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by Paul Kimani

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Original Article

Leveraging Carbon Trading for a Just Energy Transition in Kenya

By Paul Kimani*

ABSTRACT

This article explores how Kenya's carbon trading framework can be leveraged to support a Just Energy Transition (JET) that aligns climate action with socio-economic equity. While Kenya is a leader in Africa's voluntary carbon market, exemplified by its regulatory innovations and nature-based projects, serious concerns persist regarding community marginalisation and inadequate benefit-sharing. The article critically examines Kenya's Climate Change Act 2016, the Carbon Markets Regulations 2024, and emerging frameworks for internationally transferred mitigation outcomes (ITMOs) under article 6 of the Paris Agreement. It identifies key challenges, including complex approval procedures, institutional overlap, weak enforcement mechanisms, and limited capacity for community participation. The analysis proposes a suite of legal and institutional reforms: recognising carbon credits as financial instruments, expanding project eligibility to include blue carbon and urban planning, clarifying institutional mandates, and strengthening community safeguards through mandatory Free, Prior, and Informed Consent (FPIC). It also advocates for streamlined regulatory processes and targeted capacity building. By embedding equity into the design and implementation of carbon markets, Kenya can transform carbon trading into a tool for inclusive development. The article contributes a critical legal perspective to the discourse on climate justice and offers policy recommendations for aligning carbon finance with constitutional values and sustainable development goals.

* Dr. Paul Kimani, Lecturer, School of Law, University of Nairobi, Kenya and Associate, University of Exeter, United Kingdom. For correspondence <pk343@exeter.ac.uk.

INTRODUCTION

Carbon trading has emerged as a pivotal mechanism in global efforts to mitigate climate change, offering nations like Kenya a pathway to incentivise emission reductions while fostering sustainable development.[1] With the scientific consensus firmly identifying greenhouse gas (GHG) emissions, particularly from fossil fuel combustion, as the primary drivers of global warming, the urgency to transition to low-carbon economies is undeniable.[2] The Paris Agreement,[3] adopted in 2015 and entering into force in 2016, underscores this imperative, committing countries to limit warming to well below two degrees Celsius, with efforts toward one and a half degrees.[4] Article 6 of the Agreement introduces carbon trading mechanisms, such as internationally transferred mitigation outcomes (ITMOs), enabling countries to trade emission reductions and support low-carbon progress.

Kenya stands out as a compelling case, harnessing its voluntary carbon market (VCM) leadership—ranked eighth globally in nature-based credits—to integrate into these global decarbonisation efforts.[5] Its abundant renewable resources such as geothermal, wind, and solar, support projects like the *Olkaria Geothermal Plants*[6] and the *Lake Turkana Wind Power* project.[7] Proactive climate policies, including the Climate Change Act 2016[8] and the Climate Change (Carbon Markets) Regulations 2024 ('*Carbon Markets Regulations 2024*'), seek to balance environmental goals with socio-economic needs. However, worsening climate events signal an urgent crisis.[9] A just energy transition (JET) is essential, blending economic and social equity.[10]

From the Kenyan experience so far, carbon trading and JET may appear somehow misaligned. One of Kenya's most prominent and expansive carbon trading initiatives, the *Northern Kenya Rangeland Carbon Project*, has raised serious concerns regarding its impact on the rights of Indigenous communities.[11]

1 Andrew Bernstein, The Perfect is the Enemy of the Good: Carbon Credits and Funding for Decarbonization in Developing Countries' (2023) 35(2) New England Journal of Public Policy 1.

2 Bukelwa Nzimande and Happy Khambule, 'From Climate Change to a Just Energy Transition' in Nqobile Xaba and Saliem Fakir (eds), *A Just Transition to A Low Carbon Future in South Africa* (MISTRA 2022) 31.

3 Paris Agreement, Paris, 12 December 2015, in Report of the Conference of the Parties on its Twenty-First Session, UN Doc FCCC/CP/2015/10/Add.1.

4 Paris Agreement, art 2(a).

5 Nkatha Murungi-Omondi, 'Kenya's Carbon Markets: The Goose That Lays the Golden Egg?' (*IFC Review*, 16 January 2024) <https://www.ifcreview.com/articles/2024/january/kenya-s-carbon-markets-the-goose-that-lays-the-golden-egg> .

