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South African Institute of Race Relations NPC

Submission to the Department of Forestry, Fisheries and the Environment

Regarding the

Draft National Greenhouse Gas Carbon Budget and Mitigation Plan Regulations

which include the declaration of the list of Greenhouse Gases and Activities

30 September 2025

Table of Contents **Page**

1 Introduction

The Department of Forestry, Fisheries and the Environment ("the Department") has invited interested persons to submit public 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 ("the Draft Regulations") by 30 September 2025.

This submission is made by the South African Institute of Race Relations NPC (IRR), a non-profit organisation formed in 1929 to oppose racial discrimination and promote racial goodwill. Its current objects are to promote democracy, human rights, development, and reconciliation between the peoples of South Africa.

2 The constitutional need for proper public consultation

The founding values of the Constitution require "openness" and "responsiveness" on the part of the government, while Chapter Ten states that "the public must be encouraged to participate in

policy-making".[1] In addition, both houses of Parliament are obliged to "facilitate public involvement in the[ir] legislative…processes" under sections 59 and 72 of the Constitution.[2]

The constitutional need for proper public consultation is a vital aspect of South Africa's democracy, as the Constitutional Court has repeatedly reaffirmed in judgments spanning two decades. These rulings include *Matatiele Municipality and others* v *President of the Republic of South Africa and others*, *Doctors for Life International* v *Speaker of the National Assembly and others*, *Land Access Movement of South Africa and others* v *Chairperson of the National Council of Provinces and others*, and *Mogale and others* v *Speaker of the National Assembly and others*.[3]

In August 2025, moreover, in a unanimous ruling handed down in *Corruption Watch (RF) NPC* v *Speaker of the National Assembly and others*, the Constitutional Court reiterated the importance of proper public participation, saying: "The right of members of the public to participate meaningfully in democratic governance is a hallmark of our constitutional democracy. Public involvement in the legislative and other processes of all three spheres of government is not merely a fashionable accessory; it is a thread woven into the fabric of our democracy."[4]

In the *New Clicks* case in the Constitutional Court, Mr Justice Albie Sachs noted that there were many ways in which public participation could be facilitated. He added: "What matters is that…a reasonable opportunity is offered to members of the public and all interested parties *to know about the issues* and to *have an adequate say*". This passage was quoted with approval in *Doctors for Life*, the *Land Access* case, and the *Mogale* judgment in 2023.[5]

2.1 The need for an accurate socio-economic impact report

The best way to ensure that the public *know about the issues* and can then *have an adequate say* is to provide them with a comprehensive and objective report on the likely socio-economic impact of a bill. This is also what the government's own policy requires.

According to the government's *Guidelines for the Socio-Economic Impact Assessment System (SEIAS)* – which were developed by the Department of Planning, Monitoring, and Evaluation in May 2015 and took effect in September that year – all new legislation in South Africa is supposed to be subjected to a comprehensive "socio-economic impact assessment" before it is adopted. The aim of the SEIA system is to ensure that "the full costs of regulations and especially the impact on the economy" are fully understood before new rules are introduced.[6]

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[1] Sections 1(d), 195(1)(e), Constitution of the Republic of South Africa, 1996 ("Constitution").
[2] Sections 59(1), 72(1), Constitution.
[3] (CCT73/05A) [2006] ZACC 12; 2007 (1) BCLR 47 (CC); 2006 (6) SA 416 (CC); [2016] ZACC 22; [2023] ZACC 14.
[4] *Corruption Watch (RF) NPC* v *Speaker of the National Assembly and others*, [2025] ZACC 15, para. 1.
[5] Section 59(1), Constitution of the Republic of South Africa, 1996; *Minister for Health and another* v *New Clicks South Africa (Pty) Ltd and others*, [2005] ZACC 14, at para 630, emphasis supplied by the IRR; *Doctors for Life*, at para 145; *Land Access* judgment, at para 59; *Mogale* judgment, at para. 34.
[6] Department of Planning, Monitoring and Evaluation, 'Socio-Economic Impact Assessment System (SEIAS), Revised Impact Assessment: National Health Insurance Bill', 26 June 2019 (2019 SEIAS Assessment); *SEIAS Guidelines*, p. 3, May 2015.

As the *Guidelines* state, the SEIA system must be applied at various stages in the policy process. Once new legislation has been proposed, "an initial assessment" must be conducted to identify different "options for addressing the problem" and making "a rough evaluation" of their respective costs and benefits. Thereafter, "appropriate consultation" is needed, along with "a continual review of the impact assessment as the proposals evolve".[7]

A "final impact assessment" must then be developed that "provides a detailed evaluation of the likely effects of the [proposed law] in terms of implementation and compliance costs as well as the anticipated outcome". When a bill is published "for public comment and consultation with stakeholders", this final assessment must be attached to it.[8]

2.2 The need to comply with the National Policy Development Framework

The government's *National Policy Development Framework* ("the *Framework*") also puts great emphasis on "encourag[ing] the public…to participate in policy making".[9] The *Framework* was approved by the Cabinet in December 2020 and is intended to help give effect to the *National Development Plan: Vision 2030*. It seeks to improve policy development by "ensuring meaningful participation" and "inculcating a culture of evidence-based policy making".[10]

Towards this end, the *Framework* lists some of the key requirements for proper public participation. "Consultation with stakeholders should commence as early as possible," it says. All relevant stakeholders should be identified, including "those who will benefit when [existing] problems are addressed" and "those who will bear the cost of implementation of the proposed intervention". In addition, policy-makers must identify and counter all "barriers to active participation" and ensure that "consultation is infused in all aspects of the policy-making cycle".[11]

According to the *Framework*, policy-makers must consider different policy options and give adequate thought to "which policy solutions would best achieve the public policy objective". They must also "inform and engage stakeholders" on "the nature and magnitude of a policy issue", along with its likely "impacts and risks". All assessments made by policy-makers must be "informed by the best available evidence, data, and knowledge".[12]

In addition, policy-makers must be willing to adjust their proposals in the light of the evidence provided. As the *Framework* stresses, "*policy-makers must not impose their preconceived ideas…and pre-empt the outcome of the policy consultation process*."[13] This in turn means that "policy-makers need to be willing to be persuaded and acknowledge the input of stakeholders with a view to creating a win-win policy outcome". They must avoid any impression that "the consultation process is staged, managed, cosmetic, token and a mere compliance issue".

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[7] *SEIAS Guidelines* p. 7.
[8] *SEIAS Guidelines*, p. 11.
[9] Ibid, p. 19.
[10] National Policy Development Framework, 2020, p. 3.
[11] Ibid, pp. 19 – 20.
[12] Ibid, p. 20.
[13] Ibid, emphasis supplied by the IRR.

Instead, they must "strive to produce an outcome based on bargaining, negotiation, and compromise".[14]

Policy-makers, the *Framework* adds, must also provide adequate feedback to those who have submitted comments. Such feedback must include "rational reasons" as to why "submissions and comments…were not consolidated into the final policy document". In addition, policy-makers must "report in the SEIAS (final impact assessment: consultation section) on the results of their early engagement with stakeholders". They must explain "what stakeholders viewed as possible solutions, benefits, and costs and how these influenced the selection of the proposed policy solution".[15]

2.3 Little regard for these obligations

These important instructions to policy-makers have been disregarded in relation to the Draft Regulations. No final SEIA report was published with the Draft Regulations, as required by both the SEIA *Guidelines* and the Policy *Framework*. Hence, the public has been deprived of a vital opportunity to "know about the issues" raised by the Regulations and then to "have a proper say".

In addition, under Section 32 of the Climate Change Act of 2024 ("the Act'), the Minister of Forestry, Fisheries and the Environment ("the Minister") "must" ensure adequate "public participation" before "exercising a function or power" under Section 26 (dealing with "listed greenhouse gases and activities") and Section 27 (dealing with carbon budgets). This wording is peremptory. It is not enough for the Minister merely to publish the Regulations in the *Government Gazette*, as he did on 1 August 2025. Instead, he must ensure that his notice of intention to exercise such a power or function "contains sufficient information to enable members of the public to submit meaningful representations or objections". He must also "allow any interested person or community to present oral representations or objections". In addition, he must "give due consideration to all representations and objections received or presented before exercising the function or power concerned". [16]

This obligation to provide "sufficient information to enable members of the public to submit meaningful representations or objections" is particularly important. The carbon budgets being proposed are likely to pose a considerable administrative burden on the Department – and an enormous compliance burden on Eskom and many other enterprises in the mining, manufacturing, smelting, steel and other sectors. This additional burden could further deter investment, further reduce economic growth and further exacerbate the unemployment crisis.

Stringent carbon budgets could also help push Eskom into decommissioning coal-fired power stations before reliable and cost-effective alternatives are in place. This in turn could trigger a return to the high levels of loadshedding that previously caused the country great economic and societal distress. At the same time, there are more effective ways to counter climate change than carbon budgets – and these need to be taken fully into account.

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[14] Ibid.
[15] Ibid.
[16] Section 32(2)(b), (3), (4), Climate Change Act of 2024 ("the Climate Act").

However, despite the importance of all these issues, the Department has failed to provide the "sufficient" information needed to empower the public to make "meaningful representations or objections". In fact, it has provided no information at all on the ramifications of the Draft Regulations.

On the contrary, it has made it difficult even to read the Draft Regulations by providing what seems to be a screenshot of the text, which cannot be copied, highlighted or modified to increase the spacing between cramped lines.

