To: The Director-General: Department of Forestry, Fisheries and the Environment

Attention: Mr Mkhuthazi Steleki

13 December 2024

Dear Mr Mkhuthazi Steleki,

This serves to record our comments on the Draft Article 6 Framework for the Republic of South Africa in terms of Article 6 of the Paris Agreement published for public comment on the 22nd November 2024, by the Department of Forestry, Fisheries and the Environment.

We submit these comments on behalf of, and with endorsements from, the following civil society organizations

Southern African Faith Communities Environment Institute (SAFCEI)
Natural Justice
Centre for Environmental Rights (CER)
The Green Connection
groundWork (gW)
Just Share
Project 90 by 2030
Pan African Climate Justice Alliance (PACJA)

Ensuring Community Rights and Safeguards in Climate Action: Addressing Gaps in the Draft Framework on Article 6

Civil Society comments on Draft South African Framework on Article 6

Background

This year will be the hottest year on record, and the first year we have exceeded 1.5 degrees of global average warming since pre-industrial levels. We cannot emit any more greenhouse gases without worsening the climate crisis. From flooding in Eastern Cape and KwaZulu-Natal, to droughts in Gauteng and other parts of the country, flash floods in Spain, to hurricanes in Southern USA, the climate crisis is here and it is urgent that we mobilise efforts to address it. Carbon markets legitimise the continuing of an emission intensive development path, under the false assumption that we can effectively capture these emissions through geoengineering technologies and carbon offsets[1]. Carbon markets are not the solution to the climate crisis and, given its track record (see annexure 2), may worsen vulnerability to climate impacts.

Our engagement with the Framework and carbon market issues in general, is not to be seen as detracting from our fundamental rejection of carbon markets as an effective climate change response mechanism. We acknowledge that they are a reality at this point in time, and engage from the perspective that so long as they do exist, their governance must be as effective and optimal as possible.

We note the passing of Article 6 of the Paris Agreement at COP 29 at Baku. We would like to reiterate that participation in carbon markets is voluntary, and would strongly urge the government to take a stronger stance against them in South Africa, given their flawed logic around mobilising climate finance, climate mitigation action and history of environmental justice abuses and human rights abuses (see annexures 1 and 2). More specifically, civil society members in South Africa have noted, with concern, that carbon markets are not a replacement for climate finance that the developed countries are obligated to deliver to developing countries. Moreover, there is extensive evidence that carbon markets do not replace climate mitigation and that developed countries should not use elements of Article 6 to reduce their mitigation ambition.

Given the lack of transparency at an international scale regarding carbon offsetting (see annexures), it is crucial we tighten gaps at a local level to develop a robust framework.
If South Africa continues to participate in carbon markets despite the wealth of evidence discrediting it, we must have a robust national framework to preempt and protect against the failures of the Clean Development Mechanism (CDM) and Voluntary Carbon Markets, which have been mired in controversy, with poor transparency, double counting of carbon credits, human rights abuses, and land grabs (see annexure 2).

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[1] Cullenward, D., Badgley, G., & Chay, F. (2023). Carbon offsets are incompatible with the Paris Agreement. *One Earth*, *6*(9), 1085-1088.

The draft Article 6 framework, published by the Department of Environment, Forestry and Fisheries (DFFE), outlines South Africa's strategy for implementing cooperative mechanisms under the Paris Agreement. While the framework intends to align South Africa's climate goals with international commitments, it raises serious concerns for example: its impact on indigenous peoples, local communities, and the broader principles of climate justice.

General Comments

1. Carbon removal technologies are ineffective. Removals that rely on natural ecosystems' carbon fixing abilities are reversible meaning that all carbon captured can also be accidentally re-emitted, while industrial technologies for carbon removal are resource intensive, costly and not yet demonstrated as feasible at scale (annexure 1). The framework is unclear how they will ensure additionality, address risks of reversibility of carbon capture, or ensure a cautionary approach to carbon removals as suggested by the latest science.
2. The Designated National Authority in the framework is referenced as the DMRE (because it was under the CDM) but the Designated Focal Point is the DFFE and it is the DFFE that is legally mandated under the Paris Agreement, which article 6 falls under. We propose the DNA must be moved to DFFE, and highlight that this is an opportune time given that DMRE is potentially being split under the new government, and there is a review for the system of accreditation under the carbon tax planned.
3. Gold standard and other voluntary carbon credit mechanisms (mentioned as the standard to ensure environmental integrity in the draft framework) have no accountability or government oversight- and thus no way of ensuring that these are going to be effective. A recent study in Nature Communications found that of nearly 1 billion credits issued under the CDM and VCM that only 16% are likely to represent a full tonne of CO2 reduction[2]. Given the lack of transparency at an international scale regarding carbon offsetting (see annexures), it is crucial we tighten gaps at a local level to develop a robust framework.
4. The Framework needs much stronger environmental and social safeguards given the long history of human rights abuses and environmental issues that were associated with the CDM and voluntary carbon markets. It is unclear how the SA framework and carbon market will demonstrate to the Subsidiary body "The application of robust, social and environmental safeguards;" as per para 24 a (x) of annex of decision 3/CMA 3.
5. Currently the framework explicitly says, in its "Rainbow list", that it does not discriminate against the types of carbon offset technologies/approaches used, which is a problem because there are many dangerous and destructive geoengineering and energy technologies that have been marketed as offsetting carbon yet cannot actually deliver on their mitigation ambition in real terms, and may cause wide scale socio-economic and

[2] Probst, B.S., Toetzke, M., Kontoleon, A. et al. Systematic assessment of the achieved emission reductions of carbon crediting projects. Nat Commun 15, 9562 (2024). https://doi.org/10.1038/s41467-024-53645-z

environmental destruction (see annexure 1). It also contradicts the carbon offsets regulation cited in the framework already, which excludes certain project types (some renewable energy projects, as well as projects regarding HFC-23, N2O from adipic acid production, nuclear energy, geological CCS, and temporary credits from the CDM). More detailed review and guidelines are necessary, especially given scientific evidence suggesting a cautious approach.

