



63 Hout Street, Mercantile Building

Cape Town, 8000, South Africa.

TEL: +27 21 426 1633

ATT: Allan Basajjasubi

EMAIL: jacqueline@naturaljustice.org and allan@naturaljustice.org

ATTN: Mr Mkhuthazi Steleki and Ms Ndiitwani

BY EMAIL: MSteleki@dffe.gov.za or Mndiitwani@dffe.gov.za

COMMENTS ON THE DRAFT SECOND NATIONALLY DETERMINED CONTRIBUTION

INTRODUCTION

1. Natural Justice: Lawyers for Communities and the Environment is a non-profit organization, registered in South Africa in 2007. Our vision is the conservation and sustainable use of biodiversity through the self-determination of indigenous peoples and local communities.
2. Our mission is to facilitate the full and effective participation of Indigenous peoples and local communities in the development and implementation of laws and policies that relate to the conservation and customary uses of biodiversity and the protection of associated cultural heritage. Through the JET Initiative within Natural Justice, we wish to achieve just energy transitions for Indigenous Peoples and communities.
3. Natural Justice works at the local, national, regional, and international levels with a wide range of partners. We strive to ensure that community rights and responsibilities are represented and respected on a broader scale and that gains made in international fora are fully upheld at lower levels.
4. Natural Justice wishes to submit its comments to the Department of Forestry, Fisheries and the Environment. We further express our request to make a verbal submission or participate in any meaningful engagements with the Department when an opportunity arises.
5. We submit to the Department of Forestry, Fisheries and the Environment, the following comments pertaining to the gazette **Publication of the Draft Second Nationally Determined Contribution** The gazette for public comment was published on the 30th of July 2025
6. These comments are Natural Justice's contribution to ensure that appropriate and effective legislation is passed to protect the environment and the communities we serve.
7. We further express our request to make a verbal submission or participate in any meaningful engagements with the Department or the Portfolio Committee when an opportunity arises.

Title: Submission on South Africa’s Draft Second NDC (2025) — Ensuring Ambition Is Paired With Rights-Based Delivery

Introduction

8. As a legal and environmental justice organisation with deep expertise in climate governance and community rights, Natural Justice acknowledges the notable progress reflected in South Africa’s 2025 draft Nationally Determined Contribution (NDC). The inclusion of tighter 2030 targets, the first explicit 2031–2035 carbon budget, and a more operational framing of the “just transition” are commendable steps forward.
9. However, Natural Justice’s assessment finds that while ambition is articulated on paper, its communication and implementation remain open to challenge, particularly in meeting the objective criteria of “highest possible ambition” under international climate law as affirmed by the recent ICJ Advisory Opinion. The draft leaves critical gaps that risk undermining its stated goals: key adaptation finance items remain marked “TBD”; there is an over-reliance on international conditionality; natural-disturbance emissions continue to be excluded from accounting; procedural guarantees for affected communities are weak; and the loss and damage provisions call for international support without offering sufficient domestic remedies or timely access to relief.
10. The result is a draft that speaks with stronger rhetoric but risks fragile delivery, unless these gaps are urgently addressed through transparent, inclusive, and rights-based revisions.

Contextual Background

11. It has been scientifically established that the climate system has undergone widespread and rapid changes, including, in particular, an increase in global surface temperatures, or global warming. Climate change is caused by the accumulation of certain gases in the atmosphere that trap the sun’s radiation around the Earth, leading to a greenhouse warming effect. While certain GHGs occur naturally, it has been scientifically established that the increase in concentration of GHGs in the atmosphere is primarily due to human activities, whether as a result of GHG emissions, including by the burning of fossil fuels, or as a result of the weakening or destruction of carbon reservoirs and sinks, such as forests and the ocean, which store or remove GHGs from the atmosphere.
12. The consequences of climate change are therefore severe and far-reaching; they affect both natural ecosystems and human populations. Furthermore, the disruption of natural habitats is pushing certain species toward extinction and leading to irreversible loss of biodiversity. Human life and health are also at risk, with an increased incidence of heat-related illnesses and the spread of climate-related diseases. These consequences underscore the urgent and existential threat posed by climate change. According to the IPCC Panel, there is a “rapidly closing window of opportunity to secure a liveable and sustainable future for all” (very high confidence).¹

¹ IPCC AR6 Synthesis Report

Choices and actions implemented between 2020 and 2030 “will have impacts now and for thousands of years”.

13. From the context of the extent of global economic and social costs posed by climate change impacts, a report by Christian Aid²⁹ found that with current climate policies, Least Developed Countries (LDCs), Small Island Developing Countries (SIDs) and nations that are members of the Climate Vulnerable Forum (CVF), on average, can expect to see climate change reducing their GDP growth by 19.6% by 2050 and by 63.9% by 2100.
14. In South Africa, the effects of climate change and loss and damage are also being witnessed. In April 2022, severe flooding in KwaZulu-Natal Province resulted in over 400 fatalities, more than 12,000 houses destroyed, and more than 40,000 people displaced.² In the context of South Africa for example, it has a diverse agricultural sector, with more than two million small scale or subsistence farms involved in horticulture for food, and/or trade. The agricultural sector depends on seasonal rainfall, or accumulated water for irrigation. Historical inequalities have created disparities between commercial farming and small-scale farmers where the often marginalised indigenous and local communities are. These communities are more vulnerable to extreme weather events and climate change impacts due to lack of access to portable for irrigation in times of draught or to sanitation, electricity and good road networks, resources which enable adaptation. This was apparent during October 2019 and January 2020, when the Eastern Cape³, Northern Cape were declared a state of disaster after five years of compounding droughts.⁴
15. Furthermore, March 2020, saw a second national state of disaster in three years declared for drought affecting areas in Limpopo, Northern Cape, Western Cape, and Eastern Cape. This has had some form of long term economic implications as it affects the future productivity of this generation. If not addressed, the recovery of the country’s agricultural sector which is a significant source of livelihoods and food security is expected to take decades to recover from.
16. South Africa is both highly vulnerable to climate change and the leading emitter of greenhouse gases in Africa. It ranks among the top 25 global emitters and contributes over one-third of the continent’s energy-related CO₂ emissions. Despite its status as a developing country with pressing socio-economic challenges—such as unemployment, poverty, and slow economic growth, South Africa is obligated under the Paris Agreement to take robust action to reduce its climate impact.
17. It is within the abovementioned context that South Africa’s latest draft NDC must be scrutinised, particularly given the International Court of Justice’s interpretation of Article 4 paragraph 2 of the Paris Agreement, in which the court affirmed the international legal principle that “each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition”.