3 The content of the Draft Regulations

3.1 Overview of chapters and key provisions

3.1.1 Chapter 1: Interpretation and Purpose of Regulations

The purpose of the Draft Regulations is essentially two-fold: to "provide for the determination…and enforcement of carbon budget allocations and carbon budgets", and also for "the preparation and implementation of mitigation plans".

The chapter includes many important definitions, including a definition of a "data provider". A data provider, it says, is a person "conducting a [listed] production process" which involves the "emission of greenhouse gases" in excess of a specified threshold and who must, "if so directed by the minister", submit a carbon budget and an accompanying mitigation plan to the minister for his approval. This definition is entirely new, for there is no reference to a "data provider" in the Climate Change Act ("the Climate Act"), as described in *section 3.1.3* below.

This chapter contains a host of other definitions too. These include definitions of "Competent Authority", "carbon budget allocation", "commitment period", "independent assessor", "independent mitigation specialist", "product-level benchmarking", "validation" and "verification". Again, many of the definitions are not contained in the Climate Act, raising questions as to the authority under which they have been introduced into the Regulations.

3.1.2 Chapter 2: Declaration of List (sic) of Greenhouse Gases and Activities

Under Clause 3, the minister "declares that…the greenhouse gases listed [in an annexure] constitute the list of gases which cause or are likely to cause or exacerbate climate change". She also declares that "the activities listed [in another annexure] constitute the list of activities that emit, or have the potential to emit, one or more of the [listed] greenhouse gases".[17] This wording is intrinsically vague. Some of it is also *ultra vires* the Climate Act, as described below.

3.1.3 Chapter 3: Providers and requirements for their registration

According to Clause 4, a "data provider" is a person who "meets or exceeds the threshold of 30 000 tonnes C02-eq annually for the listed activities". Whether a person does so is "calculated as the average of a minimum of three consecutive years' emissions in the five-year reporting period preceding the carbon budget allocation and mitigation plan".[18]

[17] Clause 3(1), (2), Draft Regulations, read with Section 26(1), (2), Climate Act.
[18] Clause 4(1), (2), Draft Regulations.

This clause is *ultra vires* the Climate Act, as set out in *Section 3.2* below. In addition, as earlier noted, there is no definition of "data provider" in the Climate Act. Rather, a definition of this term, though differently worded, was introduced by the National Greenhouse Gas Reporting Regulations of 2017 ("the 2017 Regulations") under the National Environmental Management Act: Air Quality of 2004 ("the 2004 statute"). However, the 2004 statute makes no reference to a "data provider" either.

The main purpose of the 2004 statute, as its name suggests, is to "regulate air quality" via "the prevention of pollution and ecological degradation". However, the statute nevertheless became the legislative authority for the gathering of data about greenhouse gas emissions via the 2017 regulations. These regulations were gazetted under a provision in the 2004 statute empowering the minister to list "activities which result in atmospheric emissions" and which the minister "reasonably believes have or may have a significant detrimental effect on the environment".[19] South Africa thus embarked on the monitoring and measuring of greenhouse gas emissions without the pros and cons of this complex process being debated and agreed by Parliament.

Under Clause 5 of the Draft Regulations, a data provider must "register all facilities under its operational control". It must use the "emission sources" identified by the Intergovernmental Panel on Climate Change (IPCC) to "provide the accurate and relevant information" set out in another annexure to the Draft Regulations.[20] (The IPCC was established by the United Nations Environment Programme (UNEP) and the World Metereological Organisation (WMO) in 1998.) "A data provider must also be registered on the reporting program under the [National] Greenhouse Gas Emission Reporting Regulations of 2017" adopted under the 2004 statute, as earlier described.[21]

Under clause 6, "a data provider must notify the Competent Authority, in writing, of any change in registration details". It must also notify that Authority if it "transfers ownership or operational control of a facility or alters the capacity of it" by discontinuing or expanding a listed activity.[22]

There is no definition of "Competent Authority" in the Climate Act. This term comes instead from the 2017 Regulations adopted under the 2004 statute. Moreover, the 2017 Regulations define the Competent Authority as "the National Inventory Unit based at the National Department of Environmental Affairs". By contrast, the Draft Regulations define the Competent Authority as "the national department responsible for the environment".[23]

According to the Draft Regulations, any "modification may trigger an external specialist assessment", while "modification assessment costs are the burden of the data provider who will need to provide an independent mitigation specialist". Under Clause 7, as part of "the carbon budget allocation process", a data provider must also submit "a draft mitigation plan…to indicate what types of measures the data provider plans to implement to reduce emissions".[24]

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[19] Clause 1, Draft Regulations; National Greenhouse Gas Reporting Regulations of 2017; Section 21(1)(a), National Environmental Management Act: Air Quality of 2004.
[20] Clause 5, Draft Regulations.
[21] Clause 5(2)(b), Draft Regulations.
[22] Clause 6(1), (2), Draft Regulations.
[23] Clause 1, 2017 Regulations; Clause 1, Draft Regulations.
[24] Clauses 6(1), (5), Clause 7(6), Draft Regulations.

3.1.4 Chapter Four: Carbon budgets

Under Clause 8, "the Competent Authority must determine a carbon budget allocation applicable to the data provider" and present this to the data provider "in the form of a Carbon Budget Allocation Report". In determining a carbon budget allocation, "the Competent Authority must consider all the considerations in section 27(2)(a) to (f) of the Act" (and also "apply the provisions of Regulation 10", as described below).[25]

Section 27(2)(a) to (f) of the Climate Act provides that "when allocating carbon budgets, the Minister must take all relevant considerations into account, including but not limited to:[26]

(a) the socio-economic impacts of imposing the carbon budget;
(b) the best available science, evidence and information;
(c) the best practicable environmental options available and alternatives that could be taken to mitigate the emission of greenhouse gases;
(d) national strategic priorities;
(e) the alignment of the carbon budgets with the national greenhouse gas emissions trajectory…; and
(f) progress in the implementation of the greenhouse gas mitigation plans".

The implication is that the Competent Authority must assess each of these important factors behind closed doors and in relation to each data provider. How then are these key assessments to be made? The Draft Regulations provide no guidance as to what data and other considerations should be taken into account in assessing the listed factors.

Yet it is enormously important to the country and all its people that "the socio-economic impacts of imposing the carbon budget" should be comprehensively and accurately assessed. Accurate assessment is equally vital in considering "the best practicable environmental options available and alternatives that could be taken to mitigate the emission of greenhouse gases" – as well as in reviewing "national strategic priorities". Yet the Draft Regulations give the Competent Authority an untrammelled discretion to take into account whatever data it chooses – and to give that data as much or little weight as it prefers in every instance. The absence of proper guardrails to guide the exercise of this discretionary power is contrary to the doctrine against vagueness of laws and inconsistent with the rule of law. (Moreover, that these vital assessments are to be made by the Competent Authority – an entity with no clear authority under the Climate Act – shows a further disdain for the rule of law.)

Under Clause 9, the methods to be used in "the determination of a carbon budget allocation to a data provider" are to be based either on "Product-Based Benchmarking", or on a "Mitigation Potential Analysis…developed by the Competent Authority", or on a "Fixed Target Approach". If this third method is applied, then "carbon budget allocations will be determined on the basis of sector-wide fixed reductions".[27] None of these three methods is included or defined in the Climate Act. Nor is there any reference in the Climate Act to "sector-wide fixed reductions", which could have particularly severe socio-economic impacts. Effectively, Parliament has been

[25] Clause 8(1), (2), Draft Regulations.
[26] Section 27(2), Climate Act.
[27] Clause 9(1), read with Clauses 9(5), 9(6), and 9(7), Draft Regulations.

excluded from debating and deciding on crucial methodologies in the carbon budgeting process.

Clause 10 of the Draft Regulations is relevant here too and provides: "Upon receipt of the carbon 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". This "Carbon Budget must specify the maximum amount of greenhouse gas emissions that may be emitted during the first commitment period". (Each commitment period lasts for five years and the first is expected to run from 1 January 2026 to 31 December 2030.) The Carbon Budget must also "provide an indicative carbon budget for a duration of at least two subsequent commitment periods".[28] The Competent Authority must then assess whether the Carbon Budget complies with the carbon allocation plan. If it does not, in its view, its may "direct that specified amendments be made to the Carbon Budget to bring it into compliance with the carbon budget allocation".[29]

3.1.5 Chapter Five: Mitigation Plans

Under Clause 11, "a data provider to whom a carbon budget has been allocated must prepare and submit to the Competent Authority for approval of a (sic) Mitigation Plan". This plan must "detail the mitigation measures the data provider proposes to implement to remain within the carbon budget" for the relevant five-year "commitment period".[30]

Under Clause 11(4), "A mitigation plan must include…[among other things] the indicator and activity data used to quantify and track progress,…including assumptions and greenhouse gas estimation measures used to quantify emission reduction". It must also include "Scope 1 mitigation measures that are ready for implementation", as well as those still being planned, which will be "noted by the Competent Authority". If the carbon budget is subsequently changed, the mitigation plan must be amended too, but "the replacement measures [must] still result in similar or more ambitious results" than the original approved plan.[31]

Under Clause 12, "The Competent Authority must consider whether the mitigation actions…in the mitigation plan ensures (sic) compliance with the carbon budget allocation" and with the remaining provisions in this Clause. If it is dissatisfied, the Competent Authority may "direct the data provider to amend the mitigation plan" or submit additional information. The data provider must "implement and comply with the approved mitigation plan" and report on its compliance with both the plan and the carbon budget. Under Clause 12(10), "A data provider is wholly and solely liable for any and all costs of compliance and failures to comply with its Carbon Budget and mitigation plan and any damages which may flow from such compliance or non-compliance, and has no right of recourse against the Competent Authority in respect thereof".[32] This latter clause is not only enormously burdensome but also *ultra vires* the Climate Act, as outlined below.