6 Kenya Electricity Generating Company <https://www.kengen.co.ke/index.php/business/power-generation/geothermal.html> .

7 Lake Turkana Wind Power <https://ltwp.co.ke/ >.

8 Act No.11 of 2016.

9 Nzimande and Khambule (n 2) 31.

10 Damilola Ogunbiyi, 'Delivering a Just and Equitable Energy Transition' (2022) 75(1) Journal of International Affairs 121.

11 See Simon Counsell, 'Blood Carbon: How A Carbon Offset Scheme Makes Millions from Indigenous Land in Northern Kenya (Survival International, March 2023) <https://assets.survivalinternational.org/documents/2466/Blood_Carbon_Report.pdf> . The Northern Kenya Rangeland Carbon Project is examined in more detail in Part 4.4.

However, targeted legal reforms offer a pathway to reconciling the carbon trading framework with the goals of a JET, ensuring that carbon markets uphold both environmental integrity and principles of equity and justice.

The International Institute for Sustainable Development describes JET as a 'negotiated vision and process' to minimise community harm and maximise opportunities, such as decent jobs in low-carbon sectors.[12] The concept of a just transition initially emerged from efforts to protect workers affected by economic and environmental shifts.[13] Over time, it has evolved to encompass fairness in the transition to low-carbon economies.[14] In Kenya, the just transition discourse extends beyond carbon reduction to include climate adaptation, sustainable livelihoods, and equitable access to clean energy, reflecting the country's broader climate and development priorities.[15]

Nations are increasingly setting targets for reducing GHG emissions, implementing renewable energy initiatives, and enhancing energy efficiency.[16] Kenya aims to reduce its GHG emissions by thirty-two percent by 2030.[17] These efforts are supported by significant investments in green technologies, such as wind and solar power, electric vehicles, and energy storage solutions.[18] However, achieving these targets requires not only technological innovation but also robust policy frameworks and international cooperation.[19]

As Kenya integrates into these global decarbonisation efforts, its engagement in carbon trading can play a crucial role in promoting a JET that addresses both environmental and socio-economic challenges.[20]

This article examines how carbon trading can advance Kenya's JET, enhancing energy access and livelihoods. It critically assesses the existing legal framework and proposes reforms to promote greater equity. The second section examines the mechanisms of carbon trading, detailing how carbon credits incentivise emission reductions. It provides an overview of

12 International Institute for Sustainable Development, *Real People, Real Change: Strategies for Just Energy Transitions* (IISD 2018) 2.

13 Monkgogi Otlhogile and Rebekah Shirley, 'The Evolving Just Transition: Definitions, Context, and Practical Insights for Africa' (2023) 3(1) Environmental Research: Infrastructure and Sustainability 1.

14 ibid.

15 See Benson K Ireri, 'Discussion Paper on Just Energy Transition in Kenya' (Friedrich Ebert Stiftung Kenya 2018) < https://library.fes.de/pdf-files/bueros/kenia/14811.pdf >; B L Robinson, M J Clifford and Gareth Selby, 'Towards Fair, Just and Equitable Energy Ecosystems Through Smart Monitoring of Household-Scale Biogas Plants in Kenya' (2023) 98 Energy Research & Social Science.

16 Everett B Peterson, Joachim Schleich and Vicki Duscha, 'Environmental and Economic Effects of the Copenhagen Pledges and More Ambitious Emission Reduction Targets' (2011) 39(6) Energy Policy 3697.

17 Kenya Ministry of Environment and Forestry, 'Kenya's Updated Nationally Determined Contribution (NDC)' (2020) 8 <https://faolex.fao.org/docs/pdf/KEN210108.pdf>.

18 Max Åhman, Lars J Nilsson and Bengt Johansson, 'Global Climate Policy and Deep Decarbonization of Energy-Intensive Industries' (2017) 17 Climate Policy 634.

19 Fan Dai and others, 'U.S.-China Coordination on Carbon Neutrality: An Analytical Framework' (2023) 23 Climate Policy 929.

20 Kenya Ministry of Energy and Petroleum, 'Kenya Energy Transition & Investment Plan 2023-2050' (2023) 53 <https://www.energy.go.ke/sites/default/files/KAWI/Kenya-ETIP-2050%202.pdf>.

both compliance carbon markets and VCMs, emphasising their role in promoting a JET. The third section analyses the provisions of Kenya's Climate Change Act 2016 related to carbon trading, as well as the rules outlined in the Carbon Markets Regulations 2024. It highlights key considerations, including governance and institutional structures, the approval process for carbon projects, and mandates for local community benefit-sharing.

