

Climate Change Legislation Advisory Note

EXECUTIVE SUMMARY

In anticipation of the Climate Change Act, the National Planning Commission engaged with a wide range of local government representatives to understand their implementation capacity in relation to the Act and the possible challenges they would face. In meeting its requirements. The process also included engagement with the scientific and academic community producing climate change-related information that can inform adaptation and mitigation strategies.

The overwhelming response from most municipalities indicated that while they understood the need to take preventative measures in relation to climate impacts and build resilience, the matter of resources in the form of finances and expertise was a huge challenge. With the Climate Change Act having been promulgated, municipalities face the legal obligation to meet the requirements of the legislation.

This advisory note provides an analysis of these challenges, lists concerns related to the implementation of the legislation and makes proposals of how the challenges being faced can be addressed through cooperative action across the state and by using research bodies

1. INTRODUCTION AND BACKGROUND

The National Planning Commission (NPC), as the custodian of the National Development Plan (NDP) Vision 2030, is an independent body appointed by the President for a five-year term. The NDP is South Africa's long-term planning blueprint that was adopted by government in 2012.

Included in the mandate of the third and current NPC is the responsibility to advise on key issues such as food security, water security, energy policy and planning, economic development, the economy's structure, social cohesion, education, health, 4IR, public transport, industrial development, spatial planning, and climate change.

As part of this mandate, and in the context of the Climate Change Act, the Climate Change task team of the NPC's Economy workstream examined the capacity of government structures to implement the obligations prescribed in the legislation. This advisory note provides a summary of the findings and concerns and makes recommendations to all three spheres of

government that will support the legislation being implemented effectively and in a manner that protects the environment and the health and well-being of future generations.

It is important to state that notwithstanding the concerns raised in this note, the Commission welcomes the far-reaching and comprehensive approach that the legislation takes in terms of addressing the effects of climate change as well as its long-term mitigation and adaptation measures. As such, this advisory note is intended to support the processes of capacity building and institutional development in government.

2. PROBLEM STATEMENT

To implement policies that give effect to South Africa's global commitment to reducing greenhouse gases (GHGs), adapting to climate change effects building resilience and ensuring a Just Transition, it has introduced legislation that outlines a range of policy requirements across all three spheres of government as well as within designated sectors. The challenge that arises relates to whether the legislation, once enacted, will be implementable in terms of the requisite capacity and resources required. The matters raised in this advisory note seeks to avert a situation where well-structured, comprehensive policy and legislation is not implemented, or only partly implemented, due to absence of the basic resource requirements. Unimplementable legislation places the country at reputational risk as well as opening the state up to potential future legal action. It will also severely impede the country's climate change actions.

2.1. Climate Change legislation requirements

The Climate Change Act, signed by the President on 23 July 2024, is a landmark piece of South African legislation. It builds on the comprehensive National Environmental Management Act, by establishing a robust legal framework aimed at fostering an effective climate change response and facilitating a just transition to a low-carbon and climate-resilient economy and society.

This legislation mandates all organs of state to align their policies and legislation with climate change objectives, ensuring sustainable environmental practices and effective implementation of the Act. The Act recognises South Africa's vital role in the global effort to reduce greenhouse gas emissions and its vulnerability to the impacts of climate change, requiring urgent adaptation responses.

2.1.1. Structures created by the Act

- Provincial Forums of Climate Change are established as part of the Premiers' Coordinating Council to coordinate climate change response actions in the relevant province and report to the President's Coordinating Council.
- Municipal Forum on Climate Change that are established in the local sphere of government as part of every district intergovernmental forum must report to the Provincial Forum on Climate Change.

- The Presidential Climate Commission is formalised as an advisory body on adaptation and mitigation measures to effect a just transition to a low-carbon and climate-resilient economy and society.

2.1.2. Actions and Reporting arising from the Act

Nationally, the Minister responsible for the environment must:

- Develop a National Adaptation Strategy and Plan, including national adaptation objectives, indicators to measure progress, and adaptation scenarios to anticipate likely impacts over the short, medium, and long term. This strategy should be reviewed every five years. Aligned with this, sector departments should develop Sector Adaptation Strategies and Plans that implement adaptation measures and mechanisms based on an assessment of their respective sectors.
- Develop a GHG emissions trajectory and, in consultation with sector departments, determine sectoral GHG emissions targets. Additionally, listed greenhouse gases and activities that are detrimental must be identified, carbon budgets allocated, and arrangements established to manage them. A National Greenhouse Gas Inventory and Report must be created to track trends in the economy relative to the emissions trajectory and international climate change mitigation commitments.

