ROLE OF LEGISLATORS IN CLIMATE CHANGE: THE CASE OF SOUTH AFRICA

Background
South Africa, like other emerging developing countries of the world elsewhere, has not been spared from the potentially severe impacts of climate change. For example, in the last two decades or so, South Africa has experienced a number of adverse climatic hazards. The most serious ones have been dry spells, seasonal droughts, intense rainfall and floods to the extent that droughts and floods have increased in frequency, intensity and magnitude over the past two or three decades in the southern African region. They have adversely impacted on food and water security, water quality, energy and sustainable livelihoods of the most rural communities.

Currently, the majority of rural communities are experiencing chronic food deficits in many parts of the region on a year-round basis owing to the effects of floods and droughts.¹ This increasing prevalence of recurrent floods and droughts has had far-reaching consequences for poor people in terms of food, water, health and energy in South Africa both in rural and urban areas. The plight of the poor who dwell in informal settlements on the Cape Flats in the vicinity of the Parliament of the Republic of South Africa is indeed a stark reminder of the fact that the world’s poorest people are the most vulnerable to the increasingly frequent climate change-induced natural disasters such as floods and droughts. The ongoing drought that has severely affected certain parts of our country, is a case in point.

Shortage of water for domestic use and for agriculture is a major concern in the drought-stricken parts of our country. Increasing numbers of livestock and wildlife in protected areas are dying daily, imposing serious economic constraints on farmers and private game ranchers, thereby threatening jobs and livelihoods of many dependent families. Climate change is the major, overriding challenge of this time, facing decision makers, planners and regulators. It is a growing crisis with economic, health and safety, food production and other dimensions of sustainable development.²

The Roles of Legislators
As we face many of the challenges of climate change and the uncertainties that it has brought upon humanity, especially the most vulnerable of our people whom we represent as public representatives in our different legislatures, it is important to remind ourselves of the saying that “History is kinder to those who prepare themselves for an uncertain future, than to those who react to a crisis they should have seen coming.” History will inevitably show over time that the societies that are prepared for climate change-induced disasters, rather than just responding to them would be held in the highest regard. There is therefore further wisdom in the maxim that “there are costs and risks to action, but greater long-term costs to inaction.” In the words of British historian, Ronald Wright, “each time history repeats itself, the price goes up.”⁶

It is in this respect that an immediate action is needed on climate change in the light of the IPCC’s recent findings in the Fifth Assessment Report that many observed impacts are happening more quickly than previously predicted; and that climate change is creating more frequent and more intense extreme weather events, among other things.⁴ What is needed is bold action by the world’s leaders, including South Africa to ensure a relatively safe and stable climate. Nations must enact new policies that drive economic investment into low-carbon technologies, reduce global emissions, and enhance the resilience of their respective communities and critical infrastructure. We, as legislators,
have a critical role to ensure that these interventions are put in place, financed, implemented, monitored and reviewed. In a developmental State like South Africa, we are saying that legislators should not only scrutinise executive action, but should go further to complement the work of the Executive Branch of Government by offering alternative best practice solutions to problems in the spirit of An Activist Parliament.

We were of course in Paris (COP21), as legislators, to support the process of the delivering of a Climate Agreement under the Convention that is ambitious, durable, fair and effective that balances environmental and development imperatives, inter alia. It is important for us to note that the conclusion of the Paris Agreement meant that our work, as legislators, has just begun on several fronts to ensure that this international instrument is effectively implemented in a myriad of legislative approaches, including:

- **Ratification**: we have to ensure that the Paris/COP21 Agreement is ratified by enacting a flagship (framework) domestic climate change law to implement its applicable provisions. In South Africa, Parliament spearheading the introduction of a framework Climate Change Bill, which will incorporate all relevant and applicable provisions of the Paris Climate Agreement.

