provisions.

55. Section 32 provides for the offences and penalties under the envisaged Act. The Act must do more to introduce innovative stringent sanctions that will deter companies and individuals from generating excessive carbon emissions and incentivise them to meet their targets. In addition, false or misleading information on emissions should carry a heavy sanction.
56. All provisions in previous drafts linking non-compliance with the obligation to pay a higher carbon tax have been removed in the draft introduced in Parliament – deferring consequences of violations to regulations to be made by the Minister at an undetermined point in the future. There is a need for a meaningful deterrence for non-compliance and excessive GHG emissions so that big emitters will take the necessary action.

VIII. IMPLEMENTATION AND CO-OPERATIVE GOVERNANCE

57. The Bill is weak on training and funding local, provincial, and national government bodies to implement effective climate response measures
58. The Bill places a large burden on municipalities, provinces, and ministerial departments, without making adequate provision for capacity-building and funding. For example, the Bill requires provinces and municipalities to take a lead on climate change adaptation planning but lacks provisions on how local jurisdictions will be provided with the necessary training, expertise, and funding to carry out their duties.
59. Financial support, and capacity-building are fundamental to the implementation of the Climate Change Act yet are entirely absent from the Bill as currently drafted.
60. The Bill does not make adequate provision for interdepartmental cooperation or policy cohesion among various interrelated laws with which the Bill will intersect or provide for clear inter-departmental cooperation across ministries. As the economy of South Africa is diverse, all sectors must engage in a well-coordinated, collective effort to mitigate and adapt to climate change. All government departments must work to reduce greenhouse gas emissions (GHG) in line with South Africa's international obligations and facilitate effective climate adaptation responses in communities throughout the country. There must be clear requirements to ensure that the DEFF carries out its duties with respect to protecting the environment and natural resources, particularly in respect of biodiversity conservation, pollution prevention and meeting South Africa's international greenhouse gas mitigation

obligations. Further, the Bill must impose clear and enforceable obligations on other relevant government industries and provide DEFF with clearly defined oversight duties with respect to ensuring compliance with the objections and requirements of the Bill. The Bill must provide for more effective interdepartmental cooperation to ensure that no departments and policies undermine the objectives of the Bill and to facilitate sustainable economic development for South Africa.

61. The DEFF must sufficiently be empowered to issue guidelines and monitor and evaluate targets. There is also a need to create a National Focal Point in this department, this could help the other departments and ministries. Local governments should be strengthened, trained, and empowered to assist in taking action to respond to climate change.

IX. MAINSTREAMING CLIMATE CHANGE MITIGATION AND ADAPTATION

62. The Bill does not adequately require the mainstreaming of consideration of climate change mitigation and adaptation in all government decision-making
63. Effective climate change action requires a whole-of-government approach. The Bill does not adequately provide for well-coordinated climate response across all government bodies at all levels.
64. Approaches to remedy this weakness include, inter alia:
 - 64.1. Establishing an inter-departmental Climate Change Directorate to oversee multi-sectoral implementation of the Bill. This committee should be co-chaired by the minister for environment and the minister responsible for planning, and the minister for finance/treasury, and include representatives of provincial and municipal government as well as other relevant national government officials.
 - 64.2. Require the Minister to report to parliament bi-annually, or at least annually, on progress made with implementing all key provisions in the Bill by all relevant government bodies.

X. LIMITED SCOPE

65. The Climate Change Bill's limited scope fails to collectively address both mitigation and adaptation strategies. This crucial legislation will influence economic development policies and affect South Africa's ability to meet its international climate commitments and thus the Bill needs to be comprehensive. The current scope of the Bill must be expanded to facilitate a just transition to renewable energy sources and ensure that South Africa meets its emissions targets. The Bill must also

reduce communities' climate vulnerability by including climate adaptation provisions which protect environmental and human security.