6. Carbon markets should not be seen as climate finance but rather as a distraction from providing no-strings-attached grant financing for climate action, and another approach for business as usual to continue unchecked.
7. Our existing land sinks in South Africa are accounting for current emissions-we cannot afford to trade their carbon fixing abilities. Estimates for the potential for trees to absorb carbon have historically been overestimated as much as 5 times[3].
8. When it comes to the reliance or use of external standards to determine the nature of carbon credit programming for the purposes of facilitating the processing of transactions, it must be pointed out that the framework's dependence on external carbon standards could compromise the autonomy and effectiveness of South Africa's climate initiatives as outlined in the legal policy context. By entrusting third-party carbon programs, the governance and strategic direction of South Africa's national climate responses may inadvertently shift to foreign entities. This can result in a misalignment with local priorities and needs, ultimately weakening the impact of South Africa's intended climate responses on national sustainability, mitigation and adaptation goals.
9. Should carbon markets be pursued by South Africa, it cannot be used as a substitute for eliminating avoidable emissions, or as a permission to pollute, as this would be against the international principle of the polluter pays. To avoid biasing carbon market regulation or standards, fossil fuel companies should be barred from participating in comments.
10. The draft framework does not adequately safeguard indigenous peoples' and local communities' rights to land and natural resources, including water. Without explicit protections articulated in the draft text, the framework risks enabling land grabs for mitigation projects, displacing vulnerable groups and undermining their livelihoods.
11. While FPIC (Free, Prior and Informed Consent) is a cornerstone of protecting indigenous and community rights in development contexts[4] the framework makes no provision for requiring it. This is even though FPIC is required by the United Declaration on the Rights of Indigenous People which South Africa adopted in 2016. In addition, according to the Interim Protection of Informal Land Rights Act 3 of 1996, "no person may be deprived of any informal right to land without his or her consent" which was confirmed in the Baleni and Others v Minister of Mineral Resources and Others[5] and the Casac and Others v the

[3]Joseph W. Veldman et al. ,Comment on "The global tree restoration potential". *Science* 366, eaay7976(2019). DOI:10.1126/science.aay7976

[4] See the following constitutional court judgements

[5] Baleni and Others v Minister of Mineral Resources and Others (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP) (22 November 2018) https://www.saflii.org/za/cases/ZAGPPHC/2018/829.html

Ingonyama Trust and Others[6]. This omission leaves communities vulnerable to exploitation and undermines their agency in determining how projects are likely to affect the territories or areas of land they live on. FPIC includes disclosing all relevant information to communities including plans to set up a carbon market, financial details, and plans for the full lifecycle. By prioritizing carbon offset projects, the framework could inadvertently incentivize the appropriation of community lands under the guise of climate action. Large-scale afforestation, renewable energy projects, or conservation schemes may displace communities without adequate safeguards against displacements or mechanisms for resettlement and compensation.

12. The locations of carbon markets being planned in Asia and Africa, nearly 80% of land is managed by Indigenous Peoples and local communities through informal tenure.[7] This makes Indigenous People and communities key stakeholders who need to be consulted with, given access to information including national registries of carbon projects; project proponent; location and boundaries; project area; proposed activities and impacts, given access to free legal assistance and experts to understand complex and technical documents. The government must also ensure that Indigenous Peoples and communities' land rights are secured through strong land laws and protections. This requires a meaningful role being played by the Department of Agriculture. Approval of carbon markets needs to require respect and protection of Indigenous Peoples and communities' land rights and meaningful consultation with communities directly.
13. There is no explicit mechanism in the draft framework that seeks to ensure that local communities potentially hosting mitigation projects receive fair compensation. This omission could exacerbate inequalities by allowing project developers to reap the financial benefits of carbon credits whilst excluding communities from sharing in these benefits. Binding agreements between project developers and communities should be a prerequisite for a project with fair and transparent compensation for communities including lost income from changes to their livelihoods. Compensation should be based on revenue rather than profits, paid as soon as their rights are impacted including land and communities deciding how the compensation is used.
14. The draft framework prioritizes carbon trading and market-based solutions, which can undermine non-market approaches that are often more inclusive and equitable. Non-market approaches, such as capacity building and technology transfer, are particularly relevant for communities that lack access to market benefits. The draft in its current form does not balance market and non-market mechanisms and must be amended to provide greater emphasis on community-focused initiatives that promote adaptation and resilience.
15. Although the framework mentions sustainable development, it does not define measurable outcomes that ensure tangible benefits for local communities impacted by

[6] Council for the Advancement of the South African Constitution and Others v Ingonyama Trust and Others (12745/2018P) [2021] ZAKZPHC 42; 2021 (8) BCLR 866 (KZP); [2021] 3 All SA 437 (KZP); 2022 (1) SA 251 (KZP) (11 June 2021)
https://www.saflii.org/za/cases/ZAKZPHC/2021/42.html

[7] Rights and Resources Initiative, Status of Legal Recognition of Indigenous Peoples', Local Communities' and Afro-descendant Peoples' Rights to Carbon Stored in Tropical Lands and Forests, 2021.

carbon credit projects. This vagueness risks allowing projects that do not contribute meaningfully to social or environmental goals. Where there is an absence of clearly defined sustainability criteria that these mitigation projects must meet, there remains the potential for the allocation and approval of carbon credits which invariably do not improve in any meaningful way, the wellbeing of host communities impacted by decisions to utilize land for carbon credit arrangements. Further sustainable development should be defined as in accordance with Section 2(4)(a) of the National Environmental Management Act 1998.