² South Africa: The Deadly Impacts of Climate Change, CIVICUS (May 22, 2022), <https://lens.civicus.org/south-africa-the-deadly-impacts-of-climate-change/>

³ South Africa: Disaster Risk Finance Diagnostic, World Bank (2022)

⁴ South Africa: Disaster Risk Finance Diagnostic, World Bank (2022)

18. While the term “highest possible ambition” is not defined in the Paris Agreement, the Court considers that the level of ambition to be reflected in a party’s NDCs has not been left entirely to the discretion of the parties.⁵ The provision, when interpreted in its context and in light of its object and purpose and the customary obligation to prevent significant harm to the environment, reveals that the content of a party’s NDCs must, in fulfilment of its obligations under the Paris Agreement, be capable of making an adequate contribution to the achievement of the temperature goal. Having interpreted paragraph 13 of Article 4 of the Paris Agreement⁶, the court is of the view that such transparency and accountability provisions would be meaningless if the parties had unfettered discretion in setting their NDCs. As such, in the exercise of their discretion, parties are obliged to exercise due diligence and ensure that their NDCs fulfil their obligations under the Paris Agreement and thus, when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels, as well as the overall objective of the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
19. In the current context, because of the seriousness of the threat posed by climate change, the standard of due diligence to be applied by South Africa in preparing its NDCs, must be stringent.⁷ This means that South Africa has to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Paris Agreement.
20. Natural Justice’s submission will apply a critical analysis of South Africa’s current draft Nationally Determined Contribution (NDC), assessing whether it meets the legal standard of “stringent” as confirmed by the International Court of Justice (ICJ). This standard reflects the principle of due diligence in preparing an NDC, particularly in relation to domestic mitigation efforts, enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change.
21. Through this analysis, Natural Justice will offer recommendations to strengthen the draft NDC to ensure that:
- 17.1. It meaningfully reflects economy-wide absolute targets, with clear assumptions and a transparent methodological approach.
 - 17.2. It accelerates decarbonisation in high-emitting sectors such as shipping, aviation, steel, cement, agriculture, food systems, and defence. This could be achieved through policies and measures to achieve the global goal of doubling annual energy efficiency improvements by 2030.
 - 17.3. It closes the 2030 emissions gap through cost-effective, socially and environmentally safe mitigation measures (e.g., excluding nuclear energy and geoengineering).
 - 17.4. It presents a compelling case for equity, supported by evidence that its proposed efforts are fair and proportionate to South Africa’s share of global capacity and responsibility.
 - 17.5. It sets ambition levels aligned with human rights obligations, and is gender-responsive, child-sensitive, and disability-inclusive.

⁵ Paragraph 244-245 of ICJ Opinion

⁶ Paragraph 13 of Article 4 requires Parties to account for their NDCs and to do so in a manner that promotes “environmental integrity, transparency, accuracy, completeness, comparability and consistency” and ensures “the avoidance of double counting

⁷ Para 138 of ICJ Opinion

Mitigation: ambition vs deliverability

18. As part of its assessment of South Africa's 2025 draft NDC, Natural Justice acknowledges a notable improvement in the articulation of climate ambition. The draft moves from a Business-as-Usual (BAU) trajectory to absolute emissions targets, tightening the 2030 range to 350–420 MtCO₂-eq and introducing a new emissions budget for 2031–2035 (320–380 MtCO₂-eq). This represents progress from the previous submitted NDC as a step up in stated ambition and provides a more measurable framework for tracking progress.
19. As part of its assessment of South Africa's 2025 draft NDC, **Natural Justice** identifies a critical concern however; the conditional nature of the stated ambition. The NDC draft purports to tie the ambition of its delivery of its mitigation obligations to its fair share of setting numerical targets to which South Africa commits itself, whilst resolving to leave the remainder of achievement of the goal of limiting global warming to 1.5 degrees to additional international support as part of the common but differentiated responsibilities. The **best available science** indicates that to limit warming to 1.5°C, at least **60% of oil and gas reserves must remain unextracted**, and fossil fuel supply must decline by **55% by 2035** (relative to 2023 levels). This includes a **90% reduction in oil use and 85% in gas use**.
20. Furthermore, there is no clear phase-out/retirement schedule for coal and fossil fuel infrastructure. A tightened target without a timetable to stop new fossil infrastructure or to retire the most polluting plants is policy incoherence and invites lock-in.
21. Continued fossil fuel combustion in power generation, industry, and housing contributes significantly to **transboundary air pollution**, violating rights to life and health, especially for **women and children**, who are disproportionately affected. Therefore, consideration of the potential impacts of health on the national fiscus become ever more critical.

Health Impacts of Fossil Fuel Combustion

22. Researchers, in a recent study⁸, at the University of College London and the Stockholm Environmental Institute examined the health effects and impacts caused by the fossil fuel industry at every stage of the supply chain from exploration to combustion. Researchers found that air pollution from oil and gas causes more than 90,000 premature deaths and sickens hundreds of thousands of people across the US each year. Furthermore, they found that more than 10 000 annual pre-term births are attributable to fine particulate matter from oil and gas. This all has implications on the available state resources to address these health-related effects.

Scientific Evidence Linking Fossil Fuels to Public Health Outcomes

⁸ Karn Vohra et al. The health burden and racial ethnic disparities of air pollution from major oil and gas lifecycle stages in the United States. *Sci.Adv.*11, eadu2241 (2025)

23. The economic and financial implications of achieving greenhouse gas (GHG) targets must be considered not only in the global context but in the South African context. These implications extend to public health expenditure and the imperative to build resilient, sustainable health systems. Achieving GHG targets offers significant health co-benefits across sectors, particularly in energy and agriculture, where ambitious climate action can reduce pollution, improve food security, and lower healthcare costs. Integrating these considerations into the proposed climate planning as part of the NDC development, ensures that mitigation efforts as prescribed in the NDC are capable of also advancing public health and social equity.
24. In a study on the effects of fossil fuel consumption related CO₂ on Health outcomes in South Africa⁹, it was investigated and found that fossil fuel consumption and CO₂ emissions significantly increase infant and under-five mortality in South Africa. A 1% rise in lagged emissions correlates with a 0.63% increase in child mortality, driven by pollution-related health risks such as respiratory infections, heart disease, and compromised immune responses in young children. The findings show that continued reliance on fossil fuels worsens public health outcomes and forces higher government health expenditure, while transitioning to net zero through a more ambitious GHG reduction pathway could substantially reduce child mortality and improve long-term health resilience.

Climate Ambition and Public Health Co-Benefits

25. Strong climate ambition, specifically targeting significant reductions in greenhouse gas emissions from fossil fuel reliance, can deliver substantial public health and economic benefits. Reduced emissions will lower air pollution, thereby decreasing health-related costs for the state and improving quality of life for its citizens. This is particularly critical in South Africa, where current scientific evidence shows that stronger mitigation targets can unlock economic opportunities through economic diversification and climate-friendly industrialisation, whilst safeguarding the rights of present and future generations.
26. Moreover ambitious mitigation, particularly in efforts to decarbonize the sectors of electricity, commercial agriculture, and transport, is essential to shield South Africa from the economic risks posed by emerging carbon border adjustment mechanisms. Without decisive action, up to 50% of trade value¹⁰ and 1 million jobs could be exposed to penalties or exclusion from key markets. Sensible ambition is not only environmentally necessary, but also economically strategic.

