



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

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

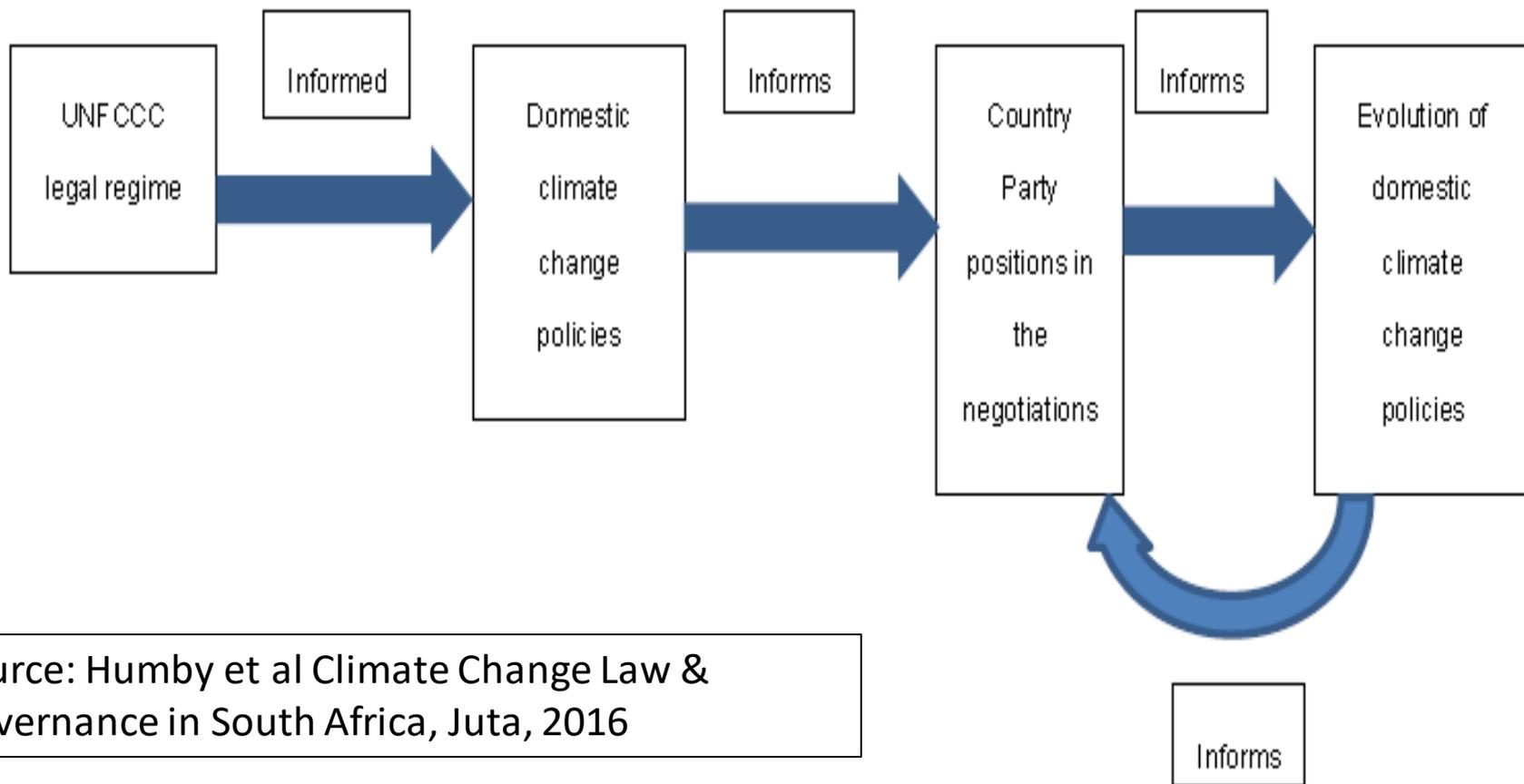
National Climate Change Bill – Implications for Industry

NACA Legal and Technical Event
Shepstone & Wylie, 7 August 2018
Andrew Gilder, Climate Legal

www.climatelegal.co.za



Climate change policy evolution



Source: Humby et al Climate Change Law & Governance in South Africa, Juta, 2016

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 framework convention 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 protocol or another legal instrument ...". Result: Kyoto Protocol – 1997 (opened for signature) and 2005 (February, comes into operation)
2007- COP13	Bali Action Plan	Achieve " an agreed outcome " and adopt a decision by COP15
2009- COP15	Copenhagen Accord	"The Conference of the Parties, takes note of 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 a protocol, another legal instrument or an agreed outcome with legal force 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 international treaty under the UNFCCC - came into operation in November 2016

