

# SOUTH AFRICA'S FRAMEWORK CLIMATE LAW: STRENGTHS, WEAKNESSES, OPPORTUNITIES, AND RISKS

Author: Tarun Gopalakrishnan



## Introduction

Over forty countries have adopted framework climate laws, including five new laws in 2024. Also referred to as strategic or flagship legislation, framework laws have the potential to set long-term economy-wide signals toward national and global climate goals. The building blocks of such laws are three-fold: (1) targets or target-setting procedures; (2) institutions – regulatory, financial, coordinating or technical/advisory; and (3) principles to guide policymaking and judicial review.

This brief evaluates one such law – South Africa's Climate Change Act (Act No. 22 of 2024). The key **strengths** of the law include mandating a long-term emissions trajectory and target-setting cycles, according legal status to the Presidential Climate Commission (PCC), empowering the Cabinet Minister for the Environment, and defining responsibilities for climate action across sectors and levels of governance. The law creates **opportunities** for progressive scaling up of climate ambition

by establishing an independent advisory role for the PCC, requiring public consultation and public participation in policymaking, specifying principles to guide policymaking, and requiring climate considerations to be mainstreamed across all policymaking.

The **weaknesses** of the law are that it does not define a financial mechanism or budget mandate, does not specify targets such as temperature goals, a carbon budget or any minimum level of ambition, and does not make higher levels of government accountable to the ground level. Some **risks** inherent in the law's design are that the government can legally make policy contradictory to the advice of the PCC and/or inputs from public consultation without explanation, that the role for scientific and technical advice is limited to sub-committees, and that the responsibilities of the Cabinet Minister for the Environment are not matched by their powers, particularly in the realm of finance. The following sections expand on these strengths, weaknesses, opportunities, and risks.

## Strengths and Opportunities

A strength is defined as a feature of the law-as-drafted that makes it effective in reducing emissions or improving resilience. An ‘opportunity’ is a feature that is not a clear strength but – if appropriately interpreted or utilized – could make the law more effective over time.

Section 24 requires the Cabinet Minister for the Environment (CEM) to develop a long-term emissions reduction trajectory which is consistent with South Africa’s international obligations such as its Nationally Determined Contribution (NDC). Relevant sectoral ministers are required to set sectoral targets consistent with the long-term trajectory (section 25). The government is empowered to set carbon budgets for individual emitters (section 27). The Act sets up a monitoring, review and revision mechanism – failure to report emissions or create and revise plans are subject to criminal penalties (sections 28 and 30.3). This framework creates the potential for judicial review of divergences between the NDC, national emissions trajectory, and sectoral trajectories or emitter budgets.

The Presidential Climate Commission is formalized as an independent and impartial body, with specified rules for constitution and conduct (sections 10 and 12–14). It is also empowered with a mandate to advise the government and the National Assembly (sections 11 and 15). The PCC is theoretically in an improved position to serve two functions – coordinate action across government, organized labor, civil society, traditional leaders, local government, and business, as well as synthesize scientific and technical expertise.

The Act is designed around the importance of action across society and levels of government. It assigns broad responsibilities for climate action to all parts of the state (section 7), creating an opportunity to mainstream climate priorities in all policymaking. It entrusts responsibility for coordinating climate action to provincial and municipal forums (sections 8, 9 and 17) and requires public consultation and participation (sections 31, 32), creating

opportunities for multi-level and collaborative policy formulation.

Section 3 of the Act requires that its interpretation and application be guided by key principles including the use of the best available science, common but differentiated responsibilities, just transition, sustainable development, a version of the polluter pays principle, and the special needs and circumstances of particularly vulnerable localities and people. These principles can be progressively interpreted over time to prioritize objectives, guide processes, refine instruments, and constructively fill in gaps in the Act over time.

## Weaknesses and Risks

A weakness is a feature (or missing feature) that undermines the law’s effectiveness in reducing emissions or improving resilience. A ‘risk’ is a feature that is not a clear weakness but that could make the law less effective over time.

The Act does not specify a long-term emissions trajectory, temperature goals, or a minimum level of ambition. It does require the long-term trajectory set by the Minister to be consistent with South Africa’s international obligations such as its NDC. However, there is little recourse or accountability if the NDC itself is not ambitious enough. It is unclear whether the penalties in section 35 extend to non-compliance with carbon budgets or sectoral targets. The government is not required to align its policy with – or explain differences in policy from – the PCC’s advice or input received during public consultations. The PCC is empowered to create scientific or technical sub-committees, but the Act does not require scientific expertise to be a Presidential Climate Commissioner.

