

South Africa's climate change regime and just energy transition "stocktake"

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Dalit Anstey, an ESG knowledge lawyer at Webber Wentzel, examines South Africa's climate policies and its evolving energy transition in light of recent changes. Anstey emphasises critical discussions expected at COP28, underscoring the importance of justice considerations.

The Global Stocktake (GST)

The 2023 edition of the United Nations Climate Change Conference of the Parties (COP28) will be unique as the first-ever GST is set to conclude, providing an opportunity for the global community to measure the progress made since the signing of the Paris Agreement and to take collective action to accelerate mitigation, adaptation, and financing for further climate ambition. This five-year event aims to inform future climate action plans, notably the nationally determined contributions.

The GST highlights the implementation gaps across all areas in the Paris Agreement. There is a mitigation gap, with the current trajectory of global emissions not being consistent with limiting the global temperature rise to 1.5 degrees Celsius. Furthermore, adaptation to climate change is not at the levels required. Anstey noted that certain African nations have criticised the GST's documentation for overlooking the importance of sustainable development policy, equity and just transitions.

South Africa's "Stocktake"

South Africa is infamously known as the highest emitter of greenhouse gas (GHG) emissions in Africa and one of the highest emitters in the world, due to its disproportionately high reliance on fossil fuels in the energy mix. As a signatory of

the Paris Agreement, and in line with the principle of "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances", as set out in Article 4.3, South Africa has committed to various climate change targets which it believes is its "fair share".

Over the years, South Africa has published a series of significant climate change policies. Webber Wentzel delves into some of these policies in an article titled: cross-jurisdictional assessment of the development of climate change-related legislation across the continent. Sustainable finance policies are also starting to surface, including guidance to banks and insurers on climate-related risks and disclosures and a green finance taxonomy.

Anstey highlights a key concern, "These policies lack teeth, as their enforceability is questionable from a legal standpoint. Some suggest that what is required in this space given the severity of the climate crisis is decisive law and policy to move the dial. South Africa introduced the Carbon Tax Act 15 of 2019."

Climate Change Bill

On 24 October 2023, the National Assembly passed the momentous Climate Change Bill (B9-2022) (Bill) which focuses on establishing a strategy for addressing climate change and implementing a fair, long-term energy transition plan to ultimately foster a low-carbon, climate-resilient economy in South Africa. The Bill is a crucial, first step to ensuring the country has a legal instrument to build the capacity to respond to the impact of climate change and reduce emissions in a way that is appropriate to national circumstances.

The Bill will introduce the concept of a "carbon budget" which limits the amount of GHGs an entity is entitled to emit. To find out more information about the architecture of the Bill, read Webber Wentzel's insight on Climate Change Bill introduced in Parliament. The Bill will still face its final hurdles before it becomes an act of Parliament – it requires the concurrence of the National Council of Provinces and the President's signature.

"The Bill first surfaced in 2018 when it was published for public comment. It is overdue but arguably a necessary tool to enable South Africa to achieve its climate change ambitions. There have been many policy developments since 2018, especially concerning the Just Energy Transition (JET) and we hope that the puzzle pieces all ultimately fit together," states Anstey.

South Africa positioned itself as a poster child for the JET, inviting international and local investors to partner with the nation to achieve energy security, economic growth and tackle systemic challenges, such as poverty, inequality, and unemployment, while achieving its climate change targets.

To date, South Africa has secured approximately \$9.3bn from international partners for the JET but recently noted in the approved JET Implementation Plan that it requires just short of \$80bn to fund the JET. More has to be done on this front to address the shortfall, including addressing underlying critical governance failures and regulatory bottlenecks.

"We are seeing developments and the growth of voluntary carbon markets in Africa, since the launch of the Africa Carbon

Markets Initiative at COP27 in Egypt, which is a coalition of organisations focused on high integrity climate impact, clean energy, and sustainable development, to accelerate the growth of Africa's voluntary carbon markets. The Johannesburg Stock Exchange (JSE) Ventures Carbon Market was launched in October 2023, it is a venture between the JSE and Xpansiv, providing a platform to buy and sell carbon credits or renewable energy certificates. Carbon markets have been identified as an important tool for governments and the private sector seeking to achieve climate change objectives and can direct capital flows to developing countries for projects that strengthen climate change resilience. However, there have been some uncertainties regarding the legal nature of carbon credits, regulation of carbon trading, carbon offset project credibility and oversight mechanisms. These issues must be resolved if we are to take the carbon market forward," asserts Anstey.

Looking to COP28

Some of the main agenda items at COP28 include the GST, accelerating the global energy transition, climate finance, the loss and damage fund (which was launched on the first day of COP 28) and leadership in climate action. However, the Minister of Forestry, Fisheries and the Environment (Minister) noted at the National Stakeholder Consultation on South Africa's Negotiating Mandate for COP28 that COP28 also provides a key platform for broader conversations. The Minister noted the following three broader conversations that will be taking place on the margins of COP28:

- how developing countries in Africa can take advantage of their abundant, renewable energy, resources, and strategic minerals to build, shared prosperity and sustainable development on the continent;
- the threat to sustainable development posed by unilateral trade measures imposed outside of the Paris Agreement and arguably, in violation of the key principles of the Paris Agreement (the Minister highlighted the European Union's Carbon Border Adjustment Mechanism in particular); and
- the pressing need for transformation of the global financial architecture to make the global financial system fit for purpose in assisting countries to combat climate change and also to achieve their sustainable development goals.

"The underlying theme of the topics of the 'fireside chats', as well as the main agenda items for COP28 clearly demonstrate that fundamental questions regarding climate justice remain unresolved. These fundamental justice concerns, which global "south" countries argue have been historically ignored by global 'north' countries, must be brought to the fore at COP28 and beyond, especially if we are to truly take stock of the international climate change regime," concludes Anstey.

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