Strategic Decarbonisation Pathways for South Africa

27. South Africa can technically achieve a national budget of 9 Gt CO₂e and reach net zero emissions by 2050 if renewable energy is deployed tenfold faster (6-7GW per annum), coal

⁹ Gbenga Wilfred, Akinola, and Abieyuwa Ohonba. 2024. "The Effects of Fossil Fuel Consumption-Related CO₂ on Health Outcomes in South Africa" *Sustainability* 16, no. 11: 4751. <https://doi.org/10.3390/su16114751>

¹⁰ World Bank Country Climate and Development Report highlights that South Africa's export orientated economic structure is at escalating risk due to carbon border measures. It highlights that 75% of South Africa's current exports to the EU come from sectors at moderate to High Trade risk including mining metals, agriculture chemicals, plastics and rubber

power is fully retired in the next 10 years and road and rail mobility is electrified, among other measures.

Legal Dimensions of Climate Mitigation: ICJ Advisory Opinion

28. The recent ICJ Advisory Opinion is relevant to the development of South Africa's NDC, particularly aspects related to mitigation as the court clarifies the international legal position regarding appropriate mitigation measures regulated in accordance with international law. In the Court's view, the "well-established rule of international law" that "the conduct of any organ of a State must be regarded as an act of that State. Failure of a State to take appropriate action to protect the climate system from GHG emissions, including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies, may constitute an internationally wrongful act which is attributable to that State."¹¹ Thus, a State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.

State Responsibility and International Climate Obligations

29. The above reading of the ICJ Opinion suggests that member states are at risk of breaching conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases. Consequently, States' obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic GHG emissions, in particular the obligation to prevent significant transboundary harm under customary international law, are obligations erga omnes.¹² Therefore state parties have a legal interest in the protection of the main mitigation obligations set forth in the climate change treaties and may invoke the responsibility of other States for failing to fulfil them
30. The above findings by the ICJ are relevant to South Africa in its attempt to develop its response to addressing climate change through its proposed means of implementation pertaining to mitigation. Drafter of the mitigation section are confronted with the tension between "due diligence" as a legal shield against international legal claims and "due diligence" as an internationally accepted imperative requiring deep cuts in fossil fuel production and use, particularly coal and gas, to prevent further harm the environment and frontline communities.
31. Failure to significantly enhance mitigation ambition damages South Africa's credibility as a climate leader and voice for the Global South, potentially weakening its position in negotiations and international finance access. The NDC drafting process must internalize this: ambition isn't just policy; it's a legal and moral imperative for planetary and community survival.

¹¹ Para 427-428 of the ICJ Advisory Opinion

¹² Para 440 of the ICJ Advisory Opinion

32. To be regarded as demonstrating meaningful ambition in mitigation, South Africa's Nationally Determined Contribution (NDC) must acknowledge its status as a significant global emitter of greenhouse gases and address its contribution. As of 2022, the country accounted for 1.2% of global emissions from combustible fuels and ranked first on the African continent with 478 Mt CO₂e. In light of this, the implementation of mitigation measures must incorporate the following actions:
- 32.1. Setting NDC targets aligned with 1.5°C, requiring deep, rapid cuts, especially from coal, oil and gas.
 - 32.2. Explicitly linking mitigation measures to immediate pollution reduction in mining/power regions and ensuring a just transition *centered* on community needs and rights.
 - 32.3. Backing the NDC with robust, enforceable domestic laws regulating private emitters, making the international "due diligence" standard a concrete domestic legal standard for enforcement.
 - 32.4. Using the *erga omnes* principle to bolster South Africa's voice in demanding global equity and finance, while demonstrating genuine domestic commitment.
33. The improved mitigation targets from the previous 2021 NDC Draft, while commendable on paper, may lack the domestic policy measures necessary for achieving a high degree of ambition in South Africa's implementation. Without clear, costed plans and guaranteed domestic contributions, ambition risks remaining rhetorical rather than actionable, as outlined by the recent ICJ opinion.

Means of implementation

34. As a legal and environmental organization committed to advancing climate justice and protecting the rights of communities most affected by environmental harm, **Natural Justice** submits the following recommendations to enhance the credibility, ambition, and equity of South Africa's Nationally Determined Contribution (NDC) as it relates to the setting of its mitigation targets and proposed means of implementation. These proposals are grounded in international best practice, legal obligations, and the imperative to safeguard public health, biodiversity, and economic resilience:
- 34.1. Add an unconditional core commitment within the means of implementation of the mitigation measures that could read as follows

"The Republic commits to unconditional measures that will, irrespective of external finance, reduce emissions to the suggested range outlined by the PCC recommendation of 350 to 420 X MtCO₂-eq by 2030, but rapidly moving to a more ambitious range of 248 to 329 MtCO₂-eq for 2031 to 2035 through: (a) no new coal plants beyond [date]; (b) a phased retirement schedule for coal power, coal to gas or gas: [dates and MW]; (c) mandatory energy efficiency standards for buildings and industry; and (d) an immediate moratorium on exploration for new fossil fuel fields."
 - 34.2. Include quantitative targets and implementation plans which specify 2026-2030 and 2030-2035 emission reduction targets alongside corresponding policies and measures.

These must prioritize people-centered approaches and align with the Convention on Biological Diversity (CBD) goals to halt and reverse nature loss.

34.3. Commit to **phasing out fossil fuels in the power sector**, ensuring decline in fossil fuel use during this critical decade in order to keep the 1.5°C goal within reach. A number of recent credible scientific estimates¹³ suggest that South Africa has a total global remaining carbon budget of between 170 Gt CO₂e and 235 Gt CO₂e to have a 50% chance of limiting warming to 1.5 average limit. Subsequently, scientific evidence supported by the PCC suggests that South Africa has to reduce GHG emissions by between 9 and 17 per cent per year.

34.4. Provide concrete fossil fuel production phase out trajectories which will guide domestic legislative and policy instruments in a manner that requires alignment with 1.5-degree Celsius scenarios with no or low overshoot. As supported by the PCC recommendations, the World Bank Country Climate Development report¹⁴ indicate that South Africa should be considering applying mitigation measures that result in at least 58 per cent emissions reductions between the period of 2030-2040 to avoid overshooting the 1.5-degree target which has been affirmed as mandatory legal obligation to signatories to the Paris Agreement by the ICJ Advisory Opinion.¹⁵

34.5. Adopt a commitment to methane reduction targets within the current NDC window of 2026-2035, through the adoption of measures and policies that ensure the reduction of fossil fuel related methane emissions by 75% in line with the International Energy Agency guidance.^{16,17,18}

35. These recommendations reflect Natural Justice's overall assessment that South Africa's NDC must evolve beyond aspirational language, to include enforceable, measurable, and rights-

¹³ IPCC Global Carbon Budget and 1.5°C limit: <https://www.ipcc.ch/sr15/chapter/spm/>; Carbon Tracker Initiative report assessing coal reserves and emissions in South Africa: <https://carbontracker.org/reports/south-africa> and "Grasping for Gas" report by The Green Connection, which discusses fossil fuel reserves and carbon budgeting in South Africa, including estimates of remaining carbon budgets aligning with IPCC global budgets:

<https://thegreenconnection.org.za/wp-content/uploads/2021/10/Grasping-For-Gas-Report-22042021-1.pdf>; and lastly A REVIEW TO ILLUMINATE UNCERTAINTIES ASSOCIATED WITH CARBON BUDGETS IN SOUTH AFRICA" published in the South African Journal of Industrial Engineering. This study reviews the legislation and policies related to carbon budgets in South Africa and discusses implementation uncertainties, which could provide context for the carbon budget estimates but does not specifically state the 170–235 Gt CO₂e figure as the national budget. <https://sajie.journals.ac.za/pub/article/view/3082>

¹⁴ World Bank Group. 2022. South Africa Country Climate and Development Report. CCDR Series;. © World Bank Group. <http://hdl.handle.net/10986/38216> License: [CC BY-NC-ND](https://creativecommons.org/licenses/by-nc-nd/4.0/).”;

¹⁵ Paragraphs 242-246 of the ICJ Advisory Opinion 2025.