The final section proposes targeted reforms to Kenya's carbon trading framework to promote an equitable and effective transition, such as recognising carbon credits as financial instruments, expanding carbon trading to other sectors, such as, blue carbon and urban planning, and capacity building for and equitable participation of local communities in carbon markets.

By situating Kenya's carbon trading framework within the broader pursuit of a JET, this article offers a critical legal perspective aimed at charting a path toward more equitable and climate-resilient policy design.

A. Carbon Markets in Advancing a JET

1. Understanding Carbon Credits

A carbon credit represents a verified unit of GHG emission reduction or removal, equivalent to one metric tonne of carbon dioxide (CO_2) or its equivalent, that can be traded to offset emissions elsewhere.[21]

This mechanism was designed to provide economic incentives for reducing emissions and mitigating climate change.[22] The concept of carbon credits was first introduced into international law under the Kyoto Protocol in 1997, which sought to operationalise the United Nations Framework Convention on Climate Change (UNFCCC) by setting legally binding GHG emission reduction targets for industrialised nations and economies in transition.[23]

These commitments applied to the first commitment period (2008–2012); however, efforts to extend them through the Doha Amendment (2012) encountered significant obstacles.[24] While the amendment eventually entered into force in December 2020, it failed to achieve broad participation, as several major emitting countries either did not ratify it or had already shifted their focus to the more comprehensive Paris Agreement (2015).[25] This lack of consensus highlighted the need for a new global climate framework grounded in broader engagement and differentiated responsibilities.[26]

The Paris Agreement replaced the Kyoto Protocol's rigid, top-down approach with

[21] Danielle Gratz, Amanda Cornish and Paul Goeringer, 'Carbon Markets 101: Understanding How Carbon Contracts Operate' (2023) 28(1) Drake Journal of Agricultural Law 3, 5.

[22] ibid.

[23] Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 11 December 1997, 2303 UNTS 162.

[24] Amanda M Rosen, 'The Wrong Solution at the Right Time: The Failure of the Kyoto Protocol on Climate Change' (2015) 43(1) Politics & Policy 30, 43.

[25] Benoit Mayer, 'The Curious Fate of the Doha Amendment' (*Blog of the European Journal of International Law,* 4 May 2020) <https://www.ejiltalk.org/the-curious-fate-of-the-doha-amendment/>.

[26] UNFCCC, 'Key aspects of the Paris Agreement' <https://unfccc.int/most-requested/key-aspects-of-the-paris-agreement>.

a more flexible and inclusive framework centred on Nationally Determined Contributions (NDCs).[27] Unlike Kyoto's binding commitments for developed nations, the Paris Agreement allows each country to set its own emission reduction targets, fostering a universal and dynamic approach to climate action.

Additionally, article 6 of the Paris Agreement introduced mechanisms to facilitate carbon trading and international cooperation, including the establishment of ITMOs,[28] and a Sustainable Development Mechanism (SDM).[29] These provisions promote transnational collaboration, enabling countries to meet their climate commitments more efficiently while supporting sustainable development efforts globally.

Although the Kyoto Protocol technically remains in force, the Paris Agreement has effectively replaced it as the primary regulatory instrument for the global response to climate change.[30]

2. The Functioning of Carbon Markets

Carbon markets are trading systems in which carbon credits are sold and bought.[31] Carbon markets exist in two primary forms: compliance markets and VCMs.[32] In compliance markets, such as national or regional emissions trading schemes, participants are required to act in response to obligations set by a regulatory body.[33] In contrast, participants in VCMs, which may be national or international, are not under any formal obligation to meet specific targets.[34] Instead, non-state actors, such as corporations, choose to voluntarily offset their emissions to achieve goals like climate neutrality or net-zero emissions.[35]

The operation of the market may be through a cap-and-trade system or an output-based pricing system.[36] In a cap-and-trade system, a governing body sets a cap on total emissions.[37] Regulated entities are issued emission allowances by the governing body, which constitute the maximum, or cap, on emissions.[38] If entities exceed their allotted emissions, they must purchase additional allowances from those who have surplus permits available (that is, trade).[39]

Output-based pricing systems limit emissions based on the amount of production (for example, per megawatt-hour of electricity produced or per ton of

27 Paris Agreement, Art 4.

28 ibid Art 6(3).

