# Symbolism and Functionality in South Africa's Climate Law

Maksim Lavrik
*MICL LLD*
*Post-Doctoral Fellow, University of South Africa, Pretoria, South Africa*
*https://orcid.org/0000-0003-2364-4100*

**SUMMARY**

The adoption of the Climate Change Act 22 of 2024 marks a milestone in the development of a comprehensive climate law for South Africa. While climate law in the country is moving towards maturity, it is critical to evaluate what kind of norms it contains. Are these norms classical legal norms that are enforceable by courts and other legal authorities, or is their role symbolic? If the latter is the case, what is the impact of such norms? This article assesses whether South Africa's Climate Change Act is symbolic or functional, what effect to expect from the Act, and how the regulation can be improved. Assessing South African climate law through the lenses of symbolism and functionality is significant because the country is one of the most coal-dependent economies in the world, and has economic development and poverty eradication as its priorities. In this context, there is a risk of resistance to climate law working at full force to move the country away from fossil fuels as a necessary response to the climate-change challenge.

KEYWORDS: Climate Change Act 22 of 2024, climate law, climate legislation, climate litigation, South Africa, symbolic law, symbolic legislation

## 1 INTRODUCTION

The Intergovernmental Panel on Climate Change (IPCC) states that human activities cause climate change.[1] This is mainly because of the emission of greenhouse gases (GHGs) from various economic sectors, such as energy, transportation and forestry.[2] The global surface temperature in the years 2011–2020 was already 1.1°C higher than in the period 1850–1900.[3] These changes negatively impact nature and people and exacerbate extreme weather events in different parts of the world.[4] Against this backdrop, the

1 IPCC "Summary for Policymakers" in Core Writing Team, Lee and Romero (eds) Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2023) par A.1 DOI:10.59327/IPCC/AR6-9789291691647.001.

2 IPCC in Core Writing Team, Lee and Romero (eds) *Climate Change* par A.1, A.1.4.

3 IPCC in Core Writing Team, Lee and Romero (eds) *Climate Change* par A.1.

4 IPCC in Core Writing Team, Lee and Romero (eds) *Climate Change* par A.2.

IPCC articulates that the development of law combined with other means such as political commitments and well-aligned institutional frameworks can contribute positively to climate-change adaptation and mitigation.[5]

Climate law develops at different levels, including international, supranational, national, provincial and municipal levels. The United Nations Framework Convention on Climate Change (UNFCCC) of 1992,[6] the Kyoto Protocol of 1997,[7] and the Paris Agreement of 2015[8] are milestones in the development of international climate law. The European Climate Law[9] is an example of supranational climate law in the European Union (EU). The United Kingdom,[10] Germany,[11] and Canada[12] are among the countries that have adopted national climate laws. California is a sub-national entity with developed climate laws and regulations,[13] while Tokyo is an example of a city that has established climate mitigation and adaptation norms.[14]

Nevertheless, despite the adoption of various climate-change laws at different levels of governance around the globe and the implementation of multiple instruments to tackle the climate challenge, societies need urgent changes in all sectors to keep the rise of temperature within the 1.5–2°C limits set by the Paris Agreement.[15] In this context, it is critical to consider that although the adoption of a climate law is a significant moment, as Lazarus highlights, such moments are only moments.[16] For such laws to produce momentous changes, they need to work out. There are multiple obstacles to the fulfilment of the provisions of climate laws. First, the obstacles are in the nature of climate change as such.[17] The climate-change challenge is a wicked problem that connects various human activities, involves multiple entities, and has different impacts.[18] Secondly, the obstacles are in human nature.[19] People prefer short-term benefits over long-term gains, lacking the courage to act if the consequences of their actions will be visible only over a long time and in distant locations.[20] Thirdly,

5 IPCC in Core Writing Team, Lee and Romero (eds) *Climate Change* par C.6.

6 1771 UNTS 107 (1992). Adopted: 09/05/1992; EIF: 21/03/1994.

7 2303 UNTS 162 (1997). Adopted: 11/12/1997; EIF: 16/02/2005.

8 3156 UNTS 79 (2015). Adopted: 12/12/2015; EIF: 04/11/2016.

9 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) # 401/2009 and (EU) 2018/1999 (09 July 2021) OJL 243 1-17 (European Climate Law).

10 Climate Change Act of 2008.

11 Federal Climate Change Act (Bundes-Klimaschutzgesetz) of 2021.

12 Canadian Net-Zero Emissions Accountability Act of 2021.

13 California Global Warming Solutions Act of 2006; Clean Energy and Pollution Reduction Act of 2015; Transportation Funding (2017–2018).

14 See Yuichiro Tsuji "Climate Change Action and Adaptation in Tokyo" 2020 11(1) *Washington Journal of Environmental Law & Policy* 89–112.

15 See Coplan, Green, Fischer Kuh, Narula, Rábago and Valova "Introduction to Climate Change Law" in Coplan, Green, Fischer Kuh, Narula, Rábago and Valova (eds) *Climate Change Law: An Introduction* (2021) 1–4.

16 Lazarus "Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future" 2009 94 *Cornell Law Rev* 1153.

17 Lazarus 2009 *Cornell Law Rev* 1187.

18 *Ibid*.

19 Lazarus 2009 *Cornell Law Rev* 1187–1193.

20 *Ibid*.

the law-making process and implementation of laws can be obstacles to better climate policies.[21] In many countries, it is challenging to adopt climate legislation owing to complicated processes where different political and economic interests are opposed to such changes in legal landscapes. Moreover, even if a draft finally becomes law, the forces in opposition do not disappear after the adoption of the law; they try to minimise the effect of the law by weakening implementation, delaying actions, and trying to rearrange the new settings in other forms.[22]

Despite difficulties in the adoption and implementation of domestic climate laws, such laws are becoming a critical element in the overall climate regime. While the UNFCCC has set a general framework for cooperation on climate-change issues, and the Kyoto Protocol has established top-down climate targets for developed countries,[23] the Paris Agreement follows the bottom-up approach where the contribution of every single country is critical for achieving an overall positive outcome for the global climate system.[24] Such contributions, or "nationally determined contributions" (NDCs) in the language of the Agreement,[25] together with "global stocktake"[26] for the periodical review of the progress are the core elements of the Paris Agreement. In this context, the adoption of a climate law in a particular country that is party to the Paris Agreement can be seen as domestic legal visualisation of how the country will organise communication between the critical actors to achieve its climate targets.

