CLIMATE CHANGE LEGISLATION IN

SOUTH AFRICA

AN EXCERPT FROM

The 2015 Global Climate Legislation Study

A Review of Climate Change Legislation in 99 Countries

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South Africa

Legislative Process

The legislative authority is centred on Parliament, which is made up of two Houses, the National Assembly, which has 400 members, and the National Council of Provinces (NCOP), with 90 members. In order for a bill to become law, both Houses must approve it. A bill can be introduced by a Minister, a Deputy Minister, a parliamentary committee or an individual MP. However, most bills are drawn up by a government department under the direction of the relevant Minister or Deputy Minister. The majority of bills are introduced in the National Assembly, but certain bills that affect provinces may be introduced in the NCOP. The law-making process usually starts with the introduction of a Green Paper – a discussion document drafted by the relevant department that is then subject to public consultation. The Green Paper may be followed by a White Paper, a more developed discussion document that broadly outlines government policy and may also be subject to review by interested parties. Once introduced, a bill is referred to the relevant committee, where it is debated in detail and, if necessary, amended. Then the House takes a decision on whether to pass the bill. The last general elections were held in May 2014 with the next due in 2019.

Approach to Climate Change

South Africa has almost exclusively dealt with climate change through policies, strategies and regulations rather than legislation. Its main focus has been in developing market-based mitigation mechanisms and promoting renewable energy and energy efficiency. The only legislation on this issue was a carbon tax introduced in 2012, with expected implementation in 2016. South Africa has pledged to reduce its emissions by 34% by 2020 and by 42% by 2025 compared to a business as usual scenario.

The process of developing climate change legislation started with the National Climate Change Response Strategy in 2004. Two years later, the Cabinet commissioned the Long-Term Mitigation Scenario (LTMS) study, in an attempt to produce sound scientific analysis from which the government could derive a long-term climate policy. The LTMS produced a series of policy recommendations, which will be at the heart of climate change legislation.

In 2008, the Vision, Strategic Direction and Framework for Climate Policy was announced by the then-Ministry of Environmental Affairs and Tourism. The Vision sets a framework for a long-term net zero-carbon electricity sector. It resulted from two and a half years of public consultation with members of government, civil society and the private sector and is based on the LTMS process. The Framework establishes general guidelines for tackling climate change including a target to curb the growth of GHG emissions by 2020–2025 at the latest; the introduction of a carbon tax, renewable energy feed-in tariffs and a carbon capture and storage system; and mandatory targets for renewable energy, energy efficiency and transportation.

The key climate policy is the National Climate Change Response Policy White Paper (NCCRP), approved by Cabinet in 2011. The NCCRP presents the government's vision for an effective climate change response and the long-term, just transition to a climate-resilient and lower-carbon economy and society. It reflects a strategic approach referred to as "climate change-resilient development", addressing both adaptation and mitigation, which makes use of three time-bound planning horizons: Short-term – five years from date of publication of the policy; Medium-term – 20 years from date of publication of the policy; Long-term – a planning horizon that extends to 2050.

The NCCRP outlines a risk-based process to identify and prioritise adaptation strategies and interventions that have to be taken in the short and medium term, to be reviewed every five years.

Strategies are specified for the following areas: Water; Agriculture and Commercial Forestry; Health; Biodiversity and Ecosystems; Human Settlements – Urban, Rural and Coastal Settlements; and Disaster Risk Reduction and Management. It includes mitigation proposals to set emission reduction outcomes for each significant sector and sub-sector of the economy based on an in-depth assessment of the mitigation potential, best available mitigation options, science, evidence and a full assessment of the costs and benefits using a "carbon budgets" approach. It also proposed the deployment of a range of economic instruments, including the appropriate pricing of carbon and economic incentives, as well as the possible use of emissions offset or emission reduction trading mechanisms for those relevant sectors, sub-sectors, companies or entities where a carbon budget approach has been selected. The NCCRP includes near-term priority "flagship programmes", on climate change response public works; renewable energy supply, energy efficiency and energy demand management, water conservation and demand management; waste management; transportation, carbon capture and sequestration, and adaptation research. The last national climate change response dialogues under the NCCRP framework took place in November 2014, and focused on implementation of policies.

