



KWAZULU-NATAL LEGISLATURE

AN ACTIVIST PEOPLE-CENTRED LEGISLATURE

NEGOTIATING MANDATE

TO: HON TC MODISE, MP
CHAIRPERSON OF SELECT COMMITTEE ON LAND
REFORM, ENVIRONMENT, MINERAL RESOURCES
AND ENERGY

NAME OF BILL: CLIMATE CHANGE BILL

NUMBER OF BILL: B9B – 2022

DATE OF DELIBERATION: 25 MARCH 2024

VOTE OF THE LEGISLATURE:

The Portfolio Committee on Conservation & Environmental Affairs met on Monday, the 25th of March 2024 and agreed to mandate the KwaZulu-Natal delegation to **support** the **Climate Change Bill [B9B-2022]** with the following proposed **amendments**:

1. In clause 15(2)(c) of the Bill on climate change needs and response assessment: consider adding [as underlined]:

“15(2)(c) identify and spatially map, within the sphere of operations of the province, district or metropolitan municipality, as the case may be, risks, vulnerabilities, areas including areas farmed by women, ecosystems and communities including women and children, that will arise, or that are vulnerable to the impacts of climate change;”

2. In the Preamble, insert as follows [as underlined]:

“Preamble

... AND WHEREAS climate variability in the Republic, including the increased frequency and intensity of extreme weather events, will affect, amongst other things, human health,

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access to food and water, biodiversity, habitats, ecosystems and ecological infrastructure, the coast and coastal infrastructure and human settlements.”

3. Under Definitions, insert the following definitions:

“**ecological infrastructure**” means naturally functioning ecosystems that provide valuable services to people and the economy;

“**Ecosystem-based Adaptation**” means the use of biodiversity and ecosystem services as part of an overall adaptation strategy to help people to adapt to the adverse effects of climate change.”

4. Under Objects of Act Clause 2, insert the following [as underlined]:

“The objects of this Act are to—

... (b) provide for the effective management of inevitable climate change impacts by enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, including through Ecosystem-based Adaptation, with a view to building social, economic and environmental resilience and an adequate national adaptation response in the context of the global climate change response; ...”

5. Under clause 3 Principles, insert the following [as underlined] and **delete bold in square brackets []**:

“The interpretation and application of this Act must be guided by—

... (l) a recognition that a robust and sustainable economy and a healthy society depend[**s**] on ecological infrastructure and the services that well-functioning ecosystems provide....”

6. Under clause 32: Offences and Penalties, insert the following [as underlined] **and delete bold in square brackets []**:

“Offences and penalties

32. (1) A person commits an offence if that person—

(a) fails to provide data, information, documents, samples or materials to the Minister in terms of section 20(1);

(b) provides false and misleading data, information, documents, samples or

materials to the Minister in terms of section 20(1);
(c) fails to prepare and submit a greenhouse gas mitigation plan to the Minister in terms of section 24(4);
(d) fails to comply with the allocated carbon budget in terms of section 24(6):
[(d)] (e) fails to comply with or contravenes the notice of the Minister in terms of section 25(1); and
[(e)] (f) fails to comply with the measures contemplated in section 25(3)(b).”

7. The provisions of clause 24(6) of the Bill will also need to be relooked as it merely requires measures from the person who has failed or is failing or will fail to comply with the allocated carbon budget. **This is insufficient to ensure compliance and requires an attached penalty.**

The Committee wishes to raise its sharp displeasure at the unreasonable time frames that the NCOP has placed on it and other committees to conduct adequate public consultation on this important Bill and the rushed manner of dealing with the serious aspect of climate change that affects us all.



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HON SW MSHENGU MPL
CHAIRPERSON: CONSERVATION AND
ENVIRONMENTAL AFFAIRS
PORTFOLIO COMMITTEE

25 March 2024

.....
DATE

PUBLIC CONSULTATION REPORT IN RESPECT OF THE CLIMATE CHANGE BILL

[B9B- 2022]

SUBMITTED BY

THE CONSERVATION AND ENVIRONMENTAL AFFAIRS PORTFOLIO COMMITTEE:

