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COMMENTS ON THE DRAFT NATIONAL GREENHOUSE GAS CARBON BUDGET AND MITIGATION PLAN REGULATIONS WHICH INCLUDE THE DECLARATION OF THE LIST OF GREENHOUSE GASES AND ACTIVITIES

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. Natural Justice's credibility is demonstrated through its longstanding work in **community-based legal empowerment, rights-based environmental litigation, and international climate advocacy**. This dual grounding in legal authority and lived community realities ensures that the submission reflects both technical rigour and social relevance.
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 ***draft National Greenhouse Gas Carbon Budget and Mitigation Plan Regulations which include the declaration of the list of Greenhouse Gases and Activities***, for public comment was published on the 1st of August 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.
8. The draft National Greenhouse Gas Carbon Budget and Mitigation Plan regulations and the accompanying technical guideline present a significant amount of information, much of it being complex and of a highly technical nature. Further, the implications and impacts are extremely significant for South Africa's climate response trajectory and outcomes. As such we trust and request that there will be adequate further opportunities for consultation and engagement, including at least a further public consultation process on proposed final Mitigation Plan regulations and technical guideline before these are submitted to Cabinet as envisaged.
9. Internationally, there is acceptance that to succeed in realising the Paris Agreement goals, and averting catastrophic climate change, we must urgently pivot towards low-emission economic development. We therefore oppose any aspects of the proposed mitigation plan regulations as part of the implementation of the Climate Change Act that are inconsistent with achieving net zero GHG emissions by 2050, including aspects not supportive of a suitably urgent and effective trajectory towards the next zero target. We attach our comments submitted jointly with the Centre for Environmental Rights (CER) on the 25 June 2024 as an annexure in support of our comments herein and to build on further advocacy for regulating mitigation plans in alignment with the 2023 Synthesis Report by the Intergovernmental Panel on Climate Change (IPCC).
10. In its 2023 Synthesis Report, the Intergovernmental Panel on Climate Change (IPCC) reiterated the need to take action to mitigate emissions in the near-term through 2050, particularly in this decade:

"In the very low GHG emissions scenario (SSP1-1.9), CO₂ emissions reach net zero around 2050 and the best-estimate end-of-century warming is 1.4°C, after a temporary overshoot (see Section 3.3.4) of no more than 0.1°C above 1.5°C global warming. Global warming of 2°C will be exceeded during the 21st century unless deep reductions in CO₂ and other GHG emissions occur in the coming decades.¹ Societal choices and actions implemented in this decade determine the extent to which medium and long-term pathways will deliver higher or lower climate resilient development (high confidence).²

¹ IPCC, 2023: Sections. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, p. 68, https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf (IPCC, Synthesis Report)

² IPCC, Synthesis Report, p. 92.

11. Given South Africa's commitment to achieving net zero GHG emissions by 2050, we strongly urge the Department to reconsider how the proposed mitigation plan regulations, technical guideline and carbon budget allocations monitoring programs ensure that emission reductions in all the sectors are compatible with a net zero pathway as established by the Sectoral Emission Target trajectories. Ensuring this alignment requires periodic review and revision of the mitigation plan and carbon budget monitoring programs together with the SETs throughout the pivotal decades ahead, particularly to update them in the face of technological advances and best available science, as the Climate Change Act requires and as affirmed by the International Court of Justice recent Advisory Opinion on state responsibilities regarding responding to Climate Change.
12. Natural Justice's submission provides a constructive legal and human rights analysis of the draft Regulations gazetted under the **Climate Change Act**. Its objective is to ensure that the Regulations are fully aligned with the **Constitution of South Africa**, the **National Environmental Management Act (NEMA)**, the **Climate Change Act**, and South Africa's **international obligations under the Paris Agreement**.
13. The draft regulations commendably adopt a broad scope in identifying greenhouse gases and associated activities. This inclusive approach reflects an understanding of the multifaceted nature of climate change drivers. However, the breadth of coverage must be matched by clarity, particularly regarding fugitive emissions and lifecycle accounting. Fugitive emissions, such as those from mining or oil and gas operations, are often underreported due to measurement challenges. The regulations should specify methodologies for quantifying and reporting these emissions to avoid loopholes.
14. Similarly, lifecycle accounting, while valuable for capturing upstream and downstream emissions, requires clear guidelines to ensure consistency across sectors. Without such clarity, there is a risk of misinterpretation or selective application, which could undermine the integrity of emissions reporting. In summary, while the draft's broad scope is a strength, its effectiveness hinges on the precision of its definitions and the comprehensiveness of its pollutant coverage. A more robust treatment of fugitive emissions, lifecycle accounting, and short lived climate pollutants (SLCPs) would significantly strengthen the regulatory framework.
15. Natural Justice's commentary below will be set out as follows: - contextual background, general comments, specific comments, and the conclusion.

Contextual Background

16. Historically, industrialization has been achieved through fossil-fuel intensive energy sources, production processes and products, which have generated the bulk of the stock of greenhouse gas (GHG) emissions in the atmosphere. There is thus a strong positive historical correlation between gross domestic product (GDP) per capita and CO2 emissions per capita.³

³ <https://ourworldindata.org/grapher/co-emissions-per-capita>

17. Furthermore, when emissions embedded in imports are considered, advanced economies account for even higher levels of emissions.⁴ South Africa remains a highly carbon-intensive economy, despite declining emission intensity ().⁵ This reflects the continued weight of an overwhelmingly coal-based electricity system together with carbon-intensive mining and heavy industries, a so-called Minerals Energy Complex (MEC) set of industries.⁶ Despite undergoing significant changes in its composition, South Africa remains roughly as reliant on exports of MEC products as it was in 1994, accounting for approximately 60% of all merchandise exports.
18. Some experts have argued that despite African countries contributing a small fraction of the world's GHG emissions, the only viable long-term development path for African countries is to embrace green structural transformation. Neither fossil-fuel based industrialization, nor a "grow now, clean up later" development path are optimal in the long term.⁷ This is, inter alia, because of the increasing cost and difficulty of financing fossil fuel projects, inevitable carbon taxes on exports, and the danger of getting stuck in dead-end industries.
19. South Africa, albeit more than other African countries, has contributed a nominal amount to the global stock of GHG emissions. However, it is imperative that it shifts to a green industrialization path, for two main reasons:
 - 19.1. First to avert looming risks arising from fundamental geo-political and economic shifts in the global economy.
 - 19.2. Second, to take advantage of opportunities this shift presents for South Africa's industrialization. Greening industrialization and industrial policy represents an opportunity for South Africa to shift from fossil-fuel intensive stagnation to a higher value-added, labour-absorbing and less carbon-intensive economy.
20. "Green policy spillovers" from various unilateral measures introduced by advanced economies, especially those from the EU and the US, are increasingly being felt by developing countries including African economies. One such green trade policy that is relevant for South Africa is the Carbon Border Adjustment Mechanism (CBAM), which is scheduled to take effect over the next few years. CBAM, which imposes levies on heavy industry products based on embedded carbon, is projected to disproportionately impact certain African countries including South Africa,

⁴ Winkler, H. and Black, A. (2021) Creating employment and reducing emissions: Options for South Africa: SARCHI Industrial Development Working Paper 2021-06

⁵ Winkler, H. and Black, A. (2021) Creating employment and reducing emissions: Options for South Africa: SARCHI Industrial Development Working Paper 2021-06 Winkler and Black, 2021; Montmasson-Clair, G. (2020) 'The global climate change regime and its impacts on South Africa's trade and competitiveness: A data note on South Africa's exports'. Trade and Industrial Strategies, Pretoria.

⁶ Baker, L. and Burton, J. (2024) 'From the minerals–energy complex to a just transition?', in Mohamed, S. and Ngoma, A. (eds.) *The Evolving Structure of South Africa's Economy: Faultlines and Futures*, pp.270.

⁷ Oqubay, A. (2024) *Green Industrial Policy and Industrialisation in Africa*; Lebdioui, A. (2024) *Survival of the Greenest: Economic Transformation in a Climate-conscious World*. Cambridge: Cambridge University Press. Elements in Development Economics.

<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/F0A8EDD3878C262B24FAEC1A9CE1CA18/9781009500517AR.pdf/survival-of-the-greenest.pdf>

Mozambique, Nigeria and a number of North African countries, notably Morocco.⁸ Such measures are expected to expand globally as other countries develop their own CBAMs in response to the EU's.

21. In addition to CBAMs a slew of sustainability related regulations, including the EU's Deforestation Directive, the Sustainable and Circular Textiles Strategy, and the Corporate Sustainability Due Diligence Directive will impose additional costs on a range of sectors exporting to the EU.⁹ South Africa's proposed mitigation regulation and GHG Carbon Budgeting frameworks therefore become critical in safeguarding South Africa's economy from contraction due to targeted climate tax likely to be applied to exports. South Africa has, however, been slow out of the starting blocks in terms of designing, resourcing and implementing industrial strategies at scale, that respond to and realize opportunities arising from the global green transition. Green Industrial policy measures such as the proposed mitigation regulations and GHG Carbon Budgeting program under the Climate Change Act offer an opportunity to recalibrate SA's structural transformation trajectory, drawing on lessons from other countries.
22. South Africa's emission intensity still requires considerable declines to fully converge with advanced economy levels and ultimately to net-zero in terms of its Nationally Determined Contributions commitments. Together with GHG emission comes high levels of air pollution and environmental degradation with adverse impacts on surrounding communities.¹⁰ However, transitioning towards green industrial-based economies can also prevent toxic pollution, protect biodiversity and save \$269 billion in health costs linked to air pollution, as underscored by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services in its 2024 thematic assessment report on the interlinkages among biodiversity, water, food and health ("nexus assessment"). In some settings, health savings are equal to climate mitigation costs.
23. The green transition presents a critical opportunity for South Africa to address long-standing economic challenges and shift toward a climate-compatible, job-rich, and value-adding industrial economy. This transformation requires the adoption of high-ambition and robust regulatory approaches to greenhouse gas (GHG) mitigation and carbon budgeting—grounded in a **human rights-based framework**.
24. A rights-based approach provides the normative foundation and evidence base for fostering inclusive social dialogue and participatory processes. These are essential for system-wide

⁸ Guepie, G., Macleod, J., Omojo, O., Davies, R., Van, C., Aggad, F. and Luke, D. (2023) Implications for African countries of a carbon border adjustment mechanism in the EU. The African Climate Foundation; LSE Firoz Lalji Institute for Africa; Maimele, S. (2023) The European Green Deal (EGD) and its implications for African Trade: Trade & Industrial Policy Strategies. Available at: <https://www.tips.org.za/research-archive/sustainablegrowth/green-economy-2/item/4722-the-european-green-deal-egd-and-its-implications-for-africantrade>

⁹ Zalk, N., Keane, J. and Nater, E. (2024) Greening African trade and industrialisation: strategic issues for the AfCFTA towards COP29.

¹⁰ Baker, L. and Burton, J. (2024) 'From the minerals–energy complex to a just transition?', in Mohamed, S. and Ngoma, A. (eds.) The Evolving Structure of South Africa's Economy: Faultline and Futures, pp.270

transformation, as highlighted by the **Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)** in its 2024 assessment on transformative change.

25. Co-developing a just transition with those most affected, particularly vulnerable rights holders, is not only a matter of justice but also a prerequisite for sustaining life-supporting systems and building long-term climate resilience.

General Comments:

International and national legal obligations:

26. In evaluating South Africa's climate ambition, it is essential to consider the latest international scientific benchmarks and legal obligations:
 - 26.1. **Paris Agreement Alignment:** South Africa's 2025 Nationally Determined Contribution (NDC), which still needs to be updated, submitted and accepted by Cabinet, currently sets a target range of **350–420 MtCO₂e by 2030**.
 - 26.2. **IPCC AR6 Pathways:** To limit warming to 1.5°C, global emissions must be reduced by **42% by 2030**, relative to 2019 levels.
 - 26.3. **Climate Action Tracker:** South Africa's 1.5°C-compatible emissions range is estimated at **148–397 MtCO₂e by 2030**.
27. However, upon assessment of the above South Africa's proposed 2025 NDC, the current draft carbon budgets risk locking South Africa into the **upper end of its NDC range**, which is inconsistent with 1.5°C-aligned pathways as this will likely result in overshooting 1.5°C pathways. This trajectory undermines both global climate goals and South Africa's constitutional and international obligations.
28. In addition, the recent ICJ Advisory Opinion is relevant to the development of its regulatory framework governing mitigation 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
29. The advisory opinion therefore recognised that meeting the 1.5°C goal requires shifting away from reliance on fossil fuels and applies to all states. Therefore, CBDR-RC "does not exempt any State from measures that are necessary, consistent with their capabilities and national circumstances, to fulfil the objectives of the climate change treaties and stringent due diligence obligations".¹² Consequently, due diligence being a stringent test, the need to move away from fossil fuels is an overriding imperative that applies even when considerations of sustainable development and CBDR-RC are placed centrally. All States have to contribute to the "deep, rapid and sustained reductions of [greenhouse gas] emissions" which are necessary to comply with the

¹¹ Para 427-428 of the ICJ Advisory Opinion

¹² Para 27 of the ICJ Advisory Opinion.

