

# CLIMATE CHANGE REGULATION IN SA



**CLIMATE LEGAL**

**28 SEPTEMBER, 2018**

# Themes for today

- Why does South Africa need to respond to climate change.
- International and national domestic legal regimes for climate change
- Climate Change Bill, 2018

# CC Impacts in SA – select examples

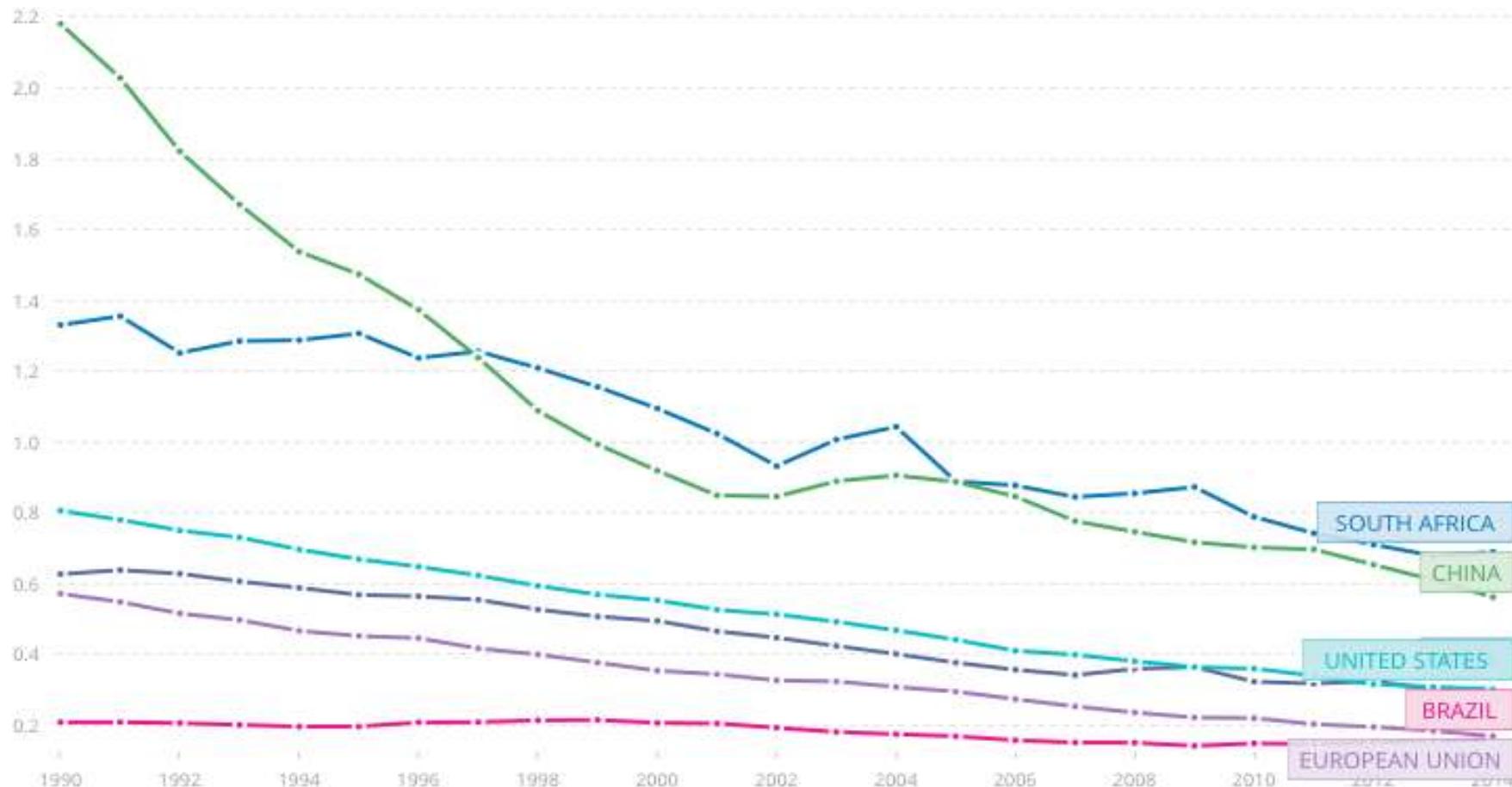
- On one of the emissions scenarios there are projected temperature increases over South Africa of up to around 4°C inland, and around 3°C nearer the coasts – there are consequences for these changes.
- Precipitation is projected to decrease over most of South Africa, particularly in the far west, with decreases of up to 20%
- Crop yields could decrease and patterns of agriculture will need to change.
- Floods, droughts, storm surges, more extreme weather events generally, incidence of disease, habitat and species loss, migration and human settlements implications.
- Disease vectors will shift, e.g., large parts of Gauteng are anticipated to become malaria areas.

(See: **Fuggle & Rabie (3<sup>rd</sup> edition), chapter 20, Climate Change**)

# Why does South Africa need to respond to climate change - mitigation

- The term 'mitigation' refers to actions that reduce anthropogenic greenhouse gas emissions, e.g., from industrial and power generation processes that rely on fossil fuels.
- South Africa:
  - has the highest greenhouse emissions on the African continent (by far)
  - within the global top 2%- emitters on a *per capita* emissions basis
  - economy is among the most carbon intense in the world, equivalent to the likes of highly industrialised economies like Japan.

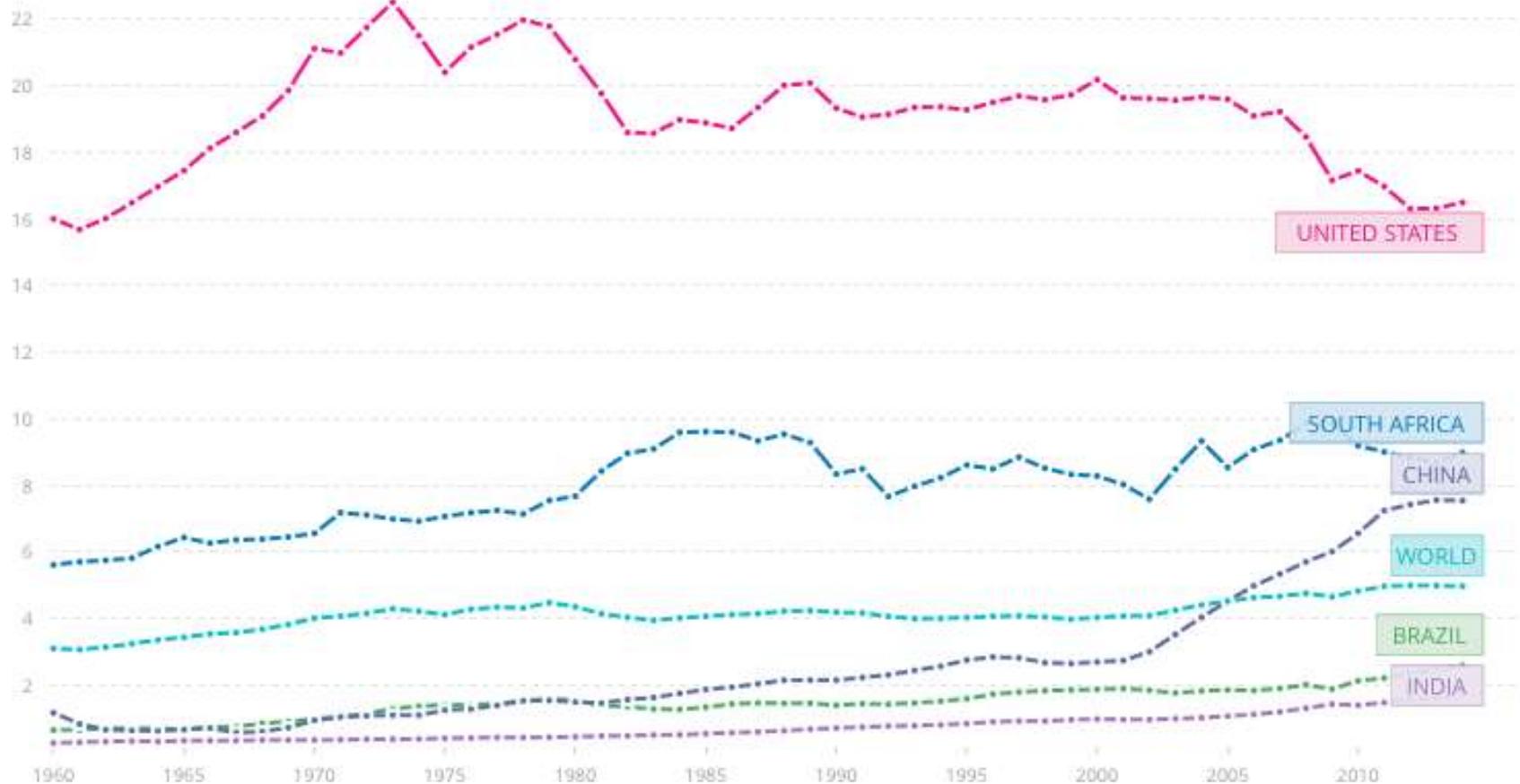
# Emissions Intensity - CO<sub>2</sub> emissions / kg per PPP \$ of GDP), (emissions per economic unit of output /efficiency) – World Bank



