



WILD LAW | INSTITUTE
RIGHTS FOR EVERY MEMBER OF THE EARTH COMMUNITY

COMMENTS ON CLIMATE CHANGE BILL



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Submitted by:

The EMS Foundation and the Wild Law Institute

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This submission is endorsed by the following organisations and movements:



WILDLIFE ANIMAL PROTECTION FORUM
SOUTH AFRICA



CLIMATE
JUSTICE
CHARTER
MOVEMENT

EXECUTIVE SUMMARY

1. We strongly support the enactment of a Climate Change Act. However, we believe that the Bill requires strengthening to ensure that it can function as an appropriate legal framework for effective climate change responses.
2. In this document we propose various amendments to the Bill and explain why they are necessary. Annex A contains the current version of the Bill which we have marked-up to show the amendments that should be made in order to give effect to the proposals in this document. We have done so in order to facilitate the finalisation of the Bill.
3. Our primary concern with the current version of the Bill is that its scope is too narrow because it does not take account:
 - 3.1. of the deeper systemic causes of climate change which motivate people to act in ways that exacerbate climate change; or
 - 3.2. of the fact that the complex interrelationships between different life forms is responsible for establishing and maintaining the stability of the global climate which means that climate change responses must simultaneously address the protection and restoration of ecosystems and natural processes in order to be effective.
4. We propose that the scope of the Bill be widened by introducing the concept of harmonious co-existence and making amendments to the long title, preamble, principles (among other provisions) to reflect a wider eco-centric approach. We propose that this term be defined as follows:

" "harmonious co-existence" means a state in which humans relate to other aspects of Nature in ways that are either beneficial to, or do not harm, the integrity and health of ecosystems and the functioning of the natural processes that sustain life and maintain climate stability;"
5. Our other principal concerns are that the Bill:
 - 5.1. does not acknowledge the existence of a climate emergency or provide for the taking of the urgent and far-reaching measures necessary to respond to the current global climate emergency and effect transformative changes in society;
 - 5.2. does not take a comprehensive, holistic and integrated approach to climate change response and that climate change response plans should address adaptation, mitigation and the promotion of harmonious co-existence with Nature as a pathway to climate stability;
 - 5.3. focuses on reducing GHG emissions (Chapter 5) as a mitigation response but it should also encompass the taking of measures to restore the carbon-sequestration capacity of indigenous ecosystems and agricultural land, and to address the forces driving the continuation of

- activities that exacerbate the climate crisis, including subsidies and the adoption of plans and the authorisation of projects that exacerbate climate change;
- 5.4. does not impose clear, legally binding duties on the State and other parties to take urgent measures to avoid exacerbating climate change and to take measures to respond to the climate crisis, such as preventing the commencement of activities that exacerbate climate change, phasing out existing activities that do so, ceasing to provide incentives to activities that exacerbate climate change or to prioritise the protection of fundamental human rights over the promotion of economic growth;
 - 5.5. gives insufficient attention to the importance of ensuring that climate change responses are undertaken in ways that uphold human rights and the rights of Nature, and promote harmonious co-existence;
 - 5.6. does not provide for a dedicated funding mechanism that can be used to incentivise desirable behaviour and finance transformative change;
 - 5.7. does not provide for effective enforcement mechanism that would enable swift and effective enforcement action to be taken against those that do not comply.
6. All of these issues can be addressed by making the relatively few amendments indicated in the marked-up version of the Bill that is attached as Annex A to this document.

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ANNEX A: BILL MARKED-UP TO SHOW PROPOSED AMENDMENTS

1. INTRODUCTION

1. The comments are submitted jointly by the EMS Foundation and by the Wild Law Institute.
2. We strongly support the enactment of a Climate Change Bill but believe that the Bill in its current form will not be effective in addressing the climate crises. Consequently, this document proposes a number of amendments to the Bill in order to strengthen it, and explains the reasons for each amendment proposed. We appreciate the importance of enacting the Bill as soon as reasonably possible and accordingly attach a version of the Bill on which we have indicated the amendments that Parliament could make in order to strengthen the Bill, as proposed in these submissions.
3. We begin with an overview of our main comments on the Bill (section 2). We then discuss the key issues to explain why it is important that the Bill addresses them, and propose amendments to address these issues.