Paris Agreement obligation to limit global temperature increases to 1.5°C, including by transitioning away from fossil fuels.

30. The ICJ's findings present South Africa with both opportunities and challenges in developing climate regulation. While the advisory opinion provides authoritative guidance on international climate obligations, translating these principles into domestic policy requires careful balancing of competing legal imperatives. The concept of 'due diligence' must be operationalized through clear, measurable standards that provide regulatory certainty while acknowledging South Africa's development imperatives and constitutional obligations to socio-economic rights. Climate regulation should establish a graduated approach to emission reductions that prioritizes the most cost-effective and socially beneficial measures first, while creating clear pathways for more ambitious action as economic and technological conditions permit. This approach would enhance South Africa's climate leadership by demonstrating how developing countries can pursue ambitious climate action within a framework that protects vulnerable communities and supports just transition principles.
31. In addition to aligning with international scientific benchmarks, and international law and international customary law as pronounced by the recent International Court of Justice's advisory opinion, South Africa's climate regulation must also be firmly grounded in domestic legal frameworks. The **Climate Change Act** must be read in conjunction with the **National Environmental Management Act (NEMA)** and the **Constitution**, as required by Section 5 of the Climate Change Act.
32. NEMA and the Constitution establish core environmental principles. For example, NEMA's preamble affirms that "*sustainable development*¹³ requires the integration of social, economic and environmental factors in all decisions (emphasis),"¹⁴ and that the environment must be protected through reasonable legislative measures to prevent pollution, promote conservation, and secure ecologically sustainable development, while also promoting justifiable economic and social development.¹⁵

¹³ The South African courts for their part have used cases to give some (vague) indications of the positive obligations implied by section 24. In *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs*, for example, the High Court had to decide a matter between British Petroleum (BP) and the environmental authority which had denied the oil company an environmental authorisation for purposes of a new petrol filling station based on the content of the EIA study and the application of various decision-making guidelines. The Court gave an indication of the obligations implied by section 24 for the conduct of EIAs, which the environmental authority and the Court perceived as being part of the state's positive mandate to 'take reasonable legislative and other measures' towards fulfilment of the environmental right. With reference to the notion of sustainable development¹³ and the concept of inter-generational equity in the protection of the environment, the Court held that section 24 of the Constitution must be interpreted to extend the environmental authorities' mandate in the conducting of EIAs beyond a consideration of strictly environmental impacts

¹⁴ Preamble to the National Environmental Management Act 107 of 1998.

¹⁵ *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* (BP case) 2004 5 SA 124 (W) at para B-D 144

33. With reference to the notion of sustainable development and the concept of inter-generational equity in the protection of the environment, the Court held that section 24 of the Constitution must be interpreted to extend the environmental authorities' mandate in the conducting of EIAs beyond a consideration of strictly environmental impacts. The court held:

*“Pure economic principles will no longer determine, in an unbridled fashion, whether a development is acceptable. Development, which may be regarded as economically and financially sound, will, in future, be balanced by its environmental impact, taking coherent cognisance of the principle of inter-generational equity and sustainable use of resources in order to arrive at an integrated management of the environment, sustainable development and socio-economic concerns. By elevating the environment to a fundamental judiciable human right, South Africa has irreversibly embarked on a road, which will lead to the goal of attaining a protected environment by an integrated approach, which takes into consideration, inter alia, socio-economic concerns and principles.”*¹⁶

34. These principles are directly drawn from **Section 24 of the Constitution**, which guarantees everyone the right *“to an environment that is not harmful to their health or wellbeing,”* and mandates that the environment be protected for the benefit of present and future generations (emphasis).¹⁷
35. Therefore, any climate regulation under the Climate Change Act must reflect these constitutional and statutory obligations, ensuring that environmental protection is not only technically sound but also legally enforceable and socially just.
36. In addition to constitutional alignment, climate regulation under the **Climate Change Act** must be consistent with the principles outlined in **Section 2 of the National Environmental Management Act (NEMA)**. These principles require the state to manage natural resources in a manner that meets basic human needs and actively redresses socio-economic imbalances. They also mandate that **all organs of state cooperate in environmental governance.**
37. Accordingly, any carbon budget or mitigation plan must uphold these principles—it cannot undermine conservation efforts or equitable development. This legal obligation has been affirmed in judicial decisions. In *Earthlife Africa v. Minister of Environmental Affairs* (the “Thabametsi” case), which recognized that climate change is a substantial risk to sustainable development. While the case did not directly address carbon budgets, it underscores a broader legal principle: **environmental decision-makers are required to consider both climate and socio-economic impacts** in line with NEMA and the Constitution.¹⁸ This requires that climate

BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs (BP case) 2004 5 SA 124 (W) at para B-D 144.

¹⁷ Section 24(b) of the Constitution of the Republic of South Africa

¹⁸ The court interpreted section 24O(1) of NEMA purposively and consistently with section 24 of the Constitution, recognizing that climate change poses substantial risks to sustainable development and that decision-makers are required to consider climate and socio-economic impacts. It was acknowledged as well that sustainable development is linked to intergenerational justice and the constitutional imperative to protect the environment for present and future generations (paras 82, 87, 101). See <https://academic.oup.com/jhrp/article/16/1/125/7591114?login=false>

regulations under the Climate Change Act must necessitate active, free, and meaningful participation, demanding comprehensive and human-centred development policy, participatory development processes, social justice, and equity.

38. Building on the legal and constitutional foundations outlined above, it is essential that the **technical guide for mitigation regulations and GHG carbon budgeting**, as drafted by the Department of Forestry, Fisheries and the Environment (DFFE), reflects South Africa's binding **human rights obligations**. These obligations are not abstract ideals, they are enforceable legal standards that must shape the design, implementation, and monitoring of mitigation measures. The technical guide must therefore go beyond emissions accounting and incorporate **rights-based indicators**, participatory mechanisms, and safeguards that protect vulnerable communities from disproportionate harm. This includes ensuring that mitigation planning does not exacerbate existing inequalities, and that carbon budgeting frameworks are aligned with the principles of **equity, inclusion, and environmental justice** as enshrined in Section 24 of the Constitution and affirmed by NEMA.

Integrating Human Rights Obligations into Technical Mitigation Design

39. The ICJ found that “the full enjoyment of human rights cannot be ensured without the protection of the climate system”¹⁹ (para. 403) and confirmed the right to a clean, healthy and sustainable environment is a human right, a right also fully ensconced in the African human rights system. African States, including South Africa in this instance, that take their human rights obligations seriously would thus have to also take the 1.5°C obligation under the Paris Agreement seriously, and exert every effort to ensure that their activities do not contribute unduly to further climate change. Furthermore, African countries have obligations under human rights law to regulate the actions of companies in the oil and gas sector.
40. The continued licensing of fossil fuel companies, especially those that are extracting to export to the global market, must be done with a strict application of procedural obligations, such as climate specific environmental impact assessment regulations, mitigation of GHG regulations, sectoral emission trajectory pathways and Carbon Budgeting mechanisms.
41. In developing mitigation regulations and carbon budgeting mechanisms, it is imperative that the draft regulations **explicitly** respect constitutionally protected socioeconomic rights. These include the rights to health care, sufficient food and water (Section 27), and an environment not harmful to health or well-being (**Section 24**) of the Constitution. Mitigation regulations cannot be designed in isolation from human needs. Therefore, the integration of rights must not be framed as a constraint, but as a **design imperative** that strengthens both the legitimacy and effectiveness of climate action. Regulatory text or guidance therefore must explicitly require consideration of these rights
42. A cornerstone of South Africa's environmental governance framework is the principle of **public participation**, as enshrined in **NEMA** and reinforced by the **Promotion of Administrative Justice Act (PAJA)**. These laws guarantee procedural rights that are essential for democratic

¹⁹ Para 403 of the ICJ Advisory Opinion

accountability and environmental justice. In the context of climate regulation, this means that **affected persons must be given adequate notice and a genuine opportunity to comment** on carbon budget allocations and mitigation plans. This must include publication of mitigation approval of plans including approved mitigation interventions, approval of carbon allocations, verification and validation proposals, annual progress reports, on an accessible platform and allowing written comments or hearings, as appropriate. The technical guide and mitigation regulatory framework must go beyond formal compliance and embed **substantive participatory mechanisms** that empower communities, particularly those most affected by climate change.

43. To address all these above mentioned dimensions, Natural Justice proposes the draft regulations must embed key principles across all stated purposes:

43.1. **Purpose One – Foundational Principles**

All actions under these regulations must be guided by the principles of **equity, intergenerational justice**, and the obligation to integrate **social, economic, and environmental considerations**. These principles are essential when facilitating the four imperatives outlined in Section 2 of the proposed regulations.

43.2. **Purpose Two – Ministerial Discretion and Scientific Alignment**

In exercising powers of amendment or cancellation, the Minister must balance **mitigation ambition** with the protection of **constitutionally guaranteed socio-economic rights** and the principle of a **just transition**. Carbon budgets and mitigation plans must be determined and reviewed in accordance with the **best available science**, ensuring **progressive and measurable reductions in fossil fuel reliance** consistent with the global 1.5°C pathway.

43.3. **Purpose Three – Rights Impact Assessment**

Mitigation plans must explicitly identify and address their impacts on the rights to **health, sufficient food, water, housing, and culture**, and must incorporate **concrete measures to protect these rights**. This ensures that climate action does not exacerbate existing inequalities or undermine basic human needs, thus ensuring the CCA's ideals of equity.

43.4. **Purpose Four – Transparency and Participation**

The process of declaring or revising regulatory lists must be subject to **public consultation** and **transparent disclosure**, in line with the principles of **environmental justice** and **intergenerational equity**. This includes accessible publication of proposals, opportunities for written submissions.

43.5. **Purpose five- Alignment with section 28 of the Climate Change Act**

It is concerning that the current draft purposes do not explicitly apply to the implementation of **Section 28 of the Climate Change Act**, which mandates the **phase down and phase out of greenhouse gas emissions** and the declaration of such intent. Without integrating it into the regulatory purposes, the regulations risk being **procedurally sound but substantively weak**.

To ensure coherence and enforceability, the regulations must include a dedicated purpose that operationalises Section 28. This must include setting timelines, thresholds, and

accountability mechanisms for fossil fuel phase-out within the regulations, consistent with South Africa's international obligations and domestic legal principles.

Climate Ambition vs. Scientific Alignment

44. Experts warn that South Africa's current targets are on the weak side of what science demands. For context, the UN *Emissions Gap Report 2024* finds that **global emissions must fall ~42% by 2030** (from 2019 levels) to stay on a 1.5°C pathway.²⁰ Similarly, Climate Analytics shows South Africa's 2030 emissions need to be in the range **148–397 MtCO₂e** (excl. land use change) for 1.5°C compatibility.²¹
45. South Africa's updated NDC aims for 350–420 MtCO₂e by 2030 tightens the 2030 range to and adds a 2031–2035 budget (320–380 MtCO₂-eq) meaning the *lower* end of the pledge roughly touches the upper end of the 1.5°C range, but the *upper* end far exceeds it.²² In other words, the country's planned carbon budgets and mitigation efforts appear **inadequate for Paris alignment**. Experts have noted that even meeting the current NDC will require high rates of decarbonization (renewables roll-out, energy efficiency, sectoral shifts), and that doing less risks falling behind global expectations.²³
46. Carbon budget frameworks inherently suffer from a fundamental misalignment between the political economy of gradual transitions and the non-negotiable physics of atmospheric carbon accumulation. The science is unequivocal that cumulative emissions, not annual reduction rates, determine temperature outcomes, yet regulatory frameworks typically emphasize percentage reductions from baseline years rather than absolute atmospheric limits. This creates a dangerous illusion of progress where meeting politically negotiated targets may still result in exceeding critical tipping points
47. The proposed framework appears to prioritize what is politically feasible over what is scientifically necessary, potentially embedding a systematic understatement of required ambition that condemns future generations to adaptation costs and irreversible impacts.
48. While international climate negotiations recognize common but differentiated responsibilities between nations, domestic carbon budget frameworks often fail to apply this same principle within national boundaries, treating all sectors as equally positioned to contribute to mitigation efforts. This approach can ignore the profound inequalities in both historical contribution to emissions and current adaptive capacity.
49. The regulation's primary enforcement mechanism for exceeding a carbon budget is not a strict prohibition but rather a financial penalty in the form of a higher carbon tax rate. This framing is fundamentally flawed. A "budget" implies a finite limit that cannot be surpassed. By contrast, this regulation presents the "budget" as a soft target, where exceeding the limit is permissible as

²⁰ UN Environment Programme Emissions Gap Report 2024, accessible here <https://www.unep.org/resources/emissions-gap-report-2024#:~:text=and%20deliver%2C%20in%20the%20next,5%C2%B0C>

²¹ Climate Analytics Report 2024, accessible here <https://1p5ndc-pathways.climateanalytics.org/countries/south-africa/ambition-gap#:~:text=To%20be%201,5%C2%B0C>

²² See note 21 above.