3.1.6 Chapter Six: Reporting requirements

[28] Clause 10(1), (2), Draft Regulations.
[29] Clause 10(6), Draft Regulations.
[30] Clause 11(1), Draft Regulations.
[31] Clause 4(f), (g), (h), (5), (7), (8), Regulations.
[32] Clause 12(2), (3), (5), (8) (10), Regulations.

Under Clause 13, "A data provider must continually monitor and evaluate its compliance with its carbon budget and submit an Annual Progress Report…to the Competent Authority…each year". A data provider must do the same as regards its "approved mitigation plan". Annual progress reports may be combined and must include "at least" a specified list of information. In terms of this list, a data provider must incorporate "the quantum and unit of the indicator" resulting in emissions reductions, along with "the assumptions used to convert the indicator to emissions reductions" and the "methods used to quantify emission reductions". It must also give "details of deviations from the approved mitigation plan", of any "remedial action" then undertaken, and of all "actions taken to manage any risks and limitations".[33]

Under Clause 13, "The Competent Authority must… consider whether the content of the Annual Report(s) complies with the Regulations". If it rejects these reports, the data provider must amend them. In the fifth and final year of the commitment period, the data provider must also "provide an additional consolidated Final Progress Report on compliance with the Carbon Budget and the approved mitigation plan" over the entire five-year period. Here, "the data provider must include the actual activity data such as production output or output generated for the full five-year commitment period".[34]

3.1.7 Chapter Seven: Validation and Verification, New Entrants, Access to information and Record-keeping

Under Clause 14, "A data provider must, as a minimum, in respect of each and every commitment period, ensure that three instances of independent verification, and two instances of validation, of annual progress reports…is conducted". At the start, "validation and verification of the carbon budget and mitigation plan data must be conducted by an independent assessor within six months from the beginning of the commitment period". The same must be done "within six months from the end of the commitment period". Moreover, "at any point" within that five-year period, "the Competent Authority may use its discretion to trigger the third instance of mandatory independent validation and verification".[35]

In addition, "if the Competent Authority reasonably believes that any information submitted…are (sic) incomplete or false, and do (sic) not meet the quality assurance principles of transparency, completeness, accuracy, comparability and consistency, the Competent Authority must direct in writing the data provider to verify the information submitted".[36] Under clause 14(8), "A data provider is liable for all costs incurred in validating and verifying the information".[37]

Under Clause 15 (a provision that has little to do with validation or record-keeping), "the Competent Authority must quantify an economy-wide emissions cap per commitment period". However, there is no provision in the Climate Act empowering the minister to set such a cap. According to the Draft Regulations, "an allowance of five percent of the reportable economy-wide emissions cap will be made available through a new reserve for new entrants", defined as "data providers that commence with [listed] activities in that commitment period". Carbon

[33] Clause 13(2)(c), (ii) to (vii), Regulations.
[34] Clause 13(3), (4), Regulations.
[35] Clause 14(1) to (4), Draft Regulations.
[36] Clause 14(5), Draft Regulations.
[37] Clause 14(8), Draft Regulations.

budgets that have been cancelled or are no longer in use are to "added back to the new entrants reserve". However, "where the new entrants reserve is depleted, no further carbon budget allocation will be considered".[38]

Clause 16 empowers "The Competent Authority [to] report annually on publicly available information related to emission reports, carbon budgets and mitigation plans". Clause 17 obliges "A data provider [to]…archiv[e] all data, measurement reports, algorithms, procedures and technical references used to estimate greenhouse emissions and used in submissions to the Competent Authority." A data provider must keep all this information "for at least five years after the end of the relevant commitment period" and make it available on request "for inspection by the Competent Authority and an independent assessor".[39]

3.1.8 Chapter Eight: General matters

Under Clause 18, "An appeal lodged in terms of these Regulations must be dealt with in terms of section 36 of the Act". Section 36 of the Climate Act states that "any person may appeal to the Minister against any decision taken by any person under a power delegated by the Minister under the Act". It also says that any such appeal must be "noted and dealt with in terms of section 43(4) of the National Environmental Management Act" (NEMA) of 1998. This sub-section of NEMA states that an appeal to the Minister must be "noted and must be dealt with in the manner prescribed and upon payment of a prescribed fee". NEMA also gives the Minister broad powers, after "considering an appeal", to "confirm, set aside or vary the decision…or make any other appropriate decision".[40]

Clause 19 of the Draft Regulations deals with offences. It makes it an offence for a data provider to "fail to register" as such, fail to submit the information needed for a carbon budget allocation, fail to submit "a Carbon Budget for confirmation", fail to "submit a mitigation plan", fail to "implement an approved mitigation plan", fail to "submit Annual Progress Reports", fail to "submit a Final Progress Report", fail to "implement mitigation measures", fail to comply with the "verification and validation requirements", fail to provide any information as directed, and fail to "implement recommended remediation identified by an independent verifier". The clause also makes it an offence for a data provider to supply "false and misleading information" to the Competent Authority.[41]

Penalties for all these offences are severe. Under Clause 20, "a data provider convicted" of any one of them is liable, "in the case of first conviction, to a fine not exceeding R5 million, or to imprisonment for a period not exceeding five years and, in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years". In both instances, "both such fine and such imprisonment" may be imposed.[42]

In addition, "A data provider is subject to a higher rate of carbon tax", under the Carbon Tax Act of 2019, "if it exceeds its carbon budget allocation prescribed by the Competent Authority in

[38] Clause 15, Draft Regulations.
[39] Clauses 16(3), 17(1), (2), Draft Regulations.
[40] Clause 18, Draft Regulations; Sections 43(4), (6), National Environmental Management Act (NEMA) of 1998.
[41] Clause 19, Draft Regulations.
[42] Clause 20, Draft Regulations.

regulations 9 and 11, during the applicable commitment period".[43] This penalty rate is reportedly to be set (initially at least) at R640/tCO2e. This is significantly higher than the current rate of carbon tax, which is R236/tCO2e.[44]

3.2 Clauses that are ultra vires *the Climate Act*

Many of the clauses in the Draft Regulations are prima facie *ultra vires* the Climate Act. This contradicts the principle of legality and the rule of law. Examples include the following.

3.2.1 Many of the key definitions: Since many of the key terms and concepts used in the Draft Regulations are not found in the Climate Act, it is unclear by what authority they have been introduced into the Draft Regulations. As earlier described in *section 3.1.1* above, the term "data provider" is not included in the Climate Act but instead derives from the National Greenhouse Gas Emission Reporting Regulations of 2017. (As noted, these 2017 Regulations were adopted, also without clear statutory authority, under the National Environmental Management: Air Quality Act of 2004 or "the 2004 statute".)

Other terms crucial or important to the obligations set out in the Draft Regulations -- including "Competent Authority", "validation"" and "verification" – are not found in the Climate Act either. They too have their origin in the 2017 Regulations adopted without clear authority under the 2004 statute.

3.2.2 Listing of greenhouse gases: According to Clause 3, "the Minister hereby declares that (1) the greenhouses gases, listed in Annexure 1 to these Regulations, constitute the list of greenhouse gases which cause or are likely to cause or exacerbate climate change". This wording is different from that used in Section 26(1) of the Climate Act, which empowers the minister to publish a list of greenhouse gases which he or she "*reasonably believes*" cause or are likely to cause or exacerbate climate change.[45] This is an important difference and it makes the minister's declaration of the relevant listed gases, as set out in an annexure to the Draft Regulations, *ultra vires* the Climate Act.

3.2.3 Setting of compliance threshold: According to Clause 4(2) of the Regulations, the minister has "set the threshold of 30 000 tonnes C02eq annually" for the activities listed in Annexure 2 of the Regulations. However, the Climate Act requires that the "quantitative greenhouse gas emission thresholds" determined by the minister under Section 26(3)(b) must satisfy various criteria, all of must be fulfilled before the threshold is set. Among other things, such thresholds "must be based on the availability of feasible mitigation technology" and "must take into account any opportunities and constraints to implementation of policies and measures".[46] These requirements have not been met. The setting of the threshold at 30 000 tonnes CO2eq annually under Clause 4(2) of the Draft Regulations is thus *ultra vires* the Climate Act.

3.2.4 Registration under National Greenhouse Gas Emission Reporting Regulations: Under Clause 5 of the Regulations, "a data provider must also be registered on the reporting program

[43] Clause 21, Draft Regulations.
[44] Gemini AI, National Treasury, Carbon Tax Discussion Paper: Phase Two of the Carbon Tax, 16 August 2024, p4, https://www.treasury.gov.za/public%20comments/TaxationOfAlcoholicBeverages.pdf.
[45] Clause 3(1), Draft Regulations; Section 26(1), Climate Act.
[46] Clause 4(2), Draft Regulations; Section 26(3), (4), Climate Act.

under the [National] Greenhouse Gas Emission Reporting Regulations". However, there is no reference in the Climate Act to these 2017 regulations. It is thus *ultra vires* the Climate Act for the Competent Authority to demand registration under these rules.