29 ibid Art 6(4).

30 Daniel Bodansky, 'Paris Agreement: Introductory Note' (2021) UN Legal <https://legal.un.org/avl/pdf/ha/pa/pa_e.pdf>.

31 UNDP, 'What are Carbon Markets and Why are they Important?' (*Climate Promise*, 18 May 2022) <https://climatepromise.undp.org/news-and-stories/what-are-carbon-markets-and-why-are-they-important>.

32 Bassam Fattouh and Andrea Maino, 'Article 6 and Voluntary Carbon Markets' (2022) 114 Oxford Institute of Energy Studies Energy Insight 1.

33 ibid.

34 ibid.

35 ibid.

36 Jake Sadikman and others, 'The Evolution of Canada's Carbon Markets and Their Role in Energy Transition' (2022) 60(2) Alberta Law Review 329, 331.

37 ibid 332.

38 ibid.

39 ibid.

steel manufactured) rather than setting a fixed cap on total emissions.[40] Thus, tying compliance obligations or incentives to production levels, encouraging efficiency by promoting lower emissions per unit of output.[41] Compliance markets may be either cap-and-trade or output-based, while VCMs are typically output-based.[42]

The European Union Emissions Trading System (EU ETS) is a prominent example of a compliance market using the cap-and-trade model.[43] In the context of VCMs, the Verified Carbon Standard Program is the most widely used and recognised standard worldwide.[44]

Carbon credits are generated through emission reduction projects or programs which contribute to emission avoidance or removal.[45] Avoidance projects prevent emissions from being released, while removal projects extract emissions from the atmosphere.[46] Common project types include improving energy efficiency, carbon and methane capture and sequestration, reforestation and renewable energy projects.[47]

40 ibid.

41 ibid.

42 World Bank Group and Kenya Private Sector Alliance, 'A Carbon Market Guidebook for Kenyan Enterprises' (2024) 16 <https://documents1.worldbank.org/curated/en/099040424053541073/pdf/P1796801e6f92d053187b01916665fc998d.pdf>.

43 Sven Rudolph and Elena Aydos, *Carbon Markets around the Globe: Sustainability and Political Feasibility*, (Edward Elgar Publishing 2021) 49.

44 The world's leading greenhouse gas crediting program <https://verra.org/programs/verified-carbon-standard>.

45 World Bank Group and Kenya Private Sector Alliance (n 42) 15.

46 ibid.

47 ibid.

For VCMs, credits are issued to verified carbon projects by carbon credit standards such as the Verified Carbon Standard.[48] Once issued, carbon credits can be sold in carbon markets where organisations and individuals wishing to reduce their carbon footprint can buy and use credits to offset their own emissions.[49] In compliance markets, a regulatory-appointed body verifies the standards.[50]

3. The Role of Carbon Credits in Incentivising a JET

Carbon credits are pivotal in advancing a JET through several key mechanisms.[51] They foster innovation, particularly in advanced technological areas such as invention and utility model patenting.[52] This innovation is driven by the financial incentives of carbon trading, which motivate corporations to develop cost-effective emission reduction technologies and practices.[53]

Revenue from carbon trading is often allocated to fund renewable energy projects, energy efficiency initiatives, and climate

48 ibid.

49 ibid.

50 ibid.

51 Amar Inamdar, 'Carbon Credits and the Energy Transition: An Investor Perspective' (*Climate Champions, UNFCCC*, 7 November 2022) <https://www.climatechampions.net/news/carbon-credits-and-the-energy-transition-an-investor-perspective/>.

52 Yi-Shuai Ren and others, 'Is the Carbon Emission Trading Scheme Conducive to Promoting Energy Transition? Some Empirical Evidence from China' (2024) 134 Energy Economics 1, 9.