Increasing developing country emissions / decreasing developed country ambition

Revival of ambition



Milestones in policy evolution

- 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



National Climate Change Bill, 2018

Comments due by 8 August 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

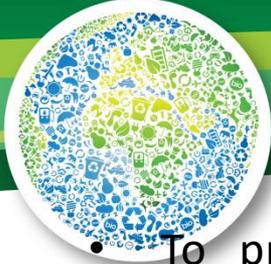
- Chapter 1: interpretation, objects and application
- Chapter 2: policy alignment and institutional arrangements
- Chapter 3: climate change response: provinces and municipalities
- Chapter 4: adaptation to the impacts of climate change
- Chapter 5: greenhouse gas emissions and removals
- Chapter 6: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



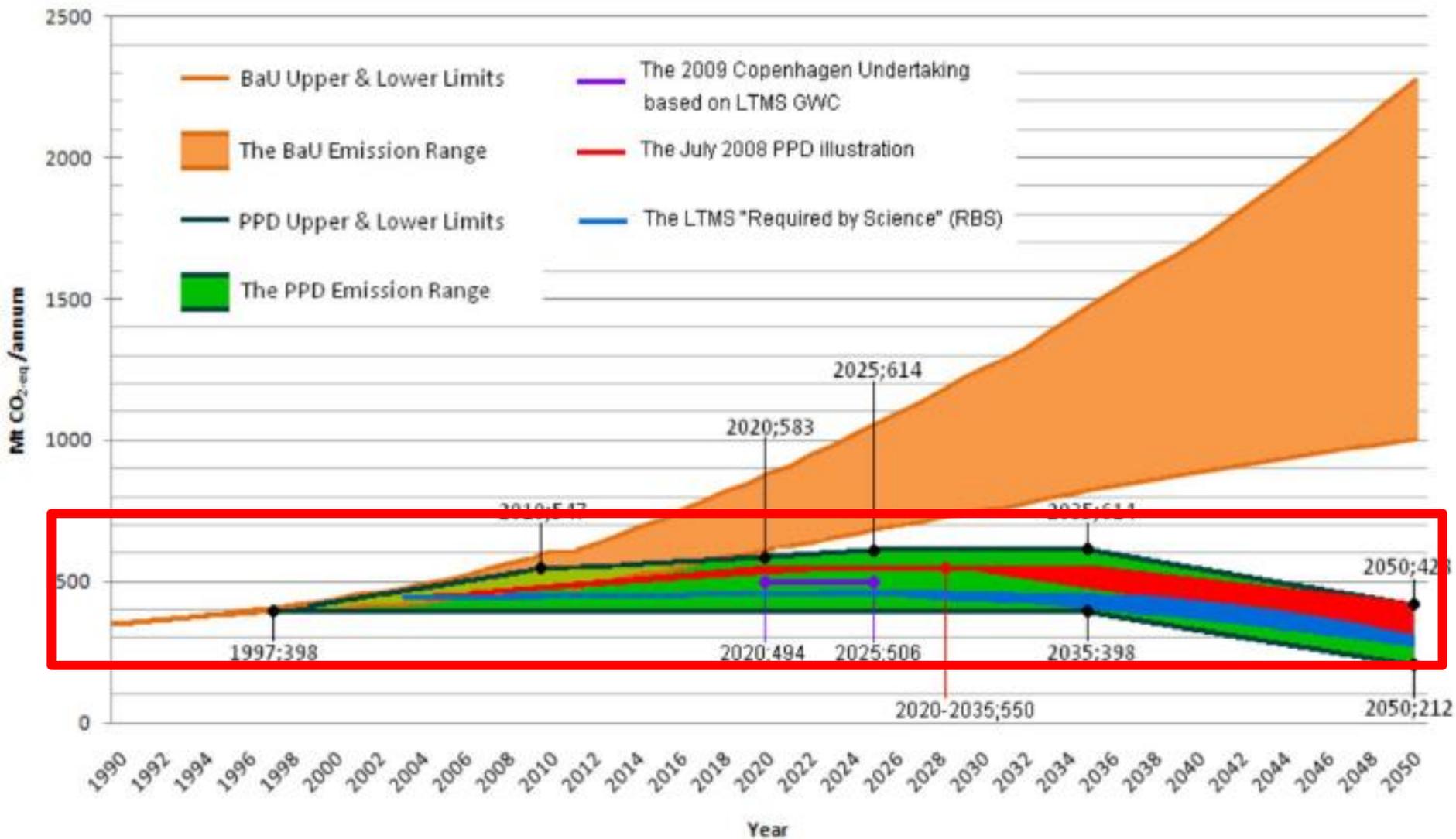
Chapter 4: National Adaptation to the Impacts of Climate Change *cont...*