1990 - 2014



# CO2 emissions per capita



1960 - 2014



# Why does South Africa need to respond to climate change – adaptation (1)

- The term ‘adaptation’ refers to actions taken within systems to adapt to the anticipated impacts of climate change.
- Human systems – economies, institutions, political formations - are at risk from such impacts and will need to be adapted to take account of geophysical circumstances very different from those which have supported the rise of human civilisation.
- UNFCCC, Art 4 paragraphs 8 and 9 – vulnerability, resilience and adaptation.

# Why does South Africa need to respond to climate change – adaptation (2)

- While the costs of mitigation might be borne by industry – generally-speaking, the costs of adaptation will be over-and-above current economic capacities.
- Future benefits will flow from South Africa's participation in the international climate change legal regime, e.g., financial and in-kind support for adaptation actions, Loss & Damage, technology transfer and climate financing.

# Why does South Africa need to respond to climate change – investment and finance (1)

- The international climate change legal regime is working towards a low carbon and climate resilient future.
- This will impact investment & financial flows and the arrangements within financial systems.
- For domestic economies to remain relevant and competitive in a carbon-constrained future, they will need to take account of these changes.
- There are risks and opportunities from this evolution.
- We are currently at the beginning of a transition phase, the ultimate outcome of which will be to reset existing economy-wide norms and expectations.

# Why does South Africa need to respond to climate change – investment and finance (2)

- Business Risk - for domestic economies to remain relevant and competitive in a carbon-constrained future, they will need to do the same.
  - *Relevant*: products & services that support increasingly outmoded economic forms will become redundant, e.g., World Bank and new coal investment.
  - *Competitive*: economies that fail to take measures to decarbonise will become increasingly uncompetitive, e.g., Border Tax Adjustments under the WTO regime.
- Business Opportunity – approaches that accommodate a new-normal of business practice will have a competitive advantage:

# The International Regime

UNFCCC/Kyoto Protocol/*Paris Agreement*

Nationally  
Determined  
Contributions

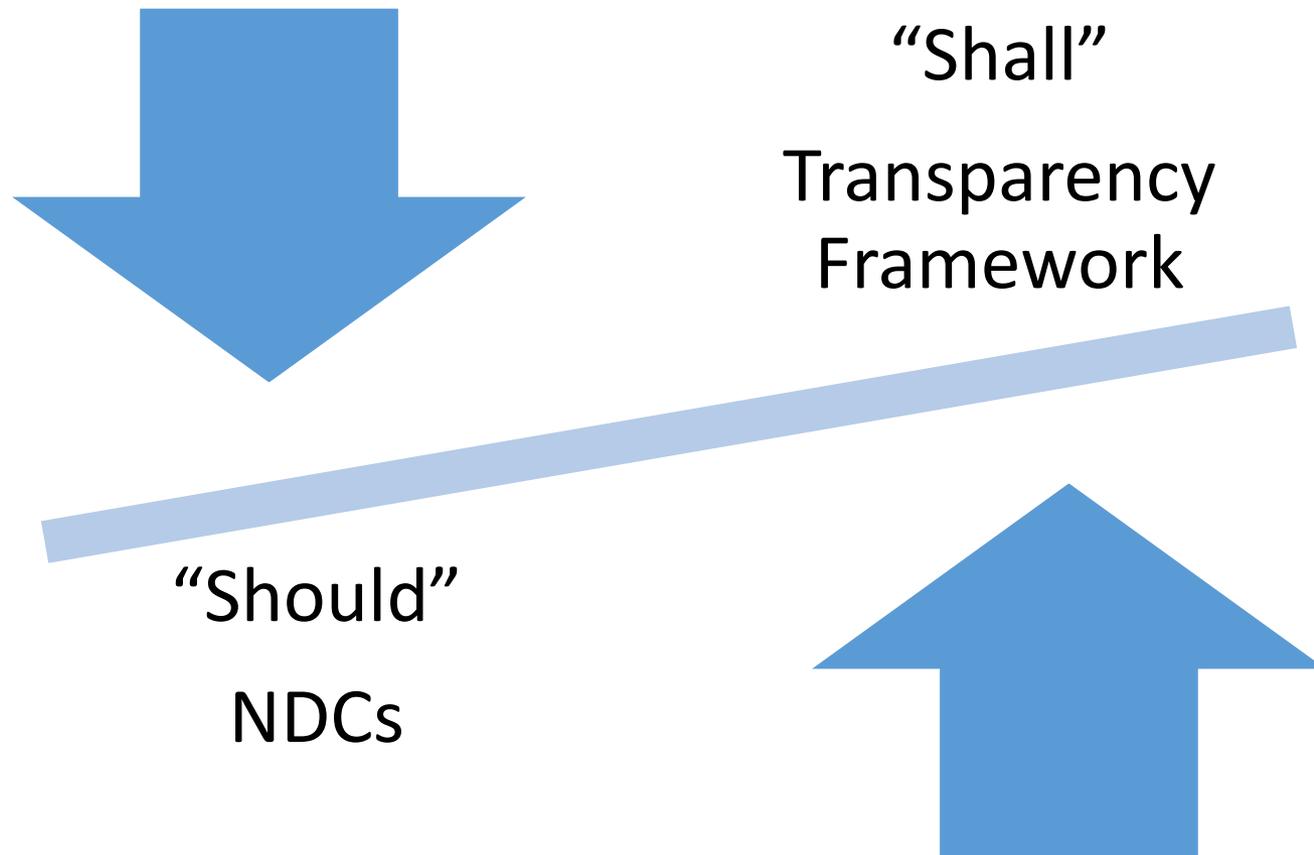
Domestic  
Laws

Year	Instrument	Mandate
1990	UN General Assembly Resolution A/RES/45/212	"...to establish a single intergovernmental negotiating process ... for the preparation... of an effective <u>framework convention</u> on climate change...". Result: UNFCCC - 1992 (opened for signature in Rio) and 1994 (comes into operation)
1995- COP1	Berlin Mandate	Strengthen UNFCCC "...through the adoption of a <u>protocol or another legal instrument</u> ...". Result: Kyoto Protocol – 1997 (opened for signature) and 2005 (February, comes into operation)
2007- COP13	Bali Action Plan	Achieve " <u>an agreed outcome</u> " and adopt a decision by COP15
2009- COP15	Copenhagen Accord	"The Conference of the Parties, <u>takes note of</u> the Accord of 18 December 2009", which provided a high-level political mandate for future negotiations – ultimately the origin of the Paris Agreement. (COP16 – progresses the negotiation mandate in the Accord in the form of the Cancun Agreements – developed in subsequent COPs)
2011- COP17	Durban Platform for Enhanced Action on Climate Change	the COP decided to "...launch a process to develop <u>a protocol, another legal instrument or an agreed outcome with legal force</u> under the Convention applicable to all Parties..." by COP21 (Negotiation mandate taken forward at COPs 18, 19 and 20)
2015- COP21	COP Decision + Annex (Paris Agreement)	Concludes the work of the Durban Platform and is an <u>international treaty</u> under the UNFCCC - came into operation in November 2016

