

SECTION27 SUBMISSION ON THE CLIMATE CHANGE BILL



Prepared by SECTION27 (27 May 2022)

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Contents

Executive Summary.....	3
Introduction	5
Chapter 1: A case for the inclusion of the education sector in the response to climate change.....	8
Chapter 2: A Gender Responsive Climate Change Act.....	13
Chapter 3: Financing climate action	16
Chapter 4: Climate Change Governance.....	24

SECTION27 SUBMISSION ON THE CLIMATE CHANGE BILL

27 May 2022

Executive Summary

SECTION27 welcomes the opportunity to make submissions on the Climate Change Bill. As a public interest law centre that works to advance the rights to basic education and access to healthcare services, SECTION27's submissions focus on the human rights impact of the climate crisis and the State's corresponding constitutional obligations. There have been great gains in achieving the constitutionally guaranteed progressively realisable right to health care services and the immediately realisable right to basic education in the last 28 years. While there remains a long way to go to full realisation of these rights, it is of immeasurable importance to safeguard the gains that have already been made.

Submission	Recommendation
<p data-bbox="225 1516 596 1547"><i>Inclusion of Basic Education</i></p> <ul data-bbox="177 1597 826 2016" style="list-style-type: none"><li data-bbox="177 1597 826 2016">• Despite the importance of the education sector and the dire effects climate change has on education, the Department of Basic Education is not included amongst the departments that are mandated to formulate a "Sector Adaptation Strategy and Plan". It is of concern that in a context where education outcomes are threatened by the increasing occurrence of extreme weather events such as floods and rising temperatures, the Department of Basic Education is not	<ul data-bbox="900 1610 1549 1877" style="list-style-type: none"><li data-bbox="900 1610 1549 1877">• Considering the importance of the basic education sector to human and societal development and the threat that climate change poses to children's rights in accessing basic education, we recommend that Schedule 2 be amended to include the Department of Basic Education.

<p>mandated by the Bill to formulate an adaptation strategy and plan.</p>	
<p><i>A gender responsive climate change Act</i></p> <ul style="list-style-type: none"> • Due to the gender, race and class inequality that persists in the country, climate change disproportionately affects women and girls who currently and will continue to experience greater risks, burdens, and impacts of climate change. However, the Climate Change Bill barely refers to the gendered nature of the impact of climate change and fails to include or specify strategies and mechanisms for gender responsive adaptation and mitigation and not exacerbate gender inequalities. 	<ul style="list-style-type: none"> • The Climate Change Bill and related documents must adhere to the Cabinet approved Gender Responsive Planning, Budgeting, Monitoring, Evaluation and Auditing Framework. • The Department of Women, Youth and People with Disabilities must be included in the list of functionaries under Schedule 2 of the Bill.
<p><i>Financing Climate Action</i></p> <ul style="list-style-type: none"> • Painful and unjustified budget cuts towards social spending, particularly in basic education and health, which are set to continue into the next three years, jeopardise the ability of the departments to enable schools, hospitals and clinics to adapt to the effects of climate change. These cuts affect the most vulnerable communities, exacerbating inequality that persists in accessing education and health care services in South Africa. Without a climate funding framework, there is a risk that government departments will have insufficient resources to respond to climate change. 	<ul style="list-style-type: none"> • We recommend the inclusion of a climate funding framework which ensures adequate allocation of financial resources to the departments, including Basic Education and Health, to ensure that the South Africa is equipped to adapt to the risks and impacts of climate change.
<p><i>Climate Change Governance</i></p> <ul style="list-style-type: none"> • Considering how far-reaching and interrelated the impacts of climate change are, impacting different sectors of society, the response to climate change thus requires unprecedented levels of cooperative governance and intergovernmental relations. However, unlike the previous version of the Bill in 2018, Chapter 2 of the current proposed Bill does not envision the establishment of any national climate change governing body to 	<ul style="list-style-type: none"> • In view of the critical role played by local government in the adaptive response to climate change, we recommend that the Department of Cooperative Governance and Traditional Affairs be included in the list of functionaries under Schedule 2. • We recommend the establishment of a Ministerial Climate Change Committee, as well as independent advisory committee to

<p>coordinate the alignment of policies across the various sectors and departments.</p> <ul style="list-style-type: none"> Moreover, the current proposed Bill does not include the Department of Cooperative Governance and Traditional Affairs in Schedule 2, a department necessary to meaningfully respond to climate change in a manner that addresses its far-reaching and interrelated nature. 	<p>advise on technical and scientific aspects of the climate change response.</p> <ul style="list-style-type: none"> As an accountability mechanism, we recommend the Bill set out clear mandates, including the submission of annual reports on the progress of the climate change response be made available to the public. To address systemic ineffective communication practices, we recommend that a directory be developed within institutional role-players, nationally and within southern Africa. We recommend that the provision on the access to information be amended to include the principle of transparency and mechanisms to easily access information, such as the designation of an information repository.
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Introduction

1. This is a submission prepared by SECTION27 and endorsed by the Treatment Action Campaign, Equal Education, Institute for Economic Justice, Womxn and Democracy Initiative - Dullah Omar Institute, Rural Health Advocacy Project, South African Federation for Mental Health, South African Depression and Anxiety Group, South African Mental Health Alliance, Lawyers for Human Rights, Equal Education Law Centre, Ahmed Kathrada Youth Activism Program, Centre for Child Law, Legal Resources Centre, Centre for Environmental Rights, 350Africa.org, Public Service Accountability Monitor, Oxfam South Africa, and Social Policy Initiative.
2. SECTION27 is a public interest law centre that seeks to achieve substantive equality and social justice in South Africa. Guided by the principles and values in the Constitution, SECTION27 uses law, advocacy, legal literacy, research, and community mobilisation to achieve access to healthcare services and basic education. We aim to achieve structural change and accountability to ensure the dignity and equality of everyone. Our objectives are to improve the delivery of quality health care services

and improve the delivery of basic education through the application of the law, as well as to improve, publicise and provide education on the Bill of Rights and the Constitution.

3. With the right to healthcare services and basic education being our primary areas of work we have recognised the threat climate change poses to these rights. Furthermore, we recognise that the crisis will disproportionately affect the most disadvantaged groups in a country plagued by soaring levels of poverty, inequality, and unemployment. It is crucial that the most vulnerable are protected against the effects of climate change which are not a future event but are already upon us and set to only worsen. Due to pre-existing gender inequalities, women and girls experience greater risks, burdens, and impacts of climate change, which we explore in our submission.¹ Therefore, owing to its complex cross-cutting impacts, the climate crisis is not solely an environmental issue, but is also a human rights concern.
4. In its submission to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, the Office of the High Commissioner for Human Rights recognised that:

“States must ensure that appropriate adaptation measures are taken to protect and fulfil the rights of all persons, particularly those most endangered by the negative impacts of climate change such as those living in vulnerable areas. States must build adaptive capacities in vulnerable communities, including by recognising the manner in which factors such as discrimination, and disparities in education and health affect climate vulnerability, and by devoting adequate resources to the realisation of the economic, social and cultural rights of all persons, particularly those facing the greatest risks.”²

¹ Committee on the Elimination of Discrimination against Women “General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change” (7 February 2018) accessed at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_37_8642_E.pdf para 2.

² Office of the High Commissioner for Human Rights (OHCHR), “Key Messages on Human Rights and Climate Change” (2015) *Submission to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*, accessed at: <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf> 2.