3.2.5 Methods for determining a carbon budget allocation: Under Clause 9, as earlier described, a carbon budget allocation must be determined according to Product-Based Benchmarking, a Mitigation Potential Analysis, or a Fixed Target approach. Preference must be given to these methods in the order (as here) in which they are listed. However, none of these concepts is included in the Climate Act, making the authority for their use uncertain. More seriously still, where the Fixed Target approach is used, the Draft Regulations state that "carbon budgets will be allocated on the basis of sector-wide fixed reductions".[47] Yet such reductions could be inappropriate for many data providers. In addition, there is no authority in the Climate Act for the setting of "sector-wide fixed reductions". Again, the power thus given to the Competent Authority is *ultra vires* the Climate Act.

3.2.6 Damages flowing from compliance or non-compliance: Under Clause 12(10) of the Regulations, "a data provider is wholly and solely liable for any and all costs of compliance and failures to comply with its Carbon Budget and mitigation plan and any damages which may flow from such compliance or non-compliance, and has no right of recourse against the Competent Authority in respect thereof".[48] However, there is no reference in the Climate Act to "damages" of this kind, which the Draft Regulations envisage as flowing not only from non-compliance but also from compliance. Such damages could in practice impose a considerable further burden on a data provider. Effectively, such damages are likely to amount to a further penalty imposed on the date provider (in addition to the draconian fines and jail terms for which other clauses in the Draft Regulations provide). Again, the sub-clause authorising the imposition of damages on the data provider is *ultra vires* the Climate Act.

3.2.7 Verification and validation: Under Clause 14(1) of the Draft Regulations, "a data provider must, as a minimum, in respect of each and every commitment period, ensure that three instances of independent verification, and two instances of validation, of annual progress reports submitted in terms of these Regulations is conducted". However, there is no reference to "verification" or "validation" requirements in the Climate Act.

Section 30(2)(a) empowers the minister to make regulations "in relation to the management of climate change response, including (i) the determination, review, revision, compliance with and enforcement of an allocated carbon budget". However, it is far from certain that this wording empowers the minister to insist upon at least three costly independent data verifications and at least two costly independent validations of reports submitted by data providers.

Here, as in other instances, the Draft Regulations seem to have drawn on the Technical Guidelines for the Validation and Verification of Greenhouse Gas Emissions, 2021. However, these were adopted under the National Environmental Management: Air Quality Act of 2004 (the

[47] Clause 9(7), Draft Regulations.
[48] Clause 12(10), Draft Regulations.

2004 statute),[49] whereas the Draft Regulations have been made under the Climate Act. Again, the minister has exceeded the powers conferred on him by the latter statute.

3.3 Other unconstitutional provisions

3.3.1 Untrammelled executive discretion, without any guardrails: Under Clause 8(2) of the Draft Regulations, the Competent Authority, as earlier noted, must "consider all of the considerations in section 27(2)(a) to (f) of the Climate Change Act" in "determining a carbon budget allocation applicable to the date provider". The factors to be considered are vitally important, for they range from "the socio-economic impacts of imposing the carbon budget" to "the best practicable…alternatives" for mitigation purposes and "national strategic priorities". Under the Draft Regulations, this assessment is to take place behind closed doors – and without any guardrails to limit and guide the exercise of the Competent Authority's discretion. This, as earlier noted, is contrary to the doctrine against vagueness of laws. It also makes the Regulations inconsistent with the rule of law, "the supremacy" of which is guaranteed by the founding provisions of the Constitution.[50]

3.3.2 Vague "assumptions" and "estimation measures": As earlier noted, Clause 11(4) of the Draft Regulations requires the data provider to set out the "assumptions" and "estimation measures" that are to be used to "quantify emission reduction".[51] This wording underscores the enormous difficulty that all data providers will experience in measuring initial greenhouse gas emissions and accurately assessing how much these might have come down in response to mitigation measures. Tests that rely on "assumptions" and "estimation measures" are inherently vague and uncertain. Yet data providers will be severely punished if they fail to "quantify" reductions with whatever level of accuracy the Competent Authority might demand. Moreover, because these assessment criteria are so uncertain, their application is sure to vary from one data provider to another and from one sector to another. This conflicts with the doctrine against vagueness of laws.

In addition, it is core requirement of the rule of law that people must have clarity on what actions are prohibited – and also on what measures they may take to avoid criminal liability (here, draconian fines and/or prison terms), civil liability (potential damages for losses flowing from compliance and/or non-compliance) and/or tax liability (a sharp rise in the carbon tax they will have to pay). Yet the wording of the Draft Regulations is too vague to give data providers this clarity. This puts the Draft Regulations in yet further conflict with the rule of law and hence with the founding values of the Constitution.

3.3.3 Conflict with the doctrine of the separation of powers: Under the doctrine of the separation of powers, Parliament is responsible for making laws, the executive has the task of enforcing the rules that the legislature has made, and an independent judiciary is responsible for adjudicating disputes, deciding on liability in criminal, civil and tax matters, and hearing appeals. The Draft Regulations conflict with this core constitutional principle.

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[49] Technical Guidelines for the Validation and Verification of Greenhouse Gas Emissions, 2021: https://www.gov.za/sites/default/files/gcis_document/202111/45452gon1496.pdf.

[50] Section 1(c), Constitution of the Republic of South Africa, 1996 ("the Constitution").

[51] Clause 4(f), (g), (h), (5), (7), (8), Draft Regulations.

Much of the fault lies with the Climate Act itself, which sets out a bare framework of law, assumes that a host of substantive rules can be added by the minister by regulation, and gives the minister, rather than the courts, the task of hearing all appeals. The resulting conflict with the doctrine of the separation of powers makes the Climate Act itself unconstitutional. The Draft Regulations are tainted have the same defect and are equally inconsistent with the Constitution. Often, moreover, the Draft Regulations introduce new rules which Parliament should be responsible for enacting. Among other things, they give the Competent Authority the power to set "sector-wide fixed reductions" on emissions; to specify "an economy-wide emissions cap" in every five-year period; and to impose on the data provider "damages which may flow from compliance or non-compliance" with either carbon budgets and mitigation plans.

The new rules thus introduced by the Competent Authority could have major ramifications. An "economy-wide emissions cap" could prevent new entrants from setting up businesses for which no carbon budget is supposedly available. If the "damages" provision is implemented as its wording suggests, it could result in coal mining companies being held "wholly and solely liable" for major job losses not only in shuttered coal mines but also in Mpumalanga towns heavily dependent on current coal mining operations in the province. If rules of this kind are to be introduced, it should be done by Parliament – not by the Competent Authority under the Draft Regulations.

4 Compliance burdens and costs

4.1 A low carbon threshold with major compliance ramifications

The Draft Regulations cover virtually the entire industrial base of South Africa, from electricity production to mining, cement, iron and steel, aluminium, petroleum refining, and chemicals. Moreover, the emissions threshold – at 30,000 tonnes of CO_2 equivalent per year – is low enough to sweep in not only the largest emitters but also mid-tier firms that lack the specialist resources of multinational companies. All these firms will be obliged to produce carbon budgets and mitigation plans, submit extensive annual reports, and hire accredited third-party verifiers. For many, this will be a prohibitive burden.

4.2 *Gathering and verifying data*

The Draft Regulations require the accurate measurement of all listed greenhouse gas emissions at all relevant facilities. This in itself will be difficult to achieve. The task will also have to be carried out across a diverse range of industries likely to pose different challenges in data collection and analysis. Moreover, many data providers may lack appropriate measuring systems, which they will then have to devise, acquire, test and bring into operation. At times, new technologies may also have to be developed. The difficulties and costs of gathering accurate data across all listed sectors will thus be great.

Emission baselines will have to be determined too, which is itself a complex operation. Much will hang on these baselines too, as any under-estimation will make it more difficult to achieve the carbon reductions the Competent Authority seeks. Moreover, once all the required information has been collected and reported, data providers will have to store it carefully for at least five years to facilitate future reviews. As earlier noted, data providers will also have to

undergo – and pay for – at least three verification and two validation exercises in every five-year period. If their information is regarded as "incomplete", inaccurate, or lacking in "comparability or consistency", they will have to pay for as many additional verifications as the Competent Authority may direct.

4.3 *Devising carbon budgets and mitigation plans*

Finding practicable ways to reduce carbon emissions to the extent required by the Competent Authority will be a difficult challenge. Data providers will need technical experts to formulate proposals, test their viability, estimate what emission reductions are likely, and develop methods to monitor and measure whether planned reductions are being achieved. Various options will need to be considered and costed in some detail. Once decisions have been made, comprehensive implementation plans will have to be devised and put into effect. Experts may also be needed to assess likely impacts on a data provider's business model, profitability, investment plans, and workforce needs. Often, more skilled staff will be needed, along with outside consultants, additional funding and other resources.

4.4 Reporting on implementation

Once carbon budgets and mitigation plans accepted by the Competent Authority – perhaps only after various costly revisions – data providers will have to report each year (in their annual progress reports) on compliance with both carbon budgets and mitigation plans. If anticipated emission reductions are not being achieved, remedial actions will have to be devised, monitored, and reported upon in due course. If the Competent Authority rejects annual reports, these will have to be rectified and resubmitted within short (30-day) periods.

Final Progress Reports will have to include "qualitative" information too. They will also have to incorporate quantitative data on all "actual activities" over the five-year period. This data must, among other things, cover emissions from "all operating conditions, including normal, abnormal, start-up, shutdown and emergency situations over the reporting period". All monitoring and reporting must be "complete and accurate" and cover "all greenhouse gas emissions and source streams belonging to [listed] activities".[52]

4.5 Additional costs for the Competent Authority

The Competent Authority will also need considerable additional skills and other resources to assess all the data submitted; set carbon budgets for all data providers; approve all mitigation plans; assess all annual progress reports; evaluate all scheduled verification and validation reports; assess whether additional verification is needed for all data providers in each five-year period; assess final progress reports; and adjust the carbon budgets of data providers for the following five-year period.