66. The Bill presents important principles, but the objectives and principles set forth in the Act must be transposed into concrete and enforceable obligations and policies. Further, the Bill fails to situate this legislation within the broader policy context and does not articulate with requisite specificity how this Bill intersects with other important legislation and regulations or how conflicting objectives and provisions of different laws will be reconciled.
67. The Bill does not properly situate the legislation in the context of international law and policy, and there is inadequate discussion of whether and how the Bill will allow South Africa to meet its international climate obligations. Further, because there are not clear requirements and legally enforceable obligations set forth in the Bill, it is unlikely that the Bill as currently drafted will ensure South Africa's compliance with its current international commitments or provide the necessary tools for South Africa to formulate and abide by future greenhouse gas mitigation targets.
68. Not only do such obligations ensure that the objectives of the Bill are realised, but they also provide necessary policy certainty to attract investors, including investors in renewable energy and other green technology. Because the Bill's scope is so limited and there are very few meaningful enforceable provisions, the legislation foregoes an important opportunity to convey a vision of South Africa's zero emissions economy.
69. The Bill does not provide a vision of climate adaptation and resilience that reflects the needs and desires of the communities who will be worst impacted by the effects of climate change. Further, the Bill does not provide a concrete adaptation plan to ensure that these communities and local governments are equipped to adapt to the climate crisis.

XI. PLANNING

70. The Climate Change Bill lacks ambition and fails to provide a clear plan for emissions reductions and climate adaptation measures. The plans that are set forth in the Bill lack the emissions reduction ambition necessary to constitute meaningful climate action and protect South African communities. While implementing policies and regulations will provide further detail in this regard, the Bill must provide clear enough boundaries and mandates to ensure that such regulations will provide more meaningful emissions reductions and lead to adequate climate adaptation action.

71. While government officials claim that South Africa is working toward “net-zero” emissions, the Bill fails to indicate a concrete plan of action to achieve this goal. In addition, there is a need to provide more information on the climate planning stages South Africa will take. There is also a need to make policies and regulations that have set out and clear timeframes, and the actions that need to happen.

D. SPECIFIC COMMENTARY

I. NEEDS ASSESSMENT PER NATIONAL ADAPTATION STRATEGY PLAN

72. The issue of vulnerability to climate change impacts and climate change-related human rights harms within the context of the National Adaptation Strategy plan and the Sector adaptation Strategy plan, must be assessed within the scope of understanding and addressing the special needs and circumstances of localities, economic sectors and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women – especially poor and rural women – children, especially infants and child-headed families, the aged, the poor, the sick and physically challenged. It is imperative that the current prevailing provisions particularly sections 18 and 19, incorporate within its text specific reference to the necessary assessment of the special needs and circumstances of localities, economic sectors and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women – especially poor and rural women – children, especially infants and child-headed families, the aged, the poor, indigenous and tribal populations, the sick and the physically challenged.
73. Such a scope is comprehensive, covering multiple levels of vulnerability (locations, sectors, individuals) and, while it does not close the door to a broad society-wide approach, it stresses key vulnerable groups that should be given particular attention as it relates to reducing vulnerability and strengthening and preserving resilience against climate change impacts within the national and sectoral adaptation strategy plans.
74. At provision 17, particularly subsection (c), stronger language should be incorporated that requires the prioritization of the consideration of most severe actual or potential human rights risks and associated vulnerabilities, as well as prioritize focus on impacts on individuals and groups at heightened risk of vulnerability and marginalization. This will ensure a prioritization of environmental and social protection interventions which promote distributive justice (i.e., fair allocation of the costs and benefits of a transition) by broadening adaptation efforts to support vulnerable stakeholders.

75. As part of the adaptation objectives outlined in section 16(1)(a), provision must be made within the current text to define and set a long-term energy transition strategy, as part of the national adaptation strategy plan. This long-term energy transition strategy target will assist in committing to a phase out of new fossil fuel development. An ambitious commitment that is outlined within the text, will provide a necessary indicator within s 16(1)(b) for measuring progress towards an adaptation strategy which is supported by a long-term energy transition strategy that is rooted in development that is premised on environmental integrity and social and economic development.