16. There is apparent absence of clear mechanisms for monitoring and enforcing compliance with environmental and social standards, thereby weakening the framework. The framework lacks mention of transparent monitoring and accountability measures that require the development and implementation of independent oversight and grievance redress mechanisms. To ensure grievance redress mechanisms are effective there needs to be accessibility to communities, grievances need to be decided by an independent and impartial process and there needs to be access to remedies.
17. The current draft of the framework does not sufficiently address concerns regarding social equity, including gender considerations. Women and marginalized groups often bear disproportionate burdens from environmental changes and development projects. It is for this reason that the framework ought to integrate gender responsive measures and respond to social equity aspects across all the aspects of the framework. Decision making should include women and marginalised groups, not only representatives.
18. Given the dynamic nature of climate change, the framework does not include mechanisms for adjusting policies and practices in response to evolving socio-economic or environmental conditions, thereby ensuring that the framework is capable of remaining responsive to changing contexts.
19. The draft framework must ensure that it mandates the creation of mechanisms which secure the creation of independent third party verification to ensure projects result in actual, measurable, and additional emission reductions.
20. We would like SA to consider Ghana's carbon market framework as there may be some elements there that could be useful to have replicated here, such as for South Africa to establish at least a principle on mitigation sharing (or "partial authorisation" as it's sometimes called), as well as developing a specific fee structure for the application of corresponding adjustments.

Specific Comments

Page reference	Text	Comment
Definition of Carbon Programme/ Standard (p6-7)	"…These programmes or standards ensure transparency, consistency, and environmental integrity in assessing and accounting for emission reductions or removals. Some examples include the Article 6.4 Mechanism, the Gold Standard, and the Verified Carbon Standard (VCS)."	These standards increase the risk of double counting because they do not fall under jurisdiction of the UN climate change secretariat (UNFCCC). In particular the VCS (operated by Verra) has been critiqued for its ineffectiveness and human rights abuses (see annexures)
Definition of Internationally Transferred Mitigation Outcome and ITMO (p. 10)	"d) From a cooperative approach referred to in Article1 6.2;"	Should refer to Article 6.2, not Article1 6.2
Definition of Just Transition and Just Energy Transition	"The Just Transition framework is committed to enhancing the quality of life for all South Africans by bolstering climate resilience, striving for net-zero GHG emissions by the year 2050, and promoting inclusive social development. The Just Transition prioritises the needs of communities most susceptible to the impacts of economic and environmental changes, notably the impoverished, women, individuals with disabilities, and the youth. The Just Energy Transition focuses on the transition of South Africa's energy sector as the country shifts away from coal towards cleaner sources of energy"	The full definition as in the Just Transition framework should be cited, and include the principles of distributive, restorative and procedural justice. The Just Energy Transition in South Africa should also be inclusive of the principles of distributive, restorative and procedural justice in its transitions from coal towards renewable, clean sources of energy that respect and promote Indigenous Peoples and communities' rights. The use of the term cleaner energy should not be used.
Definition of Mitigation Contribution Unit (p.12)	"It is the mitigation benefit accruing to a host country, effectively host country benefit which seeks	The mitigation contribution unit is an alternative to offsetting claims as credits, which came about given the many critiques against the legitimacy of carbon credits, and this definition doesn't convey this

	to enable emissions reduction within a host country, effectively sharing of mitigation outcomes under a co-operative approach. This is consistent with article 6.4c of the Paris Agreement."	
On reporting requirements under enhanced transparency framework for action (p18)	"South Africa is a developing country with limited capacity to implement the transparency framework but is nevertheless committed to providing information on its climate change action and support. South Africa will also participate in the technical expert review of its information and will receive support for the implementation of the transparency framework"	It is imperative that we have adequate transparency and accountability given the history of carbon markets, both around what the projects are, and around what the financial flows are between projects, and local communities. The current reading sets up ambiguity that could be used to justify South Africa avoiding transparency and accountability.
Section 4.1.2 Principles (p 19)	"The CMA established a set of requirements for participation in the Paris Agreement, particularly focusing on Articles 6.2, 6.4, and 6.8. For Article 6.2, parties are expected to have a robust infrastructure, including a registry to track ITMOs. This is crucial for ensuring accurate accounting and preventing double counting. Detailed reporting is also a key requirement, with parties engaging in ITMOs needing to provide structured summaries that align with the transparency framework. Additionally, corresponding adjustments are mandatory when ITMOs are used towards achieving NDCs."	CMA also sets out principles which include using the best available science, ensuring additionality, taking into account reversibility of capturing carbon and processes for cancellation of carbon credits, which are not reflected in this section
Section 4.3 Existing Legal Frameworks (p 23-26)		The text does not take into account the National Environmental Management Act: Biodiversity Act, relating to the protection of species and ecosystems that warrant national protection; the sustainable use of indigenous biological resources; the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources;

Section 4.3.1	“In terms of this allowance, tax liable entities are entitled to reduce their tax liability by purchasing and retiring carbon offsets in accordance with the prescribed Carbon Offset Regulations, as discussed below.”	Offsetting of carbon tax for polluters should not be allowed, in accordance with the principles of the National Environmental Management Act 1998 Section 2(4)(p) which states that “The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.”
Principles of South Africa’s framework (Section 5, pg 27)	“The development of the South African Framework is built upon the following principles: 1. Alignment with South Africa’s NDCs 2.Unit of measurement: 3. Environmental integrity 4. Rainbow list 5.Sustainable development 6. Increased ambition 7.Provide enabling environment for development of the green economy in South Africa 8. Climate Change Act: 9. Mechanism for international transfer 10. Polluter Pays Principle 11.Commitment to Coordination of Non-market Approaches:”	The framework at section 5 elaborates on key principles that must inform the development of carbon credit markets, however what is lacking is the inclusion of a principle that requires the addressing gender and social equity challenges. As it currently reads, the framework fails to address gender and social equity considerations, leaving gaps in support for women and marginalized groups disproportionately affected by climate impacts. It is recommended that within the section 5 discussion of principles of the South African Framework, provision is made for the prioritization of gender responsive measures that ensure equitable benefit distribution for women and marginalized groups disproportionately affected by climate impacts. This could include the development of a gender and social inclusion policy that enhances principle 5 of “sustainable development”
3. Environmental integrity (p 27)	“South Africa is committed to upholding the environmental integrity of ITMOs through the utilisation of third-party carbon programmes as an initial strategy…This principle builds on the domestic carbon tax legal regime, which acknowledges specified carbon standards and programmes for generating 'quality carbon credits'.”	Caution is needed on this principle and it should be nuanced to be more stringent. It's not enough to rely on a third-party having issued a credit as a sign of good enough quality. It says the Article 6 framework will not put constraints on including/excluding activity types, scopes or technologies, so long as the credits conform to a third-party standard. As mentioned above, the carbon offsets regulation cited in the framework already excludes certain project types (some renewable energy projects, as well as projects regarding HFC-23, N2O from adipic acid production, nuclear energy, geological CCS, and temporary credits from the CDM). Therefore, this provision as well as a similar provision in section 7.2.1 seems to contradict those exclusions from the carbon offsets regulation. Those exclusions should continue to apply in the Article 6 framework.
4. Rainbow list	“South Africa’s Article 6	The absence of categorical constraints on project