This task will be an enormous one. It will impose a massive regulatory burden both on the Department and on many other state entities. Major additional technical and other skills will be needed too. Overall, the compliance burden will weigh heavily on a government that is already often dysfunctional, short of skills and revenue, under pressure to reduce public spending and

[52] Clause 13(5), (6), Draft Regulations.

public debt, and needing to stimulate investment, growth and employment to sustain its support.

4.6 The costs of reducing carbon emissions

Compliance costs, though heavy, are likely to be dwarfed by the size of the direct investments needed to reduce carbon emissions. Eskom, as outlined below, will come under pressure to speed up the decommissioning of coal-fired power stations in favour of far more costly energy from renewable, battery (and perhaps nuclear) options. Companies in various sectors, including cement manufacturing, steel production, and mining, will have to make major capital investments in improving energy efficiency. They may also need to introduce cleaner production technologies involving costly carbon capture, utilisation and storage (CCUS).

Many companies may come under pressure to generate their own renewable energy to help meet their energy needs. However, since renewable energy is intermittent, companies will also have to ensure that they also have reliable energy supplies capable of meeting their needs when the output of renewables is zero or low. This will raise overall costs still further. They could alsoo come under pressure to invest in battery energy storage systems (BESS), which currently have high costs and limited storage capacity. This would add significantly to the burden on them.

In time, moreover, data providers may to expected to ensure that their suppliers, particularly those producing high-emission materials, also reduce their emissions. Increasingly, as the Draft Regulations indicate, they may have to manage and reduce emissions throughout their value chains.

4.7 Eskom and the risk of energy insecurity

In the period from 2008 to 2024, Eskom's loadshedding became more severe, with electricity cut off from specified areas for cumulatively longer periods of time. In 2023, the worst year of all, loadshedding often lasted six hours or day or more.

Loadshedding costs were always difficult to quantify. In 2023 the Council for Industrial and Scientific Research (CSIR) estimated that loadshedding had cost South Africa R2.8 trillion in lost output.[53] The South African Reserve Bank (SARB)'s estimate is that loadshedding in 2023 reduced GDP by 1.8 percentage points.[54] Financial consultancy PwC has put the reduction in GDP in 2022 at some 5 percentage points.[55]

Despite occasional blackouts since then, loadshedding came largely to an end in March 2024. The improvement in Eskom's performance stemmed primarily from more effective maintenance at its power plants (which was primarily achieved, it seems, by allowing original equipment manufacturers to supply needed spares in place of local ones). Reduced electricity demand played a significant part too. Electricity demand shrank by some 3% because many businesses closed or reduced their operations, while some 5,800MW of rooftop solar was installed. These

[53] "South Africa's load shedding crisis costs economy R2.8 trillion in 2023", Ginindza, B., IOL, 18 March 2025, https://iol.co.za/business-report/2025-03-18-south-africas-load-shedding-crisis-costs-economy-r2-8-trillion-in-2023/

[54] "Takeaways from yesterday's MPR", Codera Analytics, 18 October 2023, https://codera.co.za/takeaways-from-yesterdays-mpr/

[55] Gemini, "Post Budget 2023 Economic Comments", Krugel, L. and Viljoen C., pwc, https://www.pwc.co.za/en/assets/pdf/post-budget-comments-2023.pdf

developments also decreased Eskom's revenue base, making it harder for it to pay off some R412bn in accumulated debt – or to finance the transition to wind, solar and battery power that the Draft Regulations seek to achieve. [56]

Eskom has already decommissioned its Komati power plant and plans to decommission a further eight coal-fired plants by 2036 (with another plant to follow in 2046). Komati's installed generating capacity of 1000MW is being replaced by 150MW of solar, 70MW of wind and 150MW of battery storage, while Eskom proposes to "repower" many other decommissioned coal plants in much the same way. [57] However, as the figures from Komati show, even when all three of the new power sources – solar, wind, and batteries – are functioning at full capacity, overall generation at Komati will be some 630MW less.

Since energy supply from solar plants and wind farms is always intermittent, actual output from these sources at Komati and other decommissioned plants will often be lower than their installed (or theoretical) capacity. Grid-scale battery energy storage systems (BESS) are supposed to help overcome this problem by storing excess energy in periods of high generation and releasing it when the output of renewables is low. However, BESS is a costly technology which is still being developed and cannot currently fulfil this function. (For example, the Red Sand BESS plant now being built in the Northern Cape at a cost of some R5,200bn[58] will have a maximum capacity of 153MW.)[59]

The overall cost of Eskom's transition from coal-fired plants to renewables with battery storage has been estimated at R1.5 trillion.[60] In addition, Eskom needs to spend some R440bn on extending the transmission grid, so as to bring solar and wind energy from the areas best suited to their production (the Northern and Western Capes) to the areas where most businesses and residential areas are located. [61]

The government cannot afford a combined total of close on R2 trillion for new generation and grid upgrading and is looking to Western democracies, international finance organisations and the South African private sector to help fill the gap. However, most Western democracies are already deep in debt, while international loans, even if granted on favourable terms, must still be repaid (generally with interest too). The private sector has helped achieve the transition by investing some R292bn in renewables under the Renewable Energy Independent Power Producer Procurement programme (REIPPPP).[62] However, these investments were facilitated by

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[56] Gemini, Eskom Holdings, Group Annual Results for the year ended 31 March 2024, https://www.eskom.co.za/wp-content/uploads/2024/12/Eskom-integrated-report-2024.pdf; "Eskom to Exit Coal by 2040 in South Africa's Bold Energy Transition", Bekele, L., Further Africa, 18 July 2025, https://furtherafrica.com/2025/07/18/eskom-to-exit-coal-by-2040-in-south-africas-bold-energy-transition/.

[57] Gemini, Eskom, https://www.eskom.co.za/eskom-divisions/gx/coal-fired-power-stations/.

[58] GlobeleQ, n.d., https://globeleq.com/power-plants/red-sands-esipppp-project/.

[59] "Big 153 MW/612MWh Red Sands battery storage project achieves commercial close", Creamer, T., Engineering News, 27 June 2025, https://www.engineeringnews.co.za/article/big-153-mw612-mwh-red-sands-battery-storage-project-achieves-commercial-close-2025-06-27.

[60] "South Africa needs R1.5 trillion for Just Energy Transition, says Ramokgopa", Naidoo, D., IOL, 3 October 2024, https://iol.co.za/news/energy/2024-10-03-south-africa-needs-r1-5-trillion-for-just-energy-transition-says-ramokgopa/.

[61] "Collaboration vital to address South Africa's grid expansion requirements", Investec, n.d., https://www.investec.com/en_za/focus/economy/collaboration-vital-to-fix-south-africas-power-grid.html.

[62] "Government to cut state guarantees for IPPs", Ensor, L., BusinessDay, 13 November 2024, https://www.businesslive.co.za/bd/national/2024-11-13-government-to-cut-state-guarantees-for-ipps/.

the provision of government financial guarantees which the fiscus lacks the capacity to keep providing.

The Draft Regulations are likely to place a particularly heavy burden on Eskom, which accounts for some 80% of South Africa's emissions. However, if Eskom is pushed into the premature decommissioning of its coal-fired power stations before reliable and affordable alternatives are available, this could herald a return to costly and destructive loadshedding. This would puncture remaining business and consumer confidence and bring great hardship to all South Africans. It would choke off fixed investment, while many more businesses might close down or curtail their operations. A further flight of skills and capital might also ensue. This would worsen unemployment, poverty and inequality, which could trigger an upsurge in crime, corruption and instability.

5 The best practicable environmental options available

5.1 The need to look beyond carbon budgets and a shift to renewables

Clause 27 of the Climate Act requires the minister, in allocating carbon budgets, to take into account "all relevant considerations", including "the best practicable environmental options available". This important obligation needs to be properly fulfilled, not played down in the way the Draft Regulations envisage. The most important need for the country and all its people is to find the best possible solution to climate change. Many options beyond carbon budgets and an increasing shift to renewables are available. They need to be taken fully into account – as renowned climate scientist Dr Bjorn Lomborg has recently emphasised in a series of essays published in the *Financial Post* in Canada and reproduced by the Fraser Institute, a think tank.

5.1.1 A costly and unattainable "net zero" goal

In 2024, as Lomborg writes, the world spent $2.13 trillion (in US dollars) on the green energy transition. Moreover, the overall cost of the "net zero" project is likely to amount to $27 trillion a year over the remainder of the 21st century. This will impose an enormous burden on all countries.[63]

Despite this major spending, the net zero goal is likely to prove impossible to attain. It certainly cannot be reached by 2050, as is widely assumed. Writes Lomborg: "The painful Covid lockdowns of 2020 only reduced global emissions by about six per cent. To achieve net zero, the United Nations (UN) points out that we would need to have doubled those reductions in 2021, tripled them in 2022, quadrupled them in 2023, and so on. This year [2025] they would need to be sextupled, and by 2030 increased 11-fold".[64] This simply cannot be done.

[63] Lomborg, B, How Canada can respond to climate change smartly', *Financial Post*, 29 April 2025: https://www.fraserinstitute.org/commentary/how-canada-can-respond-climate-change-smartly; Lomborg, B, 'Don't double down on net zero again', Financial Post, 8 April 2025: https://www.fraserinstitute.org/commentary/dont-double-down-net-zero-again.