¹⁶ International Energy Agency. “Curtailling Methane Emissions from Fossil Fuel Operations Report” accessible here <https://iea.blob.core.windows.net/assets/585b901a-e7d2-4bca-b477-e1baa14dde5c/CurtaillingMethaneEmissionsfromFossilFuelOperations.pdf>;

¹⁷ Roadmap towards cleaner fossil fuels in South Africa phase 2 report, accessible here <https://sanedi.org.za/wp-content/uploads/2024/01/Roadmap-towards-Cleaner-Fossil-Fuels-in-South-Africa-Phase-2.pdf>

¹⁸ The OECD's Horizontal Project on Building Climate and Economic Resilience: Net Zero+: Targeting Methane Emission reduction to mitigate the risk of climate overshoot, accessible here https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/04/targeting-methane-emissions-to-mitigate-the-risk-of-climate-overshoot_92b5b4c3/5fa37719-en.pdf

based commitments within the means of implementation regarding mitigation. Doing so will not only enhance climate ambition, ensuring it truly represents the highest ambition, but also protect vulnerable communities, uphold international legal obligations, and unlock co-benefits for health, biodiversity, and economic transformation.

II. Adaptation: from planning to rights outcomes

36. As part of its broader assessment, Natural Justice acknowledges that the draft NDC makes a meaningful shift from high-level adaptation communication to more detailed national adaptation goals. This includes sector-specific targets and tracking mechanisms across critical areas such as water, disaster management, sanitation, transport, and food security. This evolution represents a significant upgrade in the country's approach to climate resilience and adaptation planning.
37. Furthermore, it is commendable that the second iteration of South Africa's NDC marks a notable improvement in adaptation planning. It appears to expand on the 2021 communication by introducing structured targets for key sectors and establishing mechanisms to monitor progress. This apparent shift reflects a more systematic and accountable approach to building climate resilience through adaptation.

What is missing/where are the gaps

38. However, as part of its rights-based assessment of South Africa's 2025 draft NDC, **Natural Justice** finds that while ambition is articulated on paper, its operationalisation remains open to challenge, particularly in meeting the objective criteria of "highest possible ambition" under international climate law. Several critical risks and omissions threaten to undermine the credibility and effectiveness of the adaptation component. These include the following below:
- 38.1. Major adaptation items in the current draft remain marked "TBD" in terms of financing. Without costed, timebound plans, these goals risk becoming aspirational rather than actionable. The **practical consequence** of this is that communities may continue to face delayed implementation, with real risks to lives, livelihoods, and resilience as has been characterized by recent events over the past four years where regions like the Eastern Cape and KwaZulu-Natal have endured catastrophic flooding, resulting in loss of life, destruction of homes and damage to infrastructure.
- 38.2. The draft centralises adaptation targets but fails to guarantee direct funding to local governments or community-based organisations. This undermines the human rights principles of participation, access, and subsidiarity, where decisions and resources should be closest to those affected. This has been echoed by the portfolio committee on cooperative governance and traditional affairs where they reported their concern over the continued failure of municipal interventions to deliver lasting

improvements¹⁹²⁰, in our preparedness and response mechanisms. Local governments, despite their best efforts, have struggled to implement effective adaptation strategies and early warning systems. Yet, without the proper capacity, budgeting and planning, an NDC of this nature will only continue to frustrate the capacity of the state to enhance its capacity to respond to future emergencies, safeguarding lives and livelihoods in the process.

38.3. The adaptation monitoring framework outlined in the NDC, focuses on outputs (e.g., infrastructure, planning documents) rather than outcomes that reflect human rights impacts, such as reduced mortality, improved food security metrics, and equitable access to safe water, and building resilient and sustainable health systems which are capable of realizing health co-benefits.

Means of implementation.

39. It is vital that NDC design, planning and implementation follows a rights-based approach. Following a rights-based approach to NDC design, planning and implementation would necessitate the following:

39.1. Setting ambition levels as defined by the ICJ as being the “highest ambition” which align with human rights obligations. In doing so, the design, planning and implementation of an NDC can be characterized as being of high ambition where it is gender responsive, child sensitive and disability inclusive. This requires mainstreaming gender considerations in the formulation, implementation, monitoring and reviewing of the NDC and in all sectors it covers, including through gender-responsive budgeting, and gender-disaggregated data collection, use and analysis.

39.2. Defining and applying mandatory human rights and environmental due diligence regulations in line with state obligations to fulfil adaptation obligations as provided for in Article 7, paragraph 9 of the Paris Agreement.²¹ These due diligence regulations ought to be incorporated into the language of the NDC in order to ensure companies, financial institutions, and public authorities take meaningful action to identify, prevent, mitigate, and account for human rights abuses, environmental harm and further greenhouse emissions caused by their operations, subsidiaries, and value chains.

39.3. Respecting, protecting and fulfilling the rights of indigenous peoples and local communities by way of including references to mandatory recognition of FPIC during all stages of implementation of the NDC and its related adaptation initiatives as and where their rights are threatened, impacted and violated. A by product of this would be ensuring that local communities are central to decision-making and benefit sharing

¹⁹ Portfolio Committee on Cooperative Governance and Traditional Affairs section 139 and 154 municipal interventions report (2025) accessible here

https://www.parliament.gov.za/storage/app/media/PBO/Occasional_Papers/2025/06-05-2025/PBO_Brief_Section_139_and_154_Municipal_Inteventions_May_2025_1.pdf

²⁰ <https://www.polity.org.za/article/cogta-committee-calls-for-early-warning-systems-for-municipal-interventions-to-be-strengthened-2025-05-21>

²¹ Paragraphs 246-254 of the ICJ Advisory Opinion.

39.4. Promoting the adoption of measures that institutionalize a health based approach to adaptation measures, considering the necessity of addressing health related impacts of climate change, with the objective of achieving the highest possible ambition in resilient and sustainable health systems.