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

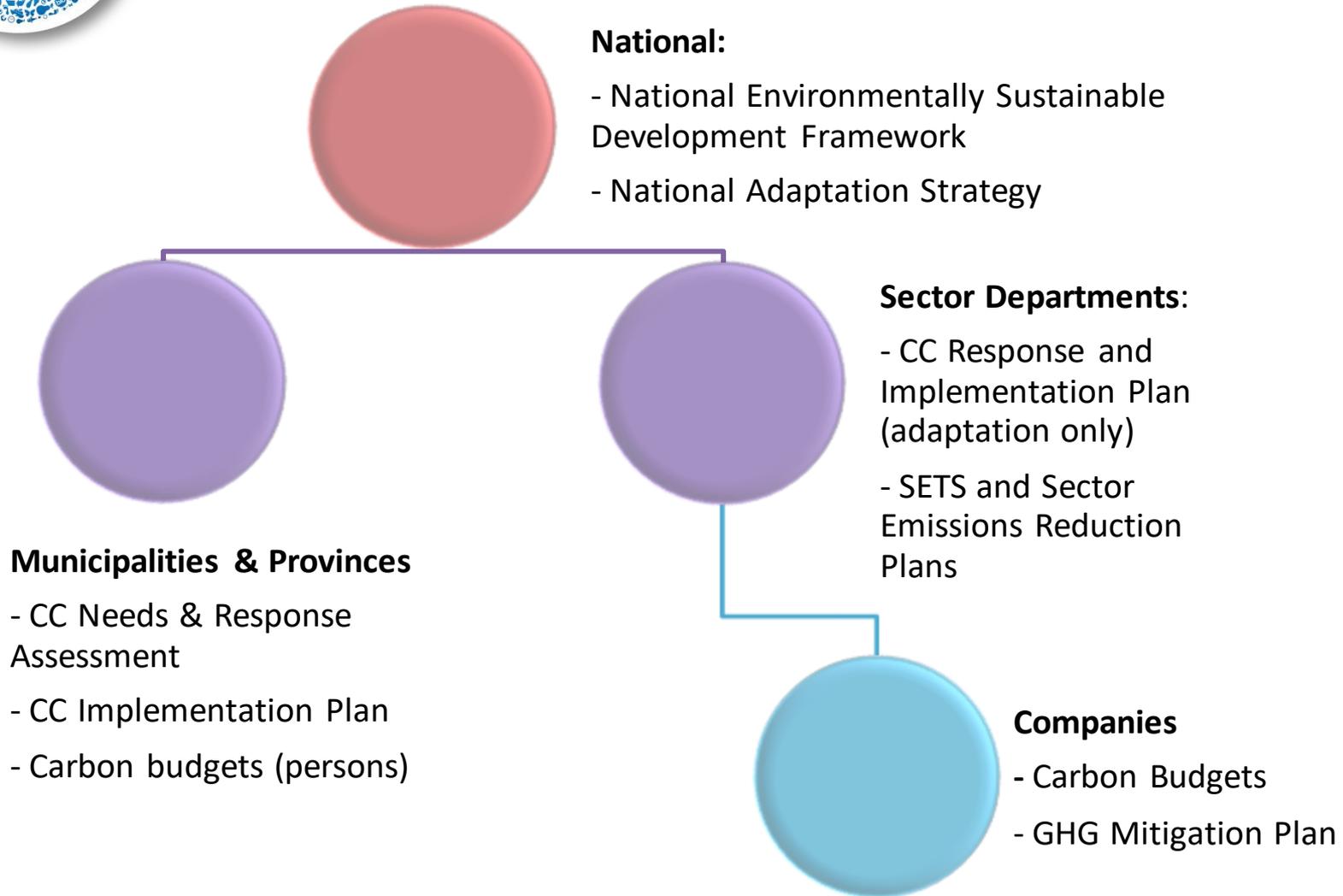
- Development and implementation of climate change needs and response assessments and implementation plans
- Performance against national adaptation objectives and indicators
- Consequences for the failure to report in the prescribed manner