5. UN Human Rights treaty bodies, particularly the Committee on Economic, Social and Cultural Rights, have affirmed that countries are in breach of their legal obligations when they fail to prevent the foreseeable harm caused by climate change on human rights, and fail “to mobilise and [allocate] the maximum available resources in an effort to do so”.³ The mobilisation of resources to address climate change should complement the efforts of government to realise human rights. Some efforts include innovative measures such as carbon taxes, and others include the integration of climate change considerations within existing social, economic, environmental, and budgetary policies at a national level.⁴

6. To act consistently with its human rights obligations, both internationally and domestically in responding to the climate crisis, it is our view that South Africa should be guided by the following principles: the best scientific evidence available, gender responsiveness, human rights budgeting, transparency, good governance, and accountability.

7. Our submission covers four key themes, which include recommendations to strengthen the ability of the Bill and its mechanisms to effectively respond to the climate crisis:
 - 7.1. A case for the inclusion of the education sector in the response to climate change
 - 7.2. A gender responsive Climate Change Act
 - 7.3. Financing climate action
 - 7.4. Climate change governance

³ Committee on Economic, Social and Cultural Rights, “Climate change and the International Covenant on Economic, Social and Cultural Rights”, (8 October 2018) accessed at <https://digitallibrary.un.org/record/1651395?ln=en> para 6.

⁴ Ibid para 7.

Chapter 1: A case for the inclusion of the education sector in the response to climate change

8. Section 19 of the Bill mandates seventeen sectors to formulate a “Sector Adaptation Strategy and Plan”. These sectors are listed in Schedule 2 of the Bill and include Health, Human Settlements and Transport, but concerningly, the Basic Education sector does not form part of the sectors required to formulate an adaptation strategy and plan.
9. The importance of Basic Education to human and societal development, in the context of continuing inequality in the education system, has been aptly captured by Justice Bess Nkabinde in *Governing Body of the Juma Masjid Primary School v Essay*⁵ She remarks that

“The significance of education, in particular basic education, for individual and societal development in our democratic dispensation in the light of the legacy of apartheid, cannot be overlooked. The inadequacy of schooling facilities, particularly for many blacks, was entrenched by the formal institution of apartheid, after 1948, when segregation even in education and schools in South Africa was codified. Today, the lasting effects of the educational segregation of apartheid are discernible in the systemic problems of inadequate facilities and the discrepancy in the level of basic education for the majority of learners. ... [B]asic education is an important socioeconomic right directed, among other things, at promoting and developing a child’s personality, talents, and mental and physical abilities to his or her fullest potential. Basic education also provides a foundation for a child’s lifetime learning and work opportunities.”⁶

10. As can be deduced from the above passage, the education sector, particularly basic education, is one of the most crucial sectors in any country with the potential of transforming and equalising our society. However, our education system is riddled with legacy issues such as addressing the school infrastructure backlog in African schools that were under resourced under apartheid and which continue to exist in

⁵ *Governing Body of the Juma Masjid Primary School v Essay* NO 2011 (8) BCLR 761 (CC).

⁶ Op cit note 5 at 42.

suboptimal conditions. It is precisely these issues that make the right to education even more vulnerable to the threats of climate change.

11. The COVID-19 pandemic has clearly exposed the vulnerabilities of the education system in times of disaster. In a recent meeting with the Basic Education Parliamentary Portfolio Committee, the Director General of the Department of Basic Education remarked that “[s]ince its outbreak two years ago, the COVID-19 pandemic had disrupted education systems globally, affecting the most vulnerable learners the hardest. It has increased inequalities and aggravated a pre-existing education crisis.”⁷ He further reported that the enrolment numbers in the first quarter of 2021 were approximately 50 000 learners lower than they had anticipated. In the same meeting, the Minister of the Department of Basic Education informed the committee that in 2020, 54% of contact teaching and learning time had been lost in the first half of the year due to school closures and rotational learning.⁸ These devastating impacts of COVID-19 on education are a foreshadowing of the impact that climate change could have on the education system should the system not adequately prepare itself for the natural and other disasters that are becoming more prevalent due to climate change.

12. School closures and dropouts are not the only threat the education system needs to contend with. For those learners remaining in the system, unsafe and dilapidated school infrastructure remains a thorn in the side of our education system. Extreme weather events such as floods, as we have recently seen in KwaZulu Natal and the Eastern Cape, have caused extensive damage to school infrastructure and interrupted children's learning for extended periods of time. After the recent KwaZulu Natal floods, government reported that over 630 schools were affected by the floods and that 124 of these schools had suffered extensive damage.⁹ The Minister of Basic Education further remarked that “[t]his is a major setback because we have serious

⁷ PMG Portfolio Committee on Basic Education Meeting Summary (2022): Department of Basic Education 2022/23 Annual Performance Plan with Minister accessed at: <https://pmg.org.za/committee-meeting/34567/> accessed 23 May 2022.

⁸ Ibid.

⁹ South African Government News Agency “Over 600 schools impacted by KZN floods” (28 April 2022) accessed at <https://www.sanews.gov.za/south-africa/over-600-schools-impacted-kzn-floods>.

infrastructure problems in the sector. It means we have to redirect resources to help with ongoing problems."¹⁰ According to the KwaZulu-Natal provincial government, it is going to cost approximately R 400 million to repair damaged schools following the floods. ¹¹The damage to school caused to schools during the April floods cannot be overstated. In addition to the damage to school infrastructure, the damage to road infrastructure in areas surrounding schools has also prevented learners from accessing their schools.¹² These disruptions have not only been confined to Kwa-Zulu Natal - the commencement of the 2022 academic year had to be pushed back in the Eastern Cape due to floods. ¹³

13. The adverse impacts to basic education that we are already starting to see are not entirely unexpected. In a report commissioned by UNICEF South Africa, the Department for Women, Children and People with Disabilities and the Department of Environmental Affairs which was published in 2009, the provinces of Limpopo, Mpumalanga, Gauteng, Eastern Cape and KwaZulu-Natal were identified as provinces which had a higher likelihood of children being adversely affected by floods and heavy rains which could damage school infrastructure and roads or bridges that reach schools.¹⁴

¹⁰ B Macupe "Provinces to Fork Out Millions to Fix Storm-Damaged Schools", City Press (19 January 2022) accessed at <https://www.news24.com/citypress/news/provinces-to-fork-out-millions-to-fix-storm-damaged-schools-20220119>.

¹¹ Remarks by Premier of Kwazulu-Natal Sihle Zikalala during the prayer held in memory of the victims of recent floods held at the Exhibition Centre on 21 April 2022 available at <https://www.gov.za/speeches/remarks-premier-kwazulu-natal-sihle-zikalala-prayer-held-memory-victims-recent-floods-21> last accessed on 26 May 2022.

¹² The Spokesperson of the Department of Education is quoted as saying "A total of 39 buses and 18 minibus taxis have not been able to operate due to, amongst other things, muddy roads, badly damaged roads and collapsed bridges. Many vehicles are expected to return to operation as soon as the ground hardens. Some vehicles are already using alternative routes to reach schools."

T Monama "KZN floods: Basic education dept arranges mobile classrooms as 72 schools remain inaccessible" available at <https://www.news24.com/news24/southafrica/news/kzn-floods-basic-education-dept-arranges-mobile-classrooms-as-72-schools-remain-inaccessible-20220425>.

¹³ SABC "Academic year delayed at Eastern Cape school due to flooding" (12 January 2022) accessed at <https://www.sabcnews.com/sabcnews/academic-year-delayed-at-eastern-cape-school-due-to-flooding/>.