Increasing developing country emissions / decreasing developed country ambition

Revival of ambition

# Paris Agreement - balance between prescriptive and voluntary (subject to verification)

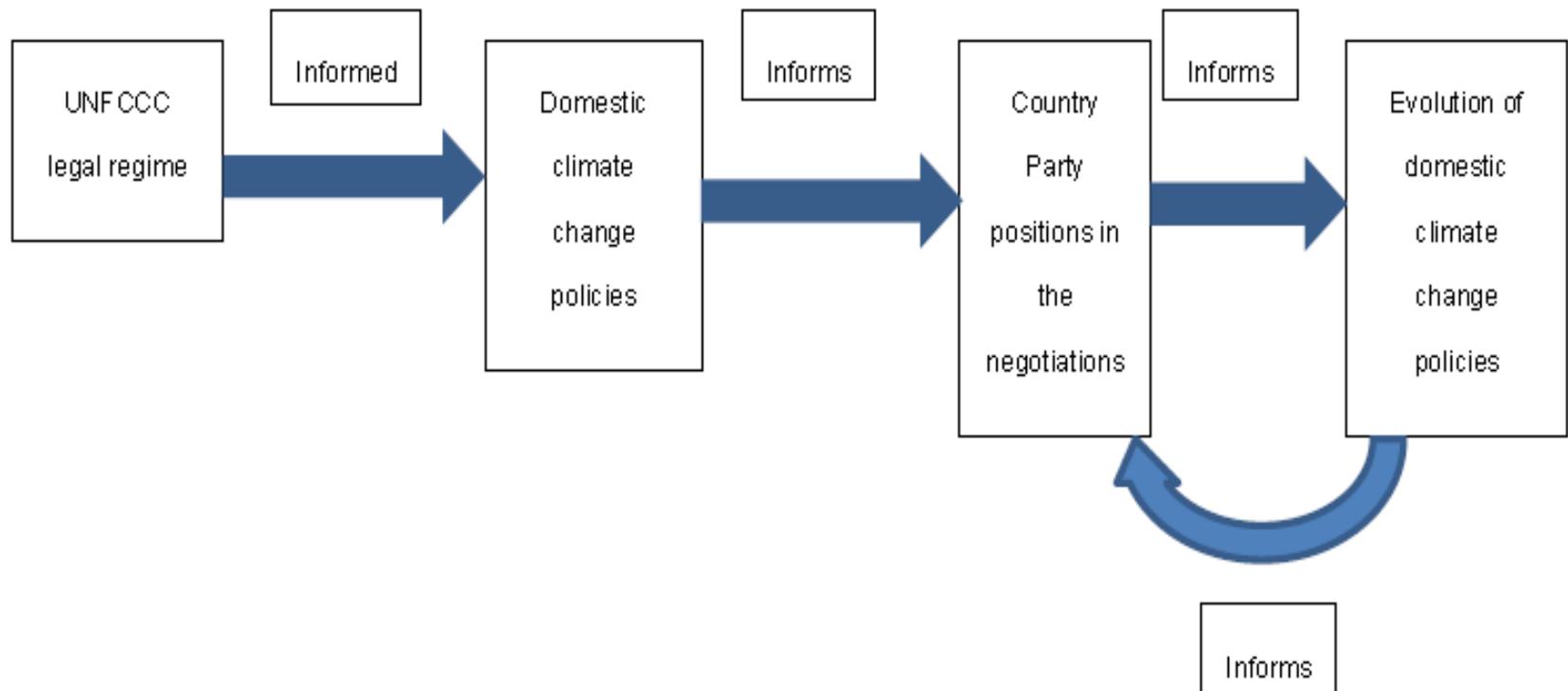


# Paris Agreement

- Now one component of a triangular international climate change legal regime, including the UN Framework Convention on Climate Change and Kyoto Protocol – the future of the regime.
- No more or less than what was possible to be agreed upon in light of the *status quo* of international geopolitics.
- *“Paris, as an agreement, has such broad acceptance and support around the world from countries of every stripe and region and Paris itself was seen as such a landmark - hard-fought, hard-won - deal that for the US to turn around and say ‘we are withdrawing from Paris’ would inevitably give the country a diplomatic black eye.”*

Todd Stern (Obama Administration Climate Change Envoy)

# International influence on domestic legal regimes



# Milestones in climate policy and regulatory development

- National Climate Change Response Strategy (September 2004)
- National Climate Change Conference (November 2005)
- Long Term Mitigation Strategy Scenarios (LTMS, 2006 and updated in 2008/10)
- **ANC Polokwane Declaration (December 2007)**
- Climate Change Policy Summit (March 2009)
- Green Economy Summit (May 2010)
- *National Climate Change Response Green Paper (November 2010)*
- **National Climate Change Response White Paper (November 2011)**
- Long Term Adaptation Scenarios (LTAS, 2013 and 2015)
- South African Intended Nationally Determined Contribution (2015) – now the **Nationally Determined Contribution** (NDC) since SA's ratification of the Agreement
- Carbon Tax Bills, 2015 and 2017
- Climate Change Bill, 2018

# Paris Agreement: Implications for SA

The Paris Agreement requires South Africa to:

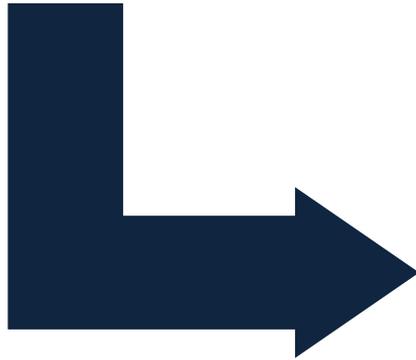
- **submit a Nationally Determined Contribution (NDC) every five years - (2015, 2025 and 2030)** (adaptation, mitigation and means of implementation).
- develop and scale-up **policies and measures (PAMs) to implement our NDC**, and to report on progress with these PAMs
- **account for our NDC** (the extent to which SA has met the goals of NDC), including any use of international market mechanisms;
- **submit biennial reports** to the UNFCCC on national circumstances, emissions, adaptation and other facets of climate change;
- submit regular **communications on adaptation**
- (encouraged) **to develop a long-term low-carbon development strategy.**

Long Term Mitigation Scenarios (LTMS) / absolute emissions reductions (superseded by the PPD)

**Development of mitigation policy - leading to legislation and regulation**

NCCRP – GHG emissions growth trajectory / carbon budget / Peak Plateau and Decline (PPD)