(p27-28)	Framework puts no categorical constraints to the inclusion or exclusion of carbon project activity types, sectoral scopes or technologies, on the condition that carbon projects meet the requirements of the third-party carbon programmes/standards with which they are registered. An analysis to determine low "hanging fruits" such as low-cost high mitigation abatement technologies to be preserved for domestic sectors, which will be informed an analysis."	types, sectoral scopes or technologies in South Africa's Article 6 framework creates a permissive environment where ineffective or non-additional projects may qualify for carbon credit issuance. While the framework requires compliance with third-party standards, many such standards have been criticized for inconsistencies in ensuring environmental integrity. To prevent against superficial compliance through the implementation of projects that produce nominal or unverifiable emissions reductions, there ought to be the development of appropriate exclusion criteria that must be adopted to prevent projects with dubious additionality or excessive reliance on untested or unviable and expensive technologies such as carbon capture and storage for fossil fuel operations.This would ensure that all approved projects align with robust mitigation goals Furthermore it is recommended that the term "rainbow list" be amended to include the following text: "*South Africa's Article 6 Framework adopts a tiered approach to project selection, prioritizing high-impact, sector-transformative projects that align with the country's long-term climate goals. Carbon credit generation will be preferentially allocated to projects that address critical high-emission sectors and deliver substantial, verifiable emissions reductions. Furthermore, entities utilizing ITMOs must demonstrate concurrent investments in direct emissions reduction measures within their operations, ensuring alignment with both national and global climate action objectives*"
Provide for Share of Proceeds towards Adaptation and building climate resilience: (p 28)	"This will be applicable to both 6.2 cooperative approaches as well as 6.4 mechanism. Regarding levied SOP s under cooperative approaches, that will be channel towards as specific domestic fund that the country will decide on. The destination for SOP in respect of"	Incomplete text and insufficient detail on the flows of finance, in terms of responsibility. This is the basis on which climate finance is being promised and so it is imperative this is clearly articulated.
7. Provide enabling environment for	"•[no fees] [limited fees] [[limited] Article 6.2 local share of proceeds] will be levied for	Again, this is supposed to be going towards climate adaptation work, not carbon market administrative costs.

development of the green economy in South Africa:(p 29)	government services associated with Article 6 project activities. The aim is to support carbon project developers or activities that have positive environmental outcomes by reducing financial burdens. •Progressive fee structure will be levied for Share of Proceeds towards administrative costs, subject to the formulae to be decided."	
6.1.1. Authorisations and approvals (p 30-31)	"Option 1: Provisions establishing a Registry (for all carbon credits) and linkage provisions [that connect the Registry to the COAS and the Carbon Offset Regulations and the GHG Reporting Regulations, SAGERS and the National Air Emissions Inventory System.] Option 2: The Article 6.2 Regulations will contain provisions that provide for additional functionalities to be added to the Article 6 Registry."	Whether there is an establishment of a Registry or Article 6 Registry, it needs to be an accessible, publicly available registry with all information pertaining to carbon credits, including details of the project proponent, location and project details. This is in light with the Constitutional right to access to information and the Promotion of Access to Information Act 2 of 2000.
6.2 Institutional Arrangements (p 32-33)	"The ELoAs and Article 6.4 LoAs are issued by South Africa's DNA, situated within the DMRE. Article 6.2 and Decision 2/CMA.3 mandates the accounting and management of ITMOs through corresponding adjustments. This involves concurrent processes: employing technical infrastructure, namely the South African Article 6 Registry, for the accounting and transfer of ITMOs, and implementing corresponding adjustments for both ITMOs and authorised OIMPs. The DMRE oversees the COAS and is responsible for listing and retiring carbon credits used as offsets under the South African carbon tax. This role extends to the administration of the South	The DMRE should not be the DNA under article 6. The DFP is the DFFE and they should be solely responsible given that the DMRE does not have a strong history of upholding environmental or social safeguards. Despite outlined roles for governmental bodies, the text does not explicitly require or detail the involvement of indigenous peoples and local communities in decision making. The lack of clear mandates for stakeholder consultations undermines the legitimacy and inclusivity of the framework. It is recommended that a new provision is made under "institutional arrangements" requiring the establishment of a **Community Consultation and Engagement Mechanism (CCEM)**. This mechanism should ensure free, prior, and informed consent (FPIC) is obtained for all projects affecting indigenous or local communities. By facilitating this change, this section should enable periodic stakeholder forums during the development and