39.5. Increased ambition in protecting and restoring the integrity of South Africa's land, freshwater, and ocean ecosystems, through **climate and biodiversity strategies** in alignment with the Convention on Biological Diversity's (CBD) Global Biodiversity Framework and South Africa's National Biodiversity Strategies and Action Plans (NBSAPs).

40. It must be stated however that the standard of due diligence may indeed vary depending on the particular circumstances, and Natural Justice accepts that the NDC must be developed in the context of common but differentiated responsibilities and respective capabilities in light of different national circumstances. However, the findings by the court in the ICJ Advisory opinion considered that that the standard of due diligence attaching to the obligation to pursue domestic mitigation measures is stringent on account of the fact that the best available science indicates that the "[r]isks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming.²²

41. This is the standard that must be applied in the current context. As part of its rights-based assessment of South Africa's draft NDC, **Natural Justice** recommends that adaptation planning outlined in the draft NDC, be explicitly framed through a human rights lens. This is essential to ensure that ambition is not only declared but delivered in ways that uphold dignity, equity, and justice. To achieve this, the NDC should:

41.1 Include disaggregated targets across sex, age, disability, income and geography to ensure inclusive tracking of adaptation outcomes across the identified seven national goals.

41.2 Mandate community led adaptation budgeting, enabling local actors to shape priority inventions and resource allocations across the seven identified national goals.

41.3 Embed as part of the implementation of its "highest ambition" legal mechanisms that are capable of creating enforcement mechanisms to challenge maladaptive projects, particularly those that exacerbate vulnerability or violate environmental rights..

41.4 Integrate social protection triggers to support communities when adaptation needs exceed local capacity.

41.5 Exclude Carbon Capture and Storage (CCS) **technologies** from recognition or adoption in the NDC, given their high cost, limited effectiveness, and potential to delay meaningful mitigation efforts.

Proposed text and policy changes to current draft NDC

42. As part of its rights based critique of South Africa's 2025 draft NDC, Natural Justice recommend the following text and policy changes to strengthen the adaptation component

²² Para 254 of the ICJ Opinion

and ensure that ambition is not only declared but delivered in line with the objective criteria of “highest possible ambition” under international law;

42.1. Consider replacing all “TBD” finance entries with at minimum:

42.1.1. A costed plan for each adaptation goal, including a portion of unconditional domestic financing from the Climate Response Fund allocated in the next two annual budgets.

42.1.2. A “local access” clause stating that “At least a certain percentage of adaptation finance shall be directly accessible to local government institutions and community-based organizations implementing adaptation objectives through simplified procedures with dedicated technical support.”

43. Insert human rights indicators *grounded in constitutional rights obligations...* within the adaptation framework which will oversee the achievement of the seven identified adaptation goals and priority interventions and progression. Natural Justice proposes the below mentioned clause to be inserted on page 6:

“All adaptation targets must report disaggregated²³ outcomes for enhancing food security, water access, access to housing and addressing displacement risk at the municipal level, and include targets for reducing extreme mortality by a certain percentage”.

44. The abovementioned proposed clause insertion will ensure that the proposed adaptation design framework outlined on pages 6-11, not only measures the achievement of goals and interventions and progressions through infrastructure outputs exclusively, but also measures the achievement of goals, interventions and progressions of rights-based outcomes. This will ensure *accountability*.

Conclusion

45. It is crucial to reinforce that an NDC that seeks to employ the objective of achieving its “highest ambition” must consider and integrate human rights as part of its legal obligations under climate treaties, customary international law, and other applicable international law to carry out climate adaptation planning and implement adaptation actions, in line with the best available science. The ICJ has now clarified the legal position that the adverse effects of climate change may “significantly impair the enjoyment of certain human rights,” including the right to life; a healthy environment; health; an adequate standard of living; to privacy, family, and home; and the rights of women, children, and Indigenous Peoples. In other words, the ICJ sees states’ failure to implement adequate and timely adaptation measures as a potential violation of their international human rights obligations. In order to ensure its NDC does not in any way result in a violation of South Africa’s international obligations, the development of the NDC regarding adaptation cannot be finalized without disaggregated data, community agency, legal safeguards, and social support.

²³Disaggregated by municipality and subpopulation groups (income, gender, disability).

46. Where the above is absent, Natural Justice considers that the NDC risks reinforcing the very vulnerabilities it seeks to address. Justice demands that ambition be inclusive, accountable and rights anchored.

III. Loss & Damage: finance and access

47. Natural Justice commends the latest draft of the NDC attempt to formalize provisions related to Loss and Damage (L&D), explicitly calling for international support and the establishment of new financial mechanisms. This inclusion within the NDC draft language reflects a deliberate policy stance by South Africa that aligns with global efforts to institutionalize L&D within climate governance frameworks. By embedding these provisions, the draft seemingly demonstrates a commitment to advancing the L&D agenda in international negotiations, signalling a shift from rhetorical acknowledgment to actionable engagement.

What the current NDC Fails to Do — Critical Shortcomings

48. The NDC draft fails to specify the nature of the international finance it seeks for Loss and Damage (L&D). Crucially, it does not commit to seeking grant-based, predictable, and non-debt financing structures to support L&D endeavours. Without such a commitment, there is a significant risk that vulnerable communities will be forced to absorb additional sovereign debt simply to recover from climate-related harm. This outcome would directly contradict the principles of climate justice, which demand that those least responsible for the climate crisis are not further burdened by its costs.
49. The draft could be strengthened by adopting a phased approach that simultaneously calls for international Loss and Damage (L&D) finance and outlines a domestic roadmap for readiness of the implementation of loss and damage measures. This roadmap should include institutional and legal mechanisms for mobilizing, receiving, and disbursing L&D funds in a timely, transparent, and equitable manner.
50. To support this, South Africa's Nationally Determined Contribution (NDC) should call for the adoption of a national L&D risk assessment that maps and quantifies both economic and non-economic losses to the extent possible. This assessment must reflect the specific vulnerabilities of South African communities and consider secondary and tertiary impacts, such as displacement, loss of cultural heritage, and long-term livelihood disruption, to accurately determine the scale of international financing required.
51. Based on this assessment, Natural Justice recommends that the NDC propose explicit L&D measures to guide the implementation of the Climate Change Response Fund subject to oversight mechanisms to ensure meaningful and just implementation. These measures should be aligned with the Early Warnings for All initiative and designed to ensure that early action, compensation, and recovery are grounded in principles of justice, transparency, and community participation.
52. Finally, the draft NDC appears to provide no clear commitment to establish an institutional mechanism for affected individuals or communities to access funds quickly, transparently, and without excessive administrative burdens managed by the state. While it identifies the

Climate Change Response Fund as a potential vehicle, it does not specify how this fund will mobilize, receive, and disburse resources to communities impacted by declared climate disasters. Nor does it define timeframes for assistance or outline operational procedures to ensure functional responsiveness by the Response Fund.

53. Equally concerning is the absence of the call for procedural safeguards regarding implementation of loss and damage measures. The draft does not set out standards for defining fair compensation within the context of South Africa's unique climate induced scenarios. This lack of procedural clarity undermines both the credibility and the practical utility of the proposed L&D framework, leaving affected communities without a reliable pathway to redress and recovery.