53 ibid.

adaptation measures.[54] This not only finances the shift to a low-carbon future but also creates investment opportunities in the burgeoning green economy.[55] By facilitating the most cost-effective emission reductions, carbon markets ensure that emission goals are met efficiently.[56] Additionally, these markets foster international cooperation by providing a common framework for countries to engage in emissions reduction efforts, promoting global climate objectives.[57]

In developing markets, carbon credits subsidise clean energy alternatives, making technologies like solar mini-grids and clean cooking stoves more affordable for low-income households.[58] This affordability broadens the adoption of clean energy solutions that would otherwise be financially inaccessible.[59] For corporations, carbon credits generate additional revenue, enabling them to serve lower-income markets without compromising profit margins.[60]

Projects generating carbon credits in developing countries often bring significant co-benefits to local communities.[61] For example, clean cooking stove projects can improve cooking conditions and offer public health benefits by reducing black carbon and particulate matter.[62]

Despite Africa's vast potential as a carbon sink and its need for clean technology, the continent is marginalised in global carbon market trades, accounting for only two percent of global trading.[63] However, does this marginalisation hinder Africa's ability to fully engage in global carbon markets, or does it create an opportunity to shape participation in a way that reflects regional priorities?

Kenya stands out as one of the few African countries where carbon trading is rapidly gaining traction.[64] As previously mentioned, it is recognised as one of the largest issuers of carbon credits through the VCM mechanism.[65] Kenya has been ranked eighth globally for nature-based solution carbon credit issuances and hosts several notable carbon projects.[66]

To strengthen its position as a regional leader in carbon trading, Kenya recently amended its Climate Change Act 2016.[67] These amendments aim to implement article 6 of the Paris Agreement by introducing a legal framework for participation in carbon markets.[68] Subsequently, the

54 Olatunji A Shobande, Lawrence Ogbeifun and Aviral Kumar Tiwari, 'Extricating the Impacts of Emissions Trading System and Energy Transition on Carbon Intensity' (2024) 357 Applied Energy 1, 11.

55 ibid.

56 ibid.

57 ibid.

58 Inamdar (n 51).

59 ibid.

60 ibid.

61 ibid.

62 ibid.

63 ibid.

64 Lucas Belenky, Rachel Mok and Isfandyar Zaman Khan, 'Is the Race for Carbon Credits A Marathon or A Sprint for Kenyan Enterprises?' (*World Bank Blogs*, 16 May 2024) <https://blogs.worldbank.org/en/africacan/is-the-race-for-carbon-credits-a-marathon-or-a-sprint-for-kenyan-enterprises-afe-0524#>.

65 ibid.

66 Murungi-Omondi (n 5).

67 The Climate Change (Amendment) Act No. 9 of 2023, which amended the existing Climate Change Act 2016.

68 Climate Change Act 2016, Pt IVA.

country implemented the Carbon Markets Regulations 2024 to further support this initiative.[69]

Kenya's experience provides valuable insights into how African nations can navigate and integrate into global carbon markets while ensuring equitable benefit-sharing and sustainable development. Rather than presenting a distinct alternative model, Kenya demonstrates how national frameworks can align with international best practices while addressing local economic and environmental priorities.

In the Kenyan context, carbon markets have been recognised as having the potential to support the JET by providing non-debt, results-based financing that enhances project economics.[70] This facilitation helps enterprises transition to green business models, mitigates exchange rate risks, and makes projects financially viable by offering additional revenue streams.[71] By leveraging carbon credits, Kenya can accelerate its transition to a low-carbon economy while ensuring that the benefits of clean energy reach all segments of its population, particularly those in low-income and at-risk communities.[72]

B. Advancing Kenya's JET through Carbon Trading

1. An Overview of the Energy Landscape

Kenya has traditionally relied heavily on biomass as a primary source of energy, with a significant portion of the population using wood, charcoal, and agricultural residues for cooking and heating.[73] This reliance on biomass has resulted in numerous environmental and health challenges, such as deforestation which exacerbates global warming, indoor air pollution, and a rise in respiratory illnesses.[74] However, in recent years, the country has made considerable progress in diversifying its energy sources, particularly in the electricity sector.[75] About eighty percent of Kenya's electricity is generated from renewable energy sources including, geothermal, hydroelectric, wind, and solar power.[76] The country has set a target to achieve one hundred percent renewable energy generation by 2030.[77]

Kenya's energy policy is directed by *Kenya Vision 2030*, the nation's official development blueprint, which seeks to evolve the country into a newly industrialising, middle-income nation that ensures a high quality of life for all

69 The Regulations came into force on 17 May 2024.

70 World Bank Group and Kenya Private Sector Alliance (n 42) 18.

71 ibid.

72 ibid.

73 Egide Manirambona, Stephen M Talai and Stephen K Kimutai, 'Appraising Kenyan Energy Demand Policies for Energy Efficiency Improvement and GHG Emissions Mitigation' (2024) 51 Energy Strategy Reviews 1.