[64] Lomborg, B, Net zero's costs benefit ratio is crazy high', *Financial Post*, 22 April 2025: https://www.fraserinstitute.org/commentary/net-zeros-cost-benefit-ratio-crazy-high.

In addition, though many Western democracies are making major efforts to reduce carbon emissions (often by shifting industrial production elsewhere), in 2024 global emissions nevertheless continued to rise. In fact, they reached a new high. Most of the increase is taking place in China and India, both of which have populations of around 1.4 billion – and a pressing need to keep reducing poverty by maintaining high rates of economic growth. For this they require large amounts of cheap and reliable energy, which fossil fuels provide but intermittent renewables cannot.[65]

5.1.2 The costs of renewables

Solar and wind energy are cheap in the sense that the "fuels" on which they rely – the sun and the wind – are freely available. This reduces their "levelised cost of electricity", which measures their generation costs (in terms of building, fuel, and operating costs) divided by the kWh they produce over their lifetimes.[66] Wind and solar are thus cheaper than fossil fuels at times when the sun is shining strongly and the wind is blowing at a suitable velocity. For considerable periods, however, these conditions are not met.

Since the strength of the sun and the wind varies greatly, so too does the amount of energy that renewables produce. In California, for example, which is investing heavily in solar and battery power, the state's monthly solar photovoltaic (PV) capacity factors in 2024 varied from 25% in June, at the height of summer, to 10% in the winter months of December and January. The same pattern is evident in China, where solar power in the Yukon provided 150 times more electricity to the grid in May 2022 than it did in December 2022.[67]

Intermittency is also a major problem in Germany. Here, as Lomborg writes, the country has "installed so much solar and wind that on sunny and windy days, renewable energy satisfies close to 70 per cent of Germany's needs". The problem comes on "dark and still days, when these renewables deliver almost nothing". Twice, thus, in the early months of 2025, "when it was cloudy and nearly windless, solar and wind delivered less than 4 per cent of the daily power Germany needed".[68]

Because solar and wind are intermittent – and modern societies need electricity around the clock – renewables must be supplemented by back-up power. Battery power is intended to meet this need but is still far from having the capacity to do so. In Germany, for example, despite

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[65] Lomborg, B, Net zero's costs benefit ratio is crazy high', *Financial Post*, 22 April 2025: https://www.fraserinstitute.org/commentary/net-zeros-cost-benefit-ratio-crazy-high; Lomborg, B, 'Don't double down on net zero again, 8 April 2025: https://www.fraserinstitute.org/commentary/dont-double-down-net-zero-again.

[66] Schernikau, L, et al, 'Full cost of energy (FCOE) and energy returns (eROI', accepted manuscript for publication at *Journal of Management and Sustainability*, Vol 12, No1, 1 June 2022 issue at Canadian Center of Science and Education, p1, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4000800; https://wattsupwiththat.com/2022/05/20/what-is-the-full-cost/

[67] Newsletter, "Fessing up", Doomsberg.com, 26 August 2025: https://newsletter.doomberg.com/p/fessing-up; Lomborg, B, Solar and wind power are expensive, 25 March 2025: https://newsletter.doomberg.com/p/fessing-up; https://www.fraserinstitute.org/commentary/solar-and-wind-power-are-expensive.

[68] Lomborg, Solar and wind power are expensive, 25 March 2025: https://www.fraserinstitute.org/commentary/solar-and-wind-power-are-expensive; Newsletter, 'Fessing up', Doomsday.com, 26 August 2025: https://newsletter.doomberg.com/p/fessing-up.

major investments in batteries, the country's "entire battery storage runs out in about 20 minutes", to cite Lomborg again.[69]

Most back-up power must thus be generated from fossil fuels. In addition, even where renewables reach the point, as in Germany, of providing 70% of electricity needs on suitably sunny and windy days, back-up systems must still be able to cover the inevitable shortfalls at dark and windless times. As Lomborg notes, "that means citizens end up paying for two power systems: renewables and their backup".[70] This helps explain why renewables are in fact significantly more expensive than fossil fuels – and why electricity prices are going up fast in countries that increasingly rely on them.

Various studies confirm the high costs of duplication. Writes Lomborg: "One study shows that in China, when including the cost of backup power, the real cost of solar power becomes twice as high as that of coal. Similarly, a peer-reviewed study of Germany and Texas shows that the real costs of solar and wind are many times more expensive than fossil fuels. Germany, the United Kingdom (UK), Spain, and Denmark, all of which increasingly rely on solar and wind power, have some of the world's most expensive electricity."[71]

Take, for example, the UK, which has focused on "net zero" policies for two decades. Here, the inflation-adjusted electricity price tripled between 2003 and 2023, mostly because of the country's shift to wind and solar power. Notes Lomborg: "Had prices been kept at the same level, an average family of four would be spending £1,882 on electricity. Instead, that family now pays £5,425 per year." The wealthiest families have been able to maintain their electricity usage, but the poorest 20% of households have reduced their electricity consumption by a third. Adds Lomborg: "The average UK person now consumes just over 10 kWh per day—a low point in consumption not seen since the 1960s… The effect on families has been devastating, [while] rising electricity costs make investment less attractive".[72]

Rising electricity prices will increasingly push up other costs too. Food prices are likely to rise substantially, along with the prices of many other important consumer goods. Heating and cooling costs will increase. Higher inflation could well result in higher interest rates, which will raise the costs of borrowing for individuals, business, and the state. The poorest people, as ever, will be the ones that suffer most.[73]

5.1.3 "One-to-one" investment on transmission grids as well

The costs involved in expanding and upgrading transmission grids are also enormous but tend to be overlooked or downplayed. The extent of the problem became apparent in Spain in April 2025, when an unexpected fault in a photovoltaic (PV) plant in one province resulted in a voltage surge. This surge spread across a grid in which PV accounted for some 60% of generation at the time of the event – and which was poorly equipped to absorb the rapid influx. This triggered a

[69] Lomborg, Solar and wind are expensive, op cit.
[70] Ibid.
[71] Ibid.
[72] Lomborg, 'Don't double down on net zero again', 8 April 2025: https://www.fraserinstitute.org/commentary/dont-double-down-net-zero-again.
[73] Lomborg, 'Net Zero's cost benefit ratio crazy high', 22 April 2025: https://www.fraserinstitute.org/commentary/net-zeros-cost-benefit-ratio-crazy-high.

cascade of failures that caused a nationwide blackout in both Spain and neighbouring Portugal.[74]

Subsequent investigation showed that grid operators had failed to make the necessary investments in stabilisation technologies, such as synchronous condensers and grid-forming inverters. As an article in *Bloomberg Green* pointed out, there had been "huge spending on new wind and solar capacity, but not enough on grids". Members of the European Union (EU) and the UK were "invest[ing] on average $0.7 in grids for every dollar spent on renewables". In Spain, grid investment was even lower, "with only $0.3 spent for every dollar". However, "that ratio should be one to one", as António Guterres, secretary general of the United Nations, noted in July 2025.[75]

This one-to-one ratio has great significance. It means that all solar plants need to be matched, dollar-for-dollar, by investments in grids with the capacity not only to transmit but also to stabilise and balance power.[76] With current grid investment standing at less than 10% of what is needed, enormous additional investments are required simply to enhance the grids serving existing solar plants. Even more investment will be needed to provide all the sophisticated grids required for all the new solar plants still to be built. Unless the one-to-one ratio for plant and grid capacity can be achieved and maintained, the risk of major grid collapses will rise.

The cost of renewables is thus considerably greater than has previously been recognised. This has major ramifications for all societies but is especially significant in emerging markets with little access to the reliable and cheap electricity that has fuelled development in wealthier countries – and allowed people there to live longer, healthier and better lives. Notes Lomborg: "In the poor half of the world, more than two billion people have to cook and keep warm with polluting fuels such as dung and wood. This means their indoor air is so polluted it is equivalent to smoking two packs of cigarettes a day – causing millions of deaths each year".[77]

This indoor pollution is far more harmful than the carbon emissions emanating from coal-fired power plants. The two million people with daily exposure to indoor pollution urgently need cheap and reliable electricity for cooking and heating. The hope that renewables will provide this is misplaced. Poor countries, in particular, cannot afford the massive costs and effective duplication that renewables and new transmission grids require. There is also no need to pursue this path, when more "practicable environmental options" are available to counter climate change.

5.2 An outline of the "best practicable alternatives"

The best practicable alternatives, writes Lomborg, are to be found in innovation, adaptation, and effective developmental measures that lift people out of poverty and so enhance their capacities to counter climate change.

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[74] Newsletter, "Fessing up", Doomsberg.com, 26 August 2025: https://newsletter.doomberg.com/p/fessing-up.
[75] Ibid.
[76] Ibid.
[77] Lomborg, B, 'Global warming policies hurt the poor', 15 April 2025: https://www.fraserinstitute.org/commentary/global-warming-policies-hurt-poor.