This article focuses on the development of climate law in a particular jurisdiction – South Africa. The South African climate-change law experience deserves global attention for various reasons. South Africa is one of the largest GHG emitters in the world. In terms of the historical emissions of $CO_2$ from fossil fuels and cement from 1750 to 2021, South Africa is one of the top fifteen emitters (in thirteenth position with a share of 1,3 per cent).[27] The country is also in thirteenth position in terms of annual $CO_2$ emissions from fossil fuels, with a global share of 1 per cent (0.39 Gt of $CO_2$ emissions in 2020).[28] For successful GHG emission reduction, it is critical to conduct an energy transition from fossil fuels to renewables and to turn to energy efficiency. However, the implementation of such a task for some countries is more difficult than for others. It is extremely difficult for South Africa as this country is one of the most fossil fuel-dependent (and moreover coal-dependent) countries in the world. In South Africa, the share of fossil fuels in

---

21 *Ibid*.

22 Lazarus 2009 *Cornell Law Rev* 1153–1233.

23 The "top-down" nature of the Kyoto Protocol is, however, debatable. See Depledge "The 'Top-Down' Kyoto Protocol? Exploring Caricature and Misrepresentation in Literature on Global Climate Change Governance" 2022 22(4) *International Environmental Agreements: Politics, Law and Economics* 673–692.

24 See, e.g., Fischer Kuh "International Climate Change Treaty Regime" in Coplan *et al Climate Change Law: An Introduction* (2021) 5–22.

25 Art 3 and 4 of the Paris Agreement.

26 Art 14 of the Paris Agreement.

27 Union of Concerned Scientists "Each Country's Share of CO2 Emissions" (16 July 2008, updated 12 July 2023) https://www.ucsusa.org/resources/each-countrys-share-co2-emissions (accessed 2023-12-14).

28 *Ibid*.

energy consumption is more than 90 per cent.[29] Coal's share is around 70 per cent.[30] The energy transition and implementation of mitigation and adaptation policies in the country are also difficult because South Africa is a developing country[31] with an apartheid legacy,[32] suffers extreme inequality[33] and is urgently in need of poverty eradication.[34]

Despite the challenges described above, South Africa is also a place of hope for a successful energy transition. Thus, the country attracted international cooperation and finance for the transition. In 2021, the governments of South Africa, the United Kingdom, the United States of America, France, Germany and the EU adopted the Political Declaration on the Just Energy Transition in South Africa.[35] Paragraph 18 of the Declaration states that the involved entities resolved to mobilise an initial amount of $8.5 billion over the next three to five years to support a just transition. During 2023, the international pledge to a just transition in South Africa grew to $11.6 billion.[36] According to paragraph 17(2) of the Declaration, a just transition in South Africa means, among other things, support of workers in fossil-fuels industries and communities affected by such a transition. The Declaration recognises the unprecedented opportunity for South Africa to become a leader in the just-energy transition.[37]

On 24 October 2023, the National Assembly of South Africa adopted the Climate Change Bill. On 23 July 2024, the President assented to the document, which is now the Climate Change Act 22 of 2024. This inspirational moment for the development of climate legislation in the country prompts critical reflection on South Africa's climate law. This article tries to identify whether the role of the existing and emerging climate norms in the country is more aspirational than enforceable. The distinguishing line between these two categories is blurred because the same norm can act both as an aspiration and a rule that turns to concrete legal results through

---

29 BRICS Energy Research Cooperation Platform "BRICS Energy Report 2021" (September 2021) https://brics2021.gov.in/brics/public/uploads/docpdf/getdocu-41.pdf (accessed 2023-12-14) 41.

30 *Ibid*.

31 Bakari "Why Is South Africa Still a Developing Country?" (2017) *Munich Personal RePEc Archive* https://mpra.ub.uni-muenchen.de/80763/1/MPRA_paper_80763.pdf (accessed 2023-12-14).

32 South African History Online "A History of Apartheid in South Africa" (produced 06 May 2016, last updated 05 April 2022) https://www.sahistory.org.za/article/history-apartheid-south-africa (accessed 2023-12-14).

33 See The World Bank "The World Bank in South Africa" (14 September 2023) https://www.worldbank.org/en/country/southafrica/overview (accessed 2023-12-14).

34 *Ibid*.

35 UN Climate Change Conference UK 2021 in Partnership with Italy "Political Declaration on the Just Energy Transition in South Africa" (02 November 2021) https://webarchive.nationalarchives.gov.uk/ukgwa/20230106144924/https://ukcop26.org/political-declaration-on-the-just-energy-transition-in-south-africa/ (accessed 2023-12-14).

36 The Presidency, Republic of South Africa "Just Energy Transition Implementation Plan 2023–2027" (2023) https://www.stateofthenation.gov.za/assets/downloads/JET%20Implementation%20Plan%202023-2027.pdf (accessed 2023-12-14) 20.

37 UN Climate Change Conference UK 2021 in Partnership with Italy https://webarchive.nationalarchives.gov.uk/ukgwa/20230106144924/https://ukcop26.org/political-declaration-on-the-just-energy-transition-in-south-africa/ Preamble recital 13.

enforcement. However, the article tries to distil the norms of a more aspirational status from those that can be enforced as classical law. In assessing these two types of norms, the article reflects on the role of climate law in energy transition in a particular jurisdiction with some general theoretical connotations. This task is critical for understanding the role of climate-change law in South Africa and in a broader context. Despite a belief that the law should be enforceable, this article does not assume the existence of symbolic norms as such to be useless. They form our vision of the future and direct various actors towards a common goal.

The structure of the article is as follows. Section two outlines climate law and policy in South Africa. Section three defines what the symbolic law means. Section four discusses the goals of the Climate Change Act and the measurement of progress. Section five focuses on the specific mechanisms under the Act. Section six assesses whether South Africa's Climate Change Act is symbolic or functional. Section seven concludes the article and offers a vision of further research on the topic.

## 2 CLIMATE LAW AND POLICY IN SOUTH AFRICA

Law and governance concerning sustainable development and the environment in South Africa are quite complex. It is critical to acknowledge that regulation is based on a system of cooperative governance shared between national, provincial and municipal levels, as well as different ministers and departments.[38] The plurinational nature of the country adds specific features to the regulatory system. Dube and Manthwa believe that better integration of indigenous values in environmental and climate change policy is needed.[39] For example, the Northern Sotho maxim *Batho Pele* ("people first") could contribute to protecting local livelihoods and the environment from the unsustainable practices of transnational energy corporations.[40]

In its NDC, South Africa points out that slow economic growth, negative impacts of climate change (such as increasing forest fires), the COVID pandemic, and a developing country's status are factors to consider when assessing South Africa's climate contributions.[41] Concerning mitigation targets, South Africa has two corresponding periods: (1) 2021–2025 and (2) 2026–2030.[42] For the first corresponding period, the target is to achieve

---

38 Glazewski "South Africa" in Lees and Viñuales (eds) *The Oxford Handbook of Comparative Environmental Law* (2023) 315–333.