To align with the National Adaptation Strategy and Plan, provinces and municipalities (districts and metros) must:

- Undertake a climate change needs and response assessment, which should be reviewed and published every five years.
- Assess the extent to which its constitutionally-mandated functions are affected by climate change and formulate steps to address these effects in the performance of its functions.
- Develop, implement and publish a climate change response implementation plan as a component of its relevant planning instruments, which should also be reviewed every five years.

2.2. **NPC Concerns**

The concerns outlined below arise from engagements conducted by the NPC and are further informed by the expertise and experience within the NPC:

- 2.1.1. The capacity to conduct the assessment required in section 17 is questionable in light of the constraints set out above. Efforts to increase the institutional load on municipalities should be avoided in the context where many are unable to meet the requirements of basic service provision and have financial management challenges.
- 2.1.2. Section 17(1)(b), which requires that the climate change needs and response assessment include the extent to which its 'constitutionally-mandated functions are

affected by climate change and formulate steps to address these effects in the performance of its functions', must be aligned to the 2002 Disaster Management Act.

- 2.1.3. In terms of required resources, section 17(2) of the Act, specifies the information to be included in the climate change needs and response assessment. This assumes that municipalities have access to scientific information, the ability to undertake spatial GIS analyses, and the skills and resources to develop appropriate, enduring solutions. The NPC consultations indicated that this is not the case and is a key constraint on appropriate municipal climate action. It may also mean that many municipalities will outsource the drafting of the assessment and implementation plans to consultants at significant costs. This is an approach which could perpetuate the absence of inherent skills within the municipality.
- 2.1.4. While section 18 makes provision to 'prescribe a mechanism to support and finance the Republic's climate change response', the country's current fiscal constraints must be taken into account and measures taken to ensure that there are sufficient resources to implement the Act. It is of concern that the section is vaguely phrased. The mechanism should guarantee funding for a minimum set of additional climate actions in the context of the already limited resources in the municipal sphere to undertake any additional responsibilities, other than by certain metros that may have the resources to budget for climate action. Under such circumstances, the relative inequality between metropolitan and district municipalities will be further exacerbated and not many municipalities are likely to be able to resource climate action that is additional to existing budgeted activities.
- 2.1.5. Notwithstanding the resource constraints highlighted, it is important to ensure the allocation of budgeting considers groups highlighted as vulnerable (aged, poor people, persons with disabilities etc). In particular, a special ring-fenced climate mitigation grant should be considered for the accommodation of disabled people in relation to aspects such as housing far from wetlands etc.
- 2.1.6. The expectation that provincial and district plans should be aligned to the National Adaptation Strategy and Plan must include the appropriate consultation to ensure that the unique circumstances in the local sphere is factored into the national plan.
- 2.1.7. While the sectoral adaptation plans and emissions targets are set nationally, implementation of the administrative requirements may occur through sector departments provincially. It is important that this be factored into provincial plans in terms of expertise and other resources.

3. STAKEHOLDER ENGAGEMENT REFLECTION

The NPC engaged with local government representatives to understand the challenges faced with the current requirements to manage climate change effects and introduce mitigation

measures, as well as their ability to implement the Act. This year-long engagement process involved consultations with the Presidential Climate Commission, the South African Local Government Association, and municipalities. It also included a workshop with science and academic institutions that produce climate information and municipal representatives, who are responsible for implementing climate adaptation and mitigation actions. The list of stakeholders is attached as an annexure.

3.1. Challenges Noted

- 3.1.1. The lack of overall capacity in the municipal sphere was a concern, as this relates not only to human resources and institutional knowledge but the absence of technical skills, including the ability to integrate climate planning into other service delivery sectors and to understand its effects and impacts. The lack of resources at smaller municipalities also affects their ability to engage in communities of practice and in capacity-sharing.
- 3.1.2. Skills planning that incorporates climate change should be incorporated into municipal workplace skills plans. It was noted that it should be integrated and co-ordinated in a manner that it influences service delivery areas, and that technical skills shortages and gaps are identified. Skills planning should also be used for capacity building of councillors so that they understand the issues when making decisions related to IDPs.
- 3.1.3. Information about existing platforms and the relevant role-players should be made available to inform decisions. The data and information should be tailored to accommodate the different types of municipalities based on size, i.e., metropolitan, district and local as well as be spatially and regionally tailored so that climate change information is relevant.
- 3.1.4. Climate scientists, who produce data and information so that it is useful, often struggle to identify what may be needed by the different groups, which reinforces the need to develop a community of practice over time.
- 3.1.5. Other than in the metros, there was a lack of capacity to use the information in the form in which it is received. There are not many who are GIS-capable or understand what information they need. Despite the vast amount of information available, municipalities were generally using only South African Weather Service data.
- 3.1.6. While climate change actions are discussed, it was not being taken seriously beyond the climate change or environmental department, which required that education about it needed to be provided more broadly.