	African Article 6 Registry."	revision of Article 6 activities, with mandatory representation from communities.
Other Elements Not Requiring Legal Empowerment (Section 6.1.3, pg 32)	"In respect of Article 6 memoranda of understanding, implementation agreements and Mitigation Outcome Purchase Agreements (MOPAs), these can be concluded or entered into without empowering legislation. In relation to Article 6 memoranda of understanding and MOPAs, procedurally, the DFP is obligated to engage with the Chief State Law Advisor to conclude such agreements. This process will follow the requirements of sections 231(1) - (3) of the Constitution of the Republic of South Africa, which governs the conclusion of international agreements concluded by the Republic."	The reliance on procedural engagement with the Chief State Law Advisor **ONLY**, without more robust checks with other stakeholders, risks allowing agreements that are misaligned with South Africa's Nationally Determined Contribution (NDC) targets or climate justice principles. The lack of a clear mechanism to evaluate the environmental and social implications of these agreements could dilute their contribution to domestic climate and development goals.Weak safeguards may lead to agreements that prioritize international carbon trading over transformative domestic projects, allowing corporations to evade substantive emissions reductions while securing favorable terms under MOPAs. The following amendment to the text is proposed: "*In respect of Article 6 memoranda of understanding, implementation agreements, and Mitigation Outcome Purchase Agreements (MOPAs), these may only be concluded following a mandatory review process to ensure alignment with South Africa's Nationally Determined Contribution (NDC) targets, environmental integrity standards, and climate justice principles. Agreements must be subject to independent oversight or parliamentary approval where they involve significant carbon credit transfers or projects with high social or environmental impact. Furthermore, the Designated Focal Point (DFP) must engage with the Chief State Law Advisor and submit a formal impact assessment for public record before finalizing any agreements, in compliance with sections 231(1) - (3) of the Constitution of the Republic of South Africa."*
Mitigation Outcome Purchase Agreements (Section 6.3.2, pg 34)	"MOPAs refer to commercial contracts for the purchase and sale of ITMOs. MOPAs may be entered into by different types of entities, including private sector and non-governmental organisations, as well as sovereign states. MOPAs will provide for linkages between the transfer of AMOs and the achievement of NDCs, within the	There is no explicit guarantee in the framework for equitable compensation to communities hosting carbon credit financed projects. It is recommended that the section articulate the necessity of creating a **Community Benefit Fund**, funded through a share of proceeds from carbon credit sales, to support local community development. By adding a specific provision that requires the creation of the fund, the section shall ensure that compensation is a mandatory

	frame of cooperation agreements under Article 6.2. MOPAs will also need to include contractual parameters relating to corresponding adjustments, registries, safeguards and authorisation of transfer. The principles underpinning MOPAs may include, but are not limited to"	precondition for project approvals, particularly in instances where communities or indigenous peoples rights to land, water and other associated environmental rights are likely to be impacted by the carbon credit sales. Mandatory compensation ought to be determined by clear and transparent benchmarks for fair valuation.
All ITMOs Lifecycle (Section 6.4.1, pg 35)	"All ITMOs are generated through the registration of project activities and the issuance of MOs (carbon credits) under the recognised carbon programmes or standards that are eligible in South Africa's existing mitigation system, as outlined in the Carbon Tax Offset Regulations. These include the: • Article 6.4 Mechanism; • Gold Standard for Global Goals; • Verified Carbon Standard; and • Any other carbon programme/standard that the Minister of Energy may approve.	The framework mentions ITMOs but provides limited clarity on the specific methodologies for ensuring accuracy and transparency of corresponding adjustments This ambiguity could lead to discrepancies in accounting and misrepresentation of emissions reductions. It is suggested that section 6.4.1 should be expanded to include a detailed methodology for tracking and verifying ITMOs, emphasizing transparency and accuracy. An example of this could be the inclusion of a provision that empowers the establishment of an **Independent verification panel** that reports to DFFE (IVP) to audit corresponding adjustments and ensure compliance with international standards.
Project entities must provide supporting documentation for DFP consideration when applying for an Article 6.2 PLA. (p 37)	"These documents include, but are not limited to: 1. The project description or project design document used to successfully register the project activity and entity/ies with one of the recognised carbon programmes/standards. 2. The validation report submitted by the third-party auditor, for the mitigation activity submitted. 3. Supporting evidence demonstrating that the MO aligns with the Principles of the South African Framework, such as evidence of alignment with South Africa's NDC and target trajectory may be required. 4.	They should be required to clearly outline their environmental and social safeguards, proof of Free Prior and Informed Consent from the communities in the areas impacted by the project, both within South Africa and outside of South Africa.

	For Article 6.4 project activities planning to transfer MOs to become ITMOs, the submission of the Article 6.4 LoA is required. Additional documents, forms, or templates as deemed necessary"	
Section 6.4.4 ITMO Management and Accounting (p38)	"In line with CMA.3 Guidance on cooperative approaches referred to in Article 6.2, only emission reductions that have been authorised as ITMOs by the host or transferring Party will be subject to corresponding adjustments. Corresponding adjustments are also required after the first transfer of authorised mitigation outcomes for OIMP."	How is this system ensuring that companies are not benefiting twice, through local carbon tax regulations and internationally through trading credits? Furthermore, there is ambiguity in the implementation of corresponding adjustments. The technical accounting of internationally transferred mitigation outcomes (ITMO) may lead to inaccuracies and misrepresentation of actual emission reductions. For instance, without standardized guidelines, different entities may interpret the adjustments in ways that can inflate or deflate reported emission reductions, undermining the integrity of climate accounting.
Section 6.4.4 ITMO Management and Accounting (p.39)	"South Africa, as a Host country, has the discretion to authorise A6.4 ERs to become ITMOs, for use towards NDC targets or OIMP."	It is unclear who would be responsible, under the current framework, between the DFFE or the DMRE, for this authorisation. The ambiguity gives the DMRE the possibility of holding this responsibility. Given the responsibility of the NDC and the emissions reporting lies with the DFFE, civil society in SA is calling for the responsibility to shift to the DFFE for management and accounting.
Section 7.1 Legal Framework (pg 39)	"In accordance with Article 6.4 of the Paris Agreement, South Africa recognises the need to enhance its legal framework to facilitate and regulate participation in the Article 6.4 Mechanism, to contribute to emission reduction efforts in host Parties and to deliver an overall mitigation in global emissions (OMGE). The Article 6 Framework needs to align with the evolving landscape and the transition from the CDM to the Article 6.4 Mechanism. The revised 39 legal foundation ensures compliance with participation requirements, reporting obligations under Article 13, and the dynamic nature of	In terms of the discussion of option 1, combining regulations for article 6.2 and 6.4 into a single legal framework risks conflating their distinct purposes and procedural requirements. Article 6.2 focuses on co-operative approaches and ITMO accounting, while article 6.4 establishes a centralized mechanism akin to the CDM. A unified regulation may result in procedural inefficiencies, reducing clarity and effectiveness in managing each mechanism. Corporations might exploit gaps in a generalized regulatory approach to engage in activities under Article 6.4 that lack the stringent accountability associated with the centralized mechanism, using ITMOs to mask ongoing pollution without delivering meaningful contributions to OMGE. Furthermore, the proposed framework appears overly focused on aligning with international transitions from the CDM to Article 6.4 without