Five component mitigation policy

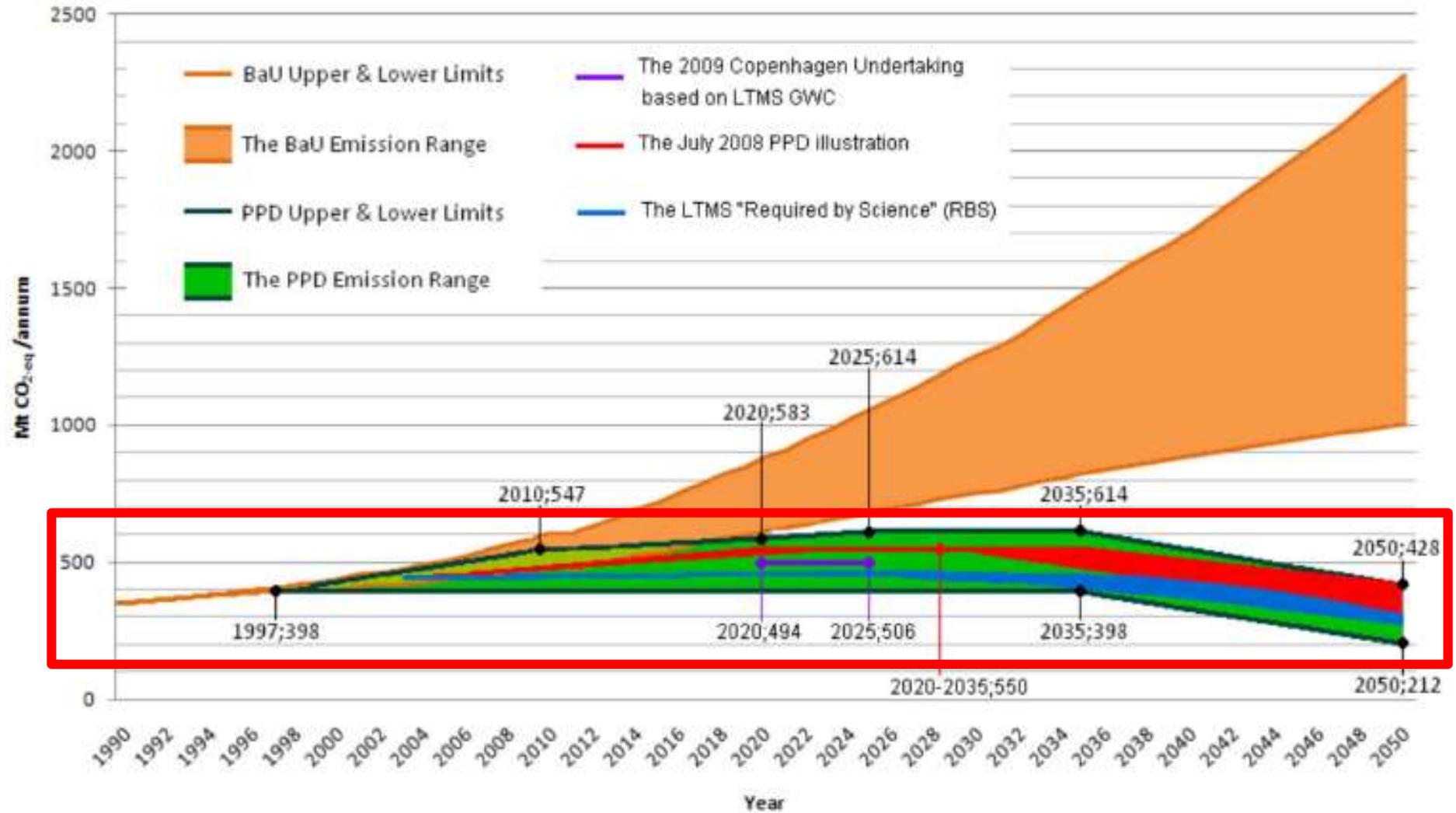


# South Africa's NDC: Mitigation

## Mitigation Commitments under the Paris Agreement:

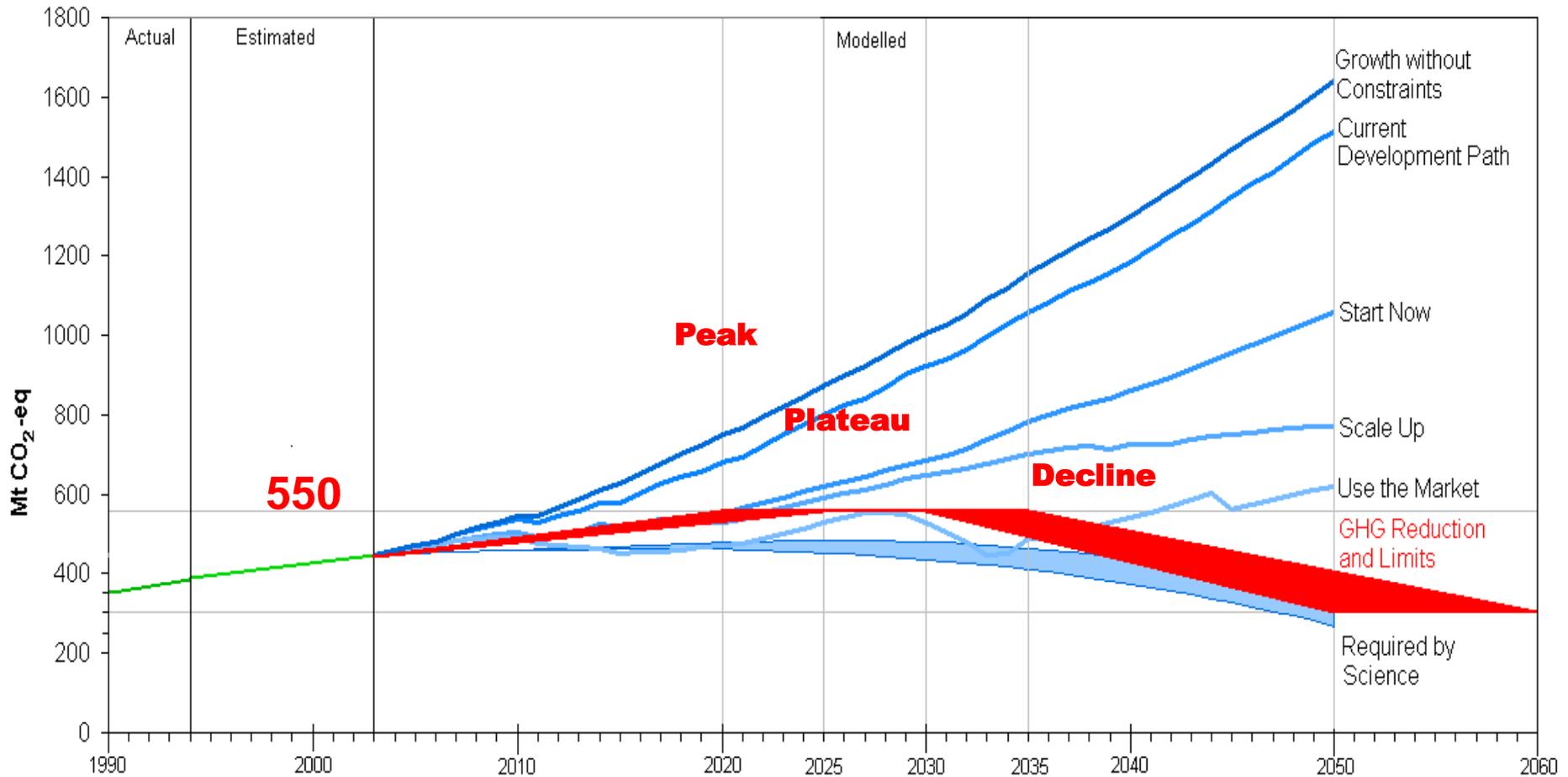
- Greenhouse gas emissions to **peak (2025), plateau (2025-2035) and decline (2035)**: expressed as **trajectory range** of 398 to 614 Mt CO<sub>2</sub> - eq
- Pre-2020 implementation provides the foundation for meeting the post 2020 commitments.
- Phase 1 of the emission reduction system (2016 – 2020), including:
  - **Mitigation potential analysis**
  - **Carbon budgets**
  - **Mitigation plans**
  - **GHG reporting system**
- Phase 2 of the emission reduction system: 2021 – 2025.