¹⁴ UNICEF "Exploring the Impact of Climate Change on Children in South Africa." (2011) 50 accessed at https://www.hst.org.za/publications/NonHST%20Publications/SAF_resources_climatechange.pdf.

14. The Department of Basic Education's failure to implement its own laws and policies make schools even more vulnerable. In November 2013 the Department of Basic Education published the Norms and Standards for Public School Infrastructure¹⁵. These legally binding norms layout what the basic required components which make a school are, these include, water, sanitation, electricity, classrooms with a maximum of 40 learners per class, libraries and electronic connectivity. The norms require that the Department of Basic Education ensure that all schools are brought in line with the norms subject to various deadlines. However, the Department has to date missed all the deadlines contained in the regulations.¹⁶ A proper commitment to the regulations would ensure that our schooling communities mitigate the impact of extreme weather events.
15. Moreover, socio-economic factors, linked to South Africa's levels of unemployment, poverty and inequality cause notable disruptions to the education system. On a yearly basis, the Gauteng and Western Cape education systems are put under immense stress because of the volumes of people migrating from other provinces to these provinces for economic opportunities. In 2018, Stats SA reported that Gauteng and the Western Cape received the highest and second highest numbers of in-migrants.¹⁷ The report goes further to say that the reasons migrants are drawn to these provinces includes economic, socio-political, cultural or environmental factors.¹⁸ The anticipated increased occurrence of extreme weather events in South Africa is going to have an impact on internal migration patterns and as we have already seen, this results in late placement of learners into schools and overcrowded classrooms.
16. The science tells us that some areas in the country are more at risk of disastrous extreme weather events than others and as such, increases the likelihood of patterns of migration away from these areas to others, with which the education system is

¹⁵ Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure

¹⁶ For example, the deadline for the eradication of schools built entirely from materials such as asbestos, metal, wood and schools with no access to any form of electricity, water or sanitation was 29 November 2016.

¹⁷ Statistics South Africa "Mid-year population estimates" (2018) available at <https://www.statssa.gov.za/publications/P0302/P03022018.pdf> , accessed 23 May 2022.

¹⁸ Ibid.

unable to cope.¹⁹ A report from Equal Education on school overcrowding in Gauteng found that 74% of 751 classrooms that they collected data on were overcrowded.²⁰ The report goes on to list the negative effects of overcrowding on education, including hastened dilapidation of infrastructure, increased occurrences of disruptive behaviour from learners and adverse psychological effects on both teachers and learners, leading to demotivation and disengagement.²¹

17. A 2019 report on the vulnerabilities of the education system in East Asia and the Pacific and what interventions are necessary was published by the United Nations Children’s Fund (UNICEF)²². Many of the threats to the education system in these regions are similar to the threats faced by the South African education system, owing to existing vulnerabilities. The report explains that there are imminent dangers to all stakeholders in the education system, and these dangers threaten to collapse the system. The report also highlights that throughout the world, the education sector plays a very minimal role in climate change discussions, however it is crucial that it is involved in the conversation. In order for the sector to participate in these discussions it is critical that education stakeholders strengthen their capacity in understanding and addressing climate change and that they proactively participate in relevant climate change policymaking and financing processes.²³ In our context, including the education sector in Schedule 2 of the Bill would be a step towards this.

18. If we intend for the constitutionally guaranteed right to education to remain realisable, we need to “climate-proof”²⁴ the education system. Climate-proofing the education system requires urgent interventions, such as ensuring that education infrastructure is resilient to extreme weather events and developing methods and strategies for the continuation of teaching and learning during extreme and after

¹⁹ The Southern parts of the country, such as the Northern Cape, Western Cape and Eastern Cape, are vulnerable to flood and the Northern parts of the country, such as Kwa-Zulu Natal are vulnerable to flooding.

²⁰ Equal Education “No Space for Us – Understanding Overcrowding in Gauteng Schools” (2021).

²¹ Ibid.

²² UNICEF “It is Getting Hot – Call for Education Systems to Respond to the Climate Crisis” (2019) accessed at <https://www.unicef.org/eap/reports/it-getting-hot>.

²³ Ibid at 43-44.

²⁴ Ibid at 35.

weather events and ensuring sufficient places for learners in schools based on migration patterns.

19. It is of concern that, in South Africa, the Department of Basic Education and the education sector as a whole are not alive to the threats of climate change and are not being proactive in planning for, and in, responding to these threats.

Recommendation

20. Considering the importance of the basic education sector to development and the threat that climate change poses to children's rights in accessing basic education, we submit that its omission from Schedule 2 of the Bill is a serious oversight. We recommend that Schedule 2 be amended to include the basic education sector.

Chapter 2: A Gender Responsive Climate Change Act

21. While the impacts of climate change are felt by and are projected to continue to affect all South Africans, these impacts have been found to vary disproportionately based on gender. For example, Black women, women of colour and women who live in poverty and/or have precarious employment. Gender inequality and the exclusion and subordination of women in South Africa is felt at a political, economic, and social level. Gendered social norms and inequalities have resulted in women [holding positions](#) burdened by environmental change, like water collection and smallholder farming, which immediately feel impacts of drought or disaster. Moreover, women contribute 60 - 80% of the agricultural labour force in the country.²⁵ In the face of increasing drought in areas in the country, failed harvests threaten women's ability to feed and provide for their families.

²⁵ See: Ndivile Mokoena and Mara Dolan "Climate Change's Disproportionate Impact on Women: Agricultural Workers in South Africa" (2020) accessed at <https://gija.georgetown.edu/2020/07/19/climate-change-disproportionate-impact-on-southafrican-women/#:~:text=Women%2C%20contributing%20sixty%20to%20eighty,political%20disenfranchisement%20and%20economic%20marginalization>.

22. Through this Act, Parliament has the power to decisively address the root causes of gender inequality by prioritising the most marginalised and realising the rights of the most vulnerable groups in South Africa. However, the government's approaches to crisis management are often siloed resulting in blind spots to gender issues that need to be (yet seldom are) rectified retrospectively. Thus, it is essential that the government prioritises an intersectional approach to climate change, which centres on women's rights in its solutions. Not approaching climate change in a gender responsive manner will continue to increase the vulnerability of women to climate shocks, trapping them into an inescapable cycle of poverty.
23. The Department of Women, Youth and Persons with Disabilities has cautioned that weaknesses in gender mainstreaming across government departments prevent the State from addressing gender inequality in the country. In fact, in its 2019 submissions to the United Nations Framework Convention on Climate Change, South Africa acknowledged that the gendered dimensions of poverty and the social, economic, and political barriers will limit women's resilience to the impacts of climate change and consequently, women will be most affected. However, to date, there has been relatively limited analysis of the gender dimensions of climate change at a very local level or downscaled data to adequately put protective measures in place. Nevertheless, the submission noted that efforts would be made to "integrate gender consideration into adaptation, mitigation, capacity-building action for climate empowerment, technology, finance policies, plans, and actions."²⁶
24. However, the Bill barely refers to the gendered nature of the impact of climate change. Section 3(f) of the Bill merely notes that the application of Act will be guided by the need to consider the special needs of persons who are vulnerable to adverse effects of climate change, such as women. However, the Bill fails to include or specify strategies and mechanisms that will be used to promote the participation of women, address the needs and priorities of different genders, and not exacerbate gender

²⁶ [The Climate Reality Project](#) "A gendered lens: Mainstreaming Gender into South Africa's Climate Change Response" (2020) 10.

inequalities. Thus, there is less surety on whether the work of mainstreaming gender concerns in the climate change response will take place, considering how the Department of Women, Youth and Persons with Disabilities has been excluded from the list of functionaries under Schedule 2 of the Bill.