	international climate agreements. **[Option 1**: makes provision for Articles 6.2 and 6.4 in one set of regulations] The [revised] [new] DNA Regulations are described in section 6.1 above. The [revised] [new] DNA Regulations will subsequently cater for Article 6.4 Mechanism functions."	adequately addressing South Africa-specific legal and social considerations. A standardized approach might overlook unique domestic challenges, such as community participation, land rights, and equitable benefit-sharing. Should drafters of the framework intend to adopt option 1, the following amended suggestion would be preferred to replace the current draft text: ""*In accordance with Article 6.4 of the Paris Agreement, South Africa recognizes the need to enhance its legal framework to facilitate and regulate participation in the Article 6.4 Mechanism, contributing to emissions reduction efforts in host Parties and delivering an overall mitigation in global emissions (OMGE).* *The Article 6 Framework must maintain a clear distinction between the roles and requirements of Article 6.2 cooperative approaches and the centralized Article 6.4 Mechanism. Separate, dedicated regulations for each mechanism will ensure procedural clarity and uphold the integrity of both approaches.* *The revised DNA Regulations will focus on Article 6.4 Mechanism functions, including:* ● *Compliance with international participation and reporting obligations under Article 13.* ● *Incorporation of South Africa-specific safeguards to ensure environmental integrity, equitable benefit-sharing, and protection of community rights.* ● *Alignment with the evolving international landscape while prioritizing domestic climate action goals."*
(p. 40)	"Additionally, the regulations will entail handling A6.4 ERs within the [new Article 6 Registry] [existing COAS Registry] and obtaining approval for listing an entity as eligible to pay carbon tax. This is to clearly differentiate which A6.4 ERs may be used under Article 6.2 as ITMOs, and which A6.4 ERs may be used in the South African carbon tax	This still leaves ambiguity around differentiation between the ERs and ITMOs and does not sufficiently mitigate the risk of double counting.

	system, as carbon offsets.”	
Section 7.2.1 Structures (p. 41)	“Building upon the existing DNA for the CDM, housed in the DMRE, the DNA plays a crucial role in communicating with the Article 6.4 Supervisory Body (UNFCCC)... …It has been established that South Africa's Article 6 Framework is impartial to incorporating or omitting carbon project activity types, sectoral scopes, or technologies, as long as these carbon projects adhere to the Framework principles stipulated in section 4.1.2, as well as requirements of the accepted third-party carbon programmes or standards under which they are registered…”	We strongly object to the extension of DNA being housed within the DMRE. Additionally, we object to the idea that this framework would be impartial to all carbon project activity types. The framework needs to be informed by FPIC, and have environmental and social safeguards in place
Section 7.2.2 Article 6.4 Letter of Approval (p. 42)		The letter of approval should also include information on what safeguards are in place, how to demonstrate additionality, how it is reflective of negative or reversibility of carbon removals and evidence that adequate FPIC will determine whether a project will occur.
Potential project opportunities to consider under 6.8 in South Africa could include: (p. 43-44)	“Funding purposes can include covering operational losses, addressing decommissioning costs, managing long-term power purchase agreement liabilities, and supporting individuals reliant on the coal industry… Sustainable Forest Management and Conservation: Projects for enhancing and fortifying protected areas. These projects can include implementing sustainable management practices to reduce deforestation and degradation as well as reforestation initiatives to sequester carbon and enhance biodiversity.”	We object to the phrasing that “individuals” reliant on the coal industry can be supported by funding from article 6.8, and suggest explicitly mentioning most vulnerable workers and affected communities instead. Additionally, we are concerned about the fortification of protected areas, and the suggestion for supporting deforestation reduction and reforestation initiatives. These practices have historically caused marginalisation of local communities, worsened local conflict, and have legitimised land grabs. It is imperative that stronger guidelines are included requiring local engagement, involvement and distribution of benefits, as well as following the principles of FPIC.
Section 8.1	South Africa's approach is	Section 8.1 mentions ensuring actions are carried out

Legal Framework (pg 45)	characterised by a commitment to a comprehensive and balanced NDC implementation, involving various stakeholders, such as the public and private sectors and civil society organisations. The focus extends beyond mitigation and adaptation, encompassing finance, technology development and transfer, and capacity-building. The voluntary nature of participation involves more than one Party, creating the need for bilateral or multilateral agreements between Parties. NMAs under this Framework do not involve the transfer of MOs but are aimed at facilitating the implementation of NDCs of host Parties while contributing to the Paris Agreement's long term temperature goal. These actions are to be carried out with respect for human rights, including the rights of indigenous peoples, gender equality, and the principle of intergenerational equity, and with a focus on minimising negative environmental, economic, and social impacts. As such, there are no requirements for specific Article 6.8 regulations in South Africa, as the legal requirements for Article 6.8 projects are contained in the country's existing legislative system.	in respect for human rights and rights of Indigenous Peoples and more. This is very important but should apply to the entire framework, especially for Article 6.2. This shouldn't only be in the Article 6.8 section. Furthermore, the absence of specific article 6.8 regulations, relying instead on the existing legislative system, risks insufficient safeguards for indigenous peoples, gender equality and intergenerational equity. Existing laws may not provide the specificity or enforceability required to operationalize these principles within the context of climate action. Without clear and binding regulations, NMAs could be implemented superficially, allowing corporations and other entities to claim alignment with human rights and equity principles without meaningful accountability or enforcement mechanisms. Furthermore,while the draft text highlights the involvement of multiple stakeholders, it lacks details on the specific roles and responsibilities of each party in implementing NMAs. This ambiguity could lead to power imbalances, where more influential entities (e.g., corporations) dominate decision-making processes, sidelining vulnerable communities. Given the above, the following proposed amendment to replace the current draft text is suggested: "*South Africa's approach is characterized by a commitment to a comprehensive and balanced NDC implementation, involving stakeholders from the public and private sectors, civil society organizations, and indigenous and local communities.* *The focus extends beyond mitigation and adaptation to encompass finance, technology development and transfer, and capacity-building. While the voluntary nature of participation involves collaboration between multiple Parties, Non-Market Approaches (NMAs) are specifically designed to facilitate the implementation of host Parties' NDCs and contribute to the Paris Agreement's long-term temperature goal without the transfer of Mitigation Outcomes (MOs).* *To ensure robust alignment with human rights, including the rights of indigenous peoples, gender equality, intergenerational equity, and environmental integrity, South Africa will establish dedicated Article*