KWAZULU-NATAL LEGISLATURE

1. Introduction

- 1.1. The Climate Change Bill [B9B-2022] (“the Bill”) as amended by the relevant Portfolio Committee pursuant to its public consultation process, was passed by the National Assembly, and as a section 76 Bill affecting provinces, transmitted for concurrence by the National Council of Provinces (“NCOP”) on the 24th of October 2023, and accordingly submitted to the provinces for formulation of mandates. The Bill was referred to the Conservation and Environmental Affairs Portfolio Committee of the KwaZulu-Natal (“KZN”) Provincial Legislature (“the Committee”) on the 30th of October 2023 as the appropriate committee for the conferral of a negotiating and a final mandate in accordance with the Mandating Procedures of Provinces Act, 2008.
- 1.2. The Bill seeks to enable the development of an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa in the context of sustainable development; and to provide for matters connected therewith.
- 1.3. The Climate Change Bill is the first piece of legislation in South Africa which is dedicated specifically to address climate change mitigation and adaptation. It is therefore intended to serve as a legal instrument to build resilience against the impacts of climate change and to reduce emissions in a manner which is aligned to national development commitments and priorities.¹ The Bill was developed within the context of South Africa’s international commitment to pursuing measures to limit temperature increases to 1.5 degrees Celsius above pre-industrial levels, under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

¹ An introduction to the Climate Change Bill [B9B-2022] Parliament Research Unit).

Under South Africa's existing climate change regulatory framework, industries (including coal mining), must submit annual progress reports on its approved pollution prevention plans to the Minister of the Department of Forestry, Fisheries and Environment (DFFE) if greenhouse gases are emitted.

- 1.4. As a province, we have experienced firsthand the devastating effects of flooding as an extreme weather event, which resulted in the loss of lives, massive infrastructural damage and impacted negatively on the economy. This has made us extremely mindful of measures to mitigate the impacts of climate change as well as the need for effective adaptation responses to climate change.
- 1.5. S118(1) of the Constitution requires that a provincial legislature facilitate public involvement in the legislative and other processes of the Legislature. Views of the public are required to be taken into consideration in the decision conferring authority on the provincial delegation to the NCOP to cast a vote in support of or in rejection of the Bill or to propose amendments to the Bill or to abstain on voting on the Bill.
- 1.6. The Select Committee on Land Reform, Environment, Mineral Resources and Energy held a briefing on the Bill by the DFFE on the 14th February 2024. The Committee further received its own briefing on the Bill by the DFFE on the 11th March 2024. The Committee, with due regard to s118(1) of the Constitution, conducted 4 public hearings in KZN on the 12th, 15th, 19th and 20th of March 2024 respectively at the following venues: Khethani Community Hall in the uThukela District Municipality, the Franklin Cultural Village Hall, Kokstad in the Harry Gwala District Municipality, Inkosi Msongelwa Hall, KwaMnqobokazi, Hluhluwe in the uMkhanyakude District Municipality, as well as in the Mkhambathini Town Hall, Camperdown in the uMgungundlovu District Municipality.
- 1.7. Notice of public hearings were published in newspapers circulating in the province. The Bill was placed on the KZN Legislature's website together with a notice calling for public comments on the Bill and also publicised on the Committee's Facebook Page. Invites were extended to the various municipalities as well as political leadership and copies of the Bill were delivered in advance of the hearings to all district municipalities and the Ethekwini Metro. The Committee also called for written submissions on the Bill via the newspaper and website notices as well at each public hearing. The Committee made sufficient copies of the Bill as well as copies of the presentation of the Bill as

translated into isiZulu available at each public hearing. The briefings on the Bill were presented in English with translation into isiZulu as well. The public hearings were well attended. They were also live streamed on the KZN Legislature YouTube page as well as on its Twitter feed. Officials from the DFFE were present at each hearing and they responded to questions raised by members of the public at each hearing.

2. Public comments received

2.1. The Committee received various oral submissions at the public hearings. The Committee received only 3 written submissions by the closing date of 22 March 2024. Comments raised by members of the public orally at the hearings were mostly in support of the Bill and a recognition of the challenges of climate change. They also raised clarity-seeking questions on the provisions of the Bill. These questions were responded to adequately by officials of the DFFE, who also provided practical examples on climate change impacts and how the public could also assist in mitigating climate change and coming up with adaptation responses to climate change.