Recommendation

25. We recommend that the Department of Women, Youth and People with Disabilities be included in the list of functionaries under Schedule 2 of the Bill. Further below we recommend the establishment of a Ministerial Committee on Climate Change to coordinate the national response to the climate crisis. We submit it is important for the Department of Women, Youth and People with Disabilities play an active role in this Committee to ensure that policies, laws, and strategies are gender responsive.²⁷ The benefit could be that the Department of Planning, Monitoring, and Evaluation could assist in ensuring that gender disaggregated data indicators are mainstreamed across all departmental annual performance plans and strategic plans, including the Department of Forestry, Fisheries and the Environment.²⁸
26. The National Climate Adaptation Strategy recognises that one of the key principles to guide the implementation of adaption and climate resilience is gender sensitivity. We propose that the section 3 of the Bill includes the principle of gender-responsive planning, budgeting, monitoring, evaluation, and auditing, which means:

“Bringing gender-mainstreaming to all elements of government spending and planning on the climate change response. This does not imply separate budgets and plans, but rather the integration of gender mainstreaming in existing plans and budgets.”²⁹

²⁷ Ibid 57.

²⁸ Ibid 56.

²⁹ Ibid 5.

27. With the above suggested amendment, it would be prudent to include the definition of gender mainstreaming in the definition section of the Bill. We propose the inclusion be worded as follows:

“Gender mainstreaming is the process of assessing the gendered implications of any planned action, including legislation policies or programmes, in any area and at all levels. This requires that the needs, concerns, and experiences of all genders and gender-non confirming people as an integral part of design, implementation, monitoring, and evaluation to avoid the perpetuation of inequality. The goal of gender mainstreaming is gender equality. There are seven principles which are:

- I. Adequate accountability mechanisms for monitoring progress need to be established.
- II. The initial identification of issues and problems across all areas of activity should be such that gender differences and disparities can be diagnosed, where there is an emphasis on certain categories of women, who face the greatest exclusions, marginalisation, and rights violations.
- III. Assumptions that issues or problems are neutral from a gender-equality perspective should never be made.
- IV. Gender analysis should always be carried out.
- V. Clear political will and allocation of adequate resources for mainstreaming, including additional financial and human resources, if necessary, are important for translation of the concept into practice.
- VI. Gender mainstreaming requires that efforts be made to broaden women's equitable participation at all levels of decision-making, particularly Black women, women of colour and women in climate hotspots, who live in poverty and/or have precarious employment.
- VII. Mainstreaming does not replace the need for targeted, women-specific policies and programmes, and positive legislation; nor does it do away with the need for gender units or focal points.”³⁰

28. Since South Africa and the Department of Forestry, Fisheries and the Environment has committed to gender mainstreaming³¹, the law should codify that commitment to ensure its realisation.

Chapter 3: Financing climate action

³⁰ Ibid 6.

³¹ See: Department of Women “The Gender-Responsive Planning, Budgeting, Monitoring and Evaluation and Auditing Framework” (2018) accessed at <http://www.women.gov.za/images/GRPB-framework-250119A.pdf>.

29. Climate finance is a critical pillar of climate action, as it enables the implementation of mitigation and adaptation efforts. The failure to include a climate funding or financing framework in the Bill is a major oversight and compromises any implementation successes the Bill aims for. The IPCC has also warned that designing of adaptation plans and policy under conditions of scarcity “can inadvertently lead to trade-offs between adaptation options, as well as between adaptation and mitigation options. This can reinforce inequality and fail to address underlying social vulnerabilities”.³²
30. National Treasury has recognised that the impact and risks posed by climate change are more pronounced owing to the “[perceived lack of financial resilience](#)”. Furthermore, the department reflected on its mandate in its response to climate change as to encourage “[reallocation of capital to have a more positive impact](#)” as well as to raise funds dedicated to financing the transition to a less carbon intensive economy.
31. While SECTION27 welcomes the fundraising and capital reallocation to better position the country to respond and adapt to the impacts of climate change, we stress the importance of allocating this funding in a manner that is socially and gender responsive and recognises the impact of climate change on social sectors, such as health and education. This section of our submission makes a case for the inclusion of a climate funding framework in the Bill to enable the government to implement policies, strategies, targets, and criteria in a manner that effectively responds and mitigates the impacts of climate change on the most vulnerable people living in South Africa.

Health Funding:

32. The World Health Organisation has described climate change as “[the biggest health threat facing humanity](#)” and has attributed an increase in morbidity and mortality to rising temperatures. The effects of climate changes already have and are projected to

³² IPCC “[Regional Factsheet on Impacts, adaptation and investment areas for southern Africa](#)” (2022) 14.

have further detrimental impact on the health of people in South Africa. South Africa has experienced [increased mean annual temperature by at least 1 °C during the last 50 years](#); 1.5 times the global average. This rapid temperature rise [compromises human bodies' ability to regulate temperature](#) and can result in illnesses like heat cramps, heat exhaustion, heatstroke, and hyperthermia. A [report](#) by the Intergovernmental Panel on Climate Change cautions that the global population exposure to deadly heat stress is predicted to rise from 30% today to 76% by the end of the century. Moreover, these extremes can aggravate conditions like cardiovascular, respiratory, and cerebrovascular disease and diabetes-related conditions. The country already faces a myriad of health challenges exacerbated by adverse socio-economic conditions like poverty, malnutrition and the highest global prevalence of HIV/AIDS and tuberculosis. The impact of these crises requires developing countries like South Africa to divert scant resources towards responding to health crises that would have otherwise been channelled into economic development.

33. However, over the last few years, the health budget has been characterised by spending cuts, or increases that do not match medical inflation in the country. While health has received an increase of 0,2% over the next three years, after accounting for inflation of 4,5% over this period, this reflects a 4,3% decrease in health funding during this period, a cut of R21 billion in real terms over this period. This does not consider that medical inflation (currently 7,9%) [exceeds](#) Consumer Price Index (CPI) inflation.
34. While the healthcare revitalisation grant increases by 5,2% (R349 million) this year, the 4.5% CPI inflation rate results in real terms increase of only R8 billion. This means that the government will have less money over the medium term to spend on the revitalisation of health infrastructure. Not only will these cuts limit health departments' abilities to provide catch-up and recovery of routine health services in the post-pandemic context, but it will also jeopardise the State's ability to adapt to the effects of climate change. In fact, Minister of Health, Dr Joe Phaahla informed Parliament on 28 April 2022, that the resources needed to repair health infrastructure damage in KZN due to the recent floods is estimated at [R190 million](#) for four

municipalities, with 66 affected facilities. The infrastructure damage has limited the ability of facilities to deliver essential services and has seen people being unable to access care due to transportation difficulties, caused by damaged roads and the unavailability of emergency medical services.

35. Furthermore, the health budget has proposed restrictive compensation ceilings which, according to the budget will “limit the ability of provincial health departments to employ more frontline staff” and encourages provinces to “if needed, reduce personnel numbers to sustainable levels.” However, the [Human Resources for Health Strategy](#) reported that 97 000 additional health workers would be required by 2025 to address the chronic human resources shortages and inequities across provinces. This number does not consider the toll of the COVID-19 pandemic on healthcare workers. It further fails to account for the need for adaptation of the system to the health impact of climate change. Persistent decreases in compensation of employees in the health sector will make it impossible to reverse the impact of COVID-19 on healthcare staffing and reach basic human resource requirements for climate change health impacts.