Lack of localized and legally mandated implementation frameworks

54. While the NDC references national legislation, like the Climate Change Act⁵ and Disaster Management Act²⁴ it fails to specify how these Acts will be synergised to mandate and capacitate municipalities to develop legally enforceable L&D response plans. This incongruence risks creating a governance impotence in high-risk, low-capacity municipalities, leaving them without the required support or resources to implement the NDC's ambitions into practice.²⁵
55. The legal framework for L&D remains fragmented, with no clear pathways for access, and implementation and accountability. Rather than provide enforceable climate justice mechanisms, the NDC currently provides communities with uncertain remedies.
56. The NDC is silent on concrete legal empowerment measures, concerning, given the complex claims processes anticipated for L&D funds. This gap is particularly acute for communities seeking redress for climate-related losses and damages, such as rural and poor communities affected by the 2022 KZN floods.²⁶
57. The KZN floods exposed deep systemic weaknesses in disaster response and legal recourse.²⁷ Lack of coordinated response from local authorities, lack of early warning systems and defective temporary housing and infrastructure planning where identifies as key challenges.²⁸ Communities were forced to rely on community solidarity and volunteer

²⁴ Disaster Management Act 57 of 2002. (**DMA**)

²⁵ Adis Dzebo, Hannah Janetschek, Clara Brandi and Gabriela Iacobuta, *Connections between the Paris Agreement and the 2030 Agenda: The Case for Policy Coherence* (SEI Working Paper, Stockholm Environment Institute, September 2019) <https://www.sei.org/publications/connections-between-the-paris-agreement-and-the-2030-agenda/>. Accessed on 21 August 2025.

²⁶ Julia Evans, 'Watershed moment: Advanced attribution study confirms climate change intensified Durban's deadly 2022 floods' *Daily Maverick* (29 July 2025) <https://www.dailymaverick.co.za/article/2025-07-29-watershed-moment-advanced-attribution-study-confirms-climate-change-intensified-durbans-deadly-2022-floods/>.

²⁷ Benni Mudau, 'Poor infrastructure imperils KZN pupils' right to education amid climate catastrophes' *Daily Maverick* (17 April 2025) <https://section27.org.za/2025/04/op-ed-poor-infrastructure-imperils-kzn-pupils-right-to-education-amid-climate-catastrophes/>.

²⁸ As seen above.

services to manage the large-scale loss of lives and damages to infrastructure, as well as associated the psycho-social impacts.²⁹

A Human Rights-Based Approach to Loss and Damage

58. A credible and just Loss and Damage (L&D) framework must be grounded in human rights principles. The draft NDC should explicitly demand that L&D finance be grant-based, predictable, and non-debt creating, identifying how once these funds are received, they can be earmarked and ringfenced for addressing loss and damage through the Climate Change Response Fund. The draft NDC must set out the methodology and scope in which this fund can be administered through a human rights-based approach that provides timely support for affected communities, particularly in the aftermath of climate-induced disasters.

Means of implementation of Loss and Damage

59. The institutional arrangements described in the draft NDC at page 13 rely heavily on top-down governance structures [national, provincial, municipal disaster management centres] without explicit guarantees of participation, accountability, or access to justice. A human rights-based approach demands that affected communities are not passive recipients of state interventions, but active participants in decision-making. Furthermore, if Loss and Damage is anchored solely in disaster management institutions, it risks being technocratic and depoliticized, bypassing the rights-based obligations the state carries under the Constitution and international human rights law.
60. It remains debatable whether existing institutions are adequately equipped to address the full scope of Loss and Damage (L&D). While disaster management centres possess data, technical expertise, and operational reach to respond to climate-related events, they are structurally and functionally misaligned with the demands of L&D. These demands go beyond emergency response and require sustained measures to restore livelihoods, support relocation, and provide redress for harm in accordance with South Africa's constitutional obligations and international legal standards. Without institutional reform and mandate expansion, current systems risk failing the communities most affected by climate-induced loss.

Proposed revision

61. As part of its rights-based assessment of South Africa's draft NDC, Natural Justice emphasises the critical role of disaster management in addressing climate-related risks and losses. While ambition is articulated in the institutional framework, its delivery remains open to challenge—particularly in meeting the objective criteria of “highest possible ambition” under international climate law. Natural Justice therefore recommends the following revision to the means of implementation of loss and damage:

²⁹ Nlwazi Ngcobo, Bongane Mzinyane and Sibonsile Zibane, 'Responding to Concurrent Disasters: Lessons Learnt by Social Work Academics Engaging with Flood Survivors during a COVID-19 Pandemic, in South African Townships' in Debra D Joseph and Roshnie A Doon (eds), *The Impact of Climate Change on Vulnerable Populations* (MDPI Books 2023) <https://doi.org/10.3390/books978-3-0365-5503-4-9>.

61.1. “South Africa’s Disaster Management Act provides a coordinated framework for preventing, reducing, and responding to climate-related risks. Existing institutional arrangements, including the National Disaster Management Centre and provincial and municipal centers, shall be strengthened to address losses and damages arising from climate change, while ensuring alignment with human rights obligations. Institutional arrangements shall guarantee meaningful participation of affected communities, particularly vulnerable and impacted groups, in the assessment, prevention, response, and recovery processes. Both emergency preparedness and long-term recovery mechanisms shall be enhanced to prioritize justice, restoration of livelihoods, relocation support, and access to grievance redress, in alignment with constitutional and human rights obligations. Existing disaster management structures at the provincial and local level shall coordinate with relevant civil society and community-based organizations to ensure accountability, transparency, and participation of affected communities.”

Conclusion

- 62. Natural Justice** emphasises that funding for loss and damage as considered within the current NDC draft, must be treated as a distinct and dedicated stream—separate from allocations for mitigation, adaptation, traditional development, and humanitarian or disaster response, all of which are already critically underfunded.
- 63.** To adequately resource South Africa’s Loss and Damage measures, it is recommended that the NDC commit to the exploration new and equitable financing sources. One such source could be the fossil fuel industry, which—despite being a major contributor to global emissions—has accrued an estimated \$2.8 billion in profits per day over the past 50 years. **Natural Justice proposes** that the NDC mandate the establishment of an obligatory tax on the annual profits of fossil fuel majors, enabling them to contribute meaningfully to national efforts to address loss and damage.
- 64.** This mechanism would serve multiple purposes: it would accelerate the operationalisation of the LDF, ensure timely distribution of funds to address climate-induced loss and damage, and support essential adaptation efforts. Additionally, it would hasten the phase-out of fossil fuels by internalising their social and environmental costs.