74 C Kirubi, W N Wamicha and J K Laichena, 'The Effects of Woodfuel Consumption in the ASAL Areas of Kenya: The Case of Marsabit Forest' (2000) 38(1) African Journal of Ecology 47; Zablon Weku Shilenje, Scholastica Maloba and Victor Ongoma, 'A Review on Household Air Pollution and Biomass Use Over Kenya' (2022) 10 Frontiers in Environmental Science 1, 6-8.

75 J K Kiplagat, R Z Wang and T X Li, 'Renewable Energy in Kenya: Resource Potential and Status of Exploitation' (2011) 15(6) Renewable and Sustainable Energy Reviews 2960, 2972.

76 Energy and Petroleum Regulatory Authority, 'Biannual Energy and Petroleum Statistics Report Financial Year 2023/2024' (2023) 21.

77 ibid.

its citizens.[78] The energy sector is a key enabler of this strategy, focusing on new and renewable sources.[79]

Kenya's energy strategy is closely aligned with the United Nations Sustainable Development Goals (SDGs), particularly SDG 7, which aims to ensure access to affordable, reliable, sustainable, and modern energy for all.[80] By investing in renewable energy, Kenya is tackling energy poverty while also advancing climate action, fostering economic growth, and promoting social development.[81]

Specifically, regarding climate goals, Kenya is committed to the Paris Agreement, which it ratified in 2016.[82] As previously stated, the country's NDCs aim to reduce GHG emissions by thirty-two percent by 2030.[83] Kenya has an extensive climate policy and legal framework, including the Climate Change Policy 2016, Climate Change Act 2016, Climate Change (Amendment) Act 2023, National Climate Change Action Plan III 2023-2027, and the Long-Term Low Emissions Development Strategy 2022-2050.[84]

[78] Kenya Vision 2030 <https://vision2030.go.ke>.

[79] Kenya Vision 2030 <https://vision2030.go.ke/project/development-of-new-and-renewable-sources-of-energy>.

[80] UN SDGS <https://sdgs.un.org/goals/goal7>.

[81] Mohammed Takase, Rogers Kipkoech and Paul Kwame Essandoh, 'A Comprehensive Review of Energy Scenario and Sustainable Energy in Kenya' (2021) 7 Fuel Communications 1, 9.

[82] UNFCCC <https://unfccc.int/node/61092>

[83] Kenya Ministry of Environment and Forestry (n 17).

[84] United States Agency for International Development (USAID), 'Kenya: Climate Change Country Profile' (2023) 2.

These instruments guide Kenya's development towards a low-carbon and climate-resilient future.[85] Kenya's priorities, as articulated through these and other frameworks, include: adaptation measures to cope with climate impacts; reducing emissions from deforestation and forest degradation; afforestation and reforestation efforts; landscape restoration projects; climate-smart agriculture practices; the development of geothermal and other clean energy sources; enhancing energy efficiency; and implementing strategies for managing drought and flood risks.[86]

The Climate Change (Amendment Act) 2023, which amended the Climate Change Act 2016, was designed to align with article 6 of the Paris Agreement by establishing a regulatory framework for participating in carbon markets.[87] Following this, Kenya introduced the Carbon Markets Regulations 2024 to bolster this initiative and facilitate effective carbon trading.

2. Key Features of the Carbon Trading Regulatory Framework

Kenya's carbon trading framework, established through the Climate Change Act 2016 and the Carbon Markets Regulations 2024, seeks to provide a structured approach for participation in both compliance carbon markets and VCMs. The framework outlines governance structures, project approval requirements, and benefit-sharing mechanisms, positioning Kenya as an emerging participant in global carbon trading. However, while it is comprehensive in its design and forward-looking, questions remain regarding its

[85] ibid.

[86] ibid.

[87] Climate Change Act 2016, Pt IVA.

effectiveness, enforcement, and alignment with international best practices.

The Climate Change Act 2016 mandates the creation of a national framework for carbon trading, facilitating the issuance and trading of carbon credits to reduce GHG emissions.[88] The Carbon Markets Regulations 2024 further detail the structure and operational aspects of this framework.[89] The Act defines a carbon market as, 'a mechanism that enables and allows public and private entities to transfer and transact emission reduction units, mitigation outcomes or offsets generated through carbon initiatives, products, programmes and projects subject to compliance of national and international laws.'[90] The law applies to both compliance markets and VCMs,[91] demonstrating Kenya's efforts to integrate into global carbon markets while fostering a structured domestic trading system.