The desired South African climate change mitigation outcome - the "Peak, Plateau and Decline" (PPD) greenhouse gas emission trajectory – comparison with other popularised conceptions of PPD



# National Emissions Reduction Trajectory:

## Peak Plateau and Decline

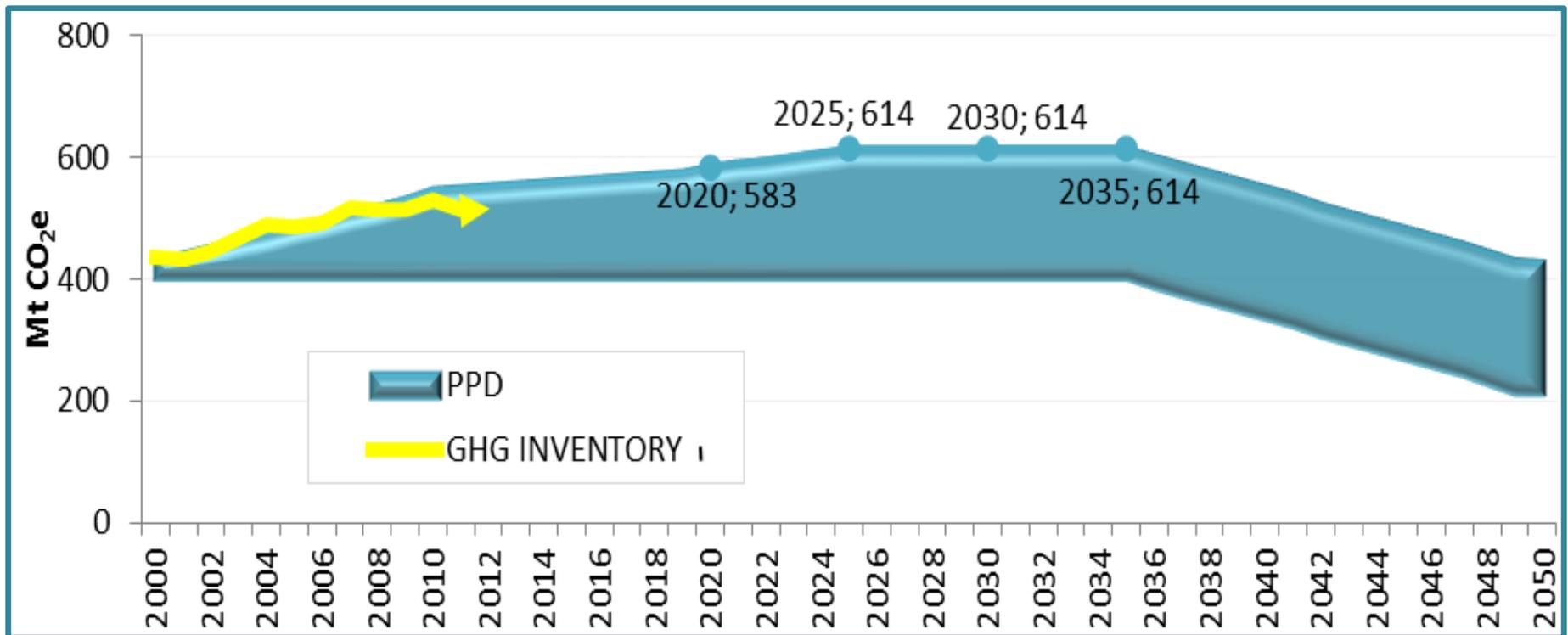


# Achieving the PPD

5<sup>th</sup> National GHG Inventory (2000-2012):

GHG emissions decreased slightly from 531 Mt CO<sub>2</sub>e in 2010 to 518.7 Mt CO<sub>2</sub>e in 2012

Current national emissions profile falls well within the PPD target trajectory range



# Post-2020 Mitigation Scheme

Instrument	Applies to	Comment
<b>National GHG Trajectory</b>	National Greenhouse Gas Emissions	Determined by DEA Minister, in consultation
<b>Sectoral Emissions Targets (SETs)</b> <b>Carbon Budgets (allocated by the DEA Minister)</b>	Government Departments  Emitting installations	Informed by Trajectory  Increasingly constrained /  Alignment with Carbon Tax?

# Post-2020 Mitigation Scheme

<b>Instrument</b>	<b>Applies to</b>	<b>Comment</b>
<b>Monitoring and Evaluation</b>	Emitting installations	National GHG Reporting Regulations – brought under Climate Change Bill
<b>Pollution Prevention Plans (evolve to become) GHG Mitigation Plans</b>	Emitting installations	<ul style="list-style-type: none"><li>• Declaration of GHGs as Priority Pollutants</li><li>• Pollution Prevention Plan Regulations</li></ul>
<b>Carbon Tax (Treasury) Compliance for Carbon Budgets?</b>	Identified activities – linked to GHG Reporting	December 2017 draft – anticipated for implementation by Q2-2019

# South Africa's NDC: Adaptation and Resilience

- Develop a **national adaptation strategy** and begin operationalization;
- **Consideration of climate change** into national, sub-national and sector policy framework
- Develop an **early warning, vulnerability and adaptation monitoring system** for key climate vulnerable sectors and geographic areas; (2020 to 2030)
- Development of a **vulnerability assessment and adaptation needs framework** by 2020;
- Communication of **past investments** in adaptation for education and awareness as well as for international recognition;
- Build the necessary **institutional capacity** for climate change response planning and implementation (2020 to 2030);

