COX YEATS ATTORNEYS:

COP28 and Climate Change

DURBAN OFFICE:

Tel: 031 536 8500

Address: 45 Vuna Close, Umhlanga Ridge, 4319

JOHANNESBURG OFFICE:

Tel: 010 015 5800

Address: 4 Sandown Valley Crescent, Sandton, Gauteng, 2196

CAPE TOWN OFFICE:

Tel: 021 879 2516

Address: Unit 801, 8th Floor, Touchstone House, 7 Bree Street, Cape Town, 8001

COP28 AND CLIMATE CHANGE

The 28th United Nations Climate Change Conference, more commonly referred to as COP28, will be held in Dubai from 28 November until 12 December 2023.

At COP21, in 2015, the world agreed (the **Paris Agreement**) to limit global warming to 1.5 degrees Celsius, compared to pre-industrial levels, by 2050. To remain on target, science tells us that emissions must be halved by 2030.

A key focus of the COP28 conference will be on scaling up private financing, investing in climate transition to support inclusive sustainable economic growth, and supporting the needs of the developing world.

At the 26th conference (**COP26**) in Glasgow, in December 2021, South Africa committed to reducing its carbon emissions to within a range of 420 to 350 mega tonnes carbon dioxide equivalent by 2030. A target of 420 MT is consistent with a fair contribution to a 2-degree temperature goal reduction while a target of 350 MT is consistent with a 1.5-degree temperature goal reduction.

At the time of submitting this initially determined contribution, the South African government indicated that its ability to meet the bottom range would depend on the level of financial investments available to support its transition to new technologies.

In a milestone development, a political declaration was signed between the Government of South Africa and the Governments of France, Germany, the United Kingdom, the United States and the European Union, collectively (the International Partners Group (**IPG**)), which gave rise to the establishment of the Just Energy Transition Partnership (**JETP**). This partnership aimed to support South Africa's pathway to low emissions and climate-resilient development, to accelerate the Just Transition and decarbonization of our electricity system, and to develop new economic opportunities such as green hydrogen and electrical vehicles amongst other interventions, to support South Africa's shift towards a low carbon future.

The IPG undertook to mobilise an initial US$8.5 billion over three to five years to support the achievement of South Africa's low-carbon future.

THE JUST ENERGY TRANSITION (JET) AIMED TO:

1. accelerate decarbonisation of South Africa's electricity system;
2. transition the economy in a way that protected vulnerable workers and communities affected

by the move away from coal;

3. determine efforts to successfully and sustainably manage Eskom's debt;
4. define the role of the private sector through creating an enabling environment through policy reform in the electricity sector such as unbundling and improved revenue collection;
5. support local value chains which would benefit from new areas of economic opportunity;
6. provide opportunities for technical innovation;

Following the signing of the political declaration, a presidential climate finance task team was formed to engage the IPC, advise and develop South Africa's JETP and make recommendations on the financing package to an inter-ministerial committee.

The scale of investment in the priority areas of electricity, new energy vehicles and green hydrogen was identified as well as how the initial funding of US$8.5 billion was to be allocated. The Just Transitional Framework was adopted by Cabinet in August 2022 to guide South Africa's approach to climate transition. This identified that the funding requirements from 2023 to 2027 were just short of US$100 billion, split between the electricity sector - US$48 billion, new energy vehicles – US$8.5 billion, green hydrogen- US$21 billion; skills development US$0.18 billion dollars and municipal capacity – US$21 billion.

In the electricity sector, the priority areas were to manage the decommissioning of the retiring coal generation fleet, strengthen the transmission grid infrastructure, accommodate the shift to renewable energy, and modernize the electricity distribution system.

Coal generation decommissioning would require ZAR4.5 billion, transmission would require ZAR131 billion, distribution ZAR13 billion, new solar ZAR233 billion, new wind ZAR241 billion and new batteries ZAR23 billion.

In the new energy vehicle sector, ZAR128 billion was required. The bulk of this was allocated to industrial development and innovation and new energy vehicle deployment support. The investment in green energy was identified to be ZAR320 billion. The municipal investment needs were ZAR320 billion, the bulk of which was allocated to infrastructure, distribution, and maintenance.

The IPG's initial allocation of US$8.5 billion was to be used largely for electricity and by far, the largest portion of this would be for infrastructure. It was recognised that there was a need to upgrade the transmission grid and the distribution networks to enable them to take up the renewable energy that would be generated largely by the private sector in the coming five years. This critical network infrastructure investment would leverage large-scale private investment in renewable energy by supporting both energy security and decarbonization.