36. The National Climate Change and Health Adaptation Plan (2014 -2019) recognises that the impact of climate change will see the shifting of physical health needs, as disease burdens shift. For instance, it is predicted that warmer temperatures will change the way diseases reach communities, “beckoning malaria-carrying mosquitos that had been historically confined to specific areas farther afield”.³³ In South Africa, malaria affects around 10% of the population, mainly the northern and north-eastern parts of the country – Limpopo, Kwa-Zulu Natal, and Mpumalanga. The National Climate Change and Health Adaptation plan specifically points out that the change in climate could increase the geographical distribution of malaria in South Africa.

³³ G Barnwell “When climate change and health collide: Will SA’s policy have the teeth – or the money?” (7 March 2019) accessed at: <https://bhekisisa.org/article/2019-03-07-00-climate-change-in-south-africa-draft-policy-solastalgia/>.

37. In addition to rapid temperature rise exacerbated morbidity, climate change has adversely and will continue to affect the mental health of people in the country. A [study](#) conducted by Lancet on climate anxiety in children and young adults found that 59% of the 10 000 participants experienced increased anxiety owing to climate change. Moreover, the Centre for Environmental Rights [reported](#) that climate change poses a present and material threat to mental health and warned that these effects will only accelerate in the future. Unfortunately, the country grapples with mental health unpreparedness as exhibited by challenges with mental healthcare provision that endure in Gauteng following the Life Esidimeni tragedy. While this is disputed, many government officials have [maintained the claim](#) that provincial budget constraints were the driving force necessitating the deadly transfer of mental healthcare users out of facilities into unprepared NGOs. Gauteng is far from the only province experiencing a mental health service crisis. Increases to the mental health grant that do not align with the inflation rate may leave the health system underprepared for worsening mental health caused by climate change. It is critical that Bill's implementation and adaptation plans consider resource allocation towards underfunded mental health services to ensure the public health system can respond appropriately to the mental health impact of climate change.

38. It is regrettable that the budget and forward estimates do not specifically recognise the ongoing, and escalating, scale and the fiscal impact of natural and other disasters. SECTION27 cautions that the implementation of the Climate Change Bill while continuing to cut financial resource allocation to public health and not including a robust financing plan, will leave the country ill-equipped in responding to health risks caused by climate change, resulting in a worsening health crisis. There will be a need for funding to respond to climate change as health threat multiplier, especially in the context of an already strained and ailing health care system.

Education Funding:

39. Education is a crucial component of climate change mitigation and adaptation. While the country is considered a [climate change hotspot](#), predicted to be hard hit by rising

temperatures, droughts and flooding, the South African education system grapples with crumbling schools constructed with inappropriate materials like mud and corrugated iron sheets, and classrooms that are neglected and overcrowded. In these circumstances, rising temperatures may result in drowsiness, poor concentration and may even affect school attendance. As mentioned in Chapter 1 of our submissions, South Africa's education system continues to be plagued by deep inequalities rooted in the legacy of apartheid, but which continue to persist 28 years into democracy. One of the ways in which this inequality manifests in the most impoverished learners attending schools that are built with inappropriate materials. With rising temperatures, learners in classrooms that are built with inappropriate materials will bear the detriment of climate change to educational outcomes, which recreates education inequality in the country.

40. President Cyril Ramaphosa attributed³⁴ the floods that resulted in over 500 school closures and an additional 97 damaged in KwaZulu Natal a month ago to climate change. This occurs in a context of a backlog of public infrastructure that was exacerbated by the COVID-19 pandemic. Spending on public school infrastructure, which occurs through the Education Infrastructure Grant and School Infrastructure Backlogs Grant, saw a net amount of R1.7 billion cut from their programs, with an additional R4.4 billion being reprioritised within infrastructure budgets for COVID-19 related measures. Moreover, the spending on public school infrastructure increases by 4,5% (R710 million) while the SIBG decreases by 3,2% (R247 million) over the next three years at a CPI inflation rate of 4,5% over the period. These real term cuts to public-school infrastructure constrict the department's ability to provide safe school infrastructure in response to climate change.

41. The Education Infrastructure Grant is a direct grant to provincial education departments that is used to supplement the school infrastructure programme in provinces. This grant was allocated R38.8 billion over the next three years, which includes an additional R470.5 million towards repairing school infrastructure damage

³⁴BBC Reality Check "Durban floods: Is it a consequence of climate change?" (2022) accessed at <https://www.bbc.com/news/61107685>.

caused by storms in KwaZulu-Natal which occurred before the disastrous April floods. Moreover, many public-school infrastructure projects were suspended during 2020/21 when the Education Infrastructure Grant suffered significant cuts and allocations were reprioritised to attend to COVID-related needs, which now places additional demands on the Department's budget. In order to enable the development of an effective climate change response and climate-resilient economy and society for South Africa, sufficient allocation of financial resources to school infrastructure is imperative.

42. Climate resilient infrastructure goes beyond classrooms being built with inappropriate materials that result in hot classrooms and homes. Climate change will increasingly affect water security and quality at schools. Increasing occurrence of droughts may threaten the availability of water in schools. Moreover, most water-borne infections, particularly those caused by bacteria, are heat sensitive: [bacteria thrive in warmer temperatures](#). However, there are [380 schools](#) in South Africa with no water, a further [3 392 schools](#) that still use pit latrines, which affects over a million learners. For South African schools to be climate resilient, it is important that financial resources are directed to eradicating pit latrines and equipping schools with adequate sanitation.
43. Climate change poses a threat to food security in South Africa. Climate change has been [found](#) to have an impact on food safety, particularly on incidence and prevalence of food-borne diseases. This threat coupled with the country's high levels of unemployment and poverty, may limit many households to access and purchase food. The National School Nutrition Programme ('NSNP') provides 9 million learners across 19 950 schools with nutritious school meals each school day. The NSNP increases over the next three years match ordinary CPI inflation and SECTION27 proposes linking its increases to the food price inflation that the Pietermaritzburg Economic Justice and Dignity Group has found to be 8.6 % between January 2021 and January 2022. Equipping education departments with the funding to feed indigent learners will insulate them from the food security threats in responding to climate change.

44. Budget cuts to teaching personnel impact the teacher: student ratio, which as of 2020 was [1:36 for secondary schools, and 1:37 for primary schools](#). Budget cuts to teachers and personnel means that the department has less funds to pay teachers, potentially resulting in more crowded classrooms, hampering education outcomes during a climate crisis.
45. We caution that without a funding framework that adequately accounts for the challenges faced by the education sector caused by climate change, South African schools will not be equipped to respond appropriately, disenfranchising millions of school children.

Recommendations

46. SECTION27 strongly recommends the inclusion of a climate funding framework to enable adequate allocation of financial resources to ensure that South Africa is equipped to mitigate and adapt to the risks and impacts of climate change. Moreover, we propose that the climate funding framework is robust and able to support the government departments in implementing policies, strategies, targets, and criteria in a gender sensitive manner that effectively responds and mitigates the impacts of climate change on the most vulnerable South Africans who carry the burdens of limited state capacity. Without this, the Climate Change Bill will hamper the development of an effective climate change response in a context of cuts to social spending.
47. We recommend the funding framework consider mechanisms that:³⁵
- 47.1. Promote fair, equitable and transparent access to resources in the climate change response.
 - 47.2. Mainstream climate change into the fiscal budgetary, planning and implementation processes to promote cross sector responses and

³⁵ For further recommendations, see the [climate financing report](#) developed by Department on Environment in 2011 in support of the National Climate Change Response White Paper.

strengthen climate change governance structures, which the submission explores further in the next chapter. For example, the integration climate adaption into social protection programmes such as cash transfers, public works programmes, conditional grants for health and education systems can increase the resilience to climate change.