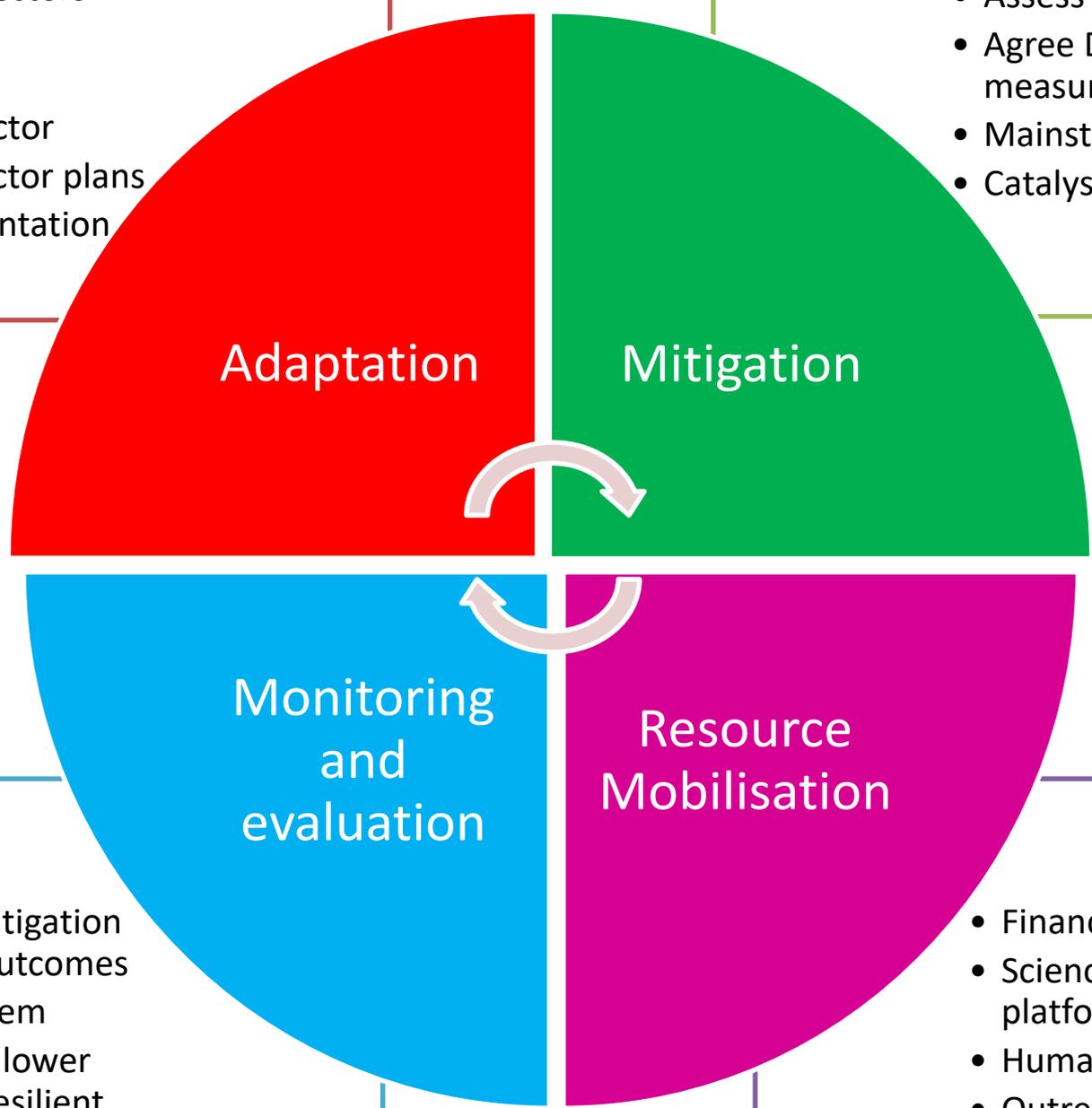
# Long Term Adaptation Scenarios

- To develop a consensus view of climate change trends and projections in order to inform key decisions in future development and adaptation planning.
- Seven technical reports:
  - Report on the climate change implications for the SADC,
  - Report on information and early warning systems for disaster risk management.
  - Report on the climate change implications for disaster risk reduction and management sector
  - Report assessing implications on urban rural, and coastal human settlements.
  - Report containing an economic analysis of adaptation and food security in South Africa
  - Report with an integrated economic and biophysics analysis of development and adaptation scenarios under future climates up until 2050.
  - Report regarding South Africa's Long-Term Adaptation Scenarios.

- Assess risk and impact scenarios in key sectors
- Assess costs
- Agree adaptation responses per sector
- Mainstream in sector plans
- Catalyse implementation

- Assess mitigation potential
- Assess costs / benefits
- Agree DEROs and mix of measures to achieve
- Mainstream in sector plans
- Catalyse implementation

DEA,  
November  
2012,  
Climate  
Change & Air  
Quality  
Directorate



Adaptation

Mitigation

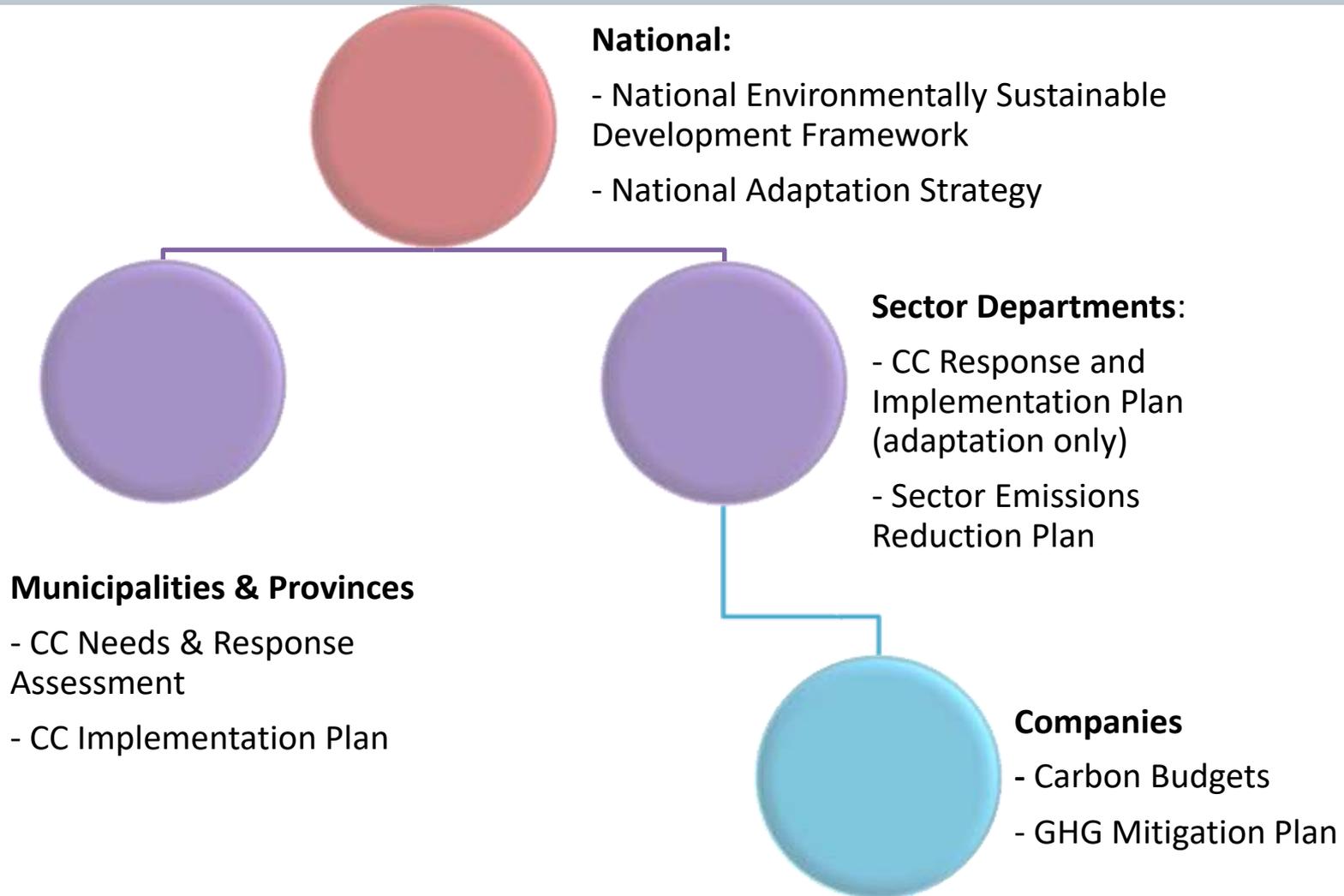
Monitoring  
and  
evaluation

Resource  
Mobilisation

- Assess current mitigation and adaptation outcomes
- Design M&E system
- Track progress to lower carbon, climate resilient society

- Financial resources
- Science and technology platform
- Human resources
- Outreach and communication