II. JUST ENERGY TRANSITION (JET)

76. South Africa's development path has not only been one of prevalent poverty, inequality, and unemployment, but also one of high carbon emissions. The country is one of the top 15 CO₂ emitters in the world and the largest in Africa. For South Africa to comply with its commitment to the Paris Agreement, it would need to phase out coal, gas, and oil from the power and liquid fuels as soon as possible. In a study conducted on workforce transfer from coal regions to sectors that might deploy solar and wind, RES4Africa found a net gain in jobs. It calculated the job numbers associated with a transition to wind and solar power between 2020 and 2030, reaching a total of 862 thousand direct, indirect, and induced jobs from wind and solar PV.¹² Furthermore, the costs of renewable energy, particularly wind and solar PV, have fallen dramatically in the past ten years. Furthermore, South Africa's electricity sector, wind and solar PV are now the least-cost options for new power plants and represent an effective way of transitioning the country to a net zero pathway whilst stabilizing the economy and securing South Africa's social protection policies. While opportunities in wind and solar and battery have the potential to recover and add to jobs lost in coal industry, a business-as-usual scenario, at least in the short term, would have further potential costs to the economy such as high electricity prices caused by aging and poorly maintained power stations; rising debt for the public to repay due to government debt servicing costs, and costs to health and provision of healthcare.

77. Therefore, we need to phase-out and eliminate the use of fossil fuels for energy. The Climate Change Bill must incentivise and enable a just transition from climate-harming to clean energy and ensure that no-one gets left behind. The Climate Change Bill must ensure urgent, transparent, and effective climate adaptation to protect vulnerable people, sectors, and communities from climate change impacts.

¹² A Just Energy Transition in South Africa: Socio-economic needs and the positive impacts of a future low-carbon economy." Res4Africa Foundation, CSIR, and ERM. 2018. <https://www.res4africa.org/wp-content/uploads/2020/09/RES4Africa-Foundation-A-Just-Energy-Transition-in-South-Africa.pdf>.

78. The International Energy Agency in its Net Zero by 2050 report¹³ states that there should be no new oil and gas field development, and no new coal mines or mine extensions, starting from last year – 2021 – if the world wants to maintain the hope of net-zero by mid-century.
79. Inexplicably, the Bill doesn't mention the urgent need to reform regulatory barriers that limit national and municipal climate mitigation, especially restrictions on the generation of procurement of renewable energy capacity via power purchase agreements. South Africa, like many countries, urgently needs the government to send the right signals to the market to support investment in renewable energy by embracing strong emission reduction measures and to dissuade via regulation the expansion and/or continued operation of carbon intensive fossil fuels such as coal and gas.

III. NATIONAL GHG INVENTORY

80. Section 26 provides for the development of the National Greenhouse Gas Inventory and the compilation of the National Greenhouse Inventory Report on an annual basis. There is a need to clarify what is intended by this provision, and the mechanisms which will give effect to it.

IV. CARBON BUDGETS

81. Section 24 requires the Minister to allocate a carbon budget to every person undertaking a listed activity. However, there are no parameters for a national carbon budget within which section 24 budgets will be determined. This national carbon budget must recognize priority sectors for mitigation and adaptation, putting in place measurable plans for emissions reductions and improvement of adaptation strategies.
82. Furthermore, given the increasing likelihood of more frequent and more catastrophic climate change impacts (e.g., recent torrential rain and flood impacts in KwaZulu-Natal, and the ongoing drought in the Eastern Cape), section 24 must provide for the allocation of carbon budgets that are cognizant and in keeping with a climate fair share of the total amount of available carbon allocations locally and globally.
83. The duration of carbon budgets should be decreased from five to three years, to accelerate efforts to reduce emissions.

¹³ <https://www.iea.org/reports/net-zero-by-2050>.

E. CONCLUSION

84. We request that the Bill be amended in line with the above comments and suggested revisions.

85. We trust that the Portfolio Committee will give due consideration to these comments and work to ensure that the Bill so amended is promulgated as soon as possible given the urgency of climate change mitigation and adaptation in South Africa.