2.2. ORAL SUBMISSIONS

The oral submissions received related in the main to the following:

- (a) The recognition by the public of the effects of climate change as observed in floods, rivers running dry, water shortages, damage to infrastructure, less healthy livestock etc.;
- (b) the acknowledgment that climate change affects us all, with the urgent need to protect our beautiful environment in KZN for future generations;
- (c) The public would like to see reports on climate change from earlier times so that a comparison could be performed;
- (d) questions around how coal mines contribute to climate change and other alternatives to coal that could be explored for energy;
- (e) accessibility by the public to Presidential Climate Commission Reports;
- (f) A number of comments on the penalties provisions in the Bill namely:
 - (i) The welcome of penalties for dealing with those who contravene the Act;
 - (ii) Whether penalties paid could be redirected to municipalities for implementation of Climate Change responses;
 - (iii) The Bill needs to be clear as to who has the power to prosecute offences- Some would like to see local government being responsible for

prosecutions as they are on the ground, rather than national, which could result in delays;

- (iv) whether small businesses would be liable for the same penalties as larger companies emitting greenhouse gases or would penalties be categorised in accordance with the nature and size of the respective company. The Department clarified that when allocating carbon budgets to different emitters, the specific activities of the businesses are considered, so the carbon budgets allocated to businesses will be different depending on the activity undertaken. The penalty provisions are maximum amounts and not all will pay the maximum amount;
- (g) Concerns as to agriculture having the biggest impact on climate change with its extensive use of chemicals which even affect the food people eat. Deforestation and the destruction of wetlands was also raised as contributing to climate change;
- (h) Concerns that the Bill specifies roles for the Ministers, MEC and Mayors but not enough is said about local municipalities' role, yet local municipalities are most effected by climate change as things happen on the ground. The DFFE explained that the Bill does not want to overburden municipalities with new structures, hence existing structures are used like the District Intergovernmental Forum which will serve as a municipal forum on climate change. Provision was made in previous versions of the Bill for all municipalities (including local) but local municipalities indicated that they did not have capacity hence they elevated it to district municipality level, with the understanding that district municipalities have the capacity to assist their local municipalities to determine their vulnerabilities.
- (i) Support for nature-based solutions as proposed by SANBI;
- (j) Questions as to how the Bill empowered traditional leaders so that they are mindful of climate change and accordingly inform community members about the use of sensitive areas like natural springs and wetlands, as these are affected in rural areas. With regard to the involvement of traditional leaders in climate change, the Department pointed out that provision is now made in the Bill for traditional leaders to advise on climate change [in terms of clause 7(2) of the Bill] as well as for the involvement of traditional leaders through the consultative processes of municipalities.
- (k) The proper use, recycling and disposal of waste to eliminate gases released by landfill sites; and
- (l) The replacing of fossil fuels by greener alternatives.

2.3. WRITTEN COMMENTS

The Committee received written comments from the following 3 stakeholders:

- (a) Ms Yonela Ndamase- Environmental Officer (EDTEA)
- (b) Commission for Gender Equality (CGE)
- (c) Kirsten Meiring on behalf of South African National Biodiversity Institute (SANBI)

(a) Yonela Ndamase: Environmental Officer (EDTEA)

Ms Ndamase did not comment on the contents of the Bill. She took issue with the public consultation process which in her view was flawed as she indicated that not all 3 districts were represented at the Khethani public hearing. She also indicated that she would have appreciated a presentation of what is climate change first and how it directly affects the people of these districts- people need examples and real life scenarios on how climate change affects them. Our Public Participation Unit confirmed that all 3 districts namely Amajuba, uThukela and uMzinyathi was represented at the Khethani public hearing and DFFE officials have shared more practical examples of climate change scenarios at the hearings that the public could relate to.

(b) Commission for Gender Equality (CGE)

In its submission, the CGE pointed out that women are particularly vulnerable to the effects of climate change, as they constitute the majority of South Africa's indigent population and are thus more dependent for their livelihood on the very same natural resources that climate change threatens. They indicated that women also face many social and economic barriers that limit their ability to manage and deal with the consequences of climate change. The CGE also intimated that unequal access to resources and decision-making processes, coupled with limited mobility experienced by women in rural areas means they are also disproportionately affected. Hence, the CGE submitted that any response to environmental and humanitarian crises caused by climate change must therefore **also encompass gender-sensitive strategies.**

In general, the CGE welcomed and supported the Bill as it is intended to ensure that South Africa meets its international responsibilities to develop legislation addressing climate change. However, CGE is of the view that while the Bill constitutes an opportunity to lay a foundation for setting policies across all levels of government that ensure gender-sensitive responses to the effects of climate-change, **the Bill does not sufficiently do this.** In CGE's view, except for 2 provisions in the Bill, the Bill does not

contain any **express provisions specifically relating to gender-sensitive climate change responses that directly address vulnerable women**. They conclude that the Bill therefore does not contain sufficient proactive measures that **address gender-inequality underlying the effects of climate-change, and which would mitigate or prevent the adverse effects of climate-change on women**.