This ambitious plan was presented to IPG at COP27 which was held in November 2022.

The electricity sector remains the source of almost half of South Africa's greenhouse gas emissions and South Africa's ageing fleet of coal power plants (39 GW) is being retired over the next three decades, with 22GW due to be decommissioned by 2035.

This has significant implications for the security of energy supply nationally as the rate at which new generation capacity is currently being added to the grid is not keeping pace with the rate at which coal generation capacity is being retired. There is of course tension between JET and supporters of the coal industry. Opponents of JET argue that the implementation of JET will result in coal mines being closed and jobs being lost. The most vocal of these critics is the Minister of Minerals & Energy, Gwede Mantashe. He speaks of our laws being too liberal and environmental meddling in economic development. Two cases where this has played out in the courts are the disputes regarding the Somkhele Mine in northern KwaZulu-Natal and the multi-national Shell which was blocked from conducting seismic surveys off the Wild Coast.

Dr Crispin Olver who heads the Presidential Climate Commission (he was previously the head of planning for the reconstruction and development programme under President Mandela and went on to run the Department of Environmental Affairs and Tourism as Director-General) recognizes that the reliance on fossil fuels must be phased out in a careful way. He talks of a "managed exit from coal".

By the Presidential Climate Commission's estimate, demand for coal will drop off between 2030 and 2040, before running out completely in the 2050s.

The Komati Power Plant, which was recently decommissioned, is being repurposed as a renewable generation site, powered with 150MW solar, 70MW wind and 150MW of storage batteries. The same fate awaits other plants in Eskom's fleet such as Grootvlei, Hendrina and Duvha.

Since the adoption of JET in 2021 and the intensification of loadshedding, the South African focus on climate change and renewables, has rapidly accelerated. Although the Renewable Energy Independent Power Producer Programme (**REIP**) was introduced in March 2011, the investment in renewables under this programme has not been dramatic compared to the investment which is now occurring. New policies have been introduced and legislation amended. The amendment to the Electricity Regulation Act and its Regulations allows for the participation of the private sector in the electricity space. Renewable energy is proving to be cheaper and quicker to introduce. Legislation has also been passed so as to promote the renewable sector. The Climate Change Bill is currently before Parliament. The Carbon Tax Act was assented to on 22 May 2019, with regulations promulgated on 27 November 2019 and amended in July 2021.

The Climate Change Bill provides for the mandatory implementation of a carbon budgeting system and for the establishment of sector emissions targets across the economy. The Electricity Regulation Amendment Bill provides for the establishment of an independent transmission company which will act as the system and market operator. It will enable the emergence of a competitive electricity market. Over time, this will allow multiple generators to sell electricity.

Under the amendment of Schedule 2 of the Electricity Regulation Act, generators of electricity no longer require a licence, but instead, need to be registered with the National Energy Regulator. The Minister of Finance has announced that the carbon tax be introduced so as to be consistent with the COP27 to reach US$20 per ton by 2025 and US$30 per ton by 2030.

Environmental authorisations for new transmission and distribution lines have been relaxed. Tax incentives have been introduced to incentivize rooftop solar.

The restructuring of Eskom into three entities, transmission, generation and distribution, is underway.

In July, the heads of 40 states, mainly from the global south, met in Paris to discuss a new "global financial pact" to help poorer countries deal with climate change. Prime Minister Mia Mottley of Barbados has been a prime mover advocating that governments and development banks should be used to leverage large-scale private investments for developing countries. Although South Africa has received significant commitments for funding by the JETP signed at the COP26 summit, the transition for South Africa is going to cost a lot more than initially committed. In order for the transition to be just, it needs to take into account the communities and individuals affected. President Ramaphosa recognized this at the July conference when he stated that the transition plan needs to take into account "people's jobs and the communities affected" and that "whatever is done must leave nobody behind".

The environmental NGO, groundWork, has recently submitted a report titled "Contested Transition: State and Capital against Community" which emphasizes the need to take into account the views of vulnerable communities and ensure that their needs are met in a "just transition".

A great deal of good work has been done in identifying what is required to transition South Africa so that it becomes less reliant on coal and is able to address our current energy crisis.

Whilst the western world has made significant commitments to assist South Africa in this journey, the transition is going to cost at least 10 times more than initially committed.

Very significant structural changes will need to be implemented and an enabling environment created so as to allow further foreign investment and the participation of the private sector.

In order for the transition to be "just", the needs of vulnerable communities will need to be considered and met.

This should be the key focus of COP28.

AUTHORS:

Michael Jackson
Partner
D +27 31 536 8512
M +27 82 808 7891
mjackson@coxyeats.co.za