²³ See note 21 above.

long as a fee is paid. This transforms the mechanism from an environmental cap into a mere cost of doing business for well-resourced corporations. This approach is inconsistent with the scientific consensus, which demands absolute and rapid reductions in emissions, not just the financial offsetting of continued pollution.²⁴ From a climate change perspective, it allows emitters to pay their way out of their responsibility, while the environmental and social costs, felt most acutely by vulnerable communities, are likely to continue to mount as tipping points and thresholds are passed.

Narrow field of ambition: Voluntary nature of Scope 2 and Scope 3 emissions

50. The regulations mandate accounting primarily for Scope 1 (direct) emissions, while the inclusion of Scope 2 (indirect emissions from purchased electricity) and Scope 3 (all other value chain emissions) remains largely voluntary. This is a significant oversight that creates a distorted and incomplete picture of a company's true climate impact. For many sectors, such as the energy generation sector, manufacturing, synthetic petrochemical fuels processing for example. the majority of their carbon footprint lies not in their direct operations but in the energy they consume and the activities they enable throughout their value chain.²⁵
51. By allowing companies to ignore these emissions, the regulation fails to drive decarbonization in the electricity sector (a key source of national emissions) and across the wider economy. It effectively creates a loophole that allows companies to outsource their emissions while appearing compliant. This is misaligned with both scientific reality and the principles of environmental justice.
52. Communities are impacted by the entire lifecycle of industrial activity, not just what happens within the factory gates. A regulatory framework that ignores this reality cannot hope to achieve the systemic change required.
53. Given the above, Natural Justice proposes the integration of the following additions to the regulatory framework and overall technical guideline:
 - 53.1. Notwithstanding any sectoral allocations specified herein, the Minister shall have regard to best available climate science, with particular reference to the remaining global carbon budget for limiting warming to 1.5°C when exercising decision making pertaining to mitigation plans, and carbon budget approvals.
 - 53.2. Where scientific evidence indicates that current allocations are inconsistent with South Africa's fair share of the global mitigation effort, considering historical emissions and developmental needs, the Minister must revise sectoral budgets downward within six months of such determination.
 - 53.3. Such revisions must prioritize reductions from sectors with the highest historical cumulative emissions and greatest financial capacity for transition, while protecting allocations for basic energy access and development needs of historically disadvantaged communities.

²⁴ Pedro Martins Barata et al., Navigating Carbon Pricing: The G20 Experience and Global South Prospects, March 2024, Observer Research Foundation and Environmental Defense Fund.

²⁵ Page 13 of the Mitigation Regulations.

53.4. Any revision by the decision of the Minister, or through application for revision of mitigation plan and budget allocations by a data provide, must be accompanied by a just transition plan that mandates economic diversification support funded through a mandatory contribution from high-emitting industries (such as a climate tax debt) proportional to their historical emissions.

54. The above proposed additions addresses the critical gap between political compromise and scientific necessity by creating a mandatory mechanism for aligning carbon budgets with evolving climate science rather than treating allocations as fixed political settlements. Our understanding of climate sensitivity and tipping points continues to evolve, and what seemed adequate when the framework was drafted may prove dangerously insufficient as new research emerges.

Conclusion

55. With regards to safeguarding provisions for basic energy access while requiring deeper cuts from historical emitters operationalizes the principle of differentiated responsibility at the domestic level, recognizing that the transition burden cannot fall equally on all sectors and communities without perpetuating injustice. This approach challenges the assumption that economic efficiency, and economic development for the purposes of addressing unemployment, lack of energy security should be the primary criterion for allocating mitigation effort, instead prioritizing the protection of vulnerable communities whose basic needs must not be sacrificed for aggregate emission reductions. The mandatory just transition planning requirement with dedicated funding mechanisms (such as the climate tax debt) ensures that workers and communities dependent on high-carbon industries are not abandoned.

56. Some stakeholders may argue that mandatory downward revisions based on scientific updates could create regulatory uncertainty that deters investment in long-term decarbonization projects. However, this critique assumes that regulatory stability is more valuable than ecological stability, a trade-off that becomes increasingly untenable as climate impacts accelerate. The business sector's demand for certainty cannot override the certainty of physics that excessive emissions will trigger catastrophic and irreversible changes.

57. The proposed mitigation measures, monitoring systems, compliance mechanisms, and carbon budgeting processes must confront a critical reality: **incremental change within existing economic and political structures may be fundamentally incompatible with the scale and speed of transformation required by climate science**. Regulatory design must therefore move beyond procedural adjustments and embrace **systemic shifts** that enable deep decarbonisation, rapid fossil fuel phase-out, and equitable socio-economic restructuring.

58. This challenge is especially relevant in the context of **Section 28 of the Climate Change Act**, which mandates the phase down and phase out of greenhouse gas emissions. Without bold regulatory ambition and enforceable mechanisms, the risk is that climate policy remains trapped in a cycle of minimal compliance, **technically sound but politically constrained**. The regulations and the technical guideline developed to assist in the interpretation implementation of the regulations must therefore be crafted not only to reflect scientific urgency but also to **disrupt**

inertia, challenge vested interests and enable transformative change through the adoption of legally certain fossil fuel phase-out deadlines.

Critique on the availability of technology to mitigate GHG

59. The inclusion of Carbon Capture and Storage (CCS) as an eligible emissions deduction and a valid mitigation plan intervention, as outlined on pages 54 and 73 of the technical guidelines under the auspices of GHG deductions and removals and mitigation plan interventions, is deeply concerning. The technical guideline appears to accept this technology at face value, creating a dangerous assumption that it is a viable, just, and effective tool for decarbonization.
60. The regulations and the guideline legitimize CCS as a solution on par with genuine emissions prevention, such as transitioning to renewable energy. It provides a regulatory lifeline to the fossil fuel industry, allowing companies to propose CCS projects as a way to meet their carbon budgets while continuing their core polluting activities. Instead of driving a necessary and rapid phase-out of fossil fuels, this approach risks locking in our dependence on them for decades to come.

Flawed economic case for the acceptance of CCS as suitable, affordable mechanism for GHG reductions and mitigation interventions

61. There are significant risks and uncertainties of CCS technology. Economists and energy analysts note that CCS projects are “prohibitively expensive compared to other GHG emissions mitigation options, such as renewable energy and energy storage technologies.”²⁶ Adding CCS onto a fossil-fueled power plant inevitably makes operating the underlying source more expensive. As the authors of the energy transition study summarized above observed, “Coal and gas power plants with integrated carbon capture and storage (CCS) are doubly mispriced (overvalued).”²⁷ With coal- and gas-fired power stations already becoming more costly than renewable alternatives, adding CCS simply makes them even less economic and even less necessary.
62. More critically, whether paired with fossil fuel power plants or industrial manufacturing, CCS technology demands massive infrastructure buildout. As the IPCC has noted, extensive deployment of CCS “will require a large network of pipelines.”²⁸
63. According to the Intergovernmental Panel on Climate Change, or IPCC, the emissions reduction pathway with the best chance of keeping warming at or below 1.5 C makes limited to no use of engineered carbon capture technologies. The IPCC points to “uncertainty in the future deployment of CCS”²⁹ and cautions against reliance on the technology, given “concerns about

²⁶ Butler, Institute for Energy Economics and Financial Analysis, Carbon Capture and Storage Is About Reputation, Not Economics (2020).

²⁷ Dorr & T. Seba, RethinkX, The Great Stranding: How Inaccurate Mainstream LCOE Estimates are Creating a Trillion-Dollar Bubble in Conventional Energy Assets, (2021), at 7, 23

²⁸ <https://www.ipcc.ch/report/carbon-dioxide-capture-and-storage/>

²⁹ IPCC, *Summary for Policymakers* in IPCC, Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty

storage safety and cost”³⁰ and the “non-negligible risk of carbon dioxide leakage from geological storage and the carbon dioxide transport infrastructure.”³¹

64. Clean sources of electricity could displace fossil fuels consumed in a growing array of industrial processes, dramatically curtailing the largest single source of industrial greenhouse emissions and, with it, the purported benefits of CCS deployment in those industries.
65. A new study by researchers from the Tyndall Centre, the world-renowned centre of climate change research, commissioned by Friends of the Earth Scotland and Global Witness³², sheds new light on Carbon Capture and Storage (CCS). Even if the technology is to become economically and technically viable at scale, optimistic forecasts do not anticipate significant CCS capacity until at least the 2030s. The study concludes that fossil fuel-based CCS will not be deployed significantly until at least the 2030s with numerous barriers to short-term deployment. The study also revealed that there is also significant deployment time to consider, with the CCS industry itself saying projects take 6-10 years from conception to completion.³³Deployment has also been far slower than predicted, with sites in development in 2010 with a potential capacity of 150Mt a year ultimately resulting in just 39Mt by 2020 - highlighting the major barriers to deployment at any scale.
66. The costs of retrofitting existing power plants with CO₂ capture have not been extensively studied. A limited number of reports indicate that retrofitting an amine scrubber to an existing plant results in greater efficiency loss and higher costs. There are relatively few studies of CO₂ capture for other industrial processes using fossil fuels and they are typically limited to capture costs reported only as a cost per tonne of CO₂ captured or avoided. The literature suggests that, provided R&D efforts are sustained, improvements to commercial technologies can reduce current CO₂ capture costs by at least 20–30% over approximately the next ten years.
67. The use of CCS technology involves significant demand for electricity for the CO₂ capture and compression. The capture process, which is the first step in CCS, typically involves separating CO₂ from other gases in industrial processes or power plants. This process requires a significant amount of energy, which can come from the combustion of fossil fuels.³⁴
68. The compression and transportation of CO₂ to a storage site also requires energy, as the gas needs to be pressurized to a level that allows for safe transportation over long distances.³⁵ This compression process can be very energy-intensive, especially if the CO₂ needs to be transported over large distances. Transportation of captured and compressed carbon requires specially designed pipes that are expensive to build. For example, offshore pipelines are about 40% to

³⁰ IPCC, *Summary for Policymakers* in IPCC, Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty

³¹ IPCC SR1.5, Ch. 5, Section 5.4.1.2.

³² Tyndall Centre report: *A Review of the Role of Fossil Fuel-Based Carbon Capture and Storage in the Energy System, January 2021*, see <https://foe.scot/resource/report-carbon-capture-storage-energy-role/>

³³ <https://www.globalccsinstitute.com/wp-content/uploads/2020/09/Netzero-and-Geospheric-Return-2.pdf>

³⁴ IPCC Special Report on Carbon Dioxide Capture and Storage, Chapter 8, p 342.

³⁵ See note 34 above at p. 342.

70% more costly than onshore pipes of the same size.³⁶ Note that economies of scale dramatically reduce the cost, but that transportation in mountainous or densely populated areas could increase cost.³⁷ Once the CO₂ reaches the storage site, it needs to be injected into underground geological formations or other storage locations. This injection process also requires energy, as the CO₂ needs to be pressurized to a level that allows it to be injected into the storage location.

69. Carbon capture and storage can also increase water withdrawals at power plants in at least three ways³⁸:

69.1. Firstly, the process of capturing CO₂ from flue gases generated by power plants requires additional energy, which may come from the combustion of additional fossil fuels or from renewable sources like wind or solar power. Both of these sources of energy require water to generate electricity, which can result in increased water withdrawals from nearby sources such as rivers or lakes.