3.2. Current resources and support

It is important to note that there are several initiatives by the state and its partners to address some of the challenges. These are listed below. The impact of these initiatives should be assessed not only to determine their current efficacy and reach but this should be done on a

regular basis so that they respond appropriately to the changing conditions experienced by policy implementers.

- 3.2.1. The CSIR's online tool, the [GreenBook](#), was developed to address the growing climate change realities being faced by cities, towns, and settlements in the context of growing urbanisation and increasing pressure on local government economies, infrastructure, and ecosystems. It was designed to respond to the problem that local government did not have the information and resources to plan effectively by providing a multidisciplinary, open-access, web-based planning support system that provides evidence to municipalities to adapt to both the current as well as the future climate change impacts based on their risk profiles. In addition to risk profiles for every municipality, it provides a range of local municipal-level planning-related adaptation actions.

Since its launch in 2019, the GreenBook has been rolled out and expanded with the assistance of multiple partners, including the National Treasury's City Support Programme, the Department of Forestry, Fisheries and Environment (DFFE), ABSA, the Climate and Disaster Resilience Fund, and Santam. The DFFE uses the GreenBook as its guide and refers municipalities to it to encourage climate change integration.

Users can get access to the source material, which acts as a further resource. The open accessibility ensures that anyone can access the information at any time without relying on specific individuals or institutions to support them or to have access to GIS systems or software because the data is already visualised and interpreted in this web-based platform. The website includes links to datasets, and access to the webmap services that allows for the integration of the maps with other GIS systems and the information is freely available.

- 3.2.2. The National Treasury has piloted a climate budget tagging (CBT) project to test opportunities and constraints in South Africa as it increases awareness of climate change in relation to action plans and budgeting by implementing units. The aim of the project was to develop an indicative CBT approach and methodology, test it through piloting, raise awareness and consult in order to assess the human and system capacities to implement CBT. The CBT project was piloted at national, provincial, and local levels in four sectors (water, energy, agriculture, and transport).

Lessons learned include sector department capacity development will be needed in all departments across directorates, there is limited climate knowledge within departments even if there are climate strategies, there is limited awareness and integration of climate change into planning and budgeting, and there was low interest. This indicated that tagging would require multi-stakeholder teams within departments and flexibility about how it is put together.

Some of the challenges identified were that CBT is overwhelming, the methodology is complex, and the alignments between directorates and sub-programmes require

streamlining to understand how plans and budgets relate to climate change. The CBT approach is associated with high administrative costs, complexity, and risk of low institutionalisation, although governance can be established through the Climate Change Bill and National Treasury regulations.

- 3.2.3. Although municipalities conduct councillor induction programmes after local government elections that include a component on climate change and its impact on the service delivery it should ensure that the political leaders understand the impact within their sector.
- 3.2.4. The DFFE's Climate Risk and Vulnerability Assessment Framework provides a useful tool to address the challenge of framing concepts and to support communities of practice between academics and government implementing agencies.
- 3.2.5. The DFFE further assists with partnerships and collaboration by undertaking a situational analysis process to understand municipal needs and resources with the view to establishing relationships with academia and civil society organisations to resolve any deficits that may exist in terms of resources and knowledge.
- 3.2.6. As partnerships and collaboration with a wide range of sectors and civil society organisations are crucial at the local government level to make progress, there was also an effort to align climate change action through the District Development Model (DDM) so that there would be better access to resources and skills. Using the DDM model, Salga in collaboration with the Department of Co-operative Governance and Traditional Affairs and UCT is piloting a process of building capacity in nine districts and their local municipalities to ensure that climate change implementation plans are drafted and integrated into IDPs over time. This is expected to build both technical skills and the ability to attract climate finance.
- 3.2.7. It should be noted that in the engagements with municipalities there appeared to be limited knowledge of and use of the above extremely useful tools, as well as limited usage of other available climate information produced in the country.