39 Dube and Manthwa "Putting People First in Climate Governance: The Role of South Africa's Indigenous Values in Securing Ecologically Sustainable Development" in Addaney, Jarbandhan and Dumenu (eds) *Climate Change in Africa: Adaptation, Resilience, and Policy Innovations* (2023) 251 https://doi.org/10.1007/978-3-031-30050-9_11.

40 Dube and Manthwa in Addaney *et al* (eds) *Climate Change* 244.

41 South Africa "First Nationally Determined Contribution Under the Paris Agreement: Updated September 2021" (27 September 2021) https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf (accessed 2023-12-14) 30.

42 South Africa https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf 15.

annual GHG emissions in 2025 in the range 398–510 $MtCO_2$-eq.[43] For the second corresponding period, the target is annual GHG emissions in 2030 in the range 350–420 $MtCO_2$-eq.[44] South Africa emphasises development challenges and the need for a just transition to renewables in which no one is left behind.[45] The implementation of the NDC requires massive investments in renewable energy sources.[46] The decarbonisation of South Africa's economy will have the following stages: (1) in the 2020s, decarbonisation of the electricity sector; (2) in the 2030s, deeper transition in the electricity sector and transportation; and (3) in the 2040s, the decarbonisation of the hard-to-mitigate sectors.[47]

Among the first comprehensive policy documents on climate change was the National Climate Change Response White Paper (2011),[48] which is a report of the South African government concerning the vision of climate-change policy development. It takes into account adaptation and mitigation policies, the country's approach to just transition, relations between authorities of different levels and branches of state bureaucracy, mainstreaming climate-change policy across various sectors, market instruments, and other means for coping with the climate crisis.

As of December 2023, the regulation was sectoral and fragmented and concerned air, waste, transportation and energy sectors.[49] In 2019, South Africa adopted the Carbon Tax Act,[50] which imposes carbon taxes on emitters from different sectors of the economy with some exceptions. To overcome the existing normative fragmentation, the country adopts an umbrella climate law. As the introduction to this article points out, on 24 October 2023, the National Assembly of South Africa adopted the Climate Change Bill,[51] which is now the Climate Change Act 22 of 2024. Public hearings on the Bill took place in the country's provinces from February to May 2023, before the adoption of the document by the National Assembly.[52]

---

43 *Ibid*.

44 *Ibid*.

45 South Africa https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf 3 5.

46 South Africa https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf 5.

47 *Ibid*.

48 South African Government "National Climate Change Response White Paper" (2011) https://www.gov.za/sites/default/files/gcis_document/201409/nationalclimatechangeresponsewhitepaper0.pdf (accessed 2023-12-14).

49 See Leal-Arcas, Al Zarkani, Jbara, Mubwana, Margaritidou and Van der Berg "Climate Change Mitigation Law and Policy in the BRICS" in Reins and Verschuuren (eds) *Research Handbook on Climate Change Mitigation Law* 2ed (2022) 231–239.

50 15 of 2019.

51 Minister of Forestry, Fisheries and the Environment "Climate Change Bill (B9–2022)" (as introduced in the National Assembly (proposed s 76); explanatory summary of Bill and prior notice of its introduction published in *GG* 45299 of 2021-10-11) https://www.parliament.gov.za/storage/app/media/Bills/2022/B9_2022_Climate_Change_Bill/B9_2022_Climate_Change_Bill.pdf (accessed 2023-12-14).

52 Parliament of the Republic of South Africa: Portfolio Committee on Forestry, Fisheries and Environment "Draft Programme of Public Hearings on Climate Change Bill" (undated) https://climatelaw.org.za/media/Climate-Change-Bill-Hearings-Programme.pdf (accessed 2023-12-27).

The Bill received support from civil society in the country – for example, from the Centre for Environmental Rights, a non-profit organisation and law clinic.[53]

The Climate Change Act is a comprehensive statute focusing on climate change mitigation and adaptation in the Republic. It establishes a legal framework for interactions between the national, provincial and municipal authorities, as well as other relevant actors, such as greenhouse gas (GHG) emitters, concerning climate-change matters. The document sets out the principles of operation of these entities, such as the principle of protecting the climate system for the benefit of present and future generations of humankind (section 3(*b*)) and specific rules and regulations such as the obligation of authorities to review their policies to ensure that the climate-change risks are considered (section 7(1)(*a*)). The Act uses concepts such as "cooperative governance" and "just transition" in articulating its objectives (section 2).

South Africa is one of the first countries to set a just-transition policy and to take steps towards pursuing the goals of such transformation.[54] Just transition is a process of societal changes toward a renewables-based energy system that gives full consideration to the interests of workers from fossil-fuel utilities and other people who are negatively affected by the transition toward renewables and climate change as such.[55] This concept is not only developing domestically but also emerging in the field of international climate-change law.[56] South Africa's initial steps toward a just transition are significant for the country and have transnational value. They provide lessons for other countries to consider. Among them are the beneficial outcomes of creating a specific authority for leading the process (the Presidential Climate Commission (PCC) in South Africa), and the necessity of meaningful public participation from the early stages, transparency, accountability and building a political coalition and social support around just transition.[57] The process has specific challenges. South African authorities send mixed signals about the role of fossil fuels in the country's future.[58] Despite articulation of support for the transition to renewables, various governmental bodies and officials continue to support the proliferation of the coal industry.[59] In this context, alignment between policy and climate-mitigation targets is critical.[60]

---

53 Centre for Environmental Rights "Climate Change Law" (2023) https://climatelaw.org.za/ (accessed 2023-12-27).

54 Connolly "5 Lessons from South Africa's Just Transition Journey" (1 September 2022) https://www.wri.org/technical-perspectives/5-lessons-south-africas-just-transition-journey (accessed 2023-11-27).

55 See, e.g., Presidential Climate Commission *A Framework for a Just Transition in South Africa* (June 2022).

56 Johansson "Just Transition as an Evolving Concept in International Climate Law" 2023 35 *Journal of Environmental Law* 229–249 https://doi.org/10.1093/jel/eqad017.

57 Connolly https://www.wri.org/technical-perspectives/5-lessons-south-africas-just-transition-journey.

58 *Ibid*.

59 *Ibid*.

60 *Ibid*.