69.2. Secondly, the CO₂ captured from power plants is often compressed and transported via pipelines to storage sites such as deep geological formations, which may be located far from the power plant. The transportation of CO₂ through pipelines requires significant amounts of water for cooling and other purposes, which can lead to increased water withdrawals.³⁹

69.3. Finally, the process of injecting CO₂ into deep geological formations for storage also requires water, as the CO₂ needs to be injected at high pressure, which can be facilitated by the use of water or other fluids.⁴⁰

70. It is important to consider these water-related impacts when evaluating the feasibility and potential benefits of CCS technology.

71. In addition to the above, a study by Energy Innovation: Policy and Technology⁴¹ found coal plants retrofitted with carbon capture technology were three times more expensive than wind power and twice as expensive as solar.

72. The IEA estimates that reaching net-zero emissions would require 70-100 billion tonnes of CO₂ to be captured and stored through CCUS by 2050.⁴² At even the optimistic cost of \$50 per tonne,

³⁶ IPCC Special Report on Carbon Dioxide Capture and Storage, Chapter 8, p 344.

³⁷ See note above.

³⁸ The has published a report titled "Water Use in the Development and Operation of Carbon Capture and Storage Projects" which discusses the water requirements of CCS technologies. The report can be found at: [The Water Cost of Carbon Capture - IEEE Spectrum](#)

³⁹ Intergovernmental Panel on Climate Change (IPCC) Special Report on Carbon Dioxide Capture and Storage (2018). Chapter 6: Potential for Carbon Dioxide Capture and Storage, Section 6.3.3: CO₂ Transportation

⁴⁰ Intergovernmental Panel on Climate Change (IPCC) Special Report on Carbon Dioxide Capture and Storage (2018). Chapter 4: Carbon Dioxide Capture and Storage Technologies, Section 4.3.3: Geological Storage of CO₂, p. 189

⁴¹ <https://www.forbes.com/sites/energyinnovation/2017/05/03/carbon-capture-and-storage-an-expensive-option-for-reducing-u-s-co2-emissions/?sh=101db3826482>

⁴² International Energy Agency. 2021. Net Zero by 2050: A road map for the Global Energy Sector. https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf; Energy Transitions Commission CCUS Report (2022), see <https://www.energy-transitions.org/wp-content/uploads/2022/08/ETC-CCUS-Report-V1.9.pdf>

this represents \$3.5-5 trillion in investment.⁴³ That same investment in renewable energy and storage could completely decarbonize global electricity generation multiple times over, while creating millions more jobs than CCUS without the associated risks and ongoing liabilities.

Risks to environmental and health and wellbeing of communities remain unaddressed by CCS technology

73. CO₂ capture systems require significant amounts of energy for their operation. This reduces net plant efficiency, so power plants require more fuel to generate each kilowatt-hour of electricity produced.⁴⁴ Based on a review of the literature, the increase in fuel consumption per kWh for plants capturing 90% CO₂ using best current technology ranges from 24–40% for new supercritical PC plants, 11–22% for NGCC plants, and 14–25% for coal-based IGCC systems compared to similar plants without CCS.⁴⁵ The increased fuel requirement results in an increase in most other environmental emissions per kWh generated relative to new state-of-the-art plants without CO₂ capture and, in the case of coal, proportionally larger amounts of solid wastes.^{46,47}
74. Existing CCS facilities capture less than 1 percent of global carbon emissions. The 28 CCS facilities currently operating globally have a capacity to capture only 0.1 percent of fossil fuel emissions or 37 megatons of CO₂ annually. Of that capacity, just 19 percent, or 7 megatons, is being captured for actual geological sequestration.⁴⁸ The Petra Nova carbon capture facility installed at a coal-fired power station near Houston in 2017 illustrates the failure of CCS to deliver meaningful emissions reductions and the folly of deploying CCS in service of fossil fuel extraction and use. It was touted as reducing carbon emissions by 90 percent, but was only able to capture 7 percent of emissions in three years.⁴⁹

⁴³ See above.

⁴⁴ <https://climate.sustainability-directory.com/question/how-does-carbon-capture-affect-energy-efficiency/>

⁴⁵ Enrique García-Tenorio Corcuera, Fontina Petrakopoulou, Evaluating the impact of CO₂ capture and storage on total efficiency: A lifecycle analysis, Cleaner Engineering and Technology, Volume 27, 2025, 101002, ISSN 2666-7908, <https://doi.org/10.1016/j.clet.2025.101002>.

[n\(https://www.sciencedirect.com/science/article/pii/S2666790825001259\)](https://www.sciencedirect.com/science/article/pii/S2666790825001259)

⁴⁶ White Paper: Identification of Potential Waste Streams Associated with Carbon Capture Use and Sequestration Projects in the US and Waste Handling Operations. 2024 Report by Environmental Defense Fund. See <https://www.gwpc.org/wp-content/uploads/2025/05/12-31-24-Final-Paper-Waste-Streams-w-CCUS-Projects-002.pdf>; See also Hossain, M. S., Kamal, S., Chowdhury, M., Islam, M. T., & Kirtania, K. (2021). Parametric Study on Co-Feeding of Municipal Solid Waste and Coal in an IGCC Power Plant with Pre-Combustion Carbon Capture. *Chemical Engineering Research Bulletin*, 22(1), 37–42. <https://doi.org/10.3329/ceerb.v22i1.54297>

⁴⁷ Wei-Hang Xie, Heng Li, Meng Yang, Liang-Nian He, Hong-Ru Li, CO₂ capture and utilization with solid waste, *Green Chemical Engineering*, Volume 3, Issue 3, 2022, Pages 199–209, ISSN 2666-9528, <https://doi.org/10.1016/j.gce.2022.01.002>. (<https://www.sciencedirect.com/science/article/pii/S2666952822000024>)

⁴⁸ Garcia Freitas & C. Jones, *A Review of the Role of Fossil Fuel-Based Carbon Capture and Storage in the Energy System*, Tyndall Centre (2021), at 12

⁴⁹ Joe Smyth, *Petra Nova carbon capture project stalls with cheap oil*, Energy & Policy Institute (Aug. 6, 2020); Nichola Groom, *Problems plagued U.S. CO₂ capture project before shutdown: document*, Reuters, Aug. 6, 2020; see also nrg, *Petra Nova: Carbon capture and the future of coal power*

75. The geographic distribution of CO₂ storage sites is a limiting factor for CCS deployment in industry.⁵⁰ The overwhelming majority of industrial facilities, including those in high-emitting industries like cement, steel and aluminium, were sited to ensure access to critical resources like steam, electricity, water and end markets, not carbon storage. Accordingly, only a small fraction of existing or proposed facilities in these sectors are in areas suitable for CO₂ storage. Storing carbon captured from such facilities would demand a vast network of new pipelines, some running hundreds of miles, and carrying hazardous CO₂ through populated areas.
76. When moved over long distances and/or through heavily populated areas, piping CO₂ poses risks similar to those associated with fossil fuel pipelines, from land disturbance and water contamination to the danger of explosions and other accidents. These risks are rarely disclosed or discussed in public discussion of CCS. Effective transport through pipelines requires that CO₂ be shipped at very high pressure and extremely low temperatures, demanding pipelines capable of withstanding those conditions. The presence of moisture or contaminants can make this condensed CO₂ corrosive to the steel in those pipelines, increasing the risk of leaks, ruptures and potentially catastrophic running fractures.
77. The IPCC recognizes that “carbon dioxide leaking from a pipeline forms a potential physiological hazard for humans and animals.” These risks take several forms:
- 77.1. The explosive rupture of a pipeline and its associated shockwave pose immediate physical risks to nearby people and property. In areas closest to the pipeline, a release of CO₂ can quickly drop temperatures to minus 60 C, coating the surrounding area with super-cold dry ice.⁵¹
 - 77.2. At high concentrations, CO₂ is a toxic gas and an asphyxiant capable of causing “rapid ‘circulatory insufficiency’, coma and death.”⁵²
 - 77.3. And potential contaminants in CO₂ streams, such as hydrogen sulfide, can dramatically compound these risks.⁵³
78. Furthermore, well failure during injection or a blowout could result in a release of large amounts of CO₂. Storage locations can leak CO₂, as they are often sited near fossil fuel reservoirs. There, oil and gas wellbores provide a pathway for CO₂ to escape to the surface. Those storage leaks could contaminate groundwater and soil. Moreover, CO₂ injections could cause earthquakes, which have already been measured at injection sites.
79. In the energy sector, there is compelling evidence that the negative climate, environmental and health impacts of adding carbon capture to fossil fuels are substantially greater than simply replacing fossil fuels altogether with clean alternatives.⁵⁴

⁵⁰ S. Julio Friedmann et al., [Low-Carbon Heat Solutions for Heavy Industry: Sources, Options, and Costs Today 10](#), Columbia University Center on Global Energy Policy (Oct. 2019), at 10.

⁵¹ June Sekera & Andreas Lichtenberger, [Assessing Carbon Capture: Public Policy, Science, and Societal Need](#), 5(14) *Biophys Econ Sust.* (2020), at 11-12, 18-20

⁵² Congressional Research Service, Report for Congress--[Carbon Dioxide \(CO₂\) Pipelines for Carbon Sequestration: Emerging Policy Issues](#), Apr. 19, 2007 at 55

⁵³ X. Liu, A. Godbole, C. Lu, G. Michal & P. Venton, [Study of the consequences of CO₂ released from high pressure pipelines](#), *Atmospheric Environment*, 116 51-64 (2015), manuscript at 26 (“If the CO₂ stream contains H₂S, the H₂S may present a greater hazard than the CO₂ itself.”)

Carbon Capture Trades Off

80. According to the Intergovernmental Panel on Climate Change, or IPCC, the emissions reduction pathway with the best chance of keeping warming at or below 1.5 C makes *limited to no* use of engineered carbon capture technologies.⁵⁵
81. The IPCC points to “uncertainty in the future deployment of CCS”⁵⁶ and cautions against reliance on the technology, given “concerns about storage safety and cost”⁵⁷ and the “non-negligible risk of carbon dioxide leakage from geological storage and the carbon dioxide transport infrastructure. A 1.5-degree Celsius pathway is possible without CCS. By transitioning the transportation, industry and building sectors to 100 percent clean, renewable energy through rapid electrification and phaseout of fossil fuels, and enhancing natural carbon sequestration through improved land management and restoration, it is possible to keep warming at or below 1.5 C *without CCS*”⁵⁸.
82. The cost estimates of US\$15-120 per tonne of CO₂ captured in the study on South Africa’s Fossil Fuel Roadmap⁵⁹, reveal a profound misallocation of scarce climate finance that could achieve far greater emission reductions if invested in proven renewable technologies and energy efficiency. When we consider that utility-scale solar and wind are now the cheapest sources of electricity in most markets globally, spending billions on CCUS to enable continued fossil fuel combustion represents not just an opportunity cost but an active obstruction of the energy transition.
83. For frontline communities already bearing the health burdens of fossil fuel pollution—from refineries in Cancer Alley to coal plants in Mpumalanga—CCUS offers the cruel promise of slightly reduced CO₂ emissions while perpetuating the particulate matter, sulfur dioxide, nitrogen oxides, and toxic metals that devastate local health.
84. The study acknowledges that leakage rates could range from 0.00001% to 1% of stored CO₂ with risks and uncertainties associated with CCS deployment not having been resolved anywhere yet. Even at the lower bound of estimated leakage, deployment of CCS technology as a proposed mitigation measure enables thousands of potential points of catastrophic failure that must be monitored and managed in perpetuity. If a geological formation proves less stable than

⁵⁴ Taylor Kubota, [Stanford study casts doubt on carbon capture](#), Stanford News, Oct. 25, 2019; Mark Z. Jacobson, [The health and climate impacts of carbon capture and direct air capture](#), 12 *Energy Environ. Sci.* 3567-3574 (2019).

⁵⁵ PCC, [Summary for Policymakers](#) in IPCC, Global Warming of 1.5°C: An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (2018) [hereinafter IPCC SR1.5]G, at 14, Section C.1.1., Figure SPM 3b (Pathway 1); see also IPCC SR1.5, at Ch. 2.3.3 and Table 2.SM.12

⁵⁶ IPCC Special Report on Carbon Dioxide Capture and Storage, Chapter 8, p 342.

⁵⁷ IPCC Special Report on Carbon Dioxide Capture and Storage, Chapter 8, p 342.