However, while these legal provisions provide the foundation for carbon market development, their practical implementation, governance efficiency, and alignment with international frameworks remain key areas of scrutiny.

A central aspect of Kenya's carbon trading framework is the establishment of a Designated National Authority (DNA) responsible for authorising carbon projects and ensuring compliance with both domestic and international carbon market standards.[92]

The National Environment Management Authority (NEMA) serves as Kenya's Designated National Authority (DNA) under the Paris Agreement.[93]

Alongside the DNA, the Climate Change Directorate has been designated as the lead state agency responsible for overseeing national climate change actions, including carbon market regulation.[94]

The Directorate is tasked with advising the government on compliance with the Carbon Markets Regulations 2024,[95] coordinating stakeholder engagement,[96] facilitating public participation,[97] and supporting research on carbon markets.[98] However, given the breadth of its mandate, there is a question as to whether the Directorate has the technical and financial capacity to effectively regulate a rapidly expanding carbon market.[99]

The institutional structure also includes a Multi-Sectoral Technical Committee (MSTC), composed of representatives from various ministries and government agencies, responsible for providing technical advice on carbon project

88 ibid Pt IVA.

89 ibid s 23A.

90 ibid s 2.

91 Carbon Markets Regulations 2024, reg. 4.

92 Climate Change Act 2016, s 2. The Act defines carbon projects as, 'interventions including programs, projects, and products designed to remove, reduce, sequester or avoid carbon emissions' at s 2.

93 Kenya Gazette Notice No 7621, 'The Climate Change Act (Cap 387A): Appointment of the Designated National Authority' (18 June 2024).

94 ibid s 9(2). The Act assigns several other roles to the Directorate concerning climate change in general at s 9(8).

95 Carbon Markets Regulations 2024, reg 8(a).

96 ibid reg 8(b).

97 ibid reg 8(c).

98 ibid reg 8(d).

99 See, Max Weber, *The Theory of Social and Economic Organization* (A M Henderson and Talcott Parsons trs, Free Press 1947) 337-341.

assessments.[100] This Committee was enacted in November 2024.[101] Given the committee's large membership, conflicts of interest and excessive bureaucracy may arise, potentially leading to slow decision-making, regulatory inefficiencies, and a lack of clear accountability in carbon project assessments.[102]

The Climate Change Council, as envisioned under the Act, provides an overarching climate governance mechanism.[103] However, while one of its designated roles is to offer policy direction and guidance on carbon markets to national and county governments, the public, and other stakeholders,[104] its practical oversight in this area remains unclear. Although some appointments to the Council have been made, it has not yet been fully constituted and remains largely inactive in fulfilling its mandate on carbon markets.[105] The Climate Change Fund, intended to finance priority climate change actions and interventions,[106] is to be managed by the Council.[107] The Council's responsibilities in this regard include defining eligibility criteria for funding climate actions that support low-carbon, climate-resilient development,[108] and establishing procedures for financing research institutions, private and public entities, civil society, and investment ventures aligned with these goals.[109] However, the fund, likewise, has not yet been implemented.[110]

The Climate Change Act 2016 provides that participation in carbon trading may occur through bilateral or multilateral agreements, direct trading with private entities, or within VCMs.[111] While this flexibility allows for various modes of engagement, it also raises regulatory challenges. A major issue concerns how transactions will be regulated to prevent double counting, ensure transparency, and maintain compliance with international requirements.[112] The ability of Kenya's carbon credit authorisation system to gain international recognition, particularly under article 6 of the Paris Agreement, remains uncertain. Corresponding adjustments, additionality, and the potential for regulatory inconsistencies across different jurisdictions pose further challenges.[113]

[100] Carbon Markets Regulations 2024, reg 9(1).

[101] Kenya Gazette Notice No 15354, 'The Climate Change Act (Cap 387A): Appointment of the Multi-Sectoral Technical Committee' (21 November 2024).

[102] See Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge University Press 1990).

[103] Climate Change Act 2016, ss 5 and 6.

[104] ibid s 6(fa).

[105] Parliament of Kenya <http://www.parliament.go.ke/house-adopts-committee-report-national-climate-change-council-membership>.