In 2022, the PCC adopted A Framework for a Just Transition in South Africa. This document outlines the process of its adoption, principles of just transition, and key challenges towards achieving it in the Republic; and identifies critical points for just transition in different sectors such as coal production, agriculture, tourism and automobiles, and the role various entities would play in the transition. The Framework points out that, currently, the State is weak, and improving its capacity to govern the transformation in society is critical for the success of a just transition.[61] The document highlights that effective governance at all levels is a crucial element of the transition.[62] South Africa's Just Energy Transition Investment Plan for 2023–2027 sets a framework for economic cooperation between South Africa and its international partners concerning just transition.[63] In November 2023, the Cabinet approved the Just Energy Transition Implementation Plan.[64] This Plan includes six portfolios: (1) Electricity; (2) Mpumalanga Just Transition;[65] (3) New Energy Vehicles; (4) Green Hydrogen; (5) Skills; and (6) Municipalities.[66] In 2024, three more portfolios are to be included: (1) South African Renewable Energy Masterplan; (2) Energy Efficiency; and (3) Road-to-Rail.[67] South Africa's national policy documents that are crucial for climate change include the National Development Plan 2030[68] and the Low-Emission Development Strategy 2050.[69] Not only national but also provincial and other levels of governance are involved in the discussion on how to prepare the country for transition and implementation.[70]

---

61 Presidential Climate Commission *A Framework for a Just Transition in South Africa* 2, 3, 15, 20.

62 Presidential Climate Commission *A Framework for a Just Transition in South Africa* 20.

63 The Presidency: Republic of South Africa "South Africa's Just Energy Transition Investment Plan (JET IP) for the Initial Period 2023–2027" (04 November 2022) https://pccommissionflo.imgix.net/uploads/images/South-Africas-Just-Energy-Transition-Investment-Plan-JET-IP-2023-2027-FINAL.pdf (accessed 2023-12-14).

64 South African Government News Agency "Cabinet Approves Just Energy Transition Implementation Plan" (20 November 2023) https://www.sanews.gov.za/south-africa/cabinet-approves-just-energy-transition-implementation-plan (accessed 2023-12-14); The Presidency: Republic of South Africa "Just Energy Transition Implementation Plan 2023–2027" (2023) https://www.stateofthenation.gov.za/assets/downloads/JET%20Implementation%20Plan%202023-2027.pdf (accessed 2023-12-14).

65 Mpumalanga is a province that produces about 80 per cent of South Africa's coal. ICHOR COAL "Mpumalanga Province" (undated) http://www.ichorcoal.com/our-business/operations-map/mpumalanga-province (accessed 2023-12-14).

66 The Presidency https://www.stateofthenation.gov.za/assets/downloads/JET%20Implementation%20Plan%202023-2027.pdf 29.

67 *Ibid*.

68 National Planning Commission "National Development Plan 2030: Our Future – Make It Work" (15 August 2012) https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf (accessed 2023-12-15).

69 South Africa "South Africa's Low-Emission Development Strategy 2050" (23 September 2020) https://unfccc.int/sites/default/files/resource/South%20Africa%27s%20Low%20Emission%20Development%20Strategy.pdf (accessed 2023-12-15).

70 See, e.g., the discussions in the Gauteng Climate Change Summit: Thabo Mbeki School "Gauteng Climate Change Summit (Gala Dinner)" (21 November 2023) https://www.youtube.com/watch?v=IvZ-YRteEEc (accessed 2023-12-14); Thabo Mbeki School "Gauteng Climate Change Summit (Towards Decarbonization of the Economy and Climate Resilient Society)" (22 November 2023) https://www.youtube.com/watch?v=EssTF0d3gIA (accessed 2023-12-14); Thabo Mbeki School "Gauteng Climate Change

South Africa has had numerous climate litigation cases. By December 2023 and starting with *EarthLife Africa Johannesburg v Minister of Environmental Affairs* in 2016 (*EarthLife*),[71] the country has had nine climate litigation decisions from the High Court.[72] In the absence of a specific climate law, plaintiffs have referred to environmental legislation, human rights and international climate commitments of the country.[73] In *EarthLife*, the defendants believed that the absence of specific legal requirements to include climate considerations in an environmental impact assessment meant that there was no obligation to conduct such a climate assessment.[74] However, the High Court disagreed with such a position and stated that the absence of such explicit requirements in law did not mean that such an obligation did not exist, considering other relevant legal norms.[75]

Thus, in light of the existence of different legal and policy documents concerning climate change (constituting a fragmented law), the need for coordinated work of different authorities from national, provincial and local levels, as well as entities from non-public sectors, is crucial for the development of South Africa's climate law. In this regard, there is hope that the Climate Change Act will boost this development. Climate litigation is another avenue that facilitates the development of climate law in the country, including the deeper integration of international climate commitments of South Africa by the domestic judiciary.[76]

## 3 SYMBOLIC LAW

Before discussing the symbolic and functional features of South African climate law, including the provisions of the Climate Change Act, the article explores the concept of symbolic law. Among recent laws that are described as symbolic is the Well-Being of Future Generations (Wales) Act of 2015.[77] Section 4 of the Act sets seven well-being goals for Wales: (1) a prosperous Wales; (2) a resilient Wales; (3) a healthier Wales; (4) a more equal Wales; (5) a Wales of cohesive communities; (6) a Wales of vibrant culture and

Summit (Towards Decarbonization of the Economy and Climate Resilient Society)" (23 November 2023) https://www.youtube.com/watch?v=ivA-XoQbHmk (accessed 2023-12-14).

71 *EarthLife Africa Johannesburg v Minister of Environmental Affairs* [2017] ZAGPPHC 58.

72 See Sabin Center for Climate Change Law "Global Climate Change Litigation" (2023) https://climatecasechart.com/non-us-jurisdiction/high-court-south-africa/ (accessed 2023-12-15).

73 On climate litigation in South Africa and other Global South countries, see Peel and Lin "Transnational Climate Litigation: The Contribution of the Global South" 2019 113(4) *American Journal of International Law* 679–726 https://doi.org/10.1017/ajil.2019.48.

74 *EarthLife supra* par 85.

75 *EarthLife supra* par 88.

76 See, e.g., *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* [2022] ZAECMKHC 55 par 121.

77 See Pontin, Stokes, Hayward and Xenophontos "Government Reporting on Significant Developments in Environmental Legislation Around the World: The Challenges of Symbolic Legislation" 2023 35(1) *Journal of Environmental Law* 149–155 https://doi.org/10.1093/jel/eqad003; Lord Thomas of Cwmgiedd "Thinking Policy Through Before Legislating – Aspirational Legislation" (21 November 2019) https://sites.create-cdn.net/sitefiles/74/4/3/744393/Lord-Thomas-text-Aspirational-Legislation-21.11.19.docx (accessed 2023-12-20).

thriving Welsh language; and (7) a globally responsible Wales. Although the Act establishes a Commissioner for Future Generations and requires public bodies to publish reports of the progress they have made in meeting their well-being objectives for achieving the well-being goals, it is highly debatable whether it contains provisions that can be enforced in courts.