⁵⁸ [Achieving the Paris Climate Goals in the COVID-19 era](#), F20 – Policy Briefing #2/2020 (Sept. 2020).

⁵⁹ Road Map Towards Cleaner Fossil Fuels in South Africa-Phase 2. Report by South African National Energy Development Institute.

modelled, if induced seismicity creates new fracture pathways, or if abandoned wells provide unexpected conduits for CO₂ migration CCS becomes untenable.

85. The build out of infrastructure necessary to support the deployment of CCS must consider the likely trade off of eminent domain to seize land from communities—often Indigenous peoples and rural poor—who have contributed least to climate change. Infrastructure such as pipelines create new corridors of risk through communities, with the potential for catastrophic CO₂ releases that could asphyxiate entire neighbourhoods, as CO₂ is denser than air and can accumulate in lethal concentrations in low-lying areas. The 2020 CO₂ pipeline rupture in Satartia, Mississippi,⁶⁰ which sent 45 people to the hospital and required evacuation of 300 residents, demonstrates these aren't theoretical risks but real dangers imposed on communities without their meaningful consent.
86. The Kemper County plant in Mississippi, after consuming \$7.5 billion, abandoned carbon capture entirely.⁶¹ Petra Nova in Texas, the U.S.'s flagship CCUS project, shut down in 2020 after operating at only 70% capacity when it did function. The Boundary Dam project in Saskatchewan has consistently failed to meet its capture targets while requiring enormous parasitic energy consumption that reduces plant efficiency by 20-30%.⁶² These aren't learning experiences; they're evidence of fundamental technological and economic constraints that make CCUS unsuitable as a primary climate solution through mitigation.
87. Energy efficiency retrofits that reduce demand, distributed renewable energy that democratizes power generation, regenerative agriculture that sequesters carbon while improving food security, and ecosystem restoration that provides multiple co-benefits beyond carbon sequestration. These solutions don't require managing permanent waste streams, don't create new categories of catastrophic risk, and most importantly, they address the root cause of climate change, our dependence on fossil fuels, rather than enabling its continuation.
88. To address the above-mentioned fundamental flaws, a safeguard must be introduced to ensure CCS is not used as climate solution within the regulatory framework of the mitigation regulations nor the technical guideline to delay climate ambition. Natural Justice proposes the following revisions to identified mitigation plan interventions as part of emission deductions and removal

⁶³

- 88.1. *“In selecting the measures for the mitigation plan, the data provider must demonstrate that priority has been given to measures in the following hierarchical order: (1) energy and process efficiency improvements that avoid emissions; (2) transition to*

⁶⁰ See <https://pstrust.org/denbury-pipeline-company-responsible-for-2020-carbon-dioxide-pipeline-rupture-in-satartia-ms-leaks-co2-again-this-time-in-sulphur-la/> ; See also

<https://www.desmoinesregister.com/story/money/agriculture/2022/09/11/here-minute-details-2020-mississippi-co-2-pipeline-leak-rupture-denbury-gulf-coast/8015510001/>

⁶¹ Institute for Energy Economics and Financial Analysis. 2017. IEEFA Update: Failed “Clean Coal” Experiments have Wasted Billions of Dollars. See <https://ieefa.org/resources/ieefa-update-failed-clean-coal-experiments-have-wasted-billions-dollars>; See also <https://www.politico.com/agenda/story/2015/05/billion-dollar-kemper-clean-coal-energy-project-000015/>

⁶² See report by Institute for Energy Economics and Financial Analysis <https://ieefa.org/resources/carbon-capture-boundary-dam-3-still-underperforming-failure> See also [Most major carbon capture and storage projects haven't met targets](#), New Scientist, Sept. 1, 2022

⁶³ Page 73 of the Technical Guideline

renewable energy sources; and (3) end-of-pipe technologies such as Carbon Capture and Storage (CCS). The adoption of measures from a lower-priority category must be justified by demonstrating that all feasible higher-priority measures have been exhausted”

89. The above proposed revision introduces a **mitigation hierarchy**, a well-established principle in environmental management, directly into the regulatory framework. This simple addition does not remove CCS as an option but correctly subordinates it to more effective, just, and proven solutions. The rationale for this change is to re-orient the focus of mitigation plans from merely *managing* emissions to fundamentally *preventing* them at their source.
90. By requiring companies to prioritize energy efficiency and the adoption of renewable energy, the revision ensures that the most direct and impactful climate actions are taken first. It closes the loophole that allows a company to bypass these fundamental changes in favor of a complex and risky technological fix that supports its polluting business model. This forces a data provider to justify why it would choose to invest in CCS.

Critical Analysis of the Draft Regulations and Technical Guidelines Supporting Implementation: Methodology for Determining Carbon Budget Allocations

91. The draft regulatory framework, as anchored by the technical guideline for implementation, adopts a tiered approach to carbon budget allocations. This methodology is outlined in Sections 8 and 9 of the mitigation regulations and further detailed on pages 64–66 of the guideline.
92. Carbon budgets are to be determined using a combination of benchmarking, mitigation potential analysis, and fixed target allocations based on historical emissions, with benchmarking identified as the preferred method. While this tiered approach offers a structured pathway for allocation, it raises important questions about equity, transparency, and scientific alignment.
93. Benchmarking, for instance, may offer consistency across sectors, but it must be critically assessed to ensure it does not obscure historical responsibility or disadvantage sectors with lower baseline emissions. Similarly, mitigation potential analysis must be grounded in credible data and sector-specific realities, not theoretical projections.
94. While presented as a flexible and pragmatic system, this methodology contains foundational flaws that threaten to undermine climate justice and scientific alignment. The draft regulatory framework and the technical guideline’s preference for product based benchmarking is problematic. A company using old, carbon-intensive technology will naturally have a higher emissions intensity. Under a benchmarking system, its high historical emissions can become the baseline for a larger future carbon budget. From a justice perspective, this socializes the burden of climate action. The core assumption that a production-based benchmark is inherently “fair” is a fallacy; it ignores the crucial context of historical responsibility and technological capability, thereby entrenching the status quo rather than disrupting it
95. With regards to the second approach, that being mitigation potential, could be subject to technical analysis that is not defined by scientific necessity, but corporate defined economic feasibility. MPA, without ironclad, science-based guardrails and mandated rights-based impact assessments, becomes a tool for data providers to argue and apply for more lenient carbon budgets.

96. Any actions aimed at reducing greenhouse gas emissions must be evaluated using a consequential analysis to ensure they do not unintentionally result in increased emissions outside the defined inventory boundary. This is particularly important in complex systems where interventions may shift emissions geographically or across sectors.
97. Claims of “emission reductions” based solely on attributional GHG inventory reporting should be treated with caution. Attributional methods, while useful for static accounting, often fail to capture system-wide impacts or unintended consequences. Therefore, such claims must be substantiated through impact estimations using appropriately selected consequential methods, which assess the broader effects of interventions across the full lifecycle or system boundary.
98. However, it is important to acknowledge that attributional methods may still serve a role in facility-level compliance or baseline tracking. The key is to ensure that methodological choices are transparent, justified, and fit for purpose. Regulatory frameworks should require that emissions accounting methods be clearly disclosed, peer-reviewed, and subject to independent verification, to uphold the integrity of climate reporting and avoid misleading claims.
99. Therefore, while the tiered approach provides a useful framework, the regulations and the technical guideline must ensure that methodological choices are transparent, justified, and aligned with both constitutional obligations and climate science. This includes allowing for public scrutiny, scientific review, and rights-based impact assessments to ensure that carbon budget allocations are not only technically sound but also socially and legally defensible.
100. Given the above, Natural Justice proposes the below mentioned revision to the proposed methodological approach outlined in the regulatory language text in regulation 8 and 9 and the accompanying technical guideline without overhauling the entire system. Natural Justice proposes that a guiding principle must be inserted to govern the application of all allocation methodologies.
- 100.1. *“The determination of a carbon budget allocation, irrespective of the method applied, must be demonstrably aligned with the latest climate science and guided by the principles of equity and historical responsibility. The ‘polluter pays’ principle must inform the distribution of the mitigation burden. (2) The determination of the carbon budget allocation to a data provider will be made on the basis of the tiered hierarchical methodological approach, where: (a) Product-Based Benchmarking is the preferred allocation methodology; (b) Mitigation Potential Analysis is the first fall-back allocation methodology; and (c) A Fixed Target Approach will be applied as the final and least preferred fall-back allocation methodology”*

Comprehensive consideration of full life cycle emissions as part of the evaluation, monitoring and reporting of the efficacy proposed mitigation measures and allocated carbon budget

101. The draft regulations’ treatment of **Scope 2 and Scope 3 emissions**—as **voluntary, separate, and merely “noted”**—is not a minor technicality; it is a **fundamental flaw** that undermines the credibility and effectiveness of the entire framework. By excluding these categories from

mandatory reporting and reduction obligations, the regulations rest on a **flawed assumption**: that a company's climate responsibility ends at its physical boundary or "fenceline." This premise is **incompatible with climate science**, which demands system-wide accountability, and with **environmental justice**, which recognizes that emissions externalized to communities or supply chains still cause harm.

102. However, it is important to interrogate the feasibility of full Scope 3 integration. **Data availability, verification challenges, and sectoral differences** may complicate enforcement. Yet these complexities should not justify voluntary omission of the reporting and disclosure of scope 3 emissions for the purposes of allocating carbon budgets and approving mitigation measures.
103. The regulations, as written, create a system that legally sanctions a dangerously incomplete form of corporate accountability. For a vast number of data providers, particularly in the manufacturing, retail, energy and service sectors, their direct (Scope 1) emissions are a mere fraction of their total climate impact. The majority of their footprint lies in the electricity they purchase (Scope 2) and the activities across their value chain (Scope 3).
104. The offering of voluntary reporting of scope 2 and scope 3 emissions creates a blind spot that allows data providers to project an image of compliance while continuing to fuel the crisis. It fails the basic test of holding polluters responsible for the full extent of the harm they cause, leaving society, and particularly the most vulnerable, to bear the true cost. This not only undermines the integrity of the carbon budgeting system but also contradicts the principles of **environmental justice and intergenerational equity**.
105. The voluntary treatment of **Scope 2 emissions** is a particularly acute failure because it surrenders one of the most powerful tools for driving a national-level just energy transition. South Africa's carbon-intensive, coal-based electricity grid is a primary source of national emissions and a cause of devastating health impacts in communities near power plants and coal mines. The assumption that a national carbon budget system can be effective without directly reporting is a logical fallacy that prioritizes corporate convenience over public health and systemic decarbonization.
106. The separation of voluntary emissions at Sections 7(7), 10(8)) inherently diminishes their perceived importance in mitigation planning. Section 11(5)(b) is particularly problematic. By stating that mitigation measures for voluntarily included Scope 3 emissions are "only recorded for noting and data collection," the regulations effectively neuter any potential accountability for these emissions. This sends a dangerous message: data providers can *appear* proactive by voluntarily including Scope 3 in plans, but face zero consequence if those plans are inadequate, unimplemented, or ineffective. For communities impacted by the *entire* lifecycle emissions, this provision offers no real assurance that the most significant indirect climate threats will be mitigated.
107. Some data providers may argue that Scope 3 emissions are complex, involve multiple entities outside a particular data provider's direct control, and lack standardized measurement methodologies. They may further argue that mandating inclusion in carbon budgets could be overly burdensome, especially for data provider's who are smaller in their operations with intricate supply chains. Natural Justice supports the view that while complexity is real,

regulations should *mandate* Scope 3 reporting for data providers where these emissions dominate their footprint using best available methodologies and phased implementation. Accepting voluntary reporting as sufficient ignores the *materiality* of these emissions.