The Taxation Law Amendment Bill of 2009 amends the 1962 Income Tax Act to include, among other things, income tax incentives for participation in Clean Development Mechanism (CDM) projects as well as for energy efficiency savings. The CDM projects are run by a designated national authority established under the Department of Energy, and governed by regulations published under the National Environmental Management Act 1998 (the CDM Regulations).

According to the NCCRP, Parliament, the Forum of South African Directors-General, the National Disaster Management Council, and provincial and local government also have significant roles to play in implementing climate policy. A number of institutional arrangements have been established to implement it: an inter-governmental Committee on Climate Change; a National Committee on Climate Change; a Monitoring and Evaluation Task Team; a Technical Working Group on Adaptation and a Technical Working Group on Mitigation.

Energy supply

Despite the fact that renewable energy sources are still at an embryonic stage in South Africa, where most of the energy matrix is coal-based, the government has invested heavily in the promotion of renewable energy and energy efficiency. The National Energy Act 2008 has a focus on increasing the generation and consumption of renewable energy. The Act also creates the National Energy Development Institute, responsible for promoting efficient generation and consumption of energy and energy research and development. The bulk of government action in this domain is translated into policies, strategies and regulations, namely the White Paper on the Promotion of Renewable Energy and Clean Energy Development 2003; the Integrated Clean Household Energy Strategy 2003, the Implementation Strategy for the Control of Exhaust Emissions from Road-going Vehicles in South Africa 2003, the Renewable Energy Policy 2004, the Cleaner Production Strategy 2005, the Energy Efficiency Strategy 2005, the Biofuels Industrial Strategy 2007, and Renewable Energy Feed-in Tariffs 2009. South Africa first explored Feed-in Tariffs (2009) before choosing instead to pursue a criteria-based competitive-bidding process known as the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP). These criteria include the creation of a local industry, job creation, Black Economic Empowerment (BEE) and technology transfer. The REIPPP Programme is amongst the flagship programmes identified in the National Climate Change Response White Policy (2011) to reduce the country's carbon footprint.

The REIPPPP encourages private-sector investment in wind, solar, photovoltaic (PV), Concentrated Solar Power (CSP), biomass and small hydro technologies. The Department of Energy (DoE) initially stated that it would procure 3,725MW of renewable power in five different rounds (1,850MW onshore wind, 200MW CSP, 1,450MW solar PV, 12.5MW biomass, 12.5MW biogas, 25 MW landfill gas, 75 MW small hydro and 100 MW small projects). In 2012, the DoE determined that a further 3,200MW of renewable generation capacity was to be procured by 2020.

The DoE has held three bidding rounds and has committed to procure 3,916MW of electricity from Independent Power Producers (IPPs), with most of the investments in wind projects, followed by solar PV and CSP projects. In the most recent bidding round in 2013, the DoE received 93 bids with a collective capacity of 6,023MW for an allocation of 1,473MW.

South Africa's electricity requirements are outlined in the Integrated Resources Plan (IRP), which defines the country's long-term electricity needs and identifies the generating capacity, technologies and costs associated with meeting that demand. The current version of the IRP, known as the policy-adjusted IRP or IRP2010 and promulgated in 2011, covers 2010 to 2030. It has evolved since its initial draft to bring forward the introduction of renewable energy and accelerate planned new coal builds.

In addition to all existing and committed power plants, including 10,000MW of new coal capacity approved before the IRP2010, the final plan includes an extra 6,300MW of new coal-fired electricity, 9,600MW of nuclear, 17,800MW of renewable energy and 8,900MW of other sources. By 2030, South Africa should have an installed capacity of 89,500MW, of which 45.9% will be sourced from coal, 12.7% from nuclear, 21% from renewable energy and the balance from other sources such as gas, pumped storage and hydropower.

The IRP was reviewed in 2013, with demand assumptions identified as one of the main issues, and the DoE published an updated version of the IRP2010. The document materially lowers the projected demand outlook over the 20-year horizon. The update anticipates that 6,600MW less capacity will be required by 2030.

The IRP is not an energy plan, but rather an electricity plan and a subset of the Integrated Energy Planning (IEP). The Draft 2012 IEP Report is being finalised by the DoE. The purpose and objectives of the IEP are anchored in the National Energy Act, 2008. Integrated energy planning is undertaken to determine the best way to meet current and future energy service needs in the most efficient and socially beneficial manner. The IEP takes into consideration the crucial role that energy plays in the entire economy and is informed by the output of analyses founded on a solid fact base. It is a multi-faceted, long-term energy framework which has multiple objectives.