4. PROPOSALS

- 4.1. It is important to build technical skills to implement the Act at the municipal level, including among councillors who will be responsible for allocating resources. This can include upskilling current officials, employing specialists and forming partnerships with key institutions who are the holders of climate information. Central to this is ensuring that there is wide knowledge of the information and tools available and that measures are put in place to ensure useful access.
- 4.2. An effective climate response must address the long-term human capital development needs. Provision for funding to enable academic institutions to train postgraduate students, ensuring the development of new talent will be a priority for

the country's skills plans. The National Research Fund is a key institution that can allocate resources to address the current obstacles in the system.

- 4.3. Existing data and information platforms should be strengthened and made more readily available. Information being produced by state-funded research entities must be spatially disaggregated and published in an easily accessible format both in terms of availability and interpretation. This requires long-term partnerships and much more widespread dissemination and use of tools, such as the CSIR's GreenBook.
- 4.4. To address the skills shortage and to build local knowledge, municipalities and provincial governments should enter into partnerships with research organisations and academia with the knowledge base necessary for their specific circumstances. This will address the need for knowledge and resources. The relationships that will be built are likely to be mutually beneficial as researchers would have a better understanding of the type and format of information required and over time build a common understanding of need and the nature of the information required at local and provincial levels. This should be done programmatically and in such a way that its benefits could be widely accessed.
- 4.5. Where consultants are used, skills must be transferred to municipalities so that they are able to manage the processes internally.
- 4.6. The Local Government Sector Education and Training Authority (LG Seta) should be mandated to establish the programmes that support the development of the requisite skills.
- 4.7. Where sections of the Act are obligatory rather than optional, the implementing agencies must be provided with the requisite and appropriate support, including accessing financial support through the fiscus and supporting agencies. The necessary mechanisms for this to happen must be anchored in the inter-governmental system.
- 4.8. The Department of Forestry, Fisheries and the Environment should support departments and entities that are expected to implement the provisions of the Act.
- 4.9. Climate-proofed infrastructure is critical. While financing for climate-proofing of infrastructure is critical, there is also an urgent need to integrate climate-proofing into the way that maintenance is carried out on an ongoing basis. An example of this would be an ongoing clearing of stormwater drains. This would go a long way to prevent flooding and the expense that is incurred when roads and other property is damaged due to lack of on-going clearing. We recommend that climate risks are taken into account in maintenance plans and that concomitant actions to mitigate these risks are included in maintenance budgets.
- 4.10. The conceptualisation of climate change measures must transform from the current approach of these being exceptional and linked to disasters, to one where a proactive

and preventative approach is used and is considered intrinsic to all planning processes across all spheres of the state and across society.

- 4.11. There should be a move to co-production and the use of indigenous local knowledge as well as scientific knowledge to give effect to epistemic justice
- 4.12. In terms of the National Adaptation Strategy and Plan, there is a need for frequent engagement with stakeholders to ensure that plans are aligned, and that the information being communicated is understood, relevant and received on time.
- 4.13. Communities of practice should be established with an emphasis on co-ordination and alignment of efforts, and so that it involves all stakeholders. In particular, the world-class work being undertaken in our academic and science system in relation to climate change must be more effectively leveraged and made accessible to practitioners in government. In addition, the systems and networks that are already working in government can be leveraged. Communities of practice must be demand-led, should share their experiences between provinces and municipalities and should be understood as knowledge-sharing and multidisciplinary platforms that are open to everyone. The impact of these communities of practice should be regularly monitored and evaluated to both gain the learnings from this, as well as to inform future action.
- 4.14. The persons to whom carbon budgets are allocated (s27(1)) and their greenhouse gas mitigation plans (s27(4)) and annual progress reports (s27(6)(d)) must be publicly available to ensure transparency.
- 4.15. The consultation contemplated in section 31(4) and the public participation in section 32 must include the private sector and make provision for small- and medium-sized businesses specifically around carbon budgets and disclosures.
- 4.16. Consideration should be given to coordinating the legislative and resource requirements of the Act through a central coordinating structure such as the District Development Model.
- 4.17. The implementation of the Act should be monitored and evaluated from the inception to address implementation challenges.

5. CONCLUSION

The NPC recognises the importance of ensuring that climate change actions, whether adaptation or mitigation measures, must be implemented across society if we are to make progress with limiting its effects and stemming the increase in global temperatures.

In the South African context, we welcome the Climate Change Act, and its far-reaching proposals to ensure that these actions are implemented as widely as possible. However, for this to succeed and not simply be a well-written document with good intentions, it is crucial

that the implementing bodies are provided with the requisite tools and knowledge to do so. We understand that this process of refining the implementation of this, and other related legislation will be an iterative process but appeal to government to ensure that the basis is well-considered and appropriately resourced.