2. OVERVIEW OF PRINCIPAL CONCERNS

4. Our main concerns about the Bill in its current form are summarised below.
 - 4.1. **The Bill does not provide for the taking of the urgent and far-reaching measures necessary to respond to the current global climate emergency.** Although the preamble to the Bill states that “climate change represents an urgent threat to human societies and the planet”, this urgency is not reflected in the provisions of the Bill. We are currently experiencing an emergency situation of the utmost gravity, which is rapidly worsening and may soon be beyond the ability of humanity to do anything about.¹ This means that the Bill must facilitate the taking of extraordinary and far-reaching measures, as soon as possible. (Any such measures should be consistent with the protection of human rights and be subject to Parliamentary oversight.)
 - 4.2. **The Bill reflects a narrow anthropocentric approach² but the climate emergency can only be successfully addressed by an holistic eco-centric approach.** Living organisms created the stable climatic conditions that have enabled the great flourishing of life and the evolution of our species and climate stability can only be restored by protecting the intricate network of life that created it. The purpose of the Bill must be to guide humans to co-exist harmoniously

¹ Once certain “tipping points” are passed, so-called “positive feedback loops” will result in climate change accelerating whatever humans do. For example, thawing permafrost will release increasing amounts of methane, which will accelerate global heating, causing more permafrost to thaw more quickly.

² The Bill focusses on requiring various sectors of the economy to achieve targets for maximum atmospheric emissions of carbon (carbon budgets) and on making the transition to a “climate-resilient-economy and society” (e.g. sections 10(1) and 11(a)). These measures are welcomed but do not address the crucial issues of how to restore the functioning of the ecological systems necessary to restore and maintain climate stability.

- within Nature, and to protect, and where necessary support the regeneration of, ecosystems in order to restore climate stability.
- 4.3. **The Bill does not address the root causes of climate change.** The Bill seeks to reduce GHG emissions which is of vital importance because GHG emissions since the start of the industrial revolution is the main immediate cause of global warming. However, the warming planet is a symptom of deeper systemic issues and climate change response measures will only be successful if they eliminate the forces that continue to drive the expansion and continuation of activities that cause climate change. These deeper root causes include governments making economic growth their top priority, and the private sector prioritising profit maximisation.
 - 4.4. **The Bill must provide for far more mitigation measures than reducing greenhouse gas (GHG) emissions.** The Bill provides for a wide-range of policies, plans and other measures to adapt to climate change. However, as a consequence of framing the problem as excessive GHG emissions, rather than examining what is causing society to increase those emissions and degrade the ecosystems that maintain climate stability, the mitigation measures envisaged by the Bill are almost exclusively confined to reducing GHG emissions (Chapter 5). The Bill must be amended to require the taking of measures to restore the carbon-sequestration capacity of indigenous ecosystems and agricultural land, and to address the forces driving the continuation of activities that exacerbate the climate crisis, including subsidies and the adoption of plans and the authorisation of projects that exacerbate climate change.
 - 4.5. **The Bill does not impose clear, legally binding duties on the State and other parties to take urgent measures to avoid exacerbating climate change and to take measures to respond to the climate crisis.** The Bill focuses on requiring organs of state to prepare plans to adapt to climate change and reduce greenhouse gas (GHG) emissions, and to co-ordinate their responses. This will involve setting goals, and carbon budgets, and monitoring and evaluating progress towards attaining them. However, it does not compel the State to prevent the commencement of activities that exacerbate climate change, to phase out existing activities that do so, to cease providing incentives to activities that exacerbate climate change or to prioritise the protection of fundamental human rights over the promotion of economic growth.
 - 4.6. **The Bill addresses climate changes primarily as a technical issue which must be managed to reduce adverse impacts give insufficient attention to the implications for human rights (or the rights of Nature).** The adverse impacts of climate change will make it increasingly difficult to uphold the fundamental human rights set out in the Constitution, including the rights to food, an environment not harmful to health, or wellbeing, access to water and sanitation and life. The Constitution does not give parties in either the public or private sectors the right to prioritise economic growth or maximise profits, nor does it impose a duty to do so. Consequently the rights in the Bill of Rights must take precedence over those economic goals.
 - 4.7. **The Bill does not provide for a dedicated funding mechanism that can be used to incentivise desirable behaviour and finance transformative change.** A significant amount of finance will