108. Natural Justice acknowledges that a **voluntary approach to Scope 2 and 3 emissions reporting** may be justified during the initial implementation phase, particularly on grounds of **administrative feasibility** and **regulatory pragmatism**. This phased approach allows the regulatory system to develop gradually, enabling data providers to **build internal capacity** while promoting the **adoption of best practices**.
109. It may also help **limit prohibitive costs** for smaller data providers who currently lack the infrastructure to report comprehensively across all emission categories. However, this flexibility must be **clearly time-bound and strategically managed** to avoid the risk of voluntary reporting becoming a **permanent substitute for accountability**.
110. To ensure that pragmatism does not undermine ambition, the regulatory framework should include mandatory transition timelines, technical support mechanisms, and progressive disclosure requirements. These measures would help balance immediate feasibility with long-term integrity, ensuring that all material emissions are eventually captured in a manner that is both equitable and enforceable.
111. However, comprehensive emissions accounting is essential for meaningful climate action and environmental justice protection. The fundamental assumption that voluntary reporting will evolve into meaningful compliance may be naive, given the economic incentives for selective disclosure and the historical tendency of industries to resist expanding regulatory obligations.
112. As a pragmatic middle ground, the regulations should include partial reporting provisions accompanied by mandatory implementation timelines. This approach would create a structured pathway to full compliance, balancing the need for immediate accountability with the realities of capacity-building across sectors.
113. To ensure that all material emission sources are eventually captured, the framework should establish a transitional reporting period during which data providers must progressively expand their disclosures of Scope 2 and Scope 3 emissions. This timeline would allow for the development of necessary systems, tools, and institutional arrangements to support optimized reporting and monitoring, without compromising the overall effectiveness and credibility of the regulatory framework.
114. However, to avoid the risk of indefinite delay or symbolic compliance, the transitional period must be clearly defined, publicly monitored, and linked to enforceable milestones. Sector-specific timelines may also be necessary to reflect differing levels of readiness and complexity.
115. Instead of prescribing a fixed window for compliance, the regulatory framework could adopt a performance-based timeline, tied to demonstrable progress in system readiness. This approach would allow for flexibility where justified, while still maintaining pressure for timely compliance. For example, data providers could be required to meet specific benchmarks—such as establishing internal reporting systems, completing third-party verification, or publishing Scope 2

and 3 disclosures—within defined intervals. This would ensure that the transition is not only time-bound but also outcome-driven, aligning regulatory ambition with real-world capacity and accountability.

Imposition of climate tax debt as a penalty for offences related to non compliance

116. The Fossil Fuel industry is known to contribute a significant proportion of global emissions. Studies such as those conducted into the Carbon Majors have indicated that approximately 100 entities are accountable for a substantial share of all emissions since the onset of the industrial revolution.⁶⁴ From 1988 onwards, over half of the global industrial greenhouse gases (GHGs) can be traced back to just 25 corporate and state-owned producers.⁶⁵ Despite contributing significantly to global emissions, the fossil fuel industry has enjoyed \$2.8 billion in profits per day over the last 50 years indicating that the industry could through an obligatory taxing mechanism, contribute meaningfully to climate response strategies addressing mitigation and adaptation through the taxing of their annual profits. Such a mechanism would not only accelerate the operationalization of climate response towards efforts of mitigation, adaptation and loss and damage, enabling the swift distribution of critical funds for mitigating loss and damage and securing essential adaptation resources, but also hasten the phase-out of fossil fuels.
117. Section 18 of the Climate Change Act provides that “The Minister must prescribe a mechanism to support and finance the Republic’s climate change response, planning and implementation by national, provincial and local government in consultation with the Minister of Finance”. The provision is broad and lacks specific guidance on how the mechanism should function, what it should prioritize, and how it should be structured. This proposal could involve allocating specific funds or establishing a dedicated program within South Africa’s broader climate response framework. These funds may be sourced through the implementation of a climate damages tax, an innovative carbon penalty designed to internalise the environmental costs of fossil fuel production.
118. The climate damages tax could be integrated into existing regulatory mechanisms, such as Regulations 20 and 21 of the mitigation regulations, or developed under the Minister’s authority to promulgate new regulations in terms of Regulation 30(1)(a) and 30(1)(b). This would provide a legal basis for operationalising South Africa’s international climate change commitments, while also serving as a strategic tool for managing domestic climate responses to mitigation or adaptation.
119. Importantly, the tax would function as a disincentive for fossil fuel companies, encouraging them to significantly reduce or phase out greenhouse gas-intensive production activities. By embedding this mechanism within the regulatory framework, the state can align fiscal policy with environmental objectives, promote behavioural change in high-emitting sectors, and advance the constitutional imperative of environmental protection. This innovative mechanism could form part of a broader climate response strategy framework that could enable the allocation of funds for government intervention.

⁶⁴ Carbon Majors Database. CDP Carbon Majors Report 2017

⁶⁵ Carbon Majors Database. CDP Carbon Majors Report 2017

120. The Climate Damages Tax (CDT) is a fee on the extraction of each tonne of coal, barrel of oil, or cubic metre of gas, calculated at a consistent rate based on how much CO₂e is embedded within the fossil fuel. Working with existing systems of payment, fossil fuel companies, who already pay royalties (or similar) to the states where they operate, will pay an extra amount on the volume they extract to the loss and damage fund.⁶⁶ The use of a CDT will raise significant finance for just transition, to help fund programmes for low income communities to shift to public transport, cycling and walking, or electric cars, further reducing their exposure to any cost increases in the price of fossil fuels. It could also be used to insulate homes, switch to energy efficient appliances and install renewable and community power. Use of this additional government revenue to incentivise and support changes in consumer behaviour as states transition to a green economy, constitutes a powerful means to protect citizens from the distributional impacts that may arise in the medium-term from the introduction of the climate damages tax.

Proposed integration of the climate damages tax

121. How could the above be integrated into the overall climate change response framework as part of efforts to regulate and mitigate against GHG emissions. Natural Justice proposes the following:

121.1. Regulation 30(1)(a) and 30(1)(b) of the Climate Change Act empowers the Minister to make regulations:

- (a) to give effect to South Africa's international climate change commitments;
- (b) to manage climate change responses, including incentives and disincentives to shift behaviour around greenhouse gas (GHG) emissions.

This provides a clear legal basis for introducing a CDT as a disincentive mechanism targeting fossil fuel extractors, aligning with South Africa's obligations under the Paris Agreement and its Nationally Determined Contributions (NDCs).

121.2. The **Climate Response Fund**, announced by President Ramaphosa in 2024, is designed to mobilize resources across government and private sectors to respond to climate impacts. The CDT can be integrated as a **dedicated revenue stream** for this Fund, with the following structure:⁶⁷

121.2.1. Collection: CDT payments made by fossil fuel extractors based on declared volumes and emissions profiles.

121.2.2. Allocation: A portion of the revenue (the "domestic dividend") is returned to the Fossil Fuel State's tax authority for local climate action.

121.2.3. Utilization: Remaining funds are retained by the Climate Response Fund to support national adaptation, mitigation, and just transition programs.

122. The above could be operationalized in the following manner:

122.1. Step One: The Minister of Forestry, Fisheries and the Environment can issue regulations under Section 30 to:

122.2. Define the CDT mechanism;

122.3. Set tax rates and calculation methods;

⁶⁶ Stamp Out Poverty (2019). The Climate Damages Tax – A guide to what it is and how it works

⁶⁷ <https://www.parliament.gov.za/news/government-establishes-climate-change-response-fund>

- 122.4. Establish reporting and compliance protocols;
- 122.5. Designate the Climate Response Fund as the recipient and administrator of CDT revenues.
123. Step Two: The Presidential Climate Commission through s 11(1)(b) can oversee CDT implementation and together with the Minister of Forestry, Fisheries and Environment ensure alignment with national carbon budgets and sectoral emission targets.
- 123.1. The South African Revenue Service (SARS) and the Department of Mineral Resources and Energy (DMRE) can collaborate on data verification and enforcement as part of the responsibilities on data providers to submit reports for verification
124. Step Three: CDT revenue flows and expenditures should be publicly reported, in line with Section 32 of the Constitution (access to information).
125. In conclusion, Natural Justice proposes that the Climate Damages Tax (CDT) may be integrated into South Africa’s Climate Response Fund as a targeted fiscal instrument under Regulation 30 of the Climate Change Act 22 of 2024. The CDT would function as a disincentive for fossil fuel extraction, with revenues collected from extractors based on declared volumes and emissions profiles. These revenues would be administered by the Climate Response Fund, with a portion returned to the originating province or municipality as a “domestic dividend” for local climate action.
126. The remaining funds would support national mitigation and adaptation efforts, including just transition programs. This mechanism aligns with South Africa’s international climate obligations and leverages fiscal policy to drive behavioural change in high-emitting sectors, while ensuring transparency, equity, and constitutional compliance
127. Below, Natural Justice continues to offer specific comments in relation to the proposed regulatory framework and the accompanying technical guidelines

Specific Comments

Specific section	Original Text	Revised Text	Rationale
Regulation 2 (1)	The purpose of these regulations is to- “Facilitate the implementation sections 30(2)(a)(i) 26 and 27 o the Act	The purpose of these regulations is to facilitate the implementation of sections 30(2)(a)(i), 26, 27, and <u>28 of the Act,</u> <u>ensuring that carbon budget allocations account for all greenhouse gas emissions including synthetic greenhouse gases subject to phase-down requirements</u>	The regulatory purpose statement's exclusive reference to sections 30(2)(a)(i), 26, and 27 of the Climate Change Act while conspicuously omitting Section 28, in the original draft text represents a fundamental failure to protect all South African citizens from the most potent greenhouse gas emissions. Section 28 of the Climate Change Act specifically governs the phase-down and

		<u>under section 28</u>	<p>phase-out of synthetic greenhouse gases. By excluding Section 28, the regulations implicitly signal that addressing these super-pollutants is not a priority for "facilitated implementation," creating a dangerous regulatory gap.</p> <p>The proposed revision addresses the fundamental legal gap by explicitly incorporating Section 28 synthetic greenhouse gas phase-down requirements within the carbon budget regulatory framework, ensuring comprehensive climate governance that protects all South African citizens from the full spectrum of greenhouse gas emissions. This integration is essential because carbon budget allocations that exclude synthetic greenhouse gases provide an incomplete and potentially misleading assessment of an entity's true climate impact, undermining the scientific integrity of the entire carbon budget system and leaving citizens vulnerable to unaccounted climate risks. The revision ensures the regulations holistically support the <i>full</i> spectrum of mitigation actions required by the Act, moving beyond just planning towards concrete emission reduction obligations, thereby upholding the Act's integrity, scientific basis, and commitment to safeguarding environmental and climate justice for communities impacted by activities reliant on these harmful gases</p>
Regulation 3(2)	In accordance with section 26(1) and (2) of the Act the Minister hereby declares that:	The activities listed in Annexure 2 to these regulations, constitute the list of activities that emit or have the	The limitation to already commenced activities in the original draft text creates regulatory incoherence that fundamentally undermines the

	<p>“The activities listed in Annexure 2 to these regulations, constitute the list of activities that emit or have the potential to emit, one or more of the greenhouse gases listed Annexure 1, <u>which activities must have already commenced</u>, and which apply to the date providers as provided for in regulation 4 of these regulations</p>	<p>potential to emit, one or more of the greenhouse gases listed Annexure 1, which activities must have already commenced <u>or are subject to environmental authorization processes initiated after [effective date]</u>, and which apply to the data providers as provided for in regulation 4 of these regulations</p>	<p>comprehensive climate governance framework intended by the Climate Change Act and violates basic principles of legal certainty and equal treatment under law. This approach creates an arbitrary distinction between functionally identical greenhouse gas-emitting activities based solely on their commencement date, resulting in differential regulatory treatment that lacks rational justification and may violate constitutional principles of equality and administrative justice. The exclusion of activities in the environmental authorization pipeline is particularly problematic because it creates regulatory fragmentation where environmental impact assessments may identify significant greenhouse gas emissions but the resulting approvals operate outside the carbon budget framework designed to manage such emissions.</p> <p>The proposed revision addresses the fundamental environmental justice gap created by the temporal discrimination inherent in the original text while maintaining legislative minimalism to ensure regulatory feasibility and industry acceptance. The addition of activities subject to environmental authorization processes ensures that new greenhouse gas-emitting projects cannot escape carbon budget obligations simply by timing their commencement to avoid regulatory coverage, thereby preventing the creation of a regulatory loophole that would undermine the entire</p>
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			<p>carbon budget system's environmental effectiveness. This revision recognizes that meaningful climate governance requires comprehensive coverage of greenhouse gas emission sources regardless of their operational timeline, as atmospheric greenhouse gas concentrations respond equally to emissions from new and existing sources. The integration of environmental authorization processes creates regulatory coherence between South Africa's environmental impact assessment framework and carbon budget system, ensuring that projects identified as significant greenhouse gas emitters during environmental authorization cannot subsequently operate without climate accountability mechanisms</p>
Regulation 4(5)	<p>For purposes of these regulations, in order to be classify as a data provider, a person must:</p> <p>“If data provider chooses to voluntarily adopt a carbon budget allocation and mitigation plan as per sub-regulation (4), implications for non-compliance ww not be applicable</p>	<p>If data provider chooses to voluntarily adopt a carbon budget allocation and mitigation plan as per sub-regulation (4), <u>such data provider shall be subject to monitoring and reporting requirements equivalent to mandatory participants, and failure to meet voluntary carbon budget commitments shall result in automatic inclusion in mandatory carbon budget allocation processes for subsequent allocation periods</u></p>	<p>The exemption of voluntary participants from non-compliance consequences, in the original draft text, creates fundamental regulatory incoherence that undermines the legal authority of carbon budget allocations and violates constitutional environmental rights by rendering climate protection mechanisms legally meaningless. This approach violates basic principles of administrative law by creating regulatory obligations without enforcement mechanisms, essentially transforming binding carbon budget allocations into non-binding aspirational statements that lack legal effect.</p>