IV. Cross-cutting issues : institutional and methodological gaps

- 65.** As part of its legal and environmental and justice assessment of South Africa’s 2025 draft NDC, Natural Justice has identified several cross cutting institutional and methodological gaps that risk undermining the credibility and effectiveness of the NDC’s ambition. While ambition appears to be established on paper, the manner in which it is communicated and operationalised remains open to challenge, particularly in meeting the objective criteria of “highest ambition” under international law.
- 66.** Regarding cross cutting issues such as transparency, MRV and Accounting, the draft’s exclusion of **natural disturbance emissions** (e.g., wildfires, droughts) disregards ecological reality and **disproportionately impacts communities reliant on vulnerable ecosystems** for

subsistence and cultural survival. Legally, this violates the "**do no harm**" principle under climate justice frameworks by masking true ecological risks.

67. In addition, ambiguous reporting protocols for **conditional versus unconditional actions** create a **procedural equity gap**. Without standardized disclosure, developing states, such as South Africa in this context, and communities cannot verify if delayed actions stem from unmet finance conditions or state.

68. These above-mentioned omissions materially undermine transparency and hinder like for like assessment of progress. The question therefore remains; how can the above-mentioned gaps get addressed? Natural Justice proposes the following recommendations:

68.1. With regards to addressing the gap of reporting of natural disturbance emissions³⁰, the NDC could adopt tiered MRV thresholds which require reporting for disturbances exceeding a portion of South Africa's national emissions, as well as restoration. This could also be supported through piloting community led monitoring which integrates data collection into national inventories.

68.2. With regards to addressing ambiguous conditional, unconditional reporting, the NDC could mandate separate disaggregated disclosure of (1) actions contingent on finance/tech transfer and (2) unconditional actions (with domestic funding sources). This could be further strengthened through the establishment of redress triggers which become active if conditional actions lapse after GST cycles.

69. Moving onto gaps regarding the concerns on participation and accountability, whilst the NDC recognizes that just transition frameworks are formally institutionalized within South Africa institutional arrangements, the draft does not specify concrete mechanisms for public participation (e.g mandated consultation timelines) and does not establish accountability pathways, such as independent review or redress options. This creates ambiguity about how stakeholders input will translate into revised commitments. Natural Justice proposes the following recommendations to address the identified gaps regarding participation and accountability:

69.1. Embed Free, Prior and informed consent for resilience-based planning interventions affecting indigenous peoples and local communities, where it pertains to land occupied by indigenous peoples and local communities.

69.2. Institutionalize the implementation of 90-day and 180-day consultation periods for all future departmental and sectoral policy instruments (including legislative) proposed during the 2025-2030 NDC period

³⁰ Natural disturbances are anthropogenic-amplified (IPCC AR6). Excluding them falsifies baseline data, violating states' duty to prevent foreseeable harm (*Urgenda v. Netherlands*).

V. "Human rights obligations established under international law, and the legal consequences arising from non-compliance with these obligations."

Linking NDC commitments to constitutional duties and international obligations:

70. As part of its legal and rights-based assessment of South Africa's draft NDC, Natural Justice recommends the incorporation of a Human Rights-Based Approach (HRBA) within the proposed operational approach outlined section a page 2 of the draft NDC. This approach will differ from the current proposed approach of all-of-economy and all-of-society in that climate ambition must be implemented in a manner consistent with constitutional and international legal obligations. Terms like all of economy and all of society³¹ remain abstract and open to interpretation without linking them to concrete, enforceable rights. These terms do not appear to be grounded in the foundational principles of South Africa's constitution and international human rights law.³² Meaningful ambition requires not just emission reductions but ensuring the process and outcomes respect human rights and avoid harm.
71. Furthermore, whilst socio-economic considerations as articulated in the approach section (employment, energy prices, poverty) are crucial, the current proposed approach and means of implementation present these considerations as the primary lens through which mitigation and adaptation pathways are evaluated. This risks sidelining the equally critical and constitutionally mandated imperatives of procedural justice, protection of specific vulnerable rights (land tenure, indigenous peoples' rights), and mechanisms for redress. Focusing predominantly on macro-economic benefits can obscure localized harms, such as the displacement of vulnerable communities from land needed for renewable projects without adequate consultation or compensation, or the failure to ensure adaptation budgets are gender-responsive and disability-inclusive. Justice cannot be an assumed by-product of economic diversification; it must be an explicitly stated and operationalized objective.

Accountability measures must be explicitly integrated:

72. Natural Justice proposes that the current proposed approach outlined at page 2 of the NDC, and the proposed support and means of implementation outlined at page 17 incorporate explicit references to the following proposed approach to developing and implementing the NDC:

³¹ All of society" is a vague aspiration, not a guarantee of *meaningful* participation or the *specific* protections needed for vulnerable groups like indigenous communities facing land dispossession or women disproportionately impacted by climate change. Relying solely on implied protections or domestic law ignores the specific context of climate action. Explicitly referencing the *specific* principles (participation, information, grievance mechanisms, land rights, gender/disability inclusion, remedy) in the NDC serves a vital purpose: it elevates these non-negotiable standards to the core of the country's *international* climate commitment, reinforcing domestic obligations and signaling unequivocally that climate action *must* conform to these justice imperatives.

³² Paragraphs 393 and 403 of the ICJ Advisory Opinion where the court held "*The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights*" and "*the Court considers that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment. In order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment.*"

72.1. *“Our approach is based on fairness and ambition, informed by the best available science and implemented in accordance with South Africa’s Constitutional obligations and international human rights law. This second NDC represents our highest possible ambition, in the context of equity - and we see implementation as key to ambition, guided by principles ensuring meaningful participation by affected communities, access to timely and accurate information, independent grievance mechanisms, gender-responsive and disability-inclusive budgeting, protection of land and tenure rights, and access to remedy and compensation”*

69. The proposed revision by Natural Justice advocates for the seamless integration of mandated principles into the existing framework of the proposed approach and means of implementation, as outlined on pages 2 and 17 of the NDC. This insertion clarifies that 'fairness' and 'ambition' are not abstract ideals but are intrinsically connected to South Africa’s binding Constitutional and international human rights obligations.

V. Monitoring, Verification and reporting as linked to transparency and accountability

70. As part of its ongoing commitment to rights-based climate governance and transparency, **Natural Justice** recommends strengthening South Africa’s Monitoring, Reporting, and Verification (MRV) framework to ensure alignment with the Nationally Determined Contribution (NDC) and international reporting obligations.

Specifically, the MRV system should:

70.1. Require **separate public reporting** on:

70.1.1. **Conditional vs. unconditional actions and finance**, to clarify the basis of South Africa’s commitments; and how it intends to track implementation.

70.1.2. **Social and rights-based indicators**, disaggregated by gender, age, and other relevant categories, across mitigation and adaptation activities and outcomes to uphold equity and inclusion of marginalized groups such as women, youth, elderly, indigenous peoples and local communities etc. This is far more detailed than the current proposed approach of tracking adaptation progress, which currently primarily focus on **tracking adaptation progress** with indicators that are primarily sectoral/institutional (plans, projects, infrastructure) rather than rights based outcomes

70.2. Establish reporting frequencies as follows:

70.2.1. Annual reporting for climate finance. The NDC calls for international L&D finance but has **no proposed national monitoring/reporting mechanism for how L&D harms are tracked or will be tracked, who gets compensation, how grievances are handled**. That’s a glaring rights gap.