- be required to enable and accelerate the transformation of society that will be required to respond to the climate crisis, and to make the transition more just. The establishment of a dedicated fund, which could be funded in part from those who exacerbate climate change.
- 4.8. **The enforcement mechanisms are inadequate.** The Bill requires "teeth" to enable swift and effective enforcement action to be taken against those that do not comply. This can be achieved by giving the national and provincial environmental authorities the power to issue directives similar to the NEMA section 28 directives that are used to enforce the NEMA duty of care, the President the power to make emergency directives and general public the power to approach the High Court to compel organs of state to comply with the provisions of the Bill. The Bill should also provide that failure to comply with those directives is a criminal offence.

3. NECESSITY FOR SWIFT, TRANSFORMATIONAL CHANGE

5. Perhaps the most important point to take into account when developing and finalising legislation and policies to respond to climate change is that laws and policies that aim to achieve gradual, incremental changes have little value because they will not achieve the urgent, transformational change that is necessary. A new approach to human beings' relationship with Nature is not only warranted, it is absolutely critical. Boldness is imperative and time is limited.
6. Climate change is inextricably linked with the degradation of the ecological systems that have created and maintained a stable climate and to support life. Measures to respond to climate change and measures to respond to ecological degradation and the global loss of species must be integrated and both issues must be dealt with simultaneously.
7. The dominant forms of civilizations in the world today (including South African society) are neither ecologically sustainable nor compatible with living in harmony within Nature. The consequence of current human activities continuing unchanged (referred to as "business as usual") will be disastrous for humanity and well as for biodiversity. Rapid, fundamental, and systemic transformation of almost every aspect of our society is required. According to the Global Assessment Report published in May 2019 by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services ("IPBES"):
- "[G]oals for 2030 and beyond may only be achieved through transformative changes across economic, social, political and technological factors" (IPBES 2019).*
8. IPBES defines transformative change as: "a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values."

9. The transition that is required involves reorienting human societies towards the aspiration of harmonious co-existence with Nature, instead of prioritising economic growth above all else.³ Support from the vision of living in harmony with Nature is growing. For example, the Conference of the Parties (COP) to the Convention on Biological Diversity have adopted a 2050 Vision titled “Living in harmony with nature”. A similar vision is reflected in the 2024 Strategic Plan 2024 of the Department of Forestry, Fisheries which states: "A prosperous and equitable society living in harmony with our natural resources".

4. URGENCY

10. While the Preamble states that “climate change represents an urgent threat to human societies and the planet”, this urgency is not reflected in the provisions of the Bill. We are currently experiencing an emergency situation of the utmost gravity, which is rapidly worsening and may soon be beyond the ability of humanity to do anything about.⁴ This means that the Bill must facilitate the taking of extraordinary and far-reaching measures, as soon as possible. (Any such measures should be consistent with the protection of human rights and be subject to Parliamentary oversight.)

4.1 Acknowledgment of climate emergency

11. The Bill should acknowledge the climate emergency to communicate the urgency of the situation to the people of South Africa and to provide a rationale for the taking of far-reaching emergency measures as soon as possible. Many countries and local governments around the world have declared a climate emergency, including New Zealand, Bangladesh, the Maldives, Argentina, Bogotá (Colombia), Sydney (Australia), and the European Union. We recommend amending the Preamble to acknowledge the climate emergency (see Annex A, Preamble, para. 2).