5.2.1 *A massive focus on "green" innovation*

"The only realistic solution to climate change [is] low-carbon energy research and development", writes Lomborg. "Studies indicate that every dollar invested in green research and development (R&D) can prevent $11 in long-term climate damage, making it the most effective long-term global climate policy."[78]

People have always relied on innovation to find new solutions to problems and overcome challenges. Environmental problems can be solved the same way – and all the more so if additional funding is devoted to the endeavour. Notes Lomborg: "In 1980, after the oil price shocks, the rich world spent more than 8 cents of every $100 of GDP on green R&D to find energy alternatives." However, this investment decreased sharply as oil prices came down and still remains low below the 8 cents mark. Wealthy countries currently spend some $25 billion on green R&D, which is about one-hundredth of overall green spending. R&D funding could thus be raised to $140 billion a year and would still be a small fraction of the cost of renewables.[79]

This increased R&D funding could be used to explore a host of innovative options. One of the most promising is "fourth-generation" nuclear power in the form of small modular reactors. Current nuclear plants are prohibitively expensive, but this is largely because regulatory compliance has become so burdensome and costly. A different approval process could be used for small modular reactors, which (as Lomborg suggests) could "get type approval in the production stage and then get produced by the thousand at low cost". This would greatly reduce the compliance burden. It would also mirror the way in passenger airliners are produced: a prototype is approved and the certified blueprint is then used to produce many planes of the same kind.[80]

If small modular reactors live up to their potential, reliable nuclear power could soon become cheaper than fossil fuels. The entire world could then afford to make this switch. Fossil-fuelled power plants could be decommissioned, while small modular reactors could be installed in the same localities to take advantage of existing transmission grids. Carbon emissions would be significantly reduced right across the globe, including China and India. In addition, the two million people who still burn dung, wood and paraffin inside their homes for cooking and heating would soon enjoy the enormous benefits of cheap, reliable electricity.[81]

Many other innovative options could be pursued. Writes Lomborg: "With smarter spending on R&D, we can afford to focus on many potential technologies. We should consider investing in innovation to grow hydrogen production along with water purification, next-generation battery technology, growing algae on the ocean surface producing CO_2-free oil (a proposal from the decoder of the human genome, Craig Venter), CO_2 extraction, fusion, second-generation biofuels, and thousands of other potential areas."[82]

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[78] Lomborg, B, 'How Canada can respond to climate change smartly', 29 April 2025: https://www.fraserinstitute.org/commentary/how-canada-can-respond-climate-change-smartly.

[79] Ibid.
[80] Ibid.
[81] Ibid.
[82] Ibid.

5.2.2 Adaptation and development

As Lomborg and many others have pointed out, people have been using adaptation strategies for many millennia to counter the risks of floods, droughts, fires, hurricanes and other extreme weather events. In October 2019 the Global Commission on Adaptation, in a report entitled *Adapt Now: A Global Call for Leadership on Climate Resilience*, noted that "humanity has always lived under the looming threat of nature's fury" – and people have thus "adapted to climate variability for thousands of years".[83]

Wealthy people living in democratic societies have greater scope for adaptation, but poor countries with often unaccountable governments benefit greatly from it too. As the late John Kane-Berman, a former CEO of the IRR, has written: "Thanks to engineering skills and political accountability, people in rich countries are much safer than they were a hundred years ago. Thanks to such measures as better warning systems and storm and cyclone shelters, even Bangladesh, a very poor country, has seen a decline in deaths from disasters."[84]

Adaptation has already helped achieve an extraordinary decline in the global death toll from natural disasters. Writes Lomborg: "On average in the 1870s, five million people a year died from such disasters. A century ago, about half a million people a year did. In the past decade, however, the death toll worldwide was fewer than 10,000 people a year."[85] This decrease has happened, moreover, at the same time as the global population has more than quintupled – making the extent of the decline all the more remarkable.[86]

Adaptation has many advantages. It can be closely targeted to specific problems, making it more precise and more effective. In the climate change context, it is already making important contributions. Adds Lomborg: "Adaptive infrastructure like green areas and water features help cool cities during heatwaves. Farmers are already adapting their practices to suit changing climates. As temperatures rise, farmers plant earlier, with better-adapted varieties or change what they grow, allowing the world to be ever-better fed."[87]

Unlike the net zero approach, adaptation does not push up energy and other prices, reduce economic growth rates, worsen unemployment, or make it harder to lift people out of poverty. Nor does it demand that poor countries forgo the cheap and reliable energy that would help them to grow richer – and would enable them improve living standards while spending more on adaptation strategies to protect their people. By contrast, the likely costs of "net zero" are so high that adaptation strategies will become increasingly unaffordable as the transition proceeds.

Innovation and adaptation are thus the "best practicable environmental options" available to counter climate change. However, climate change policy should also focus on encouraging and driving human development. This is clearly a moral imperative. It will also help to strengthen adaptation – as wealthier societies can afford a greater range of strategies – and to encourage people to put more time and resources into environmental stewardship.

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[83] Kane-Berman, J, 'Barbara Creecy's $750bn a year sounds about right', *Daily Friend*, 16 August 2021
[84] Ibid.
[85] Lomborg, 'How Canada can respond to climate change smartly', 29 April 2025, op cit.
[86] Kane-Berman, 'Barbara Creecy's $750bn a year', op cit.
[87] Lomborg, 'How Canada can respond to climate change smartly', op cit.

As Lomborg pointed out in a 2020 book entitled *False Alarm*, it would cost very much less to lift all the 650 million extremely poor people in the world out of poverty, while the positive impact on the environment would be far greater than the "net zero" strategy can ever achieve. Notes Lomborg: [88]

> It turns out that the theoretical cost to lift *everyone* on the planet out of extreme poverty would be less than $100 billion per year. Compare this to our current trajectory: we've committed to spending $1 trillion to $2 trillion a year just on the almost entirely ineffective Paris Agreement [which in practice cannot achieve the 'net zero' goal].
>
> Every *month* the cost [of the net zero approach] will be the same as the amount that could lift everyone from extreme poverty. This strikes me as obscene. As rich countries commit to going carbon-neutral, the cost will escalate to tens of trillions of dollars per year – [and all] to make a small temperature change in a century's time. [Yet] just a couple of days of [spending at net zero levels] could transform the world by ending extreme poverty entirely.

As Lomborg adds, helping the poor to rise out of poverty offers a much cheaper and a much more effective way to protect the environment. Once people are wealthier and less worried about their daily survival, they are more capable of investing in adaptation, which offers the most effective protection against rising sea levels, destructive hurricanes, and other extreme weather events.[89]

Lomborg puts it thus: "Overspending on bad climate policies doesn't just waste money, it means underspending on *effective* climate policies. [It also results in] underspending on the opportunities we have to improve life for billions of people, now and into the future. That's not just inefficient. It's morally wrong."[90]

6 Socio-economic and political ramifications of the Draft Regulations

6.1 The domestic context

The Draft Regulations are being introduced at a time of profound economic weakness in South Africa. The economy has not grown in more than a decade. Fixed investment is only 15% of GDP, barely half the 26–30% needed to sustain growth. Over eight million people are unemployed, producing one of the highest jobless rates in the world. Electricity costs are already the fourth-highest among global mining jurisdictions, a factor that not only deters vital exploration spending but has also helped push chrome smelters and other energy-intensive industries into closure.[91] Deindustrialisation is advancing, with mining and manufacturing shedding capacity instead of adding it.

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[88] Charles Rotter, *False Alarm: Book Review*, wattsupwiththat.com, 25 August 2020

[89] Ibid

[90] Ibid.

[91] "The cost of electricity has risen more than 800% since 2007. High energy costs are damaging SA's mining industry, which accounts for about 8% of GDP, according to a study by Boston Consulting Group. The study found that SA's energy costs are the fourth highest among similar mining jurisdictions." Source: "Time is running out for SA's idle smelters", Business Day, 16 September 2025, https://www.businesslive.co.za/bd/companies/mining/2025-09-16-time-is-running-out-for-sas-idle-smelters/.

In this fragile context, the Draft Regulations threaten to impose vast new regulatory and compliance burdens that will make investment less attractive, undermine competitiveness, and accelerate the country's slide into economic stagnation.

By layering criminal sanctions, repeated third-party verification obligations, and additional costs on already struggling sectors such as electricity, mining, steel, and cement, South Africa's government risks further eroding the country's industrial base.

This outcome runs directly counter to the stated goals of the Government of National Unity (GNU), which are (in the words of its founding Statement of Intent) to restore growth and create jobs.[92] The Draft Regulations are also at odds with the objectives of both the African National Congress and the Democratic Alliance to halt South Africa's progressive deindustrialisation and revive the productive economy.

6.2 The international context

The United States is increasingly turning away from net zero mandates and the state coercion implicit in carbon budgets and prescriptive mitigation planning.[93] China's target date for net zero is far off in the future and has been set for 2060 (though the government has recently said it might try to bring this forward).[94]

Germany, once a model of green ambition, is contending with falling public support for its "*Energiewende*" as it faces record-high electricity prices and an exodus of manufacturing capacity.[95] Across Europe, countries with high proportions of renewable energy are confronted with high electricity costs – and steep rates of deindustrialisation.[96]

Against this backdrop, South Africa should be careful not to move faster or more harshly than its peers, especially given our far weaker economic fundamentals.

6.3 Economic costs and consequences

Against this background, the Draft Regulations are ill-timed, overly burdensome, and misaligned with South Africa's economic realities. They should be withdrawn and rewritten in a form that substantially eases the regulatory and cost burden on companies and introduces safety-valves for energy security and trade-exposed industries. Without such changes, the regulations will

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[92] Statement of intent of the 2024 Government of National Unity. 2024, 14 June, https://www.anc1912.org.za/wp-content/uploads/2024/06/Statement-of-Intent-of-the-2024-Government-of-National-Unity.pdf.

[93] "The U.S. retreats from climate commitments, but momentum remains", 2025, 15 September, *Sweep*, https://www.sweep.net/blog/the-u-s-retreats-from-climate-commitments-but-momentum-remains; Climate Action Tracker, 2025, 22 September, https://climateactiontracker.org/countries/usa/ ; "Trump's climate rollbacks to sharply slow US emissions cuts: Report", 2025, 11 September, *SEMAFOR,* https://www.semafor.com/article/09/11/2025/trumps-climate-rollbacks-to-sharply-slow-us-emissions-cuts-report.