		6.8 regulations. These regulations will: ● *Codify the operationalization of equity principles and climate justice within NMAs.* ● *Provide clear roles and responsibilities for all stakeholders, ensuring meaningful participation by indigenous and local communities.* ● *Include mechanisms for oversight monitoring and evaluation and minimizing negative environmental, economic, and social impacts.* *These specific Article 6.8 regulations will complement existing legislative frameworks to strengthen South Africa's leadership in climate justice."*
9. Technical Infrastructure (Registry) (p. 46-48)		References to the registry arrangements, including in Section 9 are confusing because in some cases it seems like the registry will be able to issue and trade carbon credits within the system but then in Section 9 it states that the registry will not function as a trading platform but rather as a comprehensive recording and authorisation system. The wording seems ambiguous at times and could merit further clarification (e.g. the last para on page 48 refers to the retirement of ITMOs as "emission reduction credits" but if the registry is just tracking information, then the ITMOs aren't the credits themselves and this reference becomes confusing or risks ambiguity). Additionally, a registry needs to be easily accessible to the public. Information that should be included is the location and boundaries, project proponent, project area, proposed activities, anticipated impacts on community access and use rights, agreements with communities, projected and annual revenues, additionality, that all requirements and standards have been met, duration and quality of carbon credits. The registry information should include easy to understand summaries and be within languages in South Africa. The registry should include contact for whistleblowers and grievance mechanisms. This is in light with the Constitutional right to access to information and the Promotion of Access to Information Act 2 of 2000.

Annex 1: The flawed logic of carbon markets

Carbon markets are premised on the sale of prevented or avoided emissions, in exchange for actual emissions. They are framed as a low cost and flexible mitigation pathway but they oversimplify the actual process of carbon dioxide removal. There are multiple levels on which the logic of carbon markets is flawed.

Delaying and deterring mitigation action
Our mitigation goal when addressing climate change is to cut emissions, to prevent further increases in global average temperatures. Carbon markets obscure the fact that we are still adding more emissions to the atmosphere, even if there are credits being exchanged. We cannot afford any more emissions in the atmosphere, given already exceeding global temperature rises of 1.5 degrees this past year. There is no remaining budget of carbon emissions that we can safely be releasing into the atmosphere.

The flawed logic of carbon removals
There are a number of different approaches to avoiding emissions and generating a carbon credit, but the area is highly contested. There are contesting stances around what to take as the baseline for the uptake of carbon, how to demonstrate that a project claiming to reduce emissions is demonstrating additionality (in other words that it wouldn't occur given business as usual conditions).

Natural carbon sinks have very tangible limitations to the long term removal of carbon from the atmosphere at scale. They are vulnerable to ecosystem disturbances that reverse the capturing of carbon, like wildfires. Ecosystems, like South Africa's Fynbos, Savannahs and grasslands are ecologically reliant on fire, plus there is an increased propensity for fire due to higher temperatures from climate change. Too often these ecosystems are misleadingly categorised as degraded and potential sites for tree planting and carbon offsetting projects, when restoring them would often actually require the cutting down of trees [8]. We are burning fossilised carbon that was captured over millennia, and expecting to capture those emissions over the shorter term cycles of sequestration involved with natural processes like photosynthesis. With climate change causing higher temperatures, enzymes for photosynthesis become less effective, reducing the ability for many plants to be as effective at capturing carbon. Ecosystems are also constantly under pressure by ever expanding demands for land to feed expanding industries, agriculture and cities. Additionally, social and political contexts shape the feasibility, sustainability and local receptiveness to carbon offsetting projects. The land area required to naturally sequester the amount of carbon emitted is far larger than the land that is available, historically leading to land grabs in the global south where land is cheaper, for carbon offsetting schemes (see Annex 2). Despite these practical limitations, there is a tendency for governments

[8] Joseph W. Veldman et al. , Comment on "The global tree restoration potential".Science 366, eaay7976(2019). DOI:10.1126/science.aay7976

globally to overestimate the contribution that land-based carbon removals will be able to play in achieving net-zero[9].

The resource requirements for carbon dioxide removal are underestimated

Negative emission technology, like Bioenergy Carbon Capture and Storage, Carbon Capture and Storage, and Direct Air Capture, have all received much attention and investment yet their efficacy and cost remains an issue. None of them have been demonstrated to be effective at reducing emission at the scale required to achieve net zero. Although these technologies are argued for because they will lower carbon emissions in the atmosphere, the extreme resource requirements in terms of water and land in particular are not considered. For example, the deployment of BECCS at the scales required by IPCC scenarios would require between 0.4 and 1.2 billion hectares of land (25% to 80% of current global cropland), which raises questions regarding what land will be appropriated for this purpose and what the impacts will be on food production. Large scale deployment of land based removals, for example through BECCS, would require amounts of freshwater for plantations that will threaten to exceed planetary boundaries[10]. Equally, construction costs of DAC infrastructure reduces the feasibility of it[11]. The slow movement in developing more effective technologies (despite massive investment) relative to what was expected in climate models is a challenge in their inclusion in climate mitigation responses. In fact, reducing emissions may actually be cheaper than removing carbon from the atmosphere once it has already been emitted. These technologies promise benefits that have not been demonstrated. Instead, they enable business as usual without addressing the need to fundamentally change polluting practices, which discourages reducing emissions.