Even though symbolic law is not exclusively a feature of environmental law,[78] environmental legislation is sometimes less enforceable than legislation in other areas.[79] However, the symbolism of such legislation can be significant.[80] An Act sends signals to the actors concerned, shows the desirable normative outcome, and inspires entities to behave in line with the vision expressed in an Act.[81] Although there is a view that symbolic legislation can undermine the rule of law and the role of legislators, it is not correct to claim that symbolic legislation has an insignificant role.[82] Legislation, as well as judicial outcomes, possess inspirational features – for example, in the case of climate litigation.[83]

It is not an easy task to distinguish between a symbolic or a functional piece of law. It depends on different factors, including features of a legal system, the actors involved, and the clarity of legal requirements. Sometimes, only time will tell if specific provisions are merely symbolic.[84] Newig provides a framework for classifying legislation to see the place of symbolic legislation.[85] Thus, legislation can be effective or less effective in terms of achieving its substantial goals and in terms of achieving political outcomes.[86] Against this backdrop, legislation consists of four groups of laws: (1) laws that do not produce significant substantial or political outcomes but are enacted primarily for formal purposes – for example, adoption of already existing norms in other legal forms when a EU member state needs to fulfil EU requirements; (2) laws that are effective in terms of substantial outcomes but that do not receive much political attention – the so-called "workhorses of the law"; (3) legislation on high-profile political issues that both resolves political tensions and is effective in terms of substantial changes; and (4) symbolic legislation that achieves its political goals but is not effective, for example, concerning environmental outcomes or, as Newig describes such laws, they manage but do not resolve a problem.[87]

Regardless of some difficulties in distinguishing between symbolic and functional, (that is, non-symbolic) legislation, it is critical to reflect on the

---

78 See Feldman "Legislation Which Bears No Law" 2016 37(3) *Statute Law Review* 212–224 https://doi.org.10.1093/slr/hmv027.

79 Pontin *et al* 2023 *Journal of Environmental Law* 149–155.

80 *Ibid*.

81 *Ibid*.

82 *Ibid*.

83 Pontin *et al* 2023 *Journal of Environmental Law* 155.

84 See Dwyer "The Pathology of Symbolic Legislation" 1990 17(2) *Ecology Law Quarterly* 233–316.

85 Newig "Symbolic Environmental Legislation and Societal Self-Deception" 2007 16(2) *Environmental Politics* 280 https://doi.org/10.1080/09644010701211783.

86 *Ibid*.

87 Newig 2007 *Environmental Politics* 280 291.

practical effect of norms and whether they lead to behavioural changes or remain only political statements. Even the latter may be significant in the development of regulation. However, there are some costs to such movements. When a legislator makes a political statement in the form of law, it, on the one hand, expresses the commitment of the State.[88] This can be important, especially in a time of crisis or when there is a need to highlight a state's vision on significant societal issues.[89] On the other hand, if translating such a law into real changes is extremely difficult, the Act may remain only an aspirational document. By using a legislative procedure, a legislator had to overcome existing contradictions between different actors, their priorities and their interests. However, by adopting symbolic legislation, the legislator sends a signal of its vision of the situation and leaves room for agencies and other administrative bodies to make principal decisions, thus producing regulatory delay.[90]

At the same time, the forces that tried to prevent symbolic legislation from being adopted do not disappear after the adoption of the law. Against this backdrop, agencies and other administrative bodies that have to implement the new law encounter entanglements that the legislator did not resolve but transferred to them. These officials can (1) interpret the legislation literally (and sometimes, in this case, unrealistically), (2) revise its meaning by interpretation, and (3) delay the clarification and implementation of the provisions of such laws.[91] Industries, environmental non-governmental organisations, politicians, subnational entities such as regions and municipalities, and other actors can try to influence the agencies and other decision-makers, persuading them to choose a direction that would benefit such entities the most. In this case, the existence of legislation is, on the one hand, a positive move that expresses an overall strategy, but, on the other hand, it can lead to nothing. The legislator delegates the task of completing political decision-making to the actors whose role it is to implement the rules, but not to legislate.

Ultimately, this strategy can undermine the rule of law, legal certainty and a general belief in law and its ability to produce legal outcomes.[92] Lord Thomas of Cwmgiedd believes that such Acts give "false hopes"[93] and simply reflect "the desire of politicians to be seen as doing something".[94] This also undermines trust in the capability of policy makers.[95] In addition, it leaves room for judicial review, which may try to fill that regulatory void.[96] Such a situation returns to the question of whether a judge is an appropriate actor to produce law in highly debatable and politicised areas when

88 Dwyer 1990 *Ecology Law Quarterly* 247.
89 *Ibid*.
90 Dwyer 1990 *Ecology Law Quarterly* 277.
91 Dwyer 1990 *Ecology Law Quarterly* 250.
92 Dwyer 1990 *Ecology Law Quarterly* 281 309.
93 Lord Thomas of Cwmgiedd https://sites.create-cdn.net/sitefiles/74/4/3/744393/Lord-Thomas-text-Aspirational-Legislation-21.11.19.docx 52.
94 *Ibid*.
95 Dwyer 1990 *Ecology Law Quarterly*.
96 Dwyer 1990 *Ecology Law Quarterly* 302.

legislative and administrative branches cannot produce regulatory outcomes, as is often the case with climate litigation.[97]

Despite the difficulties and problems described above, symbolic law is at least a contribution to framing the normative landscape in a particular way. It also affects relevant actors psychologically. As Feldman states with a reference to the Scandinavian realist movement, "in an Act of Parliament, the words 'Be it enacted …' are the legislator's equivalent of the magician's 'Abracadabra': it produces psychological magic".[98] Moreover, environmental and climate-change issues form a domain where it is not easy to identify the causes of a problem, the contributing factors, the actors involved, their interests and expectations; to frame and reframe our understanding of these aspects based on the new information; and to regulate these areas.[99] In this regard, legislation, even in its most symbolic forms, is a step towards a new and hoped-for better vision and regulation for the environment.

Discussing why symbolic legislation exists, Newig assumes that manipulation of a society by political elites is a reason, but only a part of the picture.[100] Another aspect is the self-deception of society.[101] For example, in a complex issue, a society believes that statement A is correct while it still believes that the opposite statement B is correct.[102] In this context, such a society is willing to have symbolic legislation that fits such a societal "schizophrenia".[103] It is critical to assess South Africa's climate law, especially the new Act 22 of 2024, through the lens of symbolic legislation because society sees that economic development and poverty eradication are critical in a country dependent on coal, while coping with climate change and moving away from coal dependency is also a priority. Further research from different social sciences on this topic is needed, but that is outside the scope of this article, which is limited to an assessment of the law.