These weaknesses could be offset by the requirement that the trajectory must “be consistent with the principles and objectives of this Act” (section 24.2). This language provides an opportunity to nudge the trajectory into alignment with the best available science (such as PCC advice or IPCC synthesis reports) and the needs and circumstances of the most vulnerable.

The ‘finance mechanism’ in section 18 is the least developed part of the Act. Comparable laws around the world take different approaches to finance – dedicated climate funds, climate budgeting requirements, and/or carbon markets. Section 18 simply directs the Minister of Environment to work with the Minister for Finance to develop a mechanism. The polluter pays principle in section 3(j) could offer an

opportunity to remedy this weakness over time, such as by ring-fencing proceeds from fines and penalties to fund climate priorities.

Lack of resources and capacity for climate policy implementation at the ground level is a common challenge, even in developed economies. The Act does specify that national, provincial and municipal governance of climate change is subject to the provisions of the Intergovernmental

## Summary Impressions of South Africa's Framework Climate Law

### STRENGTHS

- Government mandated to develop long-term emissions trajectories tied to the Nationally Determined Contribution (which refers to net zero by 2050) as well as sectoral targets and carbon budgets for individual emitters (on five-year cycles).
- Presidential Climate Commission has mandate to advise government (sections 10-15).
- Sectoral ministries accountable to the Cabinet Minister of Environment, with procedure specified to monitor, report on and adjust sectoral targets.
- Strong enforcement of reporting obligations and emissions reductions through penalties (sections 28 and 25), including potential penalties under the National Environment Management Act (section 30.3).

### OPPORTUNITIES

- Potential for judicial review of divergences between NDC, national emissions trajectory, and sectoral trajectories or emitter budgets.
- Consultation and public participation provisions (sections 31, 32) create opportunities for collaborative policy formation.
- Principles to shape policy development, e.g., just transition, “best available science,” polluter pays.
- Climate action to be mainstreamed across all state action (section 7).
- Climate policy responsibilities at provincial and municipal level (sections 8, 9, 17).

### WEAKNESSES

- Unclear/absent financing mechanism.
- Long-term and sectoral trajectories tied to NDC, but no accountability/recourse if NDC itself is not ambitious enough.
- Government not required to act on PCC's advice or explain differences between government policy and PCC advice.

### RISKS

- Unclear whether non-compliance with sectoral targets or carbon budgets are subject to section 35 penalties.
- Criminal penalties may make enforcement more difficult (e.g., if burden of proof is higher than for civil penalties).
- Scientific expertise not a requisite for nomination to PCC – technical committees under section 11.3 may not have their expertise fully integrated into PCC's advice or government policy.
- New climate policy responsibilities of provincial and municipal governments may not be matched by resources/capacity.
- Potential for conflict of mandates between ministries (e.g., on the issue of budgeting for climate priorities).
- Consultation and public participation requirements do not require government to integrate or respond to input received.

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#### ABOUT THE AUTHOR:

**Tarun Gopalakrishnan** is a Predoctoral Research Fellow at the Climate Policy Lab.

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Relations Act, which establishes reciprocal accountability across levels of government. But there is a risk that the new responsibilities of the municipal and provincial governments created by the Act overwhelm their resources. There is also a risk that the mandate of the Cabinet Minister of Environment is subordinated to strong pre-existing mandates (such as that of the Minister of Finance). Finally, there is a risk that criminal penalties for non-compliance (section 35) may make enforcement more difficult (e.g., if the burden of proof is higher than for civil penalties).

## Concluding Note

These observations emerged from a joint reading and discussion of the Act by eighteen climate law and policy experts at a workshop on 'Designing Effective Climate Legislation' hosted by the Climate Policy Lab in February 2025. They are informed by literature on climate and environment policy, emerging literature on the effectiveness of framework climate laws, and professional experience with climate law and policy from across world regions, legal traditions, and development/emissions contexts. •

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## References

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visit: [climatepolicylab.org](https://climatepolicylab.org) email: [cpl@tufts.edu](mailto:cpl@tufts.edu)