4.2 Provision for taking of emergency measures

12. This Bill must facilitate the taking of extraordinary, urgent and far-reaching measures, when this is necessary for climate response purposes. Any such measures should be consistent with the protection of human rights and be subject to Parliamentary oversight.

³ We propose that the Bill be amended to include the following definition " **“harmonious co-existence”** means a state in which humans relate to other aspects of Nature in ways that are either beneficial to, or do not harm, the integrity and health of ecosystems and the functioning of the natural processes that sustain life and maintain climate stability;"

⁴ Once certain “tipping points” are passed, so-called “positive feedback loops” will result in climate change accelerating whatever humans do. For example, thawing permafrost will release increasing amounts of methane, which will accelerate global heating, causing more permafrost to thaw more quickly.

13. We recommend that this be done by giving the President the power to make emergency directives (see Annex A, section 6C, Emergency measures).

5. ACCELERATION OF EMISSION REDUCTION

14. The urgency of the climate crisis means that emissions must be reduced immediately. For mitigation, the Bill currently only assigns responsibility for the creation of emissions reduction plans. However, as history shows, this is inadequate to ensure action. The Bill must include a general duty to act swiftly, and legally binding duties for government and all high emitting businesses and organisations to comply with sectoral emissions targets and the carbon budget.
15. The Bill defers too much decision-making to a later date, and should provide for expedited decision-making in this regard.
 - 15.1. The Bill should specify the emissions reductions targets and trajectories, linking them to the most updated National Determined Contributions (NDCs). Currently, this is the 2021 NDC, however, this should progress as new NDCs are produced every five years.
 - 15.2. Similarly, Chapter 4 on adaptation defers decision-making and planning to a later date, with little emphasis on implementation. It includes at least four years of planning before any plans need to be implemented. Given the emergency nature of climate change, we would recommend much shorter timescales across the document which cover both planning and implementation.
 - 15.3. Sectoral emissions targets must be calculated in the context of the NDCs, with a requirement that the sum of all sectoral targets cannot be higher than the NDC. This must include emissions from international aviation and shipping.
16. We recommend that this be done by making amendments (see Annex A) to establish:
 - 16.1. a general duty to take all climate change response measures that they are reasonably able to take, as soon as reasonably possible (section 6A(1)),
 - 16.2. specific duties to take all measures that could reasonably be able to take, to set, revise and achieve sectoral emission targets, compliance with carbon budgets and greenhouse mitigation plans (section 6A(2)),
 - 16.3. a general duty on the State, and every organ of state to take, and promote and facilitate the taking of, urgent and effective climate change response measures (section 6B(1));
 - 16.4. specific duties on the State, and every organ of state:
 - 16.4.1. not to adopt or implement any policies or plans, provide any incentive for, facilitate or approve any project or activity, unless a thorough investigation and assessment of the risk of that policy, plan, project or activity exacerbating climate change and its implication for harmonious co-existence have been undertaken, and the decision-maker is satisfied

that it unlikely to exacerbate climate change or to be detrimental to the pursuit of harmonious co-existence;⁵

- 16.4.2. to take all reasonable measures to reduce the demand for fossil fuels and for products which have a life cycle that involves significant emission of GHGs or the destruction of natural carbon sinks;
- 16.4.3. not to take measures that: reduce the protection and enhancement of human rights, increase poverty or worsen inequality, degrade ecosystems, reduce the well-being of animals or other species, further commodify or privatise any species or natural process, or are otherwise inconsistent with harmonious co-existence (section 6B(2));
- 16.4.4. to make it a criminal offence not to comply with directives under sections 6A(2) or 6C(1) (section 32).