47.3. Enable the implementation plans by sectors and spheres of government to be credible and implementable through accurate and appropriate capital planning and cost-determination. Since local government is the primary driver of the socio-economic transition required by the climate crisis, it is particularly critical it is empowered and has access to adequate financial resources in a responsible manner.

47.4. Require National Treasury to annually report on financial matters related to climate change to Parliament and make such reports available to the public.

48. We further support the recommendation by the Department of Environmental Affairs in 2011, to monitor the effectiveness of the climate change response, through a climate financing tracking facility.

Chapter 4: Climate Change Governance

49. In this section our submissions will make recommendations on the following issues:

- I. Strengthening governance structures for policy alignment, institutional arrangements, and coordination; and
- II. Transparency

Strengthening governance structures for policy alignment, institutional arrangements, and coordination

50. The response to climate change requires unprecedented levels of cooperative governance and intergovernmental relations.³⁶ The impacts of climate change on different sectors of society are far-reaching and interrelated. To attain a just and equitable transition and low carbon economy and society, it is necessary to establish strong governance and accountability structures.
51. As currently presented, the Bill refers to provisions³⁷ of the Intergovernmental Relations Framework Act 13 of 2005 (“IGRFA”), where vertical coordination between the three spheres of government is envisaged, as well as horizontal coordination, which is defined as “coordination within and across different departments”³⁸ or inter-sectoral collaboration.
52. Chapter 2 of the Bill sets out the institutional arrangements and governance structures responsible for the coordination of climate change response actions, as well as the powers and functions of the Presidential Climate Commission (PCC). Section 7 of the Bill provides that every organ of state whose function is affected by climate change ought to align their policies and measures with climate change considerations.
53. However, concerningly, Chapter 2 of the Bill does not envision the establishment of any national climate change governing body to coordinate the alignment of policies across the various sectors and departments, as was provided for in the previous version of the Bill in 2018. Instead, sections 8 and 9 of the Bill merely charge provincial and local governments with the responsibility of coordinating climate actions through existing provincial and municipal intergovernmental forums³⁹, without strengthening and empowering those structures to effectively discharge their obligations.
54. Section 8 of the Climate Change Bill of 2018 sought to establish a Ministerial Committee of Climate Change, which was mandated to coordinate effort across all

³⁶ R Garland, S Stevenson, and C Wright “Chapter 14 - Public Health Perspective and Climate Change Law and Governance” in *Climate Change: Law and Governance in South Africa* (2016) 19.

³⁷ Chapter 2 of the IGRFA, which establish and outline the functions of intergovernmental structures.

³⁸ T Giordano, L Hall, A Gilder, and M Parramon “[Governance of Climate Change in South Africa](#)” (2011) 6.

³⁹ Section 17,20, 25 and 26 of the Framework Act.

sector departments and spheres of government toward a transition to a climate resilient and lower carbon economy, in accordance with South Africa's [White Paper on the National Climate Change Response](#) and the country's Nationally Determined Contributions. Without a national institutional structure to develop, regulate and monitor the alignment of policies and implementation of the Bill, practicing the principles of good governance and adequately addressing the climate crisis will be extremely difficult, if not impossible.

55. Perhaps under normal circumstances, sole reliance on the IGRFA structures as the framework for the effective facilitation of cooperative governance and intergovernmental relations would be appropriate. However, climate change and its prevailing and anticipated effects is widely recognised as a crisis – an emergency that has the potential to create new challenges and exacerbate existing threats, which includes weakness in governance between, within and across governmental institutions.

56. Despite the enactment of the IGFRA over 15 years ago, South Africa has yet to realise the ideal or fruits of effective cooperative governance and intergovernmental relations. There are many reasons for why good governance has been extremely difficult for South Africa. For example, there are chronic problems of institutional capacity and inexperience at local and provincial government level;⁴⁰ and the misalignment between policy objectives, which results in divergence of policy intentions and actual outcomes, particularly where the budget plays an important role in the realisation of those outcomes.⁴¹

57. The National Development Plan 2030 recognises that the current governance system relies too heavily on the notion of cooperation without paying attention to the practical conditions needed for effective cooperation to emerge.⁴² This is further

⁴⁰ K Mclean "Housing provision through cooperative government in post-Apartheid South Africa" In Mhone, G. and Edigheji, O. (eds). *Governance in the new South Africa. The challenges of globalization* (2004) 161.

⁴¹ T Coetzee "Cooperative governance and good governance: Reality or Myth" *Journal of Governance and Political Transformation* (2010) 90.

⁴² National Development Plan (2011) 385-6.

exacerbated by a culture of “[operating in] silos, fragmentation and duplications across national and provincial departments and municipalities”.⁴³ Below, we contextualise and set out our recommendations for the amendment of the Bill to strengthen governance structures and implementation mechanisms to realise the objects and purports of the Bill.

Lack of effective horizontal coordination:

58. Technically, even before the introduction of the Bill of 2018, South Africa has had a comprehensive climate change governance system for vertical and horizontal coordination, coming out of the White Paper on the National Climate Change Response. Key mechanisms for coordination have included the establishment of:⁴⁴

58.1. The Inter-Ministerial Committee on Climate Change, which is a coordination committee at an executive level, chaired by the Minister of Forestry, Fisheries and the Environment (“the Minister”). It is a sub-committee of the full Cabinet and consists of Ministers who have a stake in climate policy; and

58.2. The Intergovernmental Committee on Climate Change, which seeks to operationalise cooperative governance and bring together relevant national, provincial, and organised local government. The Department of Forestry, Fisheries and the Environment coordinates this structure to align sectoral policies with national climate change policy, and to avoid contradictions.

59. However, climate policy researchers and experts⁴⁵ have called into question the effectiveness of these national governance fora, which suffer from the common and overarching challenge of the inability to transition from policy planning and

⁴³ D Slater “District Development Model seen as key to tackling delivery backlogs” 14 May 2021, accessed at: <https://www.engineeringnews.co.za/article/district-development-model-proposes-aligning-govt-planning-and-budgeting-for-all-south-africas-districts-2021-05-14>.

⁴⁴ A Averchenkova, KE Gannon, P Curran “[Governance of climate change policy: A case study of South Africa](#)” (2019) 19.

⁴⁵ Ibid.

development to implementation. The lack of effective coordination is one of the main roadblocks to implementation.