While none of these regulations has the status of law, they set a series of meaningful national targets. For instance, the White Paper on Renewable Energy 2003 requires that 10,000GWh of energy be derived from renewable energy sources (mostly from biomass, wind, solar and small-scale hydro) by 2013. The IRP 2010 includes an emission constraint of 275 million tonnes of CO_2 per year after 2024, with 42% of total new capacity installed derived from renewables.

Energy demand

The Energy Efficiency Strategy of 2005 (revised in 2008 and 2013) sets the target of a 12% energy efficiency improvement by 2015, with targets of 10% and 15% in the residential and commercial sectors respectively. These are to be met through economic and legislative means, efficiency labels and performance standards, energy management activities and energy audits, as well as the promotion of efficient practices. The plan includes sectoral plans for industry and mining; commercial and public buildings; residential; transportation; as well as references to cross-cutting issues such as integrated energy planning, renewable energy, cleaner fuel programmes and health.

In 2012, the Department of Trade & Industry and the Economic Development Department published an Industrial Action Policy Plan, which identifies significant opportunities to develop new green & energy efficient industries and related services, and highlights the need for improved energy efficient in the manufacturing sector. Additionally, the New Growth Path Framework (2011)

calls for 'comprehensive' support for energy efficiency. The Integrated Resource Plan 2010 also takes into account aspects of energy efficiency.

The Income Tax Act 2013 proposes an energy efficiency savings allowance of ZAR0.45 (USD0.04) per kW/h (or equivalent) of energy saved, to be deducted from taxable income. Deductions will not be allowed if the taxpayer receives a concurrent government benefit in respect of energy efficiency savings. Renewables and co-generation are excluded from the allowance.

A five-year green government project aims to retrofit about 1,450 buildings with energy efficient installations, about 270 with water saving installations and about 120 with waste management installations. A zero carbon building standard is planned for 2030.

Pricing carbon

In 2013, the Minister of Finance proposed a carbon tax on annual emissions for all sectors, including electricity, petroleum, iron, steel and aluminium. The proposed design features a percentage-based emissions thresholds below which the tax will not be payable. The Minister of Finance confirmed in the 2014 Budget that the implementation of the carbon tax will be postponed to 2016 to allow for alignment with desired emission reduction outcomes (DEROs), being developed by the Department of Environmental Affairs.

The proposal includes a basic tax-free threshold of 60% of emissions, with an additional 10% concession for process emissions and an additional 10% relief for trade-exposed sectors. Under this scheme, the electricity sector would receive the 60% threshold, petroleum would receive 70%, while iron and steel, cement, glass, ceramics, chemicals and fugitive emissions from coal mining will receive exemptions of up to 80%, and the agricultural and waste sectors will be fully exempt.

The scheme offers maximum offsets of 5% or 10% until 2019/20. The proposed carbon tax will start at ZAR120 (USD 10.84) per tonne of CO_2e above the suggested thresholds with annual increases of 10% until 2019/20. The rate of annual increase for the second period between 2020-2025 will be announced by February 2019. The proposal includes a higher tax-free threshold for process emission, with consideration given to the limitations of the cement, iron and steel, aluminium and glass sectors to mitigate emissions over the near term. Additional relief for trade-exposed sectors is offered.

The tax design suggests companies use offsets to reduce their carbon tax liability. A carbon offsets paper was published by the National Treasury in April 2014. In July 2014, the UK confirmed its support for a carbon credit pilot trading scheme, to help companies prepare for the introduction of the tax.

In 2012, South Africa increased its levy for electricity generated from non-renewable sources from ZAR0.01/kWh (USD0.0009) to ZAR0.035/kWh (USD0.003). The additional revenues are used to fund energy-efficiency initiatives such as the solar water heater programme. This arrangement replaced the funding mechanism incorporated in the annual tariff application of Eskom (the largest public utility), with the net impact on electricity tariffs intended to be neutral. The electricity levy is expected to be phased out as the carbon tax is phased in.

A tax incentive for Certified Emission Reductions (CERs) has been implemented to stimulate the uptake of CDM projects, by exempting income from primary CERs from income tax from 2009 to 2012. In light of the adoption of a second commitment period of the Kyoto Protocol, the 2013 budget has extended the incentive to 31 December 2020.