## 4 GOALS OF THE CLIMATE CHANGE ACT AND THE MEASUREMENT OF PROGRESS

Section 2 of the Climate Change Act establishes its six objectives: (1) to provide for a response by the economy and society to climate change; (2) to provide for the effective management of climate-change impacts; (3) to make a fair contribution to the global mitigation effort; (4) to ensure a just transition; (5) to give effect to South Africa's international commitments; and (6) to protect and preserve the planet. To achieve these objectives, the Act establishes principles (section 3), policy alignment and institutional arrangements (Chapter 2), identifies the role of provinces and municipalities

97 See, e.g., Burgers "Should Judges Make Climate Change Law?" 2020 9(1) *Transnational Environmental Law* 55–75.

98 Feldman 2016 *Statute Law Review* 223.

99 See Fisher "Environmental Law as 'Hot' Law" 2013 25(3) *Journal of Environmental Law* 347–358 https://doi.org/10.1093/jel/eqt025.

100 Newig 2007 *Environmental Politics*.

101 *Ibid*.

102 See Newig 2007 *Environmental Politics* 292.

103 *Ibid*.

(Chapter 3) based on the principles of cooperative governance (section 2(*a*)), enshrines specific measures for national adaptation and mitigation efforts (Chapters 4 and 5), and provides norms on general matters and transitional arrangements (Chapter 6).

The Climate Change Act does not define indicators to track progress concerning climate-change adaptation. However, it obliges the Minister responsible for environmental affairs to determine them (for example, section 19(*b*)). The mitigation targets of the Act are related to a national GHG emissions trajectory determined by the Minister. Although clause 24(2) enshrines criteria for such a trajectory, the establishment of the specific GHG emissions limits will not be defined legally but transferred to the discretion of the Minister. While the country's NDC will serve as the trajectory before the trajectory has been defined by the Minister (section 24(3)), there is a hope that the new trajectory will also be oriented on the NDC, which would not only contribute to legal certainty but also the NDC's operability.

## 5 SPECIFIC MECHANISMS OF THE CLIMATE CHANGE ACT

Despite the absence of clearly defined legal climate-change goals that could be traced by interested entities, the Climate Change Act is not just a list of principles and declarations. Instead, it contains quite specific rules and procedures. First, this article notes the general institutional arrangements under the Act. Secondly, it outlines the climate-change adaptation mechanism of the Act. Thirdly, it provides an overview of the Act's climate-change mitigation mechanism.

Section 7(1) of the Act provides for the integration of climate change into public bodies' decision-making, while section 7(2) provides organised labour, civil society and business with the possibility of advising on the country's climate-change response. The Intergovernmental Relations Framework Act[104] establishes a Premier's intergovernmental forum in a province to promote and facilitate relationships between the province and local governments in the province (section 16). This Act also establishes a district intergovernmental forum with a similar function but concerning relationships between the district municipality and the local municipalities in the district (section 24). The Climate Change Act states that such forums serve as climate-change forums (sections 8 and 9). The Act also contains provisions on the Presidential Climate Commission (sections 10–16).

Chapter 4 of the Act is devoted to climate-change adaptation. It establishes the following elements of the adaptation mechanism of the country. The Minister responsible for environmental affairs should determine national adaptation objectives and indicators for measuring progress towards achieving them (section 19(1)). Moreover, the Act establishes a time frame for this. The Minister must determine the objectives within one year after the Act comes into operation (section 19(1)). In addition, the Minister must develop adaptation scenarios anticipating climate-change impacts and

[104] 13 of 2005.

associated vulnerabilities (section 20). Within two years of the Act's coming into operation, the Minister responsible for environmental affairs, after consultations with the sectoral ministers, must develop and publish a National Adaptation Strategy and Plan (section 21). Then, the sectoral ministers must adopt Sector Adaptation Strategies and Plans (section 22).

The Minister responsible for the environment determines the national GHG emissions trajectory, which specifies South Africa's emissions reduction objective as a quantitative description (section 24(1) and (2) of the Act). Sectoral emissions targets are the next elements in South Africa's mitigation mechanism. The Act highlights that within a year after the Act starts operating, the Minister defines the GHG emitting sectors and imposes mitigation targets on them (section 25(1)). Such targets include specific goals for each of the three subsequent five-year periods (section 25(4)(*c*)). It is worth noticing that it is not only climate-change mitigation *per se* that defines such targets. In formulating sectoral targets, the Minister must consider the socio-economic impacts of imposing them, as well as the best available science (section 25(5)). Even though these factors are indeed critical, such provisions are especially susceptible to making the legislation symbolic in terms of its climate-change mitigation efficiency. The compliance mechanism for sectoral emissions targets is based on annual reports from the sectoral ministers to the Presidency (section 25(11)).

Another element of the mitigation mechanism is the adoption of lists of GHGs and activities that emit such GHGs. Sections 26(1) and (2) of the Act establish that the Minister must publish such lists, even though without specifying when the Minister must do that. The list of activities emitting GHGs must also contain a threshold of GHG emissions in $CO_2$-eq. This is needed to identify persons to whom the climate budget will be assigned (section 26(3)(*b*)). In allocating carbon budgets to persons, the Minister must consider a variety of factors. Among them are not only the socio-economic impacts of imposing such budgets and the best available science but also national strategic priorities and the best practical environmental options available (section 27(2)). A person to whom the carbon budget has been allocated must prepare and then implement a GHG mitigation plan (section 27(4)). Failure to do this constitutes an offence and entails penalties (section 35(*c*)).

Besides the climate-change mitigation and adaptation elements mentioned above, the Climate Change Act states that the Minister responsible for the environment must declare that certain gases are synthetic GHGs and acknowledge whether these gases have to be phased out or phased down (section 28). The Act also requires an annual compilation of the National GHG Inventory Report (section 29). The Act establishes what kind of regulations the Minister may or must make (section 30), requires consultations with different public bodies (section 31), and establishes a public participation mechanism (section 32).

Thus, the Climate Change Act establishes a comprehensive system for mitigation and adaptation to climate change. It includes a system of principles that governs this sphere, defines public bodies and how they should cooperate on these matters, what kind of documents they must and

may produce, when they have to do that (in many, but not all, provisions, there are time frames), and the consequences of adoption of such documents. However, despite such detailed regulation, the Act leaves much room for administrative discretion, which is why the question arises whether this Act will become substantially functional or merely symbolic for South Africa's climate-change response.