60. Horizontal coordination challenges are shaped by a combination of factors. While coordination fora and mechanisms have been established under the Department of Forestry, Fisheries and the Environment the relative political weakness of the Department is a direct and significant barrier to fulfilling its cross-sectorial coordination role for climate action – especially while operating in a context of no clear and legislated legal rights and responsibilities.⁴⁶ This is by no means unique to South Africa. In fact, the United Nations Intergovernmental Panel on Climate Change (IPCC) has made the following observations:

“Climate governance challenges include ensuring coordination, [which] is important because climate change is an all-of-economy and society problem that requires cross-sectoral and cross-scale action; building consensus is needed because large scale transformations can unsettle established interests; and strategy setting is required due the transformative and time-bound natures of climate mitigation [and adaptation]. Institutions that provide coordination, integration across policy areas and mainstreaming are particularly important given the scope and scale of climate change. Ministries of environment are often appointed de facto agents of coordination but have been hampered by their limited regulatory authority and ability to engage in intra-governmental bargaining with ministries with larger budgets and political heft.”⁴⁷

61. In the South African context, coordination mechanisms without a clear authority have resulted in the misalignment of policy, especially in a culture where government departments operate in silos. As an attempt to help with policy coordination and implementation, the National Climate Change Response Policy gave explicit instructions for certain institutions to mainstream climate change considerations in their legislative frameworks and policy. For example, the National Disaster

⁴⁶ Averchenkova et al “[A case study of South Africa](#)” 25. Also see J Meadowcroft “[Climate Change Governance](#)” (2010) Washington, DC: World Bank.

⁴⁷Working Group III Sixth Assessment Report of the Intergovernmental Panel on Climate Change, “[Chapter 13: National and Sub-national Policies and Institutions](#)” in *Climate Change 2022: Mitigation of Climate Change* (2022) 9.

Management Council saw to it that the Disaster Management Act⁴⁸ be amended to include climate change clauses, and while other key institutions have done so, policy coherence between departments remains a problem.

62. The lack of alignment and policy coherence refers to “the gaps between climate change goals and the objectives set in other key strategies and policy documents that determine the trajectory of development.”⁴⁹ An example of this is the Department of Mineral Resources and Energy’s introduction of the Integrated Resource Plan (IRP) 2019, which determines the country’s strategy for energy generation for the next 20 years. The IRP seeks to build 1 500MW of new coal-powered electricity generation, creating dangerous levels of greenhouse gas emissions. The plan is incompatible with South Africa’s newly updated Nationally Determined Contributions and threatens the ability of the country to meet its climate commitments. Not to mention the incoherency of introducing a policy which the best scientific evidence warns will exacerbate climate change, but also poses a significant and unjustifiable threat to vulnerable populations and the realisation of constitutional rights. The viability of the IRP is currently subject to a constitutional challenge in an application popularly known as the [#CancelCoalCase](#), where youth-led and community environmental groups argue that the IRP is irrational and unjustifiable considering the impacts of climate change and the existence of cleaner and less harmful renewable energy sources, which are a feasible and cheaper alternative to new coal power. The uncertainty over the energy strategy has undoubtedly impeded effective engagement on climate change by the Department of Forestry, Fisheries and the Environment and other relevant government departments.

63. Coordination is further made difficult by how departments are funded. They receive individual funding without specific funding for joint projects or for broad collaboration on specific issues. This is a problem for cooperation in general and will be a particular problem in relation to climate action cooperation. Without dedicated funding for the cooperative arrangements needed for climate action, departments will be unable to

⁴⁸ See Disaster Management Amendment Act 16 of 2015.

⁴⁹ Averchenkova *et al* “[A case study of South Africa](#)” 3.

effectively work together in the unprecedented levels required to deal with climate change.⁵⁰

Fragmentation of vertical coordination

64. As frontline implementers, sections 8 and 9 of the Bill place cumbersome burdens on provinces and municipalities to coordinate and report on climate actions, through existing intergovernmental forums, established in terms of the IGRFA.⁵¹ There are several predictable challenges to vertical coordination, effective implementation of policy and fulfilment of constitutional obligations.

65. First, the envisaged structures presume that existing provincial and municipal forums are optimally capacitated and are operating effectively and efficiently in delivering on current duties and responsibilities. Municipalities are already struggling for example to fulfil obligations of air quality management and of municipal health services provision, which include water quality monitoring, food control, waste management, and the surveillance and prevention of communicable diseases. Auditor General Tsakani Maluleke makes a poignant observation in her latest [report](#) on local government that there is a lack of monitoring and supervision by provincial and national leadership, in a context of no accountability for mismanaged resources and inadequate provision of services. Historic and structural inequalities among provinces and municipalities would also contribute to the varying degrees of effectiveness of the forums.

66. Second, despite wide differences from one province and municipality to another, there is a general lack of human, financial and technical capacity, knowledge, and skill in these agencies. Outside of the Department of Forestry, Fisheries and the Environment, officials have no experience with climate change specific roles. Yet the Bill empowers intergovernmental fora with discretionary power to establish technical

⁵⁰ Garland *et al* "Public Health Perspectives" 18.

⁵¹ Section 17,20, 25 and 26 of the IGFRA.

support structures. This is inconsistent with the principles that the Bill espouses, which include that the response to climate change will be based on “best available science, evidence and information”. A technical support structure should be viewed as mandatory to guide those efforts.

67. Third, Coetzee has observed that the discrepancy between policy objectives, plans, budgets, and implementation is that the policies at national level, do not always receive the necessary funding at provincial and local levels. The national policies are often idealistic and unrealistic in that they do not take the operational context, human resources, and capacity constraints at local and provincial level governments into consideration.⁵² Garland *et al* further add that:

“While provinces and municipalities are presented in the National Climate Change Policy Response as essential partners in the response to climate change, there are few and only generalised assertions on the mobilisation of finance needed to power these levels”.⁵³

68. Similarly, as outlined in Chapter 3, the Bill in its current form fails to make provision for a comprehensive climate finance strategy that would define the allocation to support the implementation of climate change work. All three spheres of government also need to attract international funding to invest in the just transition to a low carbon and climate resilient economy and society.

Recommendations

a. Ministerial Committee on Climate Change

69. We recommend the establishment of a Ministerial Committee on Climate Change (MCCC)⁵⁴, comprising of the Minister of Forestry, Fisheries and the Environment, the Minister responsible for Planning, Monitoring, and Evaluation in the Presidency, and

⁵² Coetzee “Cooperative governance and good governance” 90.

⁵³ Garland *et al* “Public Health Perspectives” 19.

⁵⁴ See section 4 of the DMA for an example establishing an Intergovernmental Committee to address a specific issue or portfolio.

the Ministers listed in Schedules 1 and 2, who are responsible for Sectorial Emissions Targets and Sector Adaptation Strategies and plans. We note our above recommendations that Schedule 2 be amended to include Basic Education, and the Department of Women, Youth and Persons with Disabilities. In view of the critical role played by local government in the adaptive response to climate change, we further recommend that the Department of Cooperative Governance and Traditional Affairs be included in the list of functionaries under Schedule 2.

70. Since section 15 of the Bill mandates the development of a provincial climate change implementation plan, which must fall under the Department of Forestry, Fisheries and the Environment in terms of section 11(1) of the National Environmental Management Act, we recommend that the MCCC include all the MECs responsible for the environment.

b. Setting clear mandates and annual progress reporting

71. In the same way that the Bill outlines the functions of the Presidential Climate Commission, we recommend that Chapter 2 be amended to include the duties and powers of the MCCC setting clear mandates, as well as those of the Provincial and Municipal Forums on Climate Change.⁵⁵

72. As part of their duty, each structure must submit annual progress reports, which include detail on the activities of the year, particular problems experienced, the way problems were addressed and any recommendations.⁵⁶ The annual progress report produced by the MCCC on mitigation, adaptation and finance climate action must be submitted to Parliament and made available to the public, for purposes of oversight and accountability.

⁵⁵ See chapter 3, 4 and 5 of the DMA, which comprehensively outlines the duties and powers of the coordinating bodies.

⁵⁶ See section 24, 36 and 50 of the DMA, which outline the purpose of reporting, suggestions on what the annual report ought to entail and to which body the report ought to be submitted to.