6. ECO-CENTRIC APPROACH THAT ADDRESSES ROOT CAUSES

17. Climate change is being caused by an excessive concentration of GHGs in the atmosphere, as a consequence of several factors, including GHG emissions caused by human activities (anthropogenic emissions), and reductions in the capacity of ecosystems to absorb and retain carbon from the atmosphere (i.e. the reduced capacity of carbon sinks, caused by factors such as deforestation). Although the Bill correctly anthropogenic emissions of GHGs as the main direct driver of climate change, it does not address the underlying causes of those emissions. Consequently the emission-reduction and adaptation measures envisaged in the Bill are insufficient.
18. Climate change is a symptom of the fact that our society encourage the activities that exacerbate climate change. Avoiding catastrophic long-term climate change and restoring climate stability requires:
 - 18.1. addressing the root causes, that is the forces that continue to drive the expansion and continuation of activities that cause climate change, whether by increasing GHG emissions or reducing the resilience and carbon-absorption capacity of ecosystems; and
 - 18.2. restoring the ecosystems and ecological processes that created a stable climate and are essential to maintaining climate stability.

6.1 Root causes

19. . It is more accurate to understand climate change as the product of an entire world system which:
 - 19.1. exploits people and nature;

⁵ The term "harmonious co-existence" is explained in section 6.3below.

- 19.2. alienates people from nature;
 - 19.3. is based on governments making economic growth their top priority, and the private sector prioritising profit maximisation, and
 - 19.4. is rooted in the understanding that the role of (some) humans is to dominate and exploit nature and people, which informed imperialism and colonialism.
20. The symptoms of a warming planet can only be addressed successfully by eliminating these underlying causes. We therefore recommend a transformative change, a paradigm shift towards harmonious coexistence (explained below). This is a vision for a South Africa that recognises that we are part of nature, and that our survival and wellbeing depends on it. This means that we must shift away from viewing nature as a 'resources to be used' (as it stated in Preamble).
21. This can be addressed by means of the following amendments as reflected on Annex A:
- 21.1. inserting language in the preamble that makes it clear that an effective climate change response requires: education and correcting misunderstandings about the fundamental causes of climate change; transforming economic, legal, political and other systems and factors that motivate and promote activities that exacerbate climate change; and protecting and regeneration indigenous ecosystems and natural processes that capture and store carbon from the atmosphere and increase resilience to the adverse effects of climate change; and
 - 21.2. establishing general and specific duties to ensure that climate change responses are implemented in a manner that promotes harmonious co-existence (this is discussed in more detail in section 6.3 below).

6.2 Restoring the living systems that create a stable climate

22. Living organisms created the stable climatic conditions that have enabled the great flourishing of life and the evolution of our species during the Cenozoic era, and the intricate network of life that created this stability is necessary to restore and maintain a stable climate. Global heating is a symptom that the ecological systems that have stabilised the global climate for millions of years, are being overwhelmed, and requires a systemic response that goes beyond simply aiming to reduce carbon emissions. Since humans are part of nature, we cannot protect ourselves from the adverse impacts of climate change without protecting and restoring the ecological systems that enable life (as we know it) to flourish. The purpose of the Bill must be to guide humans to co-exist harmoniously within nature, and to protect, and where necessary support the regeneration of, ecosystems in order to restore climate stability.

6.3 Harmonious co-existence

23. This can be addressed by introducing the concept of "harmonious co-existence" into the Bill. The term would be defined in section 1 (Definitions) as follows:

“**harmonious co-existence**” means a state in which humans relate to other aspects of Nature in ways that are either beneficial to, or do not harm, the integrity and health of ecosystems and the functioning of the natural processes that sustain life and maintain climate stability;

24. It is important to appreciate that this concept encompasses the scientifically accurate understanding that humans exist within Nature and are part of Nature, and that human life and well-being is a product of the many interrelationships between humans and other aspect of Nature. The web of life not only provides us with water, food and air, it has also created a stable climate for millions of years which has allowed our species to evolve. The climate crisis cannot be successfully addressed without re-orienting our societies toward promoting harmonious co-existence within Nature as its highest goal (i.e. as more important than economic growth).

25. The concept of harmonious co-existence within Nature is also consistent with African philosophical understandings which view mutual respect as essential both to maintain the cohesiveness of the community and harmony within it. Furthermore, as the following quote from Ramose makes clear, maintaining the harmony necessary to ensure that humans co-exist peacefully within the community of life requires constant balancing of human interests with those of the other members of the community.