			<p>The voluntary framework without consequences fails to fulfill the state's constitutional obligation to protect citizens' environmental rights through effective regulatory measures, as rights without remedies are not rights at all but merely advisory suggestions that provide no legal protection against environmental harm. This regulatory approach may constitute administrative action that is procedurally unfair and substantively unreasonable under the Promotion of Administrative Justice Act, as it creates the appearance of environmental regulation while deliberately ensuring that such regulation cannot achieve its stated protective purposes.</p> <p>The proposed revision addresses the fundamental accountability gap in the voluntary framework while preserving incentives for voluntary participation by creating meaningful but graduated consequences for non-compliance that maintain the voluntary nature of initial participation while ensuring long-term regulatory effectiveness. The revision recognizes that voluntary carbon budget adoption without any accountability mechanisms creates regulatory meaninglessness that undermines both environmental protection and the credibility of the entire carbon budget system, while also acknowledging that overly punitive approaches could discourage voluntary participation entirely.</p>
Regulation 6(7)	The registration of a data provider in	The registration of a data provider in terms of	The automatic withdrawal mechanism from the original

	<p>terms of regulation 5 is deemed to have been withdrawn once the Competent Authority has, within 30 days, acknowledged receipt of notification</p>	<p>regulation 5 is deemed to have been withdrawn once the Competent Authority has, within 30 days, acknowledged receipt of notification <u>and confirmed that all outstanding mitigation plan commitments, reporting obligations, and compliance requirements have been satisfied or appropriate alternative arrangements have been established to ensure continued environmental protection</u></p>	<p>draft text, creates regulatory incoherence that undermines the comprehensive climate governance framework by allowing entities to unilaterally terminate their participation in carbon budget systems without ensuring continuity of climate protection measures or resolution of ongoing regulatory relationships. This approach violates basic principles of administrative law by treating regulatory relationships as terminable at will rather than ongoing legal obligations that require proper closure procedures to protect public interests.</p> <p>The proposed revision addresses the fundamental accountability gap in the withdrawal process while maintaining administrative efficiency by requiring substantive review of outstanding obligations before confirming withdrawal, ensuring that climate protection measures continue even when individual data providers exit the regulatory framework. This approach recognizes that data provider registration creates ongoing legal relationships with environmental protection implications that cannot be terminated through simple administrative acknowledgment without ensuring that the termination does not compromise broader climate governance objectives or community protection measures. The inclusion of alternative arrangements provision recognizes that some withdrawal situations may require creative solutions to ensure continued</p>
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			<p>environmental protection, such as transferring monitoring responsibilities to successor entities, establishing financial guarantees for ongoing mitigation measures, or implementing alternative oversight mechanisms that maintain environmental protection standards even after original data providers withdraw from direct regulatory participation. This flexibility ensures that withdrawal processes can accommodate complex business and operational circumstances while prioritizing environmental protection and community welfare over administrative convenience.</p>
Regulation 7(7)	<p>A data provider may voluntarily elect to submit data on scope 2 and 3 emission sources to the competent authority as part of the information submitted for the determination of the carbon budget allocation, provided that the data provider meets the threshold for the application of the carbon budget allocation</p>	<p>A data provider shall submit data on scope 2 and 3 emission sources to the Competent Authority as part of the information submitted for the determination of the carbon budget allocation, <u>provided that where complete scope 2 and 3 data is demonstrably unavailable due to technical constraints, the data provider may submit partial data accompanied by a detailed implementation plan with specified timelines for achieving comprehensive reporting, and provided further that the data provider meets the threshold for the application of the carbon budget allocation</u></p>	<p>The proposed revision addresses the fundamental environmental justice concerns while maintaining legislative practicality by transforming the voluntary framework into a mandatory requirement with built-in flexibility for genuine technical constraints. This approach recognizes that comprehensive emissions accounting is essential for meaningful climate action and environmental justice protection, while acknowledging the legitimate challenges data providers may face during the transition to full lifecycle reporting. The revision establishes a clear legal obligation to report all material emissions sources, preventing the systematic exclusion of impacts that disproportionately affect communities. The inclusion of partial reporting provisions with mandatory implementation timelines creates a pathway for compliance that balances</p>

			<p>immediate accountability with realistic capacity-building expectations. This framework prevents data providers from indefinitely avoiding comprehensive reporting while providing clear guidance on acceptable transitional arrangements.</p> <p>The requirement for detailed implementation plans transforms the reporting obligation from a mere data submission exercise into a commitment mechanism that enables regulatory oversight of progress toward comprehensive emissions accounting. This approach allows the Competent Authority to assess both current emissions and future trajectory, enabling more informed carbon budget allocation decisions that account for planned improvements in reporting completeness</p>
Regulation 8(5)	The competent authority may appoint an independent mitigation specialist to support the Competent Authority with the Carbon Budget allocation process	<p>The competent authority <u>shall</u> appoint an independent mitigation specialist to support the Competent Authority with the Carbon Budget allocation process, <u>provided that where no suitable independent specialist is available within reasonable time and cost parameters, the Competent Authority may proceed with internal expertise while documenting the reasons for proceeding without independent specialist support"</u></p>	<p>The discretionary appointment in the original draft provision, fundamentally contradicts the mandatory regulatory purposes established in the Climate Change Act and these regulations, which require "preparation and implementation of, and compliance with mitigation plans, budget allocations and the enforcement of budget allocations" through processes that demand technical competence and scientific rigor that cannot be achieved without specialized expertise. The discretionary language effectively allows the Competent Authority to abdicate its statutory duty to ensure scientifically sound carbon budget allocations by making the very expertise</p>

			<p>necessary for fulfilling this duty optional rather than required, creating a regulatory framework that may systematically fail to achieve its stated purposes due to inadequate technical support. This approach violates principles of administrative law requiring that administrative authorities exercise their powers in ways that effectively achieve statutory objectives, as discretionary avoidance of essential technical expertise undermines the authority's capacity to fulfill its climate protection mandate.</p> <p>The optional specialist appointment may constitute unreasonable administrative action under the Promotion of Administrative Justice Act by creating structural inadequacy in decision-making processes that are intended to protect constitutional environmental rights through technically sound climate governance. Furthermore, this discretionary framework may violate international climate law obligations by establishing domestic regulatory processes that systematically lack the technical rigor necessary to develop and implement emissions reduction measures consistent with South Africa's nationally determined contributions and climate commitments</p> <p>The mandatory appointment requirement ensures consistent technical standards across all carbon budget allocation processes, preventing the regulatory discrimination and inconsistent decision-making quality that discretionary</p>
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			<p>specialist appointment could create while ensuring that communities can rely on professional technical oversight regardless of administrative preferences or budgetary convenience. This approach upholds environmental justice principles by guaranteeing that all carbon budget allocations receive equivalent technical scrutiny, preventing situations where some entities benefit from rigorous independent assessment while others face less demanding evaluation processes based solely on administrative discretion.</p>
Regulation 9 (4)	<p>The allocation methodology related to each listed activity is subject to reassessment prior to the commencement of each commitment period</p>	<p>The allocation methodology related to each listed activity is subject to reassessment <u>by the Competent Authority, in consultation with relevant sector authorities and independent technical experts, prior to the commencement of each commitment period, with public consultation requirements equivalent to those applicable to initial methodology development</u></p>	<p>The failure to designate reassessment authority specifically in the regulatory text of regulation 9(4) violates fundamental principles of administrative law by creating governmental obligations without corresponding institutional responsibility, thereby undermining legal certainty and potentially compromising constitutional environmental rights through structurally deficient regulatory implementation. The authority vacuum in reassessment processes may constitute improper delegation of governmental power by creating regulatory obligations that cannot be effectively implemented due to institutional ambiguity. The absence of clear authority designation means that no specific governmental entity can be held legally accountable for ensuring that allocation methodology reassessments occur within required timeframes, are conducted with appropriate technical rigor, or incorporate community input</p>

			<p>and environmental justice considerations essential for protecting vulnerable populations from inadequate climate governance.</p> <p>The proposed revision addresses the fundamental authority gap by designating the Competent Authority as the responsible institution for conducting allocation methodology reassessments while incorporating consultation requirements that ensure appropriate technical expertise and stakeholder input are included in reassessment processes, thereby creating clear accountability while maintaining access to specialized knowledge and democratic participation essential for effective climate governance. The public consultation requirement ensures that affected communities and civil society organizations can meaningfully participate in reassessment processes that may significantly impact their environmental welfare and climate protection, thereby upholding environmental justice principles and democratic participation rights that are essential for legitimate and effective climate governance. This approach recognizes that allocation methodology changes affect broader public interests beyond regulated entities and require transparent processes that enable community input and oversight</p>
Regulation 10(8)	10(1) Upon receipt of the carbon	10 (1) Upon receipt of the carbon budget	The voluntary nature of original draft text as it pertains to the

	<p>budget allocation, the data provider must prepare its carbon budget, which must fully comply and align with the carbon budget allocation by the Competent Authority</p> <p>(8) Any voluntary declared Scope 2 and scope 3 emissions must be accounted for separately from the scope 1 emissions in the Carbon Budget.</p>	<p>allocation, the data provider must prepare its carbon budget, <u>which must include comprehensive lifecycle emissions declarations covering all scope 1, scope 2, and scope 3</u> emissions, and must fully comply and align with the carbon budget allocation by the Competent Authority</p> <p>10 (8) <u>All scope 1, scope 2, and scope 3 emissions must be integrated into total lifecycle emissions calculations that form the basis for carbon budget compliance assessment and reporting</u></p>	<p>voluntary declaration of Scope 2 and 3 emissions reporting, enables corporate greenwashing where entities can demonstrate apparent carbon budget compliance by focusing solely on direct Scope 1 emissions while ignoring supply chain impacts, purchased energy emissions, and downstream processing activities that often disproportionately affect marginalized communities through air pollution, industrial activity, and transportation impacts. The separate accounting requirement for voluntary Scope 2 and 3 emissions further obscures total lifecycle impacts by fragmenting emissions reporting in ways that prevent comprehensive assessment of cumulative environmental burdens, making it impossible for communities and regulators to understand the full climate justice implications of carbon budget allocations.</p> <p>Carbon budget allocations based on voluntary and fragmented emissions reporting cannot provide accurate baselines for emissions reduction targets, meaningful progress measurement, or credible contribution assessments toward South Africa's nationally determined contributions and Paris Agreement obligations, potentially exposing the country to international legal challenges while systematically failing to deliver the emissions reductions necessary for climate protection.</p> <p>The proposed revision addresses the fundamental</p>
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			<p>environmental justice and scientific integrity gaps by requiring comprehensive lifecycle emissions declarations that include all emission categories while integrating these emissions into unified carbon budget calculations, ensuring that carbon budget allocations reflect true environmental impacts rather than artificially reduced footprints that exclude significant emission sources. This approach recognizes that meaningful climate governance requires complete accounting of greenhouse gas emissions across all operational activities, supply chain relationships, and energy consumption patterns that contribute to climate change impacts affecting communities and ecosystems regardless of whether such emissions occur directly or indirectly through business operations. This comprehensive approach ensures that carbon budget allocations are based on scientifically accurate emissions baselines that reflect true climate impacts rather than selective reporting that may create false impressions of environmental responsibility while actual total emissions remain unchanged or increase</p>
Regulation 11(4)(h)	<p>A mitigation plan must include-</p> <p>(h) Scope 2 mitigation measures. These mitigation measures will only be recorded for noting and data collection by the Competent Authority.</p>	<p>A mitigation plan must include-</p> <p>(h) Scope 2 mitigation measures that <u>must be submitted to the Competent Authority for approval using criteria appropriate to purchasing and consumption contexts, provided that where technical or market</u></p>	<p>The approval exclusion for Scope 2 mitigation measures under the original draft text, creates fundamental regulatory fragmentation that violates principles of comprehensive climate governance and equal treatment under law by establishing arbitrary distinctions between functionally equivalent greenhouse gas emission sources based on their</p>