70.2.2. Biennial reporting on emissions and adaptation progress must include emissions from land use, land-use change, and forestry (LULUCF) caused by natural disturbances. Excluding this data would undermine transparency and contradict the intent of the Paris Agreement, which requires all national actors, including private companies, to contribute coherently to achieving NDC targets. Additionally, adaptation reporting should incorporate rights-based indicators within the MRV framework to ensure that the Biennial Transparency Report (BTR) reflects human rights outcomes, such as access to water and reductions in disaster-related displacement.

- 70.3. Creation of a domestic L&D registry which records climate-related losses (lives, livelihoods, housing, ecosystems) disaggregated by vulnerable groups.
- 70.4. Ensure that the national MRV system is fully integrated with both the NDC framework and the Biennial Transparency Report (BTR), in line with Article 13 of the Paris Agreement. To give effect to article 13 of the Paris Agreement, Natural Justice recommends that the NDC make provision for institutional **guarantees for community participation** in designing or reviewing MRV indicators or reports. An institutional guarantee may take the form of a domestic consultation mechanism before each BTR submission (ie public hearings, access to draft BTRs, publish drafts for comment, ability for civil society to submit shadow inputs).

Conclusion

71. It is anticipated that government may argue that the Enhanced Transparency Framework (ETF) and Biennial Transparency Reports (BTR) are purely technical processes under the UNFCCC, and therefore not appropriate venues for integrating rights-based indicators.
72. Natural Justice strongly disagrees with this position. As a legal and environmental organization committed to advancing climate justice, we assert that Monitoring, Reporting, and Verification (MRV) is not a neutral exercise. The decision of what to measure ultimately determines what is valued and prioritized in implementation.
73. If human rights are excluded from MRV frameworks, they are effectively excluded from implementation. To ensure that climate action is equitable, accountable, and aligned with the Paris Agreement's broader goals, rights-based indicators must be embedded in the MRV process.
74. Therefore transparent, and inclusive reporting mechanisms are essential to delivering on climate commitments, protecting vulnerable communities, and fulfilling South Africa's international legal obligations.

NDC fails to reflect equity through its fair share

75. South Africa is not only highly vulnerable to the impacts of climate change, it is also the **leading emitter of greenhouse gases in Africa** and ranks among the **top 25 global emitters**. It contributes over one-third of the continent's energy-related CO₂ emissions, primarily from the electricity, metals, and transport sectors. Despite its classification as a developing country, South Africa has a legal and moral obligation under the **Paris Agreement** to take ambitious action to reduce its emissions.
76. A fair share of the global climate effort includes both **domestic emissions reductions** and, for countries with greater capacity and historical responsibility, **financial support** for less-resourced nations. All Parties, regardless of their capacity, must transparently justify how their proposed contributions meet their fair share of the global effort. This principle applies not only to mitigation but also to **adaptation, loss and damage**, and the **global just transition**, including a fair and equitable phase-out of fossil fuels.

77. South Africa's continued reliance on fossil fuels is exacerbated by **weakened environmental regulations**, such as the Department of Environment, Forestry and Fisheries' decision to exempt **Eskom** from Minimum Emission Standards (MES) for eight coal-fired power stations. These exemptions undermine the legitimate purpose of MES: to reduce pollution that harms the environment, public health, and social and economic conditions. The burden of this toxic pollution falls disproportionately on **poor and underserved communities**, who are least responsible for emissions but most affected by their consequences.³³
78. The current **Nationally Determined Contribution (NDC)** fails to acknowledge key policies that promote fossil fuel expansion, including the **Upstream Petroleum Resources Development Act**, the **Gas Master Plan**, and the **Integrated Resource Plan (IRP)**, all published in 2024. These policies signal a commitment to locking in fossil fuel infrastructure, contradicting the NDC's stated climate goals.
79. According to the **Climate Action Tracker**³⁴, these policy choices make it unlikely that South Africa will contribute meaningfully to the 1.5°C global target, with projections instead pointing toward a **3.4°C trajectory**. Scientific estimates place the remaining global carbon budget between **170–235 Gt CO₂e**, giving states only a 50% chance of limiting warming to 1.5°C. South Africa's fair share of this budget from 2021 to 2050 is estimated at **6–9 Gt CO₂e**.
80. Given this context, the NDC must be revised to reflect the negligible economic benefits of continued fossil fuel support and the elevated risks it poses, such as deteriorating air and water quality, increased climate-related disasters, and reduced quality of life.
81. As the twelfth largest global emitter and the second-largest economy in Africa, South Africa must lead the net-zero transition with higher ambition and stronger targets. This is not only a climate imperative, it is a matter of justice, equity, and constitutional responsibility.

³³ <https://www.dailymaverick.co.za/article/2025-03-31-eskom-granted-air-quality-exemptions-under-strict-conditions/>

³⁴ <https://climateactiontracker.org/publications/the-climate-crisis-worsens-the-warming-outlook-stagnates/>

Final Conclusion and Call to Action

82. As part of its rights-based climate governance mandate, **Natural Justice** submits the following key points, in addition to the above-mentioned recommendations already raised within the entire comment, to strengthen South Africa's NDC and ensure meaningful implementation:
- 82.1. Tighter targets are meaningless without a credible finance and implementation plan. Unconditional measures must be embedded in the NDC now. Without clear ambitious pathways/ranges within mitigation and adaptation, ambition remains rhetorical. The NDC must reflect real-world commitments, not aspirational figures. Therefore, all efforts should be made to achieve reduction values well below the upper end of the 2030 target range with a more ambitious range of 248 Mt CO₂e to 329 Mt CO₂e.
 - 82.2. Transparent reporting must include all emissions sources, including those from land-use disturbances, to uphold the integrity of the MRV system.
 - 82.3. Adaptation is not a plan line item; it's a rights obligation. Cost it and fund it locally. Adaptation must be treated as a constitutional and human rights imperative. Localized funding ensures that vulnerable communities are protected and empowered.
 - 82.4. The NDC must include a minimum set of deliverables that the government is obligated to pursue regardless of external finance. These should include: (a) no new coal power plants, gas to power plants, LNG Terminal infrastructure, (b) a clear early retirement schedule for existing coal infrastructure, and (c) mandatory energy efficiency measures. This approach strengthens legal defensibility and aligns with South Africa's constitutional and international rights obligations.
 - 82.5. Adaptation must be backed by costed budgets, ring-fenced domestic funding, and simplified direct access mechanisms for municipalities and community-based organizations. This ensures that adaptation is not only planned but also implemented in a way that is responsive to local needs and realities.
 - 82.6. All listed mitigation and adaptation projects must be subject to non-negotiable safeguards, including Free, Prior and Informed Consent (FPIC), inclusive participation, and accessible grievance mechanisms. These are essential to protect community rights and ensure accountability.
 - 82.7. South Africa must advocate for and establish a domestic Loss and Damage facility that is grant-based, not loan-based, and not limited to international advocacy. This is essential to address irreversible climate harms and uphold the principle of climate justice.