Transportation

The transport sector contributes approximately 13% to emissions. One of the few legal instruments dealing directly with climate change in South Africa is the CO_2 emissions tax on passenger vehicles. Introduced in the 2009–2010 budget, it levies a flat rate tax on CO_2 emissions above a certain

threshold, although originally designed as an *ad valorem* tax. There is a transportation sector programme in the Energy Efficiency Strategy 2005, which aims to promote fuel efficiency labelling, fleet audits, programmes for encouraging public transportation development and use, and efficient vehicle technologies. Data shows declining average CO_2 emissions for passenger vehicles since the tax was introduced. Government proposes an increase in the tax for passenger vehicles from ZAR75 to R90 (USD 6.77-USD8.1) for every gram of emissions/km above 120 gCO_2/km and, in the case of double cabs, from R100 (USD9) to R125 (USD11.3) for every gram/km in excess of 175 gCO2/km, effective from 1 April 2013.

In 2011, the tax on International air passenger departure on flights to Southern African Customs Union member states and other international destinations increased.

REDD+ and LULUCF

The National Carbon Sinks Assessment study, commissioned by the Department of Environmental Affairs, which is expected to be completed shortly, is anticipated to provide more accurate estimates for different types of carbon sequestration projects in agriculture, land rehabilitation, spekboom planting, soil, etc. It is expected that by 2020, around 8 million tonnes of CO2e reduction per year could be achieved through carbon sequestration projects, increasing to 16 million tonnes by 2030.

Adaptation

An adaptation framework is being developed (2014-2015) and a strategy will follow in 2016. Meanwhile, in 2011 the South African National Biodiversity Institute (SANBI) was accredited in the NCCRP as the National Implementing Entity for a USD10 million Adaptation Fund – the agent to facilitate and oversee funding for selected approved climate change adaptation projects. The first two adaptation projects were approved in late 2014, to start in mid-2015. The first project (about USD7.5 million) is aimed at increasing resilience of vulnerable communities through early warning systems, climate smart agriculture and climate proofing settlements in greater uMngeni catchment. The second project (around USD2.5 million) will develop a small grant climate finance mechanism, led by SouthSouthNorth and Conservation South Africa, and will be implemented in the Namakwa and Mopani Districts in Northern Cape and Limpopo Provinces respectively.

South Africa: Legislative Portfolio

Name of law	**Carbon Emissions Motor Vehicles tax (within 2009–2010 budget)**
Date	September 2010
Summary	The 2009 Budget introduced an *ad valorem* CO_2 emissions tax on new passenger motor vehicles. However, it was later recommended that the original tax proposal be converted into a flat rate CO_2 emissions tax, effective from 1 September 2010. The emissions tax has initially been applied to passenger cars, and extended to commercial vehicles once agreed CO_2 standards for these vehicles are set. New passenger cars will be taxed based on their certified CO_2 emissions at ZAR75 (USD6.77) per g/km for each g/km above 120 g/km. This emissions tax will be in addition to the current *ad valorem* luxury tax on new vehicles.

Name of law	**Taxation Laws Amendment Bill, 2009 – Sections 12K and 12L inserted in Act 58**
Date	1 September 2009, came into effect November 2013.
Summary	Amends the 1962 Income Tax Act. Section 12K – "Exemption of certified emission reductions" – grants income tax exemption to the sale of certified emission reductions derived from Clean Development Mechanism (CDM) projects in the context of the Kyoto Protocol. The measure has been applied since February 2009 and has been extended until December 2020. Section 12L grants income tax reductions for energy efficiency savings from certified baselines based on "energy efficiency savings certificates" issued by an organ determined by Regulations from the Ministry of Energy. These regulations are in tune with the National Energy Act, 2008. The measure applies to the taxable income of any persons in any year of assessment until 1 January 2020.

Name of law	**National Energy Act 2008**
Date	2008, last amended April 2012
Summary	The bill seeks to ensure the availability of diverse energy resources to the economy while supporting economic growth and poverty alleviation. To this end, it intends to provide for energy planning, increased generation and consumption of renewable energies, contingency energy supply, energy feedstock and carriers, and energy infrastructure. It further establishes the South African National Energy Development Institute, responsible for promoting efficient generation and consumption of energy and energy research. The Minister of Energy is charged with implementing the Integrated Energy Plan, dealing with all issues related to energy (supply, transformation, storage and demand) including plans related to GHG mitigation within the energy sector. The South African National Energy Development Institute is responsible for promoting energy research and development. This function includes, among other things, directing, monitoring, conducting and implementing energy research and technology development in all fields except nuclear energy; fostering innovation, by making grants to educational and scientific institutions.