## 6 IS THE CLIMATE CHANGE ACT SYMBOLIC OR FUNCTIONAL?

This article assesses the potential of the Climate Change Act to become symbolic or functional based on the climate-change mitigation and adaptation dichotomy, that is, according to the following criteria: (1) setting of mitigation targets and the measurement of progress towards achieving them; and (2) establishment of adaptation indicators and the measurement of progress in adaptation.

### 6 1 Mitigation targets

In the setting of mitigation targets and the measurement of progress towards achieving them, it is evident that the Climate Change Act is a symbolic Act. First, as mentioned previously, the GHG emissions trajectory will be defined by the Minister. South Africa's Low Emission Development Strategy 2050 describes regular updates of the trajectory as a positive feature of the Climate Change Act because, through this, the trajectory can be "better placed within the context of the Paris Agreement".[105] However, as the identification of the mitigation trajectory of the country will be conducted only by the executive branch, the legislation does not produce any substantial outcome on this matter.

Although it is not an easy task to set the GHG emission reduction targets directly in law, rather than in executive orders, it is not impossible. Examples exist throughout the world. Thus, article 2 of the European Climate Law provides for the achievement of climate neutrality of the EU by 2050. This Act also establishes an intermediate target – a reduction of emissions by at least 55 per cent compared to 1990 levels by 2030 (article 4(1)). Section 1(1) of the UK Climate Change Act imposes a duty on the Secretary of State to ensure that the net carbon account of the country for the year 2050 is at least lower than the 1990 baseline. Section 10(1) of the Australian Climate Change Act of 2022 establishes such GHG emissions reduction targets as a reduction to 43 per cent below 2005 levels by 2030 and net zero by 2050.

However, the executive branch is more flexible than a legislator concerning adjustments of a GHG emissions trajectory, which is why a decision to transfer the prerogative of establishing the climate trajectory to this branch is not irrational as such. The problem is the role of the legislation in this regard.

[105] South Africa https://unfccc.int/sites/default/files/resource/South%20Africa%27s%20Low%20Emission%20Development%20Strategy.pdf 20.

Another aspect is whether South Africa's mitigation commitments are ambitious enough and how climate legislation can contribute to increasing such ambitions. An independent scientific project, the Climate Action Tracker, rates South Africa's climate targets and policies as "insufficient".[106] Thus, both initial and updated versions of the country's NDC are not fully aligned with the 1.5°C temperature goal of the Paris Agreement.[107] Assessing the country's policies, the Climate Action Tracker concludes that if all countries were to follow South Africa's approach, global temperature increase would be from 2 to 3°C.[108]

Eskander and Fankhauser analysed the effect of climate laws on GHG emissions reduction globally.[109] They concluded that countries with climate legislation, strong rule of law, and effective implementation produced a better output in terms of GHG emissions reduction than those with executive orders on climate change, weak rule of law, and ineffective law enforcement.[110] Thus, even if symbolic, the Climate Change Act is a significant step towards GHG emission reduction. Enhancing its provisions and improving the rule of law and law enforcement would be general recommendations for further development of emissions reduction in the country.

Another factor to consider for enhancing mitigation targets is international cooperation. Lacobuta and others conclude that because of the UNFCCC regime and the Kyoto Protocol, by 2017, more than 90 per cent of Annex I countries had mitigation targets in their legislation, while only 4 per cent of non-Annex I countries did so, and 65 per cent of those countries enshrined mitigation targets in executive orders.[111] Also, an increase in climate legislation and national GHG emissions reduction targets coincided with the Copenhagen and Paris Conferences of the Parties (COPs) to the UNFCCC.[112] Adoption of the Political Declaration on the Just Energy Transition in South Africa[113] during COP-26 in Glasgow was one of the stimuli in developing just-transition instruments in South Africa's domestic law and policy, including the creation of the draft Climate Change Bill. Thus, to maintain and enhance climate mitigation targets, further international cooperation on these issues matters. Additionally, there is osmosis in the

---

106 Climate Action Tracker "South Africa" (23 November 2023) https://climateactiontracker.org/countries/south-africa/ (accessed 2023-12-22).

107 Climate Action Tracker "South Africa: Targets" (23 November 2023) https://climateactiontracker.org/countries/south-africa/targets/ (accessed 2023-12-22).

108 Climate Action Tracker https://climateactiontracker.org/countries/south-africa/.

109 Eskander and Fankhauser "Reduction in Greenhouse Gas Emissions by National Climate Legislation" 2020 10(8) *Nature Climate Change* 750–756.

110 *Ibid*.

111 Lacobuta, Dubash, Upadhyaya, Deribe and Höhne "National Climate Change Mitigation Legislation, Strategy and Targets: A Global Update" 2018 18(9) *Climate Policy* 1124 https://doi.org/10.1080/14693062.2018.1489772.

112 Lacobuta *et al* 2018 *Climate Policy* 1130.

113 UN Climate Change Conference UK 2021 in Partnership with Italy "Political Declaration on the Just Energy Transition in South Africa (2021) https://webarchive.nationalarchives.gov.uk/ukgwa/20230106144924/https://ukcop26.org/political-declaration-on-the-just-energy-transition-in-south-africa/.

behaviour of states.[114] When some states adopt climate laws, peer states may behave similarly.[115] In this regard, South Africa's Climate Change Act and other legal and policy initiatives on climate change may be a source of inspiration beyond the country and may spread across the continent and to other parts of the world, especially considering the aspirations of the country to occupy a position of leadership in just-energy transition.

In summary, prescribing GHG emissions reduction targets directly in the law rather than in executive orders, enhancing the rule of law, law enforcement and international cooperation would make the Climate Change Bill more functional and its achievements more significant.

## 6 2 Adaptation indicators and measurement of progress

The implementation of the provisions of the Climate Change Act on adaptation would produce national adaptation objectives, indicators for measuring progress towards achieving them (section 19(1)(*a*)(*b*)), adaptation scenarios (section 20), National Adaptation Strategy and Plan (section 21), Sector Adaptation Strategy and Plan (section 22) and a Synthesis Adaptation Report (section 23). The Act also provides for the reporting system. Thus, sectoral ministers report to the Minister responsible for the environment on progress concerning the implementation of the relevant Sector Adaptation Strategy and Plan (section 22(2)). Should these provisions of the Climate Change Act on adaptation be classified as symbolic or functional?

