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Climate Change Bill and sectoral emissions targets

Background

The Climate Change Bill was finally passed by both houses of Parliament on 25 April 2024 and is awaiting the President's signature. The Bill provides a domestic legal framework for the commitments that South Africa made to curb global warming and climate change.

There is a global climate change agreement in place, - the United Nations Framework Convention on Climate Change (UNFCC). The Kyoto Protocol and the Paris Agreement follow on the UNFCC. Countries have agreed in the convention and its protocols to reduce greenhouse gas emissions. South Africa is a party to both the United Nations Framework Convention on Climate Change and the Kyoto Protocol, having acceded to the Convention in 1997 and ratified the Kyoto Protocol in 2002. As a signatory, South Africa has to comply to the Kyoto Protocol. South Africa has not yet signed the Paris Agreement.

Important provisions in the Bill

The main aim of the legislation is to enable the development of an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa. The legislation falls under the framework of the National Environmental Management Act (NEMA) but deals specifically with climate change as part of the state's broader duty to under NEMA to manage our natural environment. It does so by placing a legal obligation on every organ of state to coordinate and harmonise their policies, laws, programmes and decisions relating to climate change with the provisions of the Climate Change legislation. It also obliges companies exceeding a specific threshold to report on their green house gas emissions and to limit their emissions to remain within a carbon budget.

The Bill (soon to be an Act), provides for the establishment of adaptation objectives. The objective is to guide the adaptation response which is to be accompanied by indicators for measuring progress. It also requires the adoption of a National Adaptation Strategy and Plan. Within a year from the publication of the National Adaptation Plan and Strategy, certain Ministers (including the Minister of Agriculture, Land Reform and Rural Development) will have to develop and implement a sector adaptation strategy and plan.

The Minister of Forestry, Fisheries and the Environment must determine a national greenhouse gas emissions trajectory for the Republic. The national greenhouse gas emissions trajectory must specify a national GHG emissions reduction objective which is consistent with South Africa's international obligations. The legislation also mandates the minister responsible for the environment to empowers the Minister to list the sectors and

subsectors which are subject to the allocation of a sectoral emissions target. Such a list must reflect the national greenhouse gas emissions profile. After having published such a list, the Minister must then determine sectoral emissions targets for the listed sectors and subsectors. These sectoral emissions targets must be aligned with the national greenhouse gas emissions trajectory. The targets must include quantitative and qualitative greenhouse gas emission reduction goals for the first five years, the subsequent five to ten years and for a ten to fifteen year period thereafter. The targets will be reviewed every five years.

The minister responsible for the environment, must also publish a list of greenhouse gases which may cause or exacerbate climate change. The Minister must further publish a list of activities which emit, or has the potential to emit, one or more of the listed greenhouse gases.

The minister responsible for the environment must also allocate a carbon budget to every person / entity undertaking a listed activity. The minimum requirements to be taken into account when allocating a carbon budget and its prescribed content are specified in the legislation. A person who has been allocated a carbon budget is required to prepare and submit to the Minister of Forestry, Fisheries and the Environment a greenhouse gas mitigation plan. Failure to prepare and submit a greenhouse gas mitigation plan to the Minister is an offence.

Proposed emissions targets for the agricultural sector

On 26 April 2024 the Ministry of Forestry, Fisheries and the Environment published a draft sectoral emissions target report for public comment. The due date for comments is 28 June 2024. In the report, seven government departments were identified to develop of Sectoral Emission Targets (SETs). These government departments are Agriculture, Land Reform and Rural Development, Trade, Industry and Competition, Energy, Mineral Resources, Human Settlements, Transport and the Environment, Forestry and Fisheries. Each government department is responsible for implementing policies and measures to guide the respective economic sectors they represent towards meeting the targets. The proposed reduction in emissions per identified line department is reflected in the table below.

Table S.0-2 Summary table of quantifiable SETs by policy sector

Policy Sector	Target type	Unit	2025	2030	Cumulative (2025-2030) - SET Allocation
DMRE - Electricity	Emission level	MtCO2eq	177.3	124.7	
DMRE - Other	Emission Reductions	MtCO2eq	3.7	11.5	47.9
DALRRD	Emission Reductions	MtCO2eq	0.7	0.6	3.4
DWS	Emission Reductions	MtCO2eq		0.1	0.1
DFFE	Emission Reductions	MtCO2eq	7.0	15.2	76.5
DoT	Emission Reductions	MtCO2eq	0.2	4.5	18.0

Source: Sectoral Emissions Target Report for public comments

According to the report: "*The agriculture sector accounted for 53,519 Gg CO2eq emissions, representing 11% of South Africa's total emissions. In 2022, the primary contributor within this sector was the enteric*

fermentation category, contributing 36,352 Gg CO2eq, which constituted 68% of the total agricultural sector emissions. Overall, there has been a decreasing trend in agricultural emissions, with total emissions in 2022 being 9% lower compared to 2000 levels. This reduction can be attributed to a decrease in livestock population numbers." Also: "*The sources of GHG emissions in agriculture are CO2, CH4 and N2O from fuel consumption, N2O and CH4 from soils, N2O and CH4 from livestock and CO2 from land disturbances. The agriculture land has the potential to sequester carbon. In 2022 the livestock sector, specifically enteric fermentation accounted for most of the emissions (40,637 ktCO2eq) and the cropland sector contributed 3,509 kt CO2 to national emissions. The emissions reductions of the agriculture sector would be from reducing CH4 and N2O emissions from livestock, N2O and CH4 emissions from agriculture soils, increasing carbon sequestration in soils, CO2 from land disturbances and CH4, N2O and CO2 from reducing fuel use or changing technology to use non GHG emitting energy sources*."

Clearly the livestock value chains as well as the fertiliser industry and the cropland sector have a particular interest in these targets. When compared to the mining, chemical or steel industries, the agricultural sector is unique in the sense that it consists of a multitude of small and medium-size entities that contribute towards greenhouse gas emissions. Most of the companies in the sector are likely too small to be allocated company-level carbon budgets. Hence, the policies and measures under the Sectoral Emission Targets will play a key role in mitigating emissions from the sector. From a principled point of view, there are several questions that must be interrogated before the feasibility of the sector's draft target can be assessed. For instance, are the targets based on the sector's ability to reduce emissions through the adoption of new technology or does it require subsectors to downscale their activities? The latter would not be reasonable. There will also be inevitable trade-offs between sectors as the realistic mitigation potential differs between economic sectors. Has this been taken into consideration? If so, where does the agricultural sector fit in? How will the sector's emissions be reduced if we rely on coal-powered power stations and diesel-powered trucks to transport inputs and products? Much of the sector's emission potential is therefore outside of its control. Is the target premised on the existing sector's footprint or does it allow for new entrants? We are still at the beginning phases of this effort but answers to the questions outlined above must be found in the process.

Way forward

Agbiz is studying the draft report with a view to preparing comments. We are also working with Agri SA on this matter. Agbiz has requested a meeting with the Department of Agriculture, Land Reform and Rural Development to better understand their role and the proposed manner in which these targets will eventually be implemented.

By Head: Legal Intelligence Annelize Crosby