# Climate Change Bill: Overview



# General implications of the legal scheme

- **Carbon intensive industries** will face increasing pressure to:
  - Comply with company level carbon budgets
  - Comply with monitoring and reporting regulations
  - Assimilate to the financial implications of the carbon tax
- **Benefits:**
  - lower carbon and more resilient economy and society
  - Long term international competitiveness
  - Certainty on the legal framework, compliance with international obligations
- **Risks:**
  - Inadequate facilitated transition to greener industries and jobs
  - Stranded assets
  - Inadequate revenue recycling
  - Possible short term international competitiveness challenges

# Benefits / Risks

- **Benefits:**
  - Lower carbon and more resilient economy and society
  - Long term international competitiveness
  - Certainty on the legal framework, compliance with international obligations
- **Risks:**
  - Reputational risk for non-compliant industries
  - Inadequate facilitated transition to greener industries and jobs
  - Stranded assets and consequent debt servicing considerations
  - Inadequate revenue recycling (carbon tax)
  - International competitiveness challenges



# South Africa's **National Climate Change Response**

Accelerating the transition to a climate-resilient and lower carbon economy and society

Climate Change Bill, 2018



# Legal form

Analysis and consultation on the legal form concluded that the most desirable option is the development of **framework legislation**; Reasons being:

- requires **co-ordinated action** across the social, economic and environmental **sectors; and across spheres**
- must therefore be **overarching**, and create the necessary **framework** to enable co-ordinated planning and action
- framework legislation would have **greater gravitas** within the scheme of multiple legislative instruments
- provides the necessary cross-cutting **policy certainty** to business and industry sector, to make investment decisions that result in GHG reductions and climate resilience
- provides **single legal reference** to determine obligations rather having to refer to multiple statutes

In addition, and in consultation with the relevant sector departments, certain legal instruments, under the jurisdiction of national departments, may benefit from **amendments that enable the mainstreaming of climate change consideration** into existing planning and decision-making processes. Therefore, the **framework legislation should be accompanied by a schedule**, that outlines suggested amendments

# Overview of Climate Change Bill

## STRUCTURE

- Chapter 1: interpretation, objects and application
- Chapter 2: policy alignment and institutional arrangements
- Chapter 3: climate change response: provinces and municipalities
- Chapter 4: adaptation to the impacts of climate change
- Chapter 5: greenhouse gas emissions and removals
- Chapter 6: general matters and transitional arrangements

# Preamble

## Key elements:

- Constitutional right to an environment not harmful to health and well-being,
- SA is an emitter of greenhouse gases;
- SA is vulnerable to the impacts of climate change; potential to undermine many of the advances made in meeting SA's developmental goals,
- SA has committed, internationally, to develop and implement an effective national climate change response
- An effective national climate change response will support a just transition to a climate-resilient, equitable and internationally competitive lower-carbon economy and society, that takes into account the economic, employment and societal risks and opportunities that are expected to arise as a consequence of implementing the response;
- Responding to climate change raises unique challenges to effective governance - requires a nationally-driven, coordinated and cooperative legal and administrative response that acknowledges centrality of provincial and municipal spheres

# Objects

- To provide for the **co-ordinated and integrated response** to climate change and its impacts by all spheres of government in accordance with the **principles of co-operative governance**, as well as designated /prescribed entities.
- To provide for the **effective management of inevitable climate change impacts** through enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to building social, economic, and environmental resilience and an adequate national adaptation response in the context of the global climate change response;
- **Make a fair contribution to the global effort to stabilise greenhouse gas (GHG) concentrations** in the atmosphere at a level that avoids dangerous anthropogenic interference with the climate system within a timeframe that enables economic, social and environmental development to proceed in a sustainable manner.

# Principles

The interpretation and application must be guided by:

- the national environmental management principles set out in section 2 of the National Environmental Management Act;
- the principle that the climate system should be protected for the benefit of present and future generations of humankind;
- the principle that acknowledges international equity and each country's common but differentiated responsibilities and respective capabilities, in light of different national circumstances; and
- the need to ensure a just transition for all towards an environmentally sustainable economy.

# Chapter 2: Policy Alignment and Institutional Arrangements

- **National Framework for achieving the objects of the legislation**
  - Sets out mechanisms, systems and procedures to achieve the objects
  - May assign and delineate responsibilities for the implementation of legislation among spheres of government and organs of state
- **Alignment of laws and policies:** every organ of state must co-ordinate and harmonise policies, plans and programmes and decisions to ensure:
  - risks of climate change impacts and associated vulnerabilities are taken into consideration; and
  - to give effect to national adaptation and mitigation objectives set out in this legislation
- **Institutional arrangements** for the purposes of achieving the objects
  - Establishment of Ministerial Committee on Climate Change
  - Establishment of a Provincial Committee on Climate Change – as part of existing provincial intergovernmental forums (Intergovernmental Relations Framework Act, 2005)

# Chapter 3: Climate Change Response: Provinces and municipalities

MECs responsible for the environment, and Mayors must:

- undertake a climate change needs and response assessment for their provinces and municipalities; reviewed at least once every five years; and,
- develop and implement a climate change response implementation plan which shall be informed by the assessments (above) and, on a 5-yearly basis, review and publish provincial and/or municipal climate change response implementation plans
- Implementation Plans to include:
  - Cover both adaptation and mitigation
  - Take account of risks and vulnerabilities
  - All priority sectors
  - Align with national sectors
- Climate change response implementation plans must guide provincial and municipal planning processes
- The preparation of climate change response implementation plan may take into consideration existing plans which could be amended to include climate change response

# Chapter 4: National Adaptation to the Impacts of Climate Change

## National Adaptation Planning

The Minister must in consultation with sector departments, provinces and municipalities:

- within one year of the coming into operation of this Act, set out **national adaptation objectives** that will guide the Republic's adaptation to climate change impacts
- publish **indicators for measuring progress** towards achieving the national adaptation objectives

Climate change adaptation within the Republic must be managed in a **coherent and co-ordinated manner and in accordance with a National Adaptation Strategy.**

National Adaptation Strategy aimed at achieving the following:

- Reduction in vulnerability of society, economy and environment;
- Minimise the risks and vulnerabilities;
- Achieve national adaptation objectives
- Provide policy direction for adaptation