- **Reviewing and amending of existing legislation**: Parliamentarians can take legislative action on climate change by reviewing existing laws and proposing amendments to them where

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possible to incorporate aspects that would ratify the new international climate treaty. Reviewing and amending of existing legislation is particularly useful for legislators in many national legislatures who rarely have the necessary legal support staff to develop large-scale bills or proposals for climate change. Moreover, amending existing legislation is a much more feasible undertaking, with a comparatively high success rate, although this option has run out for South Africa, as the National Environmental Management: Air Quality Act No 39 of 2004 can no longer be amended to incorporate further regulation of climate change, as done in previous years.

- **Costing and financing of domestic Climate Law:** Legislative Acts and policy initiatives most often produce costs and benefits for society as a whole, and hence there is a need to have a sound analysis of new Legislative Acts and measures to determine whether benefits typically coincide with the reason why they were formulated. It is imperative that legislators ensure that the cost of a climate change law is estimated and budgeted for, to ensure effective implementation. We must ensure that targets contained in the law are worked into deliverable programmes for government departments with precise targets to ensure effective oversight of government departments and entities in terms of budget for those programmes, timeframes and obvious results on the ground. Parliamentary committees need to be scientific in their thinking and work, precise and deliberate in deepening the culture of accountability and transparency in their nations, more so, for us as South Africans.

- **Exercising leadership in mobilising private climate finance:** we do understand that legislators play an indirect role in mobilising international climate finance (whether via the Financial Mechanism, which is under the Convention or outside the Convention through the Climate Investment Funds, which is under the World Bank). However, legislators have a critical role to play in mobilising private climate finance by passing innovative laws that entail favourable risk-return ratio and/or risk mitigation measures to spur private investment in climate change mitigation and adaptation.

- **Building of reporting provisions in climate legislation and parliamentary oversight models:** legislators can facilitate climate change oversight procedures by the introduction of regular reporting provisions into climate change law to enable focused attention to climate change, considering that effective oversight can be hampered by the lack of relevant data and reports for Parliamentarians to work with. Without the necessary information coming through from relevant government departments, other organs of state or agencies, appropriate oversight is practically unfeasible. By legally enshrining a department’s obligation to report on a regular basis, legislators are more likely...
to receive the information they need in time to carry out their oversight functions in an effective and focused manner. This provides additional grounds for summoning ministers, departmental heads and other relevant competent authorities to account when reports fail to come through.

• **Climate change awareness:** Legislators have a crucial role to play in shaping people’s perception of climate change and in building the political will needed to tackle it. They can help inform people by supporting public information campaigns and by reporting on the issue through personal statements and communications. Legislators can also encourage their respective parliaments and relevant committees to share findings and reports with the public, and push for greater openness and direct consultation with citizens and key stakeholders. Strong and consistent communication on climate change is indeed crucial for citizens to see and accept the need for urgent action. For unless a critical number of our constituents are reached and awakened to the need for climate action, climate change would remain a government problem, rather than every citizen’s.

• **Need for a coordinated approach to climate change oversight:** The crosscutting impact of climate change requires mainstreaming of climate change across a range of sectors and departments, which in turn requires considerable coordination to ensure effective oversight of climate change implementation. The responsible parliamentary committee needs to monitor the government department responsible for climate change, but also the relevant budget lines and activities housed in other departments. It is in this respect that the Portfolio Committee on Environmental Affairs in our Parliament oversees the work of the lead Department of Environmental Affairs, but also interacts with other government departments, such as the Department of Energy; Department of Agriculture, Forestry and Fisheries; Department of Science and Technology; Department of Rural Development and Land Reform; Department of Water and Sanitation; and the Department of Minerals in monitoring the implementation of the South African White Paper on Climate Change.

• **Parliamentary Steering Committee on Climate Change:** a Parliamentary Steering Committee on Climate Change will shortly be reactivated in the South African Parliament to ensure a coordinated oversight approach to climate change to ensure that climate change response measures and actions are comprehensive and purposefully integrated. We need to ensure that all relevant gaps are closed and nothing is left to chance.

**Conclusion**

It goes without saying that legislators have the legal authority and responsibility to hold governments to account. It is time for Parliamentarians to exert their power and engage in the climate debate in a manner not seen before, as this also provides new openings for more effective democratic parliamentary and public action on climate change.

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**References**