South Africa: Executive Portfolio

Name of Policy	**National Climate Change Response Policy White Paper (NCCRP)**
Date	Approved by cabinet on 18 October 2011
Summary	The National Climate Change Response Policy is a comprehensive plan to address both mitigation and adaptation in the short, medium and long term (up to 2050). GHG emissions are set to stop increasing at the latest by 2020–2025, to stabilise for up to 10 years and then to decline in absolute terms. Strategies are specified for the following areas: • Carbon Pricing • Water • Agriculture and commercial forestry • Health • Biodiversity and ecosystems • Human settlements • Disaster risk reduction and management The policy has two main objectives: first, to manage inevitable climate change impacts through interventions that build and sustain social, economic and environmental resilience and emergency response capacity. Secondly, to make a fair contribution to the global effort to stabilise GHG concentrations in the atmosphere. The Policy specifies strategies for climate change adaptation and mitigation, making use of the short-, medium- and long-term planning horizons (up to five years from publication of policy, up to 20 years, up to 2050, respectively). The White Paper outlines a risk-based process to identify and prioritise adaptation strategies and interventions that have to be taken in the short and medium term, while reviewed every five years. Concerning mitigation, it includes proposals to set emission reduction outcomes for each significant sector and sub-sector of the economy based on an in-depth assessment of the mitigation potential, best available mitigation options and a full assessment of the costs and benefits using a "carbon budgets" approach. It also proposed the deployment of a range of economic instruments, including the appropriate pricing of carbon and economic incentives, as well as the possible use of emissions offset or emission reduction trading mechanisms for those relevant sectors, sub-sectors, companies or entities where a carbon budget approach has been selected. Energy Efficiency and Energy and Demand Management flagship programmes cover development and facilitation of an aggressive energy efficiency programme in industry, building on previous Demand Side Management programmes, and covering non-electricity energy efficiency as well. A structured programme will be established with appropriate initiatives, incentives and regulation, along with a well-resourced information collection

and dissemination process. Local governments are encouraged to take an active part in demand-side management.

There is a short-term transportation flagship programme, which aims to facilitate the development of an enhanced public transportation programme to promote lower-carbon mobility in five metros and in ten smaller cities and create an Efficient Vehicles Programme with interventions that result in measurable improvements in the average efficiency of the vehicle fleet by 2020. The planned rail recapitalisation programme is considered an important component of this Flagship Programme due to its projected contribution to modal shifts of passengers and freight. The programme further introduces a Government Vehicle Efficiency Programme that will measurably improve the efficiency of the government vehicle fleet by 2020, by setting procurement objectives for efficient technology vehicles such as electric vehicles.

In the medium term, the plan calls for significant up-scaling of energy efficiency applications in transportation; and for promoting transport-related interventions including transportation modal shifts (road to rail, private to public transport) and switches to alternative vehicles (e.g. electric and hybrid vehicles) and lower-carbon fuels.

The principles of the White Paper include prioritising co-operation and the promotion of research, investment in and/or acquisition of adaptation, lower-carbon and energy-efficient technologies, practices and processes for employment by existing or new sectors or sub-sectors. All fields and flagship programmes include a key element of research and development, data collection and analysis tools in their respective areas.

Adaptation efforts are prioritised, acknowledging the vulnerability of the country. Adaptation efforts will require: early warning and forecasting for disaster risk reduction; medium-term (decade-scale) climate forecasting to identify potential resource challenges well in advance; and long-term climate projections that define the range of future climate conditions. Adaptation strategies are to be integrated into sectoral plans, including: The National Water Resource Strategy, as well as reconciliation strategies for particular catchments and water supply systems; The Strategic Plan for South African Agriculture; The National Biodiversity Strategy and Action Plan, as well as provincial biodiversity sector plans and local bioregional plans; The Department of Health Strategic Plan; The Comprehensive Plan for the Development of Sustainable Human Settlements; and the National Framework for Disaster Risk Management.

In order to monitor success of measures, South Africa will, within two years of the publication of the policy, design and publish a draft Climate Change Response Measurement and Evaluation System.

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