73. These annual submissions must be led by the Minister, whose powers must be clearly set out in Chapter 4 and 5 to coordinate national adaptation and mitigation efforts with the functionaries listed in Schedules 1 and 2. We recommend that where the Minister is required to submit reports to Cabinet, as required in sections 20(3) and 22(12), the Bill be amended to include that the reports be submitted to Parliament and made publicly available.

c. Urgency and timelines

74. Under section 19 of the Bill, Ministers, as listed under Schedule 2, are required to assess the risks their sectors face, as well as determine ways to manage and implement the required adaptation response. The Ministers must then develop and implement a Sector Adaptation Strategy and Plan. All of this is to be done with two years of the publication of the National Adaptation Strategy and Plan. We submit that these are reasonable timelines, considering the urgency of the situation.

75. However, we note that some sectors have already developed their adaptation plans and we advise this Committee to encourage other sectors to be proactive and begin the work as envisioned under section 19(1) of the Bill, even before the enactment of the Climate Change Act. The need for adaptation measures to be developed and implemented have never been more urgent and should be a top priority – as evident by the 2017 Knysna fires, the recurring droughts in the Eastern and Western Cape from 2018, the frequent floods in all nine provinces⁵⁷, particularly in parts of the Eastern Cape, Gauteng, and Kwa-Zulu Natal in 2019, 2021 and the recent floods in 2022.

76. Further on the issue of urgency, section 19(2) of the Bill only requires the relevant Minister to submit a report on the progress made in the implementation of the relevant Sector Adaptation Strategy Plan within five years after publication of the plan and then in five-year intervals thereafter. These reporting timeframes, we submit, are too long. A five-year interval simply makes it impossible to enable monitoring and

⁵⁷ A le Roux “Urban South Africa is ill-prepared for the coming climate change storm” (2021) *Institute for Security Studies* accessed at: <https://issafrica.org/iss-today/urban-south-africa-is-ill-prepared-for-the-coming-climate-change-storm>

ensure accountability. We accept that the relevant Minister may require a period of five years to implement the strategy and plan and may only review and amend it thereafter, however progress reports must be submitted more regularly and made publicly available. We recommend that reports be submitted yearly – to ensure accountability and monitor progress.

d. Communication links

77. Since the impacts of climate change are transnational,⁵⁸ we recommend the MCCC to establish effective communication links with role-players, by developing and maintaining a directory of institutional role-players that are or should be involved the climate change response in southern Africa.⁵⁹ To address ineffective communications practices, the directory should include the particulars of all organs of state and functionaries involved in the climate change response.⁶⁰

e. Independent specialist advisory body

78. We recommend the establishment of an independent specialist advisory body⁶¹, comprising scientists and experts, whose duty is to make recommendations to government on technical and specialised decisions taken in furtherance of the purposes of the intended Act, based on the best available science, evidence and information.⁶² The duty of such a body ought to also include providing support to the Provincial and Municipal Forums on Climate Change, in assessing vulnerabilities, mitigation and adaptation needs and reviewing reports and actions taken.

⁵⁸ Transnational climate change impact reach across borders, affecting one country – and requiring adaption there – because of climate change or climate-induced extreme events in another country.

⁵⁹ See section 16 of the DMA for an example.

⁶⁰ See section 16(2) of the DMA for an example.

⁶¹ See section 5 of the DMA for an example.

⁶² The function of the advisory should not be confused with that of the PCC, which is a multi-stakeholder forum that has adopted a social compact approach in advising on the country's climate change response. We commend the work of the PCC.

f. Implementation protocols

79. We recommend that the Bill be amended to include implementation protocols to manage the conduct and scale of intergovernmental relations anticipated under the Act. Such a provision must include, for example, the circumstances in which an implementation protocol ought to be considered and the function of the protocol. Section 35 of the IGfRA serves as a good model for a provision dealing with implementation protocols.

g. Funding arrangements

80. As already submitted in Chapter 3 of our submissions, it is critical that governance structures be adequately capacitated to comply with their obligations by taking a strategic approach to allocating financial resources. We recommend that the Bill include a provision for a funding arrangement or a mechanism that would allow municipalities and provinces to access funding for the implementation of their functions.⁶³ Such a provision could create a new funding arrangement in line with existing financial legislation such as the Public Finance Management Act 1 of 1999 or provide that existing transfer mechanisms of conditional grants consider potential climate impacts and the need for investment for a just transition in their plans.

Transparency and access to information

81. Despite the provisions of the Protection of Access to Information Act 2 of 2000 (PAIA), we have found it extremely difficult to gain access to information relating to the public health care and education system, and other related information of public concern. Sometimes routine information is released only after a PAIA application has been submitted. However, often, PAIA requests have been ignored. While legal steps can be taken, and have been, such steps come with legal costs that few can afford, and eventually gaining access to information is subject to significant delays.

⁶³ See chapter 6 of the DMA, which can act as guide on developing a funding arrangement or framework to support the response to climate change.

Recommendations

82. To increase public trust and accountability in the intended legislation and the structures responsible for fulfilling the objects and purport of the Bill, it is imperative that all processes and decisions related to the response to the climate crisis are as transparent as possible. We submit that this requires section 31 of the Bill on access to information be amended and that the principle of transparency be included in the principles clause under section 3 of the Bill. We recommend the amendments be as follows:

81.1 The insertion of the “principle of transparency”:

“The State has the duty to make available all public information related to climate change, respecting the right of every person to access adequate and timely information without the need to invoke justification or interest that motivates such requirement, reducing the asymmetries of information”.⁶⁴

81.2 The amendment of section 31 to read as follows:

“Information provided to the Minister or the Department in terms of this Act must be made available, on a designated information repository such as a website, as provided for in the Promotion of Information Act and Protection of Personal Information Act, but without having to make a request in terms of the information legislation or having to provide any justification for accessing the information.”

83. We submit that these specific provisions in law that guarantee transparency would enable certain types of information being made available to the public as a matter of routine and without the public having to submit requests in terms of PAIA. On the type of information to be made readily available in terms of section 31, we recommend the following amendment -

⁶⁴ Borrowed from Article 2.5 of the Peru Framework on Climate Change, accessed at: <http://www.lse.ac.uk/GranthamInstitute/wpcontent/uploads/2018/04/1638161-1.pdf>.

82.1 The insertion of a provision to read as follows:

“The type of information to be routinely shared with the public, include but are not limited to:

- (a) Annual reports by the Ministerial Committee on Climate Change submitted to Parliament on the national response to climate change.
- (b) Annual reports by the Provincial Forums on Climate Change to the President’s Coordinating Council in terms of section 8(3)(b) of the Act.
- (c) Annual reports by the Municipal Forums of Climate Change to the Provincial Forums on Climate Change in terms of section 9(3)(b) of the Act.
- (d) Reports by the Presidential Climate Commission to the President in terms of section 13 of the Act.
- (e) Provincial climate change plans in terms of section 15(4) of the Act.
- (f) Annual progress reports submitted to the Minister in relation to the implementation of the Sector Adaptation Strategy Plan in terms of section 19(2) of the Act and envisioned under our recommendations above.
- (g) Annual progress reports submitted by the Minister to Cabinet on the implementation of sectoral emission targets in terms of section 22(12) of the Act.

Conclusion

84. We trust these submissions will be helpful and request an opportunity to make oral submissions at the oral hearings before the Portfolio Committee.

85. Should you require any further information, please contact:

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