[94] "China poised to achieve carbon neutrality before 2060 goal", 2025, 20 June, Harvard Business School, https://www.hbs.edu/bigs/china-poised-to-meet-carbon-neutrality-goal-before-2060.

[95] Anderson, K., "What is Germany's Energiewende?", 2024, 20 March, Greenly, https://greenly.earth/en-gb/blog/ecology-news/what-is-germanys-energiewende; Amelang, S., Wehrmann, B. and Wettengel, J., "Q&A: What does the government's 'reality check' mean for Germany's energy transition?", 2025, 15 September, https://www.cleanenergywire.org/factsheets/qa-what-does-governments-reality-check-mean-germanys-energy-transition.

[96] https://www.adlittle.com/en/insights/viewpoints/deindustrialization-threat.

deepen unemployment, deter investment, and place economic growth even further out of reach.

6.3.1. A wide ambit and low threshold

As earlier noted, the Draft Regulations cover almost the entire industrial base of the South African economy. In addition, the emissions threshold that has been set is low enough to bring not only the big emitters but also many mid-tier firms lack the specialist resources available to multinational corporations. This wide ambit and low threshold will add to the damage from the Draft Regulations and could well trigger the closure of many energy-intensive plants

6.3.2 *Unreasonable reporting and verification requirements*

The Draft Regulations establish a reporting cycle that is among the most onerous in the world. Entities must produce annual reports, secure validation and verification from multiple independent sources, and remain subject to further checks at the discretion of the Competent Authority. This stack of compliance obligations is far too onerous. South Africa does not have sufficient numbers of accredited verifiers to handle the workload that will be generated. The inevitable bottlenecks will increase costs, introduce delays, and expose companies to legal and financial risks for reasons unrelated to their actual emissions performance. Those costs will cascade through the economy, raising already unsustainable electricity and industrial input prices.

6.3.3 Excessive sanctions and a form of "double jeopardy"

The sanctions regime is punitive. Non-compliance carries criminal penalties of up to ten years' imprisonment and fines of up to R10 million. On top of this, emitters who exceed their carbon budgets will face a higher carbon tax rate. The duplication is clear: firms will be punished twice, first through fiscal penalties under the tax system and then through criminal liability under the Draft Regulations. In an economy already bleeding investment and jobs, such double punishment is counterproductive. It risks deterring investment entirely and hastening the exit of companies that are barely holding on in the face of high input costs and policy uncertainty.

6.3.4 Vagueness and discretion

The regulations confer wide discretionary powers on bureaucrats to prescribe methodologies, tighten allocations, and demand further verifications. Much is left vague or is delegated to technical guidelines rather than codified in the regulations themselves. This uncertainty compounds risk for investors, who require clear, predictable rules before committing scarce capital. Where regulations exceed the scope of the Climate Change Act, they are also *ultra vires* and inconsistent with the rule of law. At the very least, the vagueness undermines the constitutional principle of legality, adds to the compliance burden, and opens the door to selective enforcement of the new rules.

6.3.5 Risks to energy security

The Draft Regulations target sectors that are already under severe strain. Eskom is struggling to restore reliability after years of loadshedding, while mining and heavy industry face crippling energy prices. Imposing inflexible carbon budgets in this context risks forcing premature plant closures and production cuts without secure alternatives in place. The burden of compliance,

and the prospect of higher penalties for budget overruns, could deter investment in critical replacement capacity. The net result would be greater insecurity of electricity supply, higher tariffs, and accelerated job losses.

6.3.6 More obstacles to foreign direct investment

South Africa is moving faster and more aggressively than most of its peers. Few countries have imposed legally binding carbon budget regimes backed by criminal sanctions. Germany, which pioneered the renewable transition, is experiencing economic stress as high electricity costs drive industry offshore. Other European countries with high renewable shares are also the ones experiencing the most severe industrial decline. In the United States, climate policy is moving away from coercive targets towards more flexible, incentive-based measures. South Africa should not outpace stronger economies by saddling its own weakened economy with burdens that others are now reconsidering. The more it does so, moreover, the more it will battle to attract the foreign direct investment it so badly needs to increase growth and counter the crisis of employment.

6.4 Risks to political stability and the GNU

The Draft Regulations run directly against the commitments made by the Government of National Unity to revive growth and create jobs. Both the ANC and the DA have acknowledged the need to arrest deindustrialisation and to restore competitiveness. Imposing an elaborate carbon budget system at this juncture will have the opposite effect. It will raise costs, deter investment, and push more firms into closure or disinvestment. This is inconsistent with the goals of the GNU and undermines the credibility of its economic recovery agenda. It will increase tensions within the GNU and add to the risks of a political fracturing. It will also worsen unemployment and poverty, thereby encouraging yet more crime and further undermining political and social stability.

7 Unconstitutionality of the Draft Regulations

Under Section 24 of the Constitution, "everyone has the right to an environment that is not harmful to their health or wellbeing". Every person also has the right to "have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and ecological degradation, (ii) promote conservation and (iii) secure ecologically sustainable development and use of natural resources".[97]

Laws which seek to protect and safeguard the environment – such as the Draft Regulations – must comply with all of these provisions. Among other things, such rules must seek to promote the "health and well-being" of all South Africans. They must also be "reasonable" measures that "promote conservation" and help achieve "sustainable development".

The Draft Regulations are inconsistent with these obligations. By pushing for a shift to renewables, the Draft Regulations will greatly increase the costs of electricity, as has happened in the UK, Germany and other countries with a "net zero" focus. In the UK, as earlier noted,

[97] Section 24, Constitution.

electricity prices have tripled since 2003, while the poorest 20 percent of households have been compelled to cut their electricity consumption by one third.

In South Africa, the poorest 20 percent are already under great financial strain from high levels of poverty and unemployment. The Draft Regulations could thus result in many families having to return to heating their houses or cooking their food by burning wood, coal or paraffin inside their homes. This would expose them to high levels of indoor pollution, which would not only be contrary to their "health and wellbeing" but also lead to many more deaths.

Rapidly rising electricity prices will also push up the costs of food and many other essentials, which will further undermine "health and wellbeing". They will also deter the investment vitally needed for faster growth and the generation of millions more jobs. Instead, higher electricity prices and a crippling compliance burden are likely to result in disinvestment, company closures and significant job losses in many industries. The mining sector – and particularly the coal sector – will be hard hit. Many towns that are currently sustained by coal and other forms of mining will see major job losses too. The steel industry will also suffer, as will the manufacturing sector as a whole. This will worsen poverty and thereby further undermine the "health and wellbeing" of South Africans. It will also undermine the country's prospects for "development" of any kind, let alone the "sustainable" sort.

Retrenchments, shuttered businesses and rising poverty will also make it harder to afford the innovation and adaptation that offer by far the best means of countering the effects of climate change. Since poor people have significantly less capacity than the better off to safeguard the environment, the Draft Regulations will make also it harder to "promote conservation", as the Constitution requires.

The Constitution further requires that environmental policies be "reasonable", but the Draft Regulations are not. The Draft Regulations thus conflict with Section 24 of the Bill of Rights. Nor can they be "saved" from invalidity by the limitations clause in Section 36 of the Constitution. Limitations on guaranteed rights may be justified where "less restrictive means" cannot be found to achieve an important governmental purpose. In this context, however, better and more practicable environmental options are clearly available to counter climate change, as earlier described. Since a key element in the Section 36 tests cannot be met, the conflict between the Draft Regulations and the Section 24 cannot be justified.

The Draft Regulations also conflict with the doctrine of the separation of powers, as earlier outlined. In addition, their wording is uncertain, putting them in conflict with the doctrine against vagueness of laws. This in turn makes them inconsistent with the rule of law, the "supremacy" of which is one of the Constitution's founding values.

The Draft Regulations are thus unconstitutional in their substantive content. Procedural defects are evident too – as the need for proper public participation on the Draft Regulations has not been met. Among other things, no SEIA report was attached to the Draft Regulations when they were published for public comment. Without such a report, the public and affected sectors cannot judge the likely effect on investment, growth, employment, and administered prices such as electricity tariffs. In addition, in gazetting the Draft Regulations, the Department has failed to provide the "sufficient" information needed to empower the public to make "meaningful representations or objections", as required by Section 32 of the Climate Act. These

omissions are fatal to meaningful public participation and make the Draft Regulations unconstitutional on procedural grounds too.

8 The way forward

South Africa cannot afford to get its climate change policies wrong. The country is battling under unemployment levels at a massive scale, with electricity prices that already squeeze industry to the brink, and with an investment rate that has long been too low to sustain growth. Introducing a compliance regime of this weight and complexity under these conditions will do real harm. It will not deliver the promised "just transition." It will simply make it harder to create jobs, attract capital, and keep factories, mines and other businesses running.

The Draft Regulations should therefore be withdrawn and replaced with rules that are leaner, more practical, and better aligned with the country's economic circumstances. Suitable alternatives have already been sketched. The starting point must be to focus on innovation, adaptation and human development. This in turn requires a substantially different approach that lifts the regulatory burden, provides safeguards for electricity security and energy-intensive industries, and focuses on far more effective and less costly means to manage climate change.

That would not only keep South Africa on the right side of its climate commitments but also give the country a fighting chance of meeting its even more urgent goals: restarting growth, reviving investment, and putting millions of people into work.

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