“The concept of harmony in African thought is comprehensive in the sense that it conceives of balance in terms of the totality of the relations that can be maintained between and among human beings, as well as between human beings and physical nature. The quest for harmony is thus the striving to maintain a comprehensive but specific relational condition among organisms and entities. It is the constant striving to strike, and then maintain, a balance between human beings and physical nature.” (Ramose, 2009: 309)

26. Harmony, connectedness and respect as encompassed by ubuntu therefore extend beyond human relationships, but to the whole living world. This is consistent with the harmonious co-existence approach which we advocate.

27. This can be addressed by means of the following amendments (as reflected on Annex A):

27.1. amending the long title of the Bill to provide that one of the objects of the Bill is to promote the harmonious co-existence of people within Nature;

27.2. amending the Preamble to make it clear that effective climate change responses must include protecting and regeneration indigenous ecosystems and natural processes that capture and store carbon from the atmosphere and increase resilience to the adverse effects of climate change and that climate change policy needs to be implemented in the context of the imperative to promote harmonious co-existence within Nature;

27.3. inserting a definition of "harmonious co-existence" (section 1);

27.4. adding an object to eliminate causes of climate change within the Republic and contribute as far as possible to stabilizing the global climate by promoting harmonious co-existence (section 2);

- 27.5. adding the principle that human health and wellbeing must be safeguarded and pursued by promoting harmonious co-existence, and not at the expense of Nature (section 3);
- 27.6. requiring that climate change response measures must promote harmonious co-existence (section 6A(1), 6B(1)), including by
 - 27.6.1. establishing a general duty on the State, and every organ of state to take, and promote and facilitate the taking of, urgent and effective climate change response measures that promote harmonious co-existence (section 6B(1)); and
 - 27.6.2. establishing specific duties on the State, and every organ of state: not to adopt or implement any policies or plans, provide any incentive for, facilitate or approve any project or activity, unless a thorough investigation and assessment of the risk of that policy, plan, project or activity exacerbating climate change and its implication for harmonious co-existence have been undertaken, and the decision-maker is satisfied that it is unlikely to exacerbate climate change or to be detrimental to the pursuit of harmonious co-existence;⁶
- 27.7. requiring every organ of state to exercise its powers and perform its duties in a manner that promotes harmonious co-existence and not to take measures that are inconsistent with harmonious co-existence (section 6B(2)(a)); and
- 27.8. requiring policies to be aligned to promote harmonious co-existence (section 7).

7. COMPREHENSIVE AND INTEGRATED CLIMATE CHANGE RESPONSES

28. The Bill envisages a clear distinction between adaptation measures (which potentially cover a wide range of activities) and mitigation measures (limited to emission reduction). It ignores proactive measures to restore the functioning of the ecosystems and processes that are responsible for maintaining a stable climate.
29. The distinction between adaptation and mitigation has gained currency in the context of international climate change negotiations. However, in reality, they are two sides of the same coin and separating them in the context of a national climate change response is unhelpful and will lead to duplications of effort. Integrated and comprehensive climate change response plans and strategies will be more effective.
30. The Bill does refer to the need for integrated management (principle 3(e)) and for integrated climate change response (principle 3(k)). We agree that it is desirable to adopt an integrated approach that encompasses the full range of adaptation and mitigation responses as well as the long-term goals of re-stabilising the climate through the pursuit of harmonious co-existence within Nature.

⁶ The term "harmonious co-existence" is explained in section 6.3. below.

31. A more comprehensive, integrated and holistic approach to climate change response can be achieved by:
 - 31.1. adding a wide definition of “climate change response” to include any action planned or taken by humans to restore climate stability, or to prevent, mitigate, increase resilience to, or adapt to the adverse effects of climate changes, including adaptation and mitigation (section 1) which will have the effect of widening the potential scope of provincial and municipal climate change response implementation plans envisaged in section 15;
 - 31.2. widening the scope of Chapter 4 (sections 16 to 20) so that they deal with climate change responses generally and not simply adaptation, by replacing reference to "adaption" with references to "climate change response".
32. The amendments proposed to achieve this are set out in Annex A.