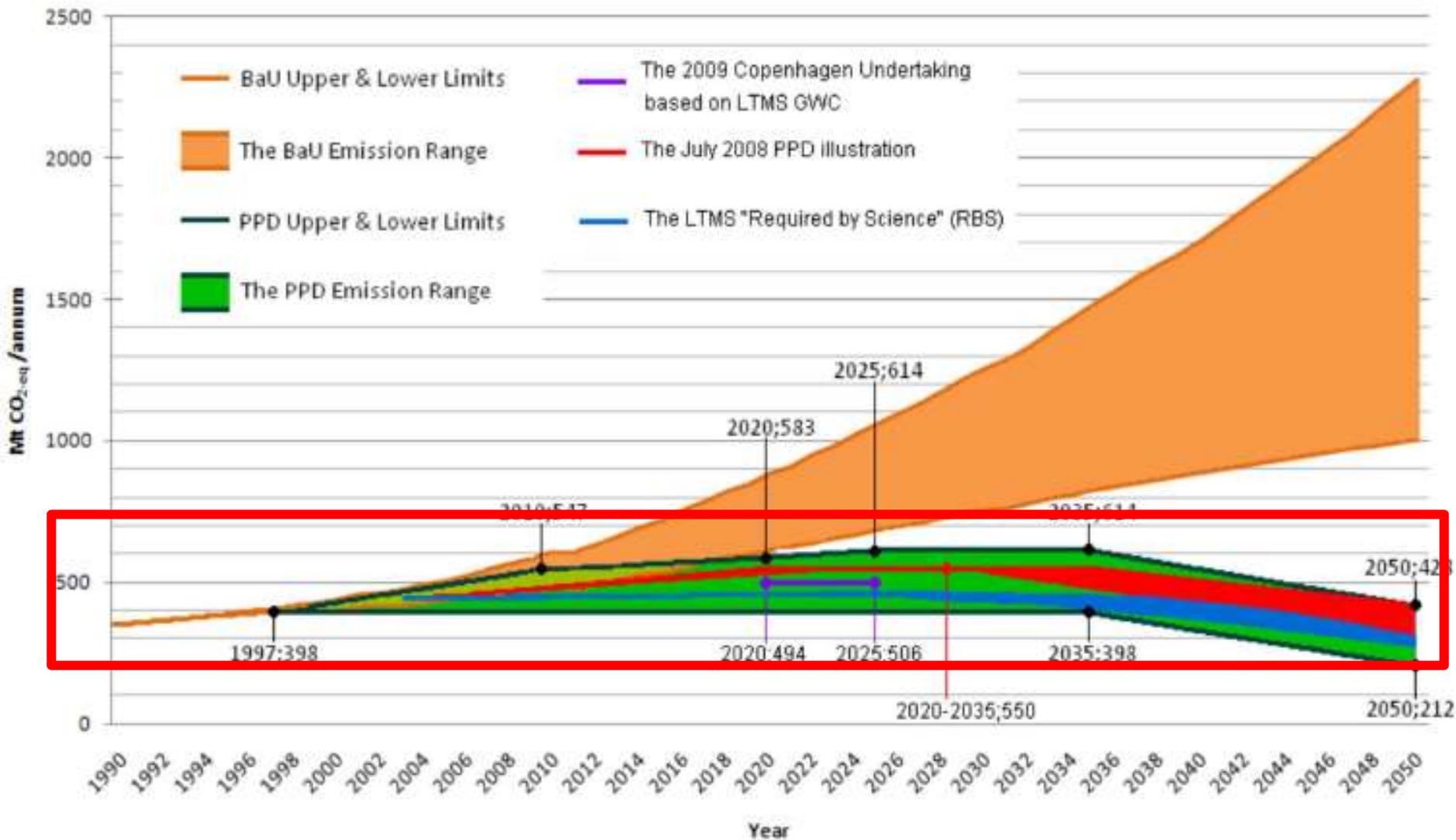
# Chapter 4: National Adaptation to the Impacts of Climate Change *cont...*

**Ministers responsible for sector departments, and the associated state entities must;**

- Identify and map, within their sphere of operations, climate change risks and vulnerabilities; and
- identify and/or establish measures and mechanisms to manage and implement the required response
- Within 2 years of the coming into operation of this Act develop and implement a climate change response implementation plan which shall be informed by the assessments undertaken
- Submit the climate change response implementation plans to the Ministerial Committee on Climate Change for consideration and adoption
- Submit, every 5 years, reports on the progress made with implementation of the plan

The Minister must collate, compile and synthesise information relevant to the achievement of the national adaptation objectives and the objectives of this Act, and thereafter **publish a synthesis Adaptation Report** – which will also be used for international reporting

### The desired South African climate change mitigation outcome - the "Peak, Plateau and Decline" (PPD) greenhouse gas emission trajectory – comparison with other popularised conceptions of PPD



# Chapter 5: GHG Emissions and Removals

- **GHG emissions trajectory:** The Minister must, in consultation with the Ministerial Committee on Climate Change (MCCC), determine a national GHG emissions trajectory which binds all organs of state; further set out content and process, including 5 year review
- **Sectoral emissions targets:**
  - The Minister must, in consultation with the MCCC, on a 5 yearly basis, determine **sectoral emissions targets (SETs)**;
  - The Minister responsible for each sector and subsector must prepare and submit a **sector emissions reduction plan (SERP)**, providing for how the relevant sector/sub-sector will meet its SET
  - SETs:
    - Cost and benefits
    - Best available science
    - Best available mitigation options
    - Consistent with national trajectory

# Chapter 5: GHG Emissions and Removals *cont...*

**Carbon budgets:** The Minister must:

- determine a GHG emissions threshold for determining carbon budgets
- allocate a carbon budget to a specified person, for a period not less than 3 successive 5 year periods
- require a GHG mitigation plan that describes mitigation actions to meet the carbon budget

**A person to whom a carbon budget has been allocated is obliged to:**

- Comply with their carbon budget
- Implement their approved GHG mitigation plans
- Monitor annual GHG emissions
- Report on progress towards compliance with their carbon budgets

**Phase down and phase out of synthetic GHG emissions and declaration: The Minister:**

- Must develop a plan to phase down or phase out the use of synthetic GHGs
- Minimum requirements
- May declare further synthetic GHGs

# Chapter 6: General matters

## **Regulations that will promote the effective implementation of the national climate change response policy, including:**

- Determination, review, amendment and cancellation of a carbon budget allocation
- Phasing down / out of synthetic GHGs
- Incentives and disincentives to encourage a change in behavior towards generation of GHGs

## **Regulations that will promote effective monitoring evaluation and assessment of national progress on climate change adaptation matters**

- Development and implementation of climate change needs and response assessments and implementation plans
- Performance against national adaptation objectives and indicators
- Consequences for the failure to report in the prescribed manner

## **Regulations that will promote effective monitoring, evaluation and assessment of national progress on climate change matters**

- Information on direct and indirect GHG emissions
- Information necessary to determine climate change vulnerability and to foster resilience

# Thank you!

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# GHG Emission Reporting Regulations

- GN 275 of 3 April 2017: creates a single national reporting system; for a GHG National Inventory; to report under UNFCCC and inform policy and law
- Category A Listed Activities
- Category B : Organs of state/research & academic institutions
- Category A must have registered on the NAEIS by 3 May 2017
- On 31 March annually must submit GHG emissions data
- Reporting boundaries based on “operational control”
- Relies on tiering for reporting methodology

# Pollution Prevention Plan Regulations

- GN 625 of 21 July 2017
- Sets out requirements for Pollution Prevention Plans
- Must contain monitoring methodology and measures to mitigate GHGs.
- Must submit the plan for approval. The Minister can reject the plan and require an amendment.
- It is an offence to not submit a plan or to report on it.
- It is *not* an offence to fail to comply with the undertakings in a Pollution Prevention Plan (this will change under the CC Bill).
- Under the Bill, these will become the Greenhouse Mitigation Plans.

# Carbon Tax Bill

- Likely implementation date – January or April 2019
- headline tax rate of R120 per ton CO<sub>2</sub>e.
- Schedule 2 lists liable entities, typically a 10MW threshold.
- Levied on GHG emissions from fuel combustion, industrial processes and fugitive emissions.
  - Basic tax-free allowance of 60%
  - Tax-free allowance for process emissions of 10%
  - Tax-free allowance for fugitive emissions of 10%
  - Tax-free allowance for trade-exposed sectors of up to 10%
  - Tax-free allowance for above average performance of up to 5%
  - Tax-free allowance for companies with a carbon budget of 5%
  - Carbon offset allowance capped at 5% or 10%
- tax incentives and revenue recycling measures
- Two phases. Designed to be revenue neutral in first phase
- First phase: a credit for (or reduction in) the electricity generation levy and the renewable electricity premium (built into the current price of electricity)

# Transitional Risk

Transition risks in the financial sector are linked to changes in the real sector, triggered by:

- **Mandatory or voluntary changes** in emission control policies that companies need to comply with, possibly entailing additional costs;
- **Declining profitability and cash flows** of projects underwritten by financial institutions resulting from **higher capital and operating expenditures** required to mitigate and adapt to climate change;
- **Low-carbon technologies** and innovations that render previous technologies or products financed by financial institutions obsolete; and,
- a **shift by consumers** away from high-carbon emitting products