		<p><u>constraints prevent immediate implementation, the Competent Authority may approve staged implementation plans with specified timelines and performance benchmarks</u></p>	<p>classification rather than their environmental impact. This approach undermines the integrated climate management framework intended by carbon budget regulations by treating different emission categories through inconsistent regulatory mechanisms that prevent holistic assessment of mitigation plan adequacy and overall environmental effectiveness across all emission sources. Scope 2 emissions contribute equally to atmospheric greenhouse gas concentrations and climate change impacts regardless of their indirect nature. This fragmented approach may potentially undermine South Africa's international climate law obligations by establishing domestic regulatory frameworks that systematically fail to ensure comprehensive emissions reduction across all relevant sources necessary for meeting nationally determined contributions and Paris Agreement commitments.</p> <p>The proposed revision addresses the fundamental environmental justice gap by requiring competent authority approval for Scope 2 mitigation measures while incorporating flexibility provisions that acknowledge the legitimate technical and market complexities associated with energy purchasing and consumption changes, ensuring that indirect emissions receive regulatory oversight equivalent to direct emissions while maintaining practical feasibility for implementation in complex energy market contexts. This approach recognizes that Scope</p>
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			<p>2 emissions often represent significant portions of total greenhouse gas footprints and contribute equally to climate change impacts regardless of their indirect nature, making regulatory approval essential for ensuring mitigation plan adequacy and environmental protection effectiveness across all relevant emission sources. This approach upholds environmental justice principles by providing equivalent regulatory protection against all emission sources regardless of their classification, ensuring that entities cannot satisfy mitigation plan requirements through adequate direct measures while presenting inadequate indirect measures that receive no regulatory scrutiny</p>
Regulation 11(5)(b)	<p>A mitigation plan may include-</p> <p>(b) Scope 3 mitigation measures. These mitigation measures will only be recorded for noting and data collection by the Competent Authority</p>	<p>A mitigation plan must include-</p> <p>(h) Scope 3 mitigation measures that <u>must be submitted to the Competent Authority for approval using criteria appropriate to purchasing and consumption contexts, provided that where technical or market constraints prevent immediate implementation, the Competent Authority may approve staged implementation plans with specified timelines and performance benchmarks</u></p>	<p>The approval exclusion for Scope 3 mitigation measures under the original draft text, creates fundamental regulatory fragmentation that violates principles of comprehensive climate governance and equal treatment under law by establishing arbitrary distinctions between functionally equivalent greenhouse gas emission sources based on their classification rather than their environmental impact. This approach undermines the integrated climate management framework intended by carbon budget regulations by treating different emission categories through inconsistent regulatory mechanisms that prevent holistic assessment of mitigation plan adequacy and overall environmental effectiveness across all emission sources. Scope 3 emissions contribute</p>

			<p>equally to atmospheric greenhouse gas concentrations and climate change impacts regardless of their indirect nature. This fragmented approach may potentially undermine South Africa's international climate law obligations by establishing domestic regulatory frameworks that systematically fail to ensure comprehensive emissions reduction across all relevant sources necessary for meeting nationally determined contributions and Paris Agreement commitments.</p> <p>The proposed revision addresses the fundamental environmental justice gap by requiring competent authority approval for Scope 2 mitigation measures while incorporating flexibility provisions that acknowledge the legitimate technical and market complexities associated with energy purchasing and consumption changes, ensuring that indirect emissions receive regulatory oversight equivalent to direct emissions while maintaining practical feasibility for implementation in complex energy market contexts. This approach recognizes that Scope 3 emissions often represent significant portions of total greenhouse gas footprints and contribute equally to climate change impacts regardless of their indirect nature, making regulatory approval essential for ensuring mitigation plan adequacy and environmental protection effectiveness across all relevant emission sources. his approach upholds environmental justice principles by providing equivalent</p>
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			regulatory protection against all emission sources regardless of their classification, ensuring that entities cannot satisfy mitigation plan requirements through adequate direct measures while presenting inadequate indirect measures that receive no regulatory scrutiny
Regulation 13(3)(c)	If an annual progress is rejected, the competent authority must, in writing, direct the data provider to amend the report within 30 days upon receipt of written instruction from the Competent Authority	If an annual progress report is rejected, the competent authority must, in writing, direct the data provider to amend the report within 30 days upon receipt of written instruction and take escalated enforcement action in accordance with section 27(6) and 30(3) of the Act where: <u>(a) The amended report remains non-compliant with Annexure 8 requirements; or</u> <u>(b) The data provider fails to submit an amended report within the stipulated period</u>	<p>When we consider that this annual progress report ostensibly monitors compliance with approved carbon budgets and mitigation measures detailed in Annexure 8, the provision's failure to establish clear consequences for substantive non-compliance versus procedural deficiencies is alarming. The provision's singular focus on amendment without escalation reveals a troubling assumption that all rejections stem from correctable reporting errors rather than fundamental compliance failures. The provision creates no distinction between a report rejected for missing data fields and one rejected because actual emissions exceeded the carbon budget by 200%.</p> <p>The current provision requires fundamental restructuring to serve its intended purpose within the carbon budget compliance framework. The regulation must distinguish between procedural deficiencies warranting amendment and substantive violations demanding immediate enforcement action. When a report reveals actual emissions exceeding approved carbon budgets or failure to implement mitigation measures specified in Annexure 8, mere amendment</p>

			<p>cannot remedy the atmospheric harm already inflicted.</p> <p>The proposed revision ensures that failure to correct a rejected report triggers automatic consequences, eliminating regulatory ambiguity. Crucially, it distinguishes between <i>initial</i> rejection (requiring amendment) and <i>ongoing</i> non-compliance (triggering enforcement), aligning with the Act's risk-based approach. The two-pronged structure (a) and (b) addresses both substantive failures (inadequate corrections) and procedural defiance (missing deadlines), preventing evasion tactics. By tethering enforcement to Annexure 8's technical requirements, it ensures carbon budgets and mitigation plans retain scientific rigor rather than becoming negotiable paperwork</p>
Regulation 13(4)	A data provider must provide qualitative information, as specified in Annexure 8, to enhance the transparency of its Final Progress Report and to enable the Competent Authority to assess compliance against the data provider's Carbon Budget and mitigation.	<p>A data provider must provide qualitative and quantitative information, <u>as specified in Annexure 8, to enhance the transparency of its Final Progress Report and to enable the Competent Authority and the Minister to assess compliance against the data provider's Carbon Budget and mitigation measures, and to determine whether such measures require revision based on:</u></p> <p><u>(a) the best available scientific evidence;</u></p> <p><u>(b) the Republic's international climate</u></p>	<p>The original draft text mandates qualitative information to "enhance transparency" but fails to require quantitative metrics essential for verifying alignment with climate targets. Annexure 8's technical requirements (e.g., "comparison of actual vs projected emissions") are neutered if qualitative reporting isn't explicitly tied to measurable outcomes. Without quantitative anchors, the Minister cannot assess whether mitigation measures <i>actually</i> reduce emissions in line with the 1.5°C threshold or South Africa's NDC commitments.</p> <p>The revision inserts three critical elements with minimal</p>

		<p><u>commitments and obligations.</u></p> <p><u>(c) the best practicable environmental options available and alternatives that could be taken to mitigate the emission of greenhouse gases</u></p> <p><u>(d) national strategic priorities</u></p> <p><u>(e) the alignment of the carbon budgets with the national greenhouse gas emissions trajectory, noting that the cumulative amount of greenhouse gas emissions which the carbon budgets represent are not equivalent thereto</u></p>	<p>textual disruption. First, adding "quantitative" closes a fatal accountability gap by requiring hard data to validate qualitative claims – ensuring reports disclose <i>measurable emissions outcomes</i> (e.g., tons reduced) rather than aspirational narratives. Second, explicitly empowering the Minister to review reports aligns with Section 26(3)(b) and section 27(1) and 27(4) of the Act, which tasks the Minister with evaluating national progress against climate targets. This clarifies that the Competent Authority's assessment is not the final step; the Minister retains oversight to enforce systemic accountability. Third, introducing criteria (a) and (b), (c), (d) and (e) creates a legally binding framework for evidence-based reviews. By mandating assessment against current science and international obligations (e.g., updated NDCs or IPCC findings), the provision ensures carbon budgets adapt to evolving climate imperatives.</p>
Regulation 16(3)	The Competent Authority may report annually on publicly available information related to emission reports, carbon budgets and mitigation plans	<p><u>The Competent Authority shall report annually on publicly available information related to emission reports, carbon budgets and mitigation plans, in a manner that supports effective monitoring, evaluation, and the functions of the Minister and the Presidential Climate Commission</u></p>	<p>The absence of a compulsory reporting framework within the original draft text, impedes the development of a robust Monitoring, Evaluation, and Learning (MEL) system. This is critical for tracking the effectiveness of carbon budgets and mitigation plans. Under Article 13 of the Paris Agreement, South Africa must maintain transparent climate records. Permissive domestic reporting risks non-compliance with global transparency frameworks.</p> <p>By replacing “may” with “must” the proposed revision seeks to</p>

			<p>make the case for a clear and binding duty to report, removing discretionary language that has historically enabled opacity in emissions disclosures. This shift aligns with principles of administrative accountability and ensures consistent compliance.</p> <p>Second, by specifying the Presidential Climate Commission (PCC) and the Minister as recipients of the reported data, the revision closes existing accountability gaps. It ensures that information flows directly to institutions with statutory mandates for climate oversight, as outlined in Sections 8(1)(b); 15(4); 15(6) and 26(3) of the Climate Change Act.</p> <p>Thirdly , the use of “all information” expands the scope of disclosure beyond selectively released “publicly available” data. This includes commercially sensitive information, subject to appropriate confidentiality protections, that is essential for accurate assessments by the PCC and other oversight bodies.</p> <p>Finally, the requirement to produce public summaries of reported data strikes a balance between transparency and confidentiality. It honours the right of access to information under Section 32(1)(b) of the Constitution and empowers communities to monitor local emitters, thereby enhancing environmental democracy and participatory governance. Collectively, these revisions reinforce the constitutional and statutory imperatives of climate accountability, while ensuring</p>
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			that regulatory obligations are both enforceable and responsive to public oversight.
Technical Guidelines to the Mitigation Regulations			
Section defining the implementation of the New Entrants Reserve	<p>In terms of the operation of the new entrants reserve, the following principles guide its implementation:</p> <ol style="list-style-type: none"> 1. The reserve is calculated on a per commitment period basis. 2. The reserve is allocated from a first come, first serve basis 3. The reserve is not strictly for new data providers but can be used for existing data providers who are starting new facilities or significantly increasing existing capacity. 4. If the reserve is fully depleted, no new entrants allocations will be considered. 5. Carbon budget allocations cancelled and no longer in use, due to discontinuation, temporary care, indefinite shutdown, or significant capacity reductions will be 	<p>"In terms of the operation of the new entrants reserve, the following principles guide its implementation:</p> <ol style="list-style-type: none"> 1. The reserve is calculated on a per commitment period basis. 2. The reserve is allocated on a first come, first serve basis, <u>subject to equitable access considerations and alignment with national climate priorities.</u> 3. The reserve is not strictly for new data providers but can be used for existing data providers who are starting new facilities or significantly increasing existing capacity. 4. If the reserve is fully depleted, no new entrants allocations will be considered. 5. Carbon budget allocations cancelled and no longer in use, due to discontinuation, 	<p>The absence of a prioritization framework (e.g., based on socio-economic impact, emissions reduction potential, or alignment with just transition goals) means the new entrants reserve could be depleted without advancing national climate objectives. This is particularly problematic given the Climate Change Act's objective purpose to ensure a just and equitable transition in accordance with section 2(d) and 2(f) and section 3 (db) and 3(d)</p>

	added back to the new entrants reserve	<p>temporary care, indefinite shutdown, or significant capacity reductions will be added back to the new entrants reserve."</p> <p>6. <u>The competent authority must quarterly report to the Minister and the Presidential Climate Commission and the public:</u></p> <p><u>(a) total reserve allocations per commitment period, including recipient sectors and project locations</u></p> <p><u>(b) quantities of cancelled allocations returned to the reserve;</u></p> <p><u>(c) Justification for all allocations to existing data providers under principle 3, demonstrating alignment with national carbon budgets.</u></p>	
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