The CGE suggested that express provisions be included in the Bill that address the following: The need to protect women regarding agriculture and food security in the context of climate change, **especially in supporting women farmers**; and dealing with **displacement of women and children** as a result of the impact of severe weather events such as droughts and floods, and associated increase in human migration. In their view, the issue of insufficient gender-sensitive responses in the Bill also has the potential to trickle down into regulations or policies that arise from the draft legislation, further aggravating the issue.

The CGE welcomes the inclusion of the gender sensitive obligation in clause 3(f) of the Bill which provides that the interpretation and application of the Bill must be guided by amongst others, the need for need for decision-making to consider the special needs and circumstances of women. However, the CGE are of the view that the Bill does not contain any express provisions **addressing responses to the threats that climate change poses to vulnerable women** as outlined above, **and ought to do so**. The CGE welcomed clause 12(2)(a) of the Bill that requires that the composition of the Climate Change Commission broadly reflect the gender composition of the Republic as it ensures women are empowered and participate in decision-making processes relating to climate-change.

The CGE's comments are appreciated as it pertains to gender sensitivities. While the Bill may not be explicit on the aspects proposed by the CGE, the obligation in clause 3(f) of the Bill does assist to ensure that the interpretation and application of the Bill be guided by amongst others, the need for decision-making to consider the special needs and circumstances of women. This may be an aspect that can be regulated more fully in regulations. The CGE, as a relevant stakeholder in terms of clause 7(2) of the Bill, is also not prevented from advising on the country's climate change response as pertaining to gender and the issues identified in its submission.

The Committee proposes these 2 aspects for inclusion in the Bill, namely:

- (a) The need to protect women regarding agriculture and food security in the context of climate change, **especially in supporting women farmers**; and
- (b) dealing with **displacement of women and children** as a result of the impact of severe weather events.

(ii) Kirsten Meiring on behalf of South African National Biodiversity Institute (SANBI)

Ms Meiring also physically presented SANBI’s inputs at the public hearing in Camperdown. She indicated that SANBI supported the Climate Change Bill (2022), as amended by the Portfolio Committee on Forestry, Fisheries and the Environment.

SANBI, to strengthen the substance of the Bill, proposed that ecological infrastructure (EI) and Ecosystem-based Adaptation (EbA) should be explicitly recognised in the Climate Change Bill as favourable climate change adaptation responses in support of a long-term just transition to a climate-resilient economy and society. SANBI, therefore, proposes the following textual amendments to the Climate Change Bill:

*Please note that suggested insertions are indicated by the underlined text and that suggested deletions are shown in bold in **square brackets []**.

SECTION / CLAUSE NO.	NATURE OF THE PROPOSED AMENDMENT	PROPOSED AMENDED TEXT
PREAMBLE	Insertion	“Preamble ... AND WHEREAS climate variability in the Republic, including the increased frequency and intensity of extreme weather events, will affect, amongst other things, human health, access to food and water, biodiversity, habitats, ecosystems <u>and ecological infrastructure</u> , the coast and coastal infrastructure and human settlements; ...”
CHAPTER 1: INTERPRETATION, OBJECTS AND APPLICATION	Insertion	“Definitions 1. In this Act, unless the context indicates otherwise— ...

<p>(Clause 1: Definitions)</p>		<p><u>“ecological infrastructure”</u> means naturally functioning ecosystems that provide valuable services to people and the economy;</p> <p>“ecosystem” means a dynamic system of plant, animal and micro-organism communities and their non-living environment, interacting as a functional unit;</p> <p><u>“Ecosystem-based Adaptation”</u> means the use of biodiversity and ecosystem services as part of an overall adaptation strategy to help people to adapt to the adverse effects of climate change.”</p>
<p>(Clause 2: Objects of Act)</p>	<p>Insertion</p>	<p>Objects of Act</p> <p>1. The objects of this Act are to—</p> <p>... (b) provide for the effective management of inevitable climate change impacts by enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, <u>including through Ecosystem-based Adaptation</u>, with a view to building social, economic and environmental resilience and an adequate national adaptation response in the context of the global climate change response; ...”</p>
<p>(Clause 3: Principles)</p>	<p>3: Insertion and deletion</p>	<p>Principles</p> <p>1. The interpretation and application of this Act must be guided by—</p> <p>... (l) a recognition that a robust and sustainable economy and a healthy society depend[s] on <u>ecological infrastructure and the services that well-functioning ecosystems provide</u>, and that enhancing the sustainability of the economic, social and ecological services is an integral component of an effective and efficient climate change response.”</p>

These insertions relating to ecological infrastructure are important and will form part of the proposed amendments of the Bill suggested to the Select Committee.