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

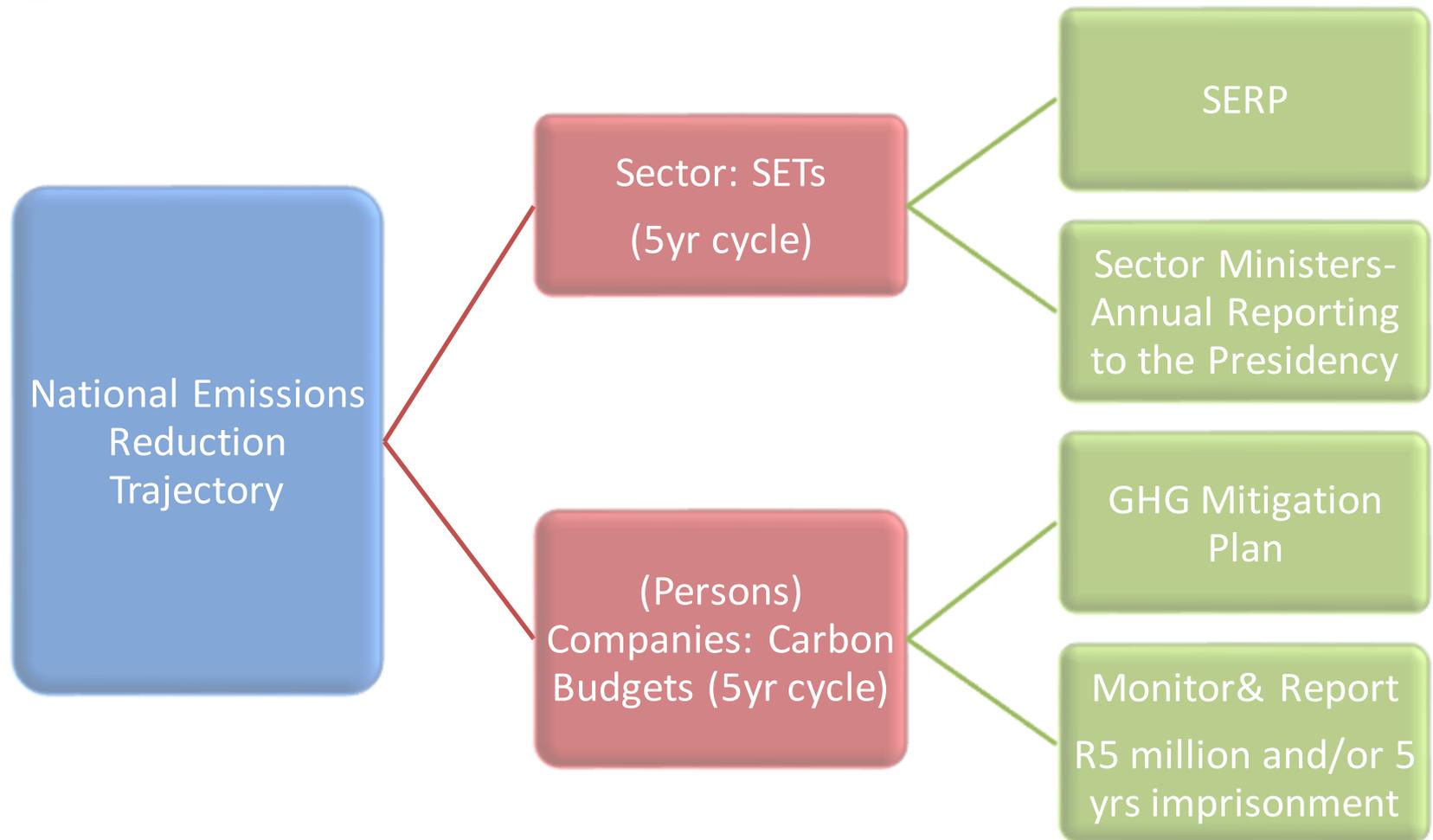


Climate Change Bill: Overview





Climate Change Bill- Mitigation



Post-2020 Mitigation Scheme

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

Post-2020 Mitigation Scheme

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



Implications for business (1)

- **Carbon intensive industries** will face increasing pressure to:
 - Comply with increasingly demanding company level carbon budgets >> emissions constraints
 - Comply with monitoring and reporting regulations
 - Assimilate to the financial implications of the carbon tax
 - Plan strategically to take mitigation commitments into account in the long term
 - Diversify asset portfolios and productive areas of business



Implications for business (2)

- **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



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