The significant factor to consider here is that in comparison with mitigation, climate-change adaptation *per se* is a more symbolic branch of climate policy. The mere existence of a category such as climate-change adaptation law is debatable.[116] It is easier to define the GHG emission reduction targets than to establish what exactly society has to achieve to confirm that it was a successful adaptation mechanism. Understanding of adaptation can vary significantly from region to region and from one group of stakeholders to another. Against this backdrop, Dupuis believes that adaptation is a symbolic category under which policymakers make statements without aspiring to achieve concrete and measurable adaptation results.[117] This leads to erratic results and attracts adaptation commitments from politicians around the world as it allows them to relabel their policies under the etiquette of "adaptation" or, in other words, to "put old wine in new bottles".[118]

---

[114] See Fleig, Schmidt and Tosun "Legislative Dynamics of Mitigation and Adaptation Framework Policies in the EU" 2017 3(1) *European Policy Analysis* 101–124.

[115] *Ibid*.

[116] See Mayer "Climate Change Adaptation Law: Is There Such a Thing?" in Mayer and Zahar (eds) *Debating Climate Law* (2021) 310–328.

[117] Dupuis "Climate Change Adaptation as a New Global Norm in the Water Sector? Between Symbolism and Dilution" in Bréthaut and Schweizer (eds) *A Critical Approach to International Water Management Trends: Policy and Practice* (2018) 177–200.

[118] *Ibid*.

To make adaptation policy more functional and measurable, indicators and metrics of progress are critical. According to section 19(1)(*b*) of the Climate Change Act, establishing indicators is the task of the Minister responsible for environmental affairs. According to section 21(2) of the Act, the Minister responsible for environmental affairs, in consultation with the sectoral ministers, develops the National Adaptation Strategy and Plan. Section 21(5)(*e*) states that the National Adaptation Strategy and Plan must contain a plan that details the implementation of adaptation responses informed by the indicators. Thus, the development of indicators and the plan of implementation based on such indicators is the prerogative of the executive branch.

Arnott, Moser and Goodrich, in their comprehensive survey of adaptation indicators, conclude that different entities can develop such indicators, including academics, non-governmental organisations, investors or indicator implementors.[119] Indicators developed, for example, by academics are less pragmatic and more idealised, while implementor-driven indicators are more oriented in practice.[120] However, when entities responsible for the creation of indicators and their implementation respectively are more or less the same (that is, the executive branch), such indicators may lack validity in characterising actual adaptability of the system under consideration and may lead to incomplete portrayal of the progress, which can lead to maladaptation or a false sense of progress.[121] That is why assessment of the indicators and implementation of the plan based on such indicators should not be given entirely to the executive branch; the role of civil society and academia in these matters is critical.

Also, in the process of developing indicators, it is important to consider different types of indicators based on a hierarchy of evaluation, namely: (1) assessing the programme/project need; (2) supporting action and design logic; (3) guiding implementation; (4) assessing outcomes and impact; and (5) concerning costs and efficiency.[122] It is critical that the choice of indicators involves value choice, which is why it is a political choice.[123] In this context, to evaluate adaptation that would be beneficial for a society, there should be a community that has the capacity to assess adaptation policies and to use their benefits.[124] Thus, although it is the Minister responsible for environmental affairs who is responsible for setting adaptation indicators, the involvement of science, other policy makers and stakeholders is crucial for the development of indicators. As this process develops, the law can embed more functional, enforceable norms regarding adaptation indicators.

---

[119] Arnott, Moser and Goodrich "Evaluation That Counts: A Review of Climate Change Adaptation Indicators & Metrics Using Lessons from Effective Evaluation and Science – Practice Interaction" 2016 66 *Environmental Science & Policy* 383–392 http://dx.doi.org/10.1016/j.envsci.2016.06.017.

[120] *Ibid*.

[121] *Ibid*.

[122] *Ibid*.

[123] *Ibid*.

[124] *Ibid*.

## 7 CONCLUSION

This article expresses preliminary observations on South Africa's Climate Change Act. The outcomes of this research may need to be corrected at later stages, during the implementation of the Act. However, for the success of climate-change mitigation and adaptation in the Republic, it is critical to think about its legal framework through the lenses of symbolism and functionality from the initial stages of the development of such a law. It facilitates a critical assessment of South Africa's climate-change regulation and makes visible some flaws and potential for improvement. Such an approach would also be beneficial for the evaluation of climate laws of other countries that face similar challenges.

South Africa's Climate Change Act establishes the climate trajectory of the country. However, further development of this parameter is transferred to the executive branch. This makes provisions on GHG emissions reduction less strong than they could be. Also, adaptation objectives and indicators are the prerogative of the Minister responsible for environmental affairs in the Republic. Despite the debatable nature of climate adaptation law *per se*, such provisions also minimise the legislative effect and enhance the role of executive orders in the regulation. Against this backdrop, this article characterises the Act as a piece of symbolic legislation. Nevertheless, the article submits that the symbolic nature of the Act does not make this document weak and insignificant. In the context that the nation is among the most fossil fuel-dependent in the world and faces multiple challenges related to poverty eradication, development and inequality, the fact of adoption of the Act as such is a significant milestone. It illustrates the willingness of the government to commit to climate-change mitigation and adaptation and provides a legal framework therefor. Also, the Act contains quite specific norms and regulations on these matters. The active involvement of politicians, bureaucracy, academia, business and civil society in the implementation of the document can make it a really functional law.

Examples from the country's climate litigation showcase how domestic law can produce changes toward better climate outcomes, inspiring hope for the enforceability of the Climate Change Act. As a result of the *EarthLife* case mentioned in this article, the Thabametsi coal-fired power station project was abandoned.[125] Because of the judicial outcome of the *Sustaining the Wild Coast NPC* case, the Shell Wild Coast Seismic Contract was cancelled.[126]

Further research that assesses the symbolism and functionality of South Africa's Climate Change Act could include areas regulated by the Act such as (1) integration of climate change in decision-making; (2) institutional arrangements; (3) documentation that should be produced under the Act; (4) the sectoral emissions targets mechanism and implementation; and

[125] Fourie, Peek and Lekalakala "SA Saved From the R12.57bn Environmental Disaster That Thabametsi Would Have Been" (30 November 2020) https://www.businesslive.co.za/bd/opinion/2020-11-30-sa-saved-from-the-r1257bn-environmental-disaster-that-thabametsi-would-have-been/ (accessed 2024-01-03).

[126] Shell "Wild Coast Seismic Survey" (undated) https://www.shell.co.za/energy-and-innovation/wild-coast-seismic-survey.html (accessed 2024-01-03).

(5) listing of GHGs and GHG-emitting activities mechanism and implementation. Such research would increase understanding of the dynamics of legislative and executive regulation and contribute to assessment of the current stage of the development of climate law.