[9] Dooley, K., Christiansen, K.L., Lund, J.F. et al. Over-reliance on land for carbon dioxide removal in net-zero climate pledges. Nat Commun 15, 9118 (2024). https://doi.org/10.1038/s41467-024-53466-0
[10] Heck, V., Gerten, D., Lucht, W. et al. Biomass-based negative emissions difficult to reconcile with planetary boundaries. Nature Clim Change 8, 151–155 (2018). https://doi.org/10.1038/s41558-017-0064-y
[11] Chatterjee, S., Huang, KW. Unrealistic energy and materials requirement for direct air capture in deep mitigation pathways. Nat Commun 11, 3287 (2020). https://doi.org/10.1038/s41467-020-17203-7

Annex 2: The history of human rights abuses and environmental degradation associated with carbon markets and offsetting

Destruction, land grabs and human rights violations, despite supposed standards

There are numerous examples of carbon forestry schemes that involve land grabs, human rights violations and disregard for indigenous peoples. Projects have disrupted community access to resources for their livelihoods and entrenched local existing inequalities, and concentrated the benefits of the offsetting to the small elite directly involved in the carbon market business. In Kenya, the Ogiek people were evicted from their ancestral land for carbon credits by the Kenyan government[12]. In Cambodia's largest offsetting program, the indigenous Chong people were not consulted before their villages were incorporated into a national park under the guise of carbon offsetting, limiting their access to resources for their livelihoods[13]. Carbon offsetting activities happened over the course of 31 months before the Chong community was ever consulted. Both cases narrate mistreatment and violations by local authorities who violently policed access to the natural resources previously available to communities. An investigation into another project in the Kasigau Corridor in Kenya, that was approved by Verra in 2011 and has sold carbon credits to major companies like Microsoft and Netflix, revealed major sexual harassment and abuse by senior project staff[14]. Despite the long history of evidence discrediting offsetting project's tendency to encourage land grabs, they are expanding rapidly. At COP 28, Blue Carbon, a Dubai based company, entered into agreements to secure land across 5 different African nations the size of the United Kingdom, for carbon offsetting schemes[15]. It is imperative that we develop strong frameworks to ensure that these agreements are entered into ethically and local communities who bear the burden of hosting projects are the beneficiaries.

Additionally, carbon markets have been used to legitimised projects that are environmentally destructive, under the guise of offsets. Under the CDM, a proposed project from western Panama of a hydroelectric dam on the Tabasará River, would flood the homes, cultural and significant sites in Ngäbe indigenous territories without any consultation with the Ngäbe communities[16]. In India, a waste to energy incinerator project in Delhi was accused by the local community for fraudulent accounting of carbon credits, and exposing the community to dioxin and heavy metal pollution from the burning of waste[17]. Additionally, there is a long history of

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[12] Kenya's Ogiek people being evicted for carbon credits - lawyers
https://www.bbc.com/news/world-africa-67352067

[13] Carbon Offsetting's Casualties: Violations of Chong Indigenous People's Rights in Cambodia's Southern Cardamom REDD+ Project
https://www.hrw.org/report/2024/02/29/carbon-offsettings-casualties/violations-chong-indigenous-peoples-rights

[14] Offsetting human rights
Sexual abuse and harassment at the Kasigau Corridor REDD+ Project in Kenya.
https://www.somo.nl/offsetting-human-rights/

[15] A UAE company has secured African land the size of the UK for controversial carbon offset projects
https://edition.cnn.com/2023/11/22/climate/uae-cop28-adnoc-fossil-fuels-expansion-climate-intl/index.html

[16] https://climatenetwork.org/2013/06/10/human-rights-in-the-cdm-2/

[17] Seeking action against questionable CDM project Okhla Waste to Energy Plant, Delhi, India

attempting to use carbon offsets to legitimise technologies, like nuclear[18], Solar Radiation Management and other geoengineering approaches that have widespread environmental impacts that consistently are unanticipated and unaccounted for[19].

High overheads, misleading accounting, minimal local benefits

The premise of the carbon markets is that some portion of the funds should be directed towards local benefits and climate finance for adaptation, but the track record is that the majority gets spent on administrative overheads. From 2009 to 2015, the administrative costs for the World Bank's Forest Carbon Partnership Facility were more than 50% of the total annual REDD+ disbursement for each year. Additionally, there is a history of insufficient transparency in accounting and verifying carbon credits. In Zimbabawe, the largest carbon offsetting project in Kariba was issued around 36 million credits since 2011, but the Swiss company responsible ended the partnership in 2023 amid allegations that the credits were fake[20]. A recent systematic assessment published in Nature communications found that only 16% of the 1 billion credits issued under the CDM and Voluntary Carbon Markets are likely to represent a full tonne of CO2 reduction[21]. Verra is one of the biggest certifiers responsible for setting standards in carbon offset programmes, issuing credits and overseeing their quality (mentioned as a reference in the SA Draft Framework as a standard to follow) and yet 90% of their rainforest certified credits were not worth what they were sold as, and do not represent actual carbon reductions. This is in part because Verra inflated the expected rates of deforestation when calculating the value of carbon credits to be sold, and additionally, deforestation rates did not reduce in many of the areas used to sell credits[22]. While the majority of money is spent on overheads and the benefits are held by elites, when a project fails or causes socio-economic upheaval, it is the local community who must bear the burden.

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https://www.change.org/p/cdm-executive-board-unfccc-seeking-action-against-questionable-cdm-project-okhla-waste-to-energy-plant-delhi-india

[18] https://www.iaea.org/sites/default/files/greenhousegas.pdf

[19] Cziczo, D. J., Wolf, M. J., Gasparini, B., Münch, S., & Lohmann, U. (2019). Unanticipated side effects of stratospheric albedo modification proposals due to aerosol composition and phase. Scientific reports, 9(1), 18825.

[20] Swiss carbon offset giant pulls plug on Zimbabwe project amid allegations https://www.swissinfo.ch/eng/sci-tech/swiss-carbon-offset-giant-pulls-plug-zimbabwe-project-amid-forest-protection-allegations/48927908

[21] Probst, B.S., Toetzke, M., Kontoleon, A. et al. Systematic assessment of the achieved emission reductions of carbon crediting projects. Nat Commun 15, 9562 (2024). https://doi.org/10.1038/s41467-024-53645-z

[22] Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe

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