2.4. Offences and Penalties

The issue of penalties was raised a number of times at the public hearings. While a person who fails to provide data, information, samples to the Minister, or fails to submit a greenhouse gas mitigation plan etc, commits an offence and may be liable to penalties on conviction, it is **silent as to the penalties applicable for those emitters who exceed their carbon budgets**. It may be that this aspect will be dealt with more fully in regulations as the Bill does allow for regulations to impose penalties. However, we would like to see the offences and penalties for exceeding carbon budgets in the primary legislation rather than in regulations.

2.5. Having considered the submissions received on the clauses of the Bill, the Committee proposes the amendments listed below:

2.5.1. In clause 15(2)(c) of the Bill on climate change needs and response assessment: consider adding [as underlined]:

“15(2)(c) identify and spatially map, within the sphere of operations of the province, district or metropolitan municipality, as the case may be, risks, vulnerabilities, areas including areas farmed by women, ecosystems and communities including women and children, that will arise, or that are vulnerable to the impacts of climate change;”

2.5.2. In the Preamble, insert as follows [as underlined]:

“Preamble

... AND WHEREAS climate variability in the Republic, including the increased frequency and intensity of extreme weather events, will affect, amongst other things, human health, access to food and water, biodiversity, habitats, ecosystems and ecological infrastructure, the coast and coastal infrastructure and human settlements.”

2.5.3. Under Definitions, insert the following definitions:

“ecological infrastructure” means naturally functioning ecosystems that provide valuable services to people and the economy;

“Ecosystem-based Adaptation” means the use of biodiversity and ecosystem services as part of an overall adaptation strategy to help people to adapt to the adverse effects of climate change.”

2.5.4. Under Objects of Act Clause 2, insert the following [as underlined]:

“The objects of this Act are to—

... (b) provide for the effective management of inevitable climate change impacts by enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, including through Ecosystem-based Adaptation, with a view to building social, economic and environmental resilience and an adequate national adaptation response in the context of the global climate change response; ...”

2.5.5. Under clause 3 Principles, insert the following [as underlined] and **delete bold in square brackets []**:

“The interpretation and application of this Act must be guided by—

... (l) a recognition that a robust and sustainable economy and a healthy society depend[s] on ecological infrastructure and the services that well-functioning ecosystems provide....”

2.5.6. Under clause 32: Offences and Penalties, insert the following [as underlined] **and delete bold in square brackets []**:

“Offences and penalties

32. (1) A person commits an offence if that person—

(a) fails to provide data, information, documents, samples or materials to the Minister in terms of section 20(1);

(b) provides false and misleading data, information, documents, samples or materials to the Minister in terms of section 20(1);

(c) fails to prepare and submit a greenhouse gas mitigation plan to the Minister in terms of section 24(4);

(d) fails to comply with the allocated carbon budget in terms of section 24(6);

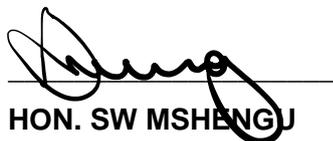
[(d)] (e) fails to comply with or contravenes the notice of the Minister in terms of section 25(1); and

[(e)] (f) fails to comply with the measures contemplated in section 25(3)(b).”

The provisions of clause 24(6) of the Bill will also need to be relooked as it merely requires measures from the person who has failed or is failing or will fail to comply with the allocated carbon budget. This is insufficient to ensure compliance and requires an attached penalty.

3. Conclusion

- (a) The NCOP dates for the negotiating and final mandates on the Bill are the 26th March 2024 and 17th April 2024 (provisional) respectively. The Conservation and Environmental Affairs Portfolio Committee met on Monday, 25th March 2024 to consider the negotiating mandate. The Committee wishes to raise its sharp displeasure at the unreasonable time frames that the NCOP has placed on it and other committees to conduct adequate public consultation on this important Bill and the rushed manner of dealing with the serious aspect of climate change that affects us all.
- (b) The Committee unanimously agreed to confer a negotiating mandate to the NCOP in support of the Bill subject to the inclusion of the aforementioned proposed amendments for consideration by the NCOP.



HON. SW MSHENGU

**CHAIRPERSON: CONSERVATION AND
ENVIRONMENTAL AFFAIRS PORTFOLIO COMMITTEE
KWAZULU-NATAL PROVINCIAL LEGISLATURE**

25 March 2024

DATE