

## CONCERNS ON CLIMATE REGULATION IN SA – TALKING POINTS

Presently climate regulation in South Africa falls under the Air Quality Act, with regulations for GHG emissions reporting and the submission of Pollution Prevention Plans by emitters. A Climate Change Bill was published for comment in June 2018 – and while this is a welcome step, the Bill is [not nearly ambitious enough and would need to be substantially amended](#) if it is to have any hope of properly regulating climate change and reducing GHG emissions in South Africa.

In terms of regulation more generally, we are concerned that what we're seeing from government currently is:

- very little/no coordination and alignment between government departments – CC is seen more as an environmental issue with little/no buy-in from health, energy, transport, mineral resources; agriculture – which are all relevant, even from DEA we are not seeing enough commitment. To demonstrate, we have a national CC policy saying SA is extremely vulnerable to CC and that we need to reduce our emissions; yet we have government making decisions to authorise 2 of the most GHG-emission intensive plants in the world;
- no transparency and a clear intention to protect the interests of industry by failing to make GHG emission data automatically and easily accessible by the public and refusing to disclose industry's GHG pollution prevention plans, which are supposed to set out the steps companies plan to take to reduce their GHG emissions. If we can't even get this basic information, it will be very difficult to hold polluters accountable and to ascertain where we are in terms of GHG emission reductions;
- lots of reports, studies and research documents, but very little action or actual steps being implemented to show how we are going to meaningfully reduce our emissions.

For climate regulation (in particular measures to reduce GHG emissions and to build resilience) to be effective, we need – **at least**:

- full mandatory disclosure and public access to all GHG emission and climate-related reports, assessments, and records. The DEA takes the very problematic view that some GHG emission records are commercially confidential, and the current regulations places undue restrictions on data being made available, which will make competent authorities reluctant to disclose info which should simply be automatically available. There is no reason or logical basis why GHG emission data should be confidential. Other jurisdictions (Guatemala and Peru) provide for GHG emission data and a wide range of additional information to be publicly available. There is no reason why certain data should be regarded as confidential in South Africa when they are not regarded as confidential in other jurisdictions. The default position must be public disclosure, given the fundamental public importance of emission data.
- a clear target and strict emissions trajectory at the lower PPD range, with the need for constantly increasing ambition, and cognisance of the international target of staying within 1.5°C. The legislation cannot be effective unless everyone has certainty about its goal. Linked with this, South Africa simply cannot be authorising and building new coal-fired power stations or coal mines, particularly not the coal IPPs, which will be 2 of the most GHG emission-intensive coal-plants in the world;

- proper and full assessment of climate impacts at all stages and levels of decision-making, including EIAs;
- provision for the duty of care and climate justice - companies that knowingly contribute to climate change impacts must be held accountable and should also be liable to compensate those who suffer these impacts;
- adequate compliance-monitoring and enforcement provisions, and strong penalties for non-compliance; and
- strong institutional structures to regulate, implement and monitor implementation of climate adaptation and mitigation measures.

Even in the absence of clear climate change laws, there is a positive legal obligation on the state to protect the people of South Africa from the impacts of climate change.

Section 24 of the Constitution and section 28 of the National Environmental Management Act impose a duty of care and obligation on the state to take reasonable measures to protect the people of South Africa from harmful impacts to their health and/or wellbeing and to protect the people and future generations from the irreversible impacts of climate change.

Simply adhering to inadequate targets or commissioning research and reports without clear plans for implementation and deadlines, or without actual implementation, does not, in any way, discharge the state's Constitutional duties to implement proper GHG emission reduction measures and measures to protect the people of South Africa from the impacts of climate change.