8. PRINCIPLES

33. We support the inclusion of principles in the Bill to guide the interpretation and application of the Act, particularly the exercise of decision-making powers granted by the Bill. However, we have proposed a number of amendments and additions to the principles as reflected in Annex A. The reasons for some of those proposed amendments are explained below.
34. The principles should be amended to reflect an eco-centric perspective consistent with the promotion of harmonious co-existence.
 - 34.1. For example, principle (b) states that “the climate system should be protected for the benefit of present and future generations of humankind”. This framing of the climate system as only existing for the benefit of humankind is extremely anthropocentric and fails to acknowledge the many other individuals, species and communities with whom we share the planet and on whom we rely.
 - 34.2. Principle (d) recognises the need for a “just transition” that contributes to “the creation of decent work for all, social inclusion and the eradication of poverty”. We recommend that this be extended to include ecological restoration. This is in line with restorative justice principle, one of three core pillars, within the Just Transition Framework of the Presidential Climate Commission.⁷
35. The principles should place greater emphasis on climate justice. Principle (c) “acknowledges international equity and each country’s common but differentiated responsibilities and respective capabilities, in light of different national circumstances”. This principle refers to international climate justice, although it does not explicitly say so. We recommend that climate justice be explicitly included in this principle, and expanded to incorporate the following:

⁷ https://pccommissionflow.imgix.net/uploads/images/South-Africas-Just-Transition-Framework-for-Stakeholder-Consultation-Feb-2022_2022-02-23-092221_xtvt.pdf

- 35.1. A local climate justice which acknowledges equity and differentiated responsibilities in South Africa, as it is the wealthy and large corporates who are responsible for, and have profited from, emitting activities, while the poorest are the most vulnerable and may end up paying for it if this principle is not adequately understood and incorporated.
 - 35.2. Multi-species justice which recognises that (some) human activities have been the cause of climate change, but that those impacts extend to all species who are also facing the severe impacts of climate change leading to harm, death, and in some cases, extinction. A commitment to multi-species climate justice would recognise these impacts, as well as the relationality between species, including humans. We will perpetuate injustice if we continue to only centre humans in our responses to climate change.⁸
36. We have also proposed additional principles dealing with non-regression (to ensure that regulation and targets become progressively stricter) and to ensure that climate offsetting is not used as a substitute for actual emission reductions.

9. FUNDING THE TRANSITION

37. We strongly recommend that the Bill provides for the establishment of a dedicated climate change fund that can be used to incentivise and fund a just transition and the pursuit of harmonious co-existence. This could be funded (at least in part) by those responsible for exacerbating climate change in accordance with the polluter pays principle. The Presidential Climate Change Commission should be required to provide input into how the funds are used and the Act must provide that the expenditure of the Fund be audited and made public.

10. ENHANCED ENFORCEMENT

38. The Bill has inadequate enforcement provisions. Consequently, we have proposed adding sections that:
- 38.1. empower the Director-General of the national Department of the Environment or a provincial head of department to direct a person to take specific action if the Director-General or head of department has reason to believe that any person is doing or omitting to do anything that has exacerbated, is exacerbating, or may in future exacerbate climate change to a significant extent (section 6A(3));
 - 38.2. empower any person to approach a court to compel an organ of state to comply with their duties under this Act and the National Environmental Management Act (section 6B(3));
 - 38.3. empower the President, after consulting with the Presidential Climate Commission and the Cabinet, to direct any person to take extraordinary climate change response measures that

⁸ <https://wires.onlinelibrary.wiley.com/doi/abs/10.1002/wcc.699>

- are not provided for in any other law, (section 6(C)(1)) subject to the safeguard that the measures must then be tabled before the National Assembly to decide whether or not they should continue to be valid (section 6C(4)); and
- 38.4. make it a criminal offence not to comply with directives under sections 6A(2) or 6C(1) (section 32).
-