[106] Climate Change Act 2016, s 25(1).

[107] ibid s 25(4).

[108] ibid s 25(5)(c).

[109] ibid s 25(5)(f).

[110] Hillary Korir, 'The National Treasury's Role, Challenges & Opportunities in NDC and LTS Implementation' (Coalition of Finance Ministers for Climate Action Workshop (virtual workshop), 12 September 2023) 9. <https://www.financeministersforclimate.org/sites/cape/files/inline-files/Hillary%20Korir.Presentation%20-%20MoF%20Role%20in%20NDC%20%26%20LTS%20Implementation.pdf>.

[111] Climate Change Act 2016, s 23C(1)(a)-(c).

[112] World Bank Group and Kenya Private Sector Alliance (n 42) 41.

[113] ibid.

Additionally, the approval process for carbon projects involves multiple levels of scrutiny. Projects must first be submitted to the DNA for review.[114] The MSTC then evaluates the project and provides recommendations to the DNA.[115] Based on the MSTC's report and with the concurrence of the Cabinet Secretary (Minister) in charge of Climate Change (Cabinet Secretary), the DNA makes the final decision on whether to approve the project.[116] While rigorous oversight enhances environmental integrity, this layered bureaucratic process may discourage private sector participation by introducing procedural inefficiencies.[117]

A notable feature of Kenya's carbon market framework is the mandatory Community Development Agreement for carbon projects implemented on public or community land.[118] The Carbon Markets Regulations require that land-based carbon projects allocate at least forty percent of their net earnings to affected communities, while non-land-based projects must allocate at least twenty-five percent.[119]

The inclusion of a mandatory benefit-sharing mechanism is a progressive step toward ensuring equitable distribution of revenues from carbon trading. However, there may be concerns regarding the financial sustainability of these requirements for carbon project developers, particularly in a market where investment risks remain high.[120] Additionally, compliance and enforcement mechanisms for benefit-sharing provisions are not fully developed. The Regulations stipulate that failure to adhere to benefit-sharing obligations constitutes a criminal offence,[121] an unusually strict penalty that could deter potential investors. Ensuring that communities receive fair compensation while maintaining an investment-friendly regulatory environment will require clear implementation guidelines and institutional capacity to monitor compliance.

Kenya's carbon trading framework is well-structured, but its effectiveness will rely on how well it is executed. Several key areas require further clarification, including excessive bureaucracies, particularly within the MSTC; the need to streamline approval processes for greater efficiency; the full operationalisation of the Climate Council and Climate Fund; and the development of strong compliance mechanisms that enforce benefit-sharing provisions without deterring investment. The success of the framework will ultimately depend on its ability to balance regulatory oversight with private sector participation and equitable climate financing. Kenya's potential to emerge as a leader in carbon trading will hinge on aligning its domestic regulations with evolving international standards while staying focused on national development goals.

[114] Carbon Markets Regulations 2024, reg 21.

[115] Carbon Markets Regulations 2024, reg 22.

[116] ibid reg 23.

[117] See Ostrom (n 102)

[118] Carbon Markets Regulations 2024, reg 29(3). The Regulations mandate that a community development agreement for land-based carbon projects on public and community land be established per the comprehensive template set out in the Fourth Schedule, at reg 22(4)(c).

[119] Climate Change Act 2016, s 23E(5)(b); Carbon Markets Regulations 2024, reg. 29(1) (a) and (b).

[120] OECD, *The Economics of Climate Change Mitigation* (OECD Publishing 2009) 133-135.

[121] Carbon Markets Regulations 2024, reg 37.

C. Enhancing the Legal Framework of Carbon Markets in Kenya for a JET

A just transition necessitates that carbon markets not only facilitate decarbonisation but also contribute to economic equity, prevent social displacement, and protect the rights of vulnerable communities.[122] Without such safeguards, carbon trading risks becoming a mechanism that exacerbates existing socio-economic inequalities. The current framework has several gaps that undermine its potential to advance a JET. The following sections critically examine these gaps and propose legal refinements that would strengthen the contribution of Kenya's carbon market to a just transition.

1. Recognising Carbon Credits as Financial Instruments in Support of a JET

The law does not expressly recognise carbon credits as financial instruments. This may affect market participants, particularly local communities and small-scale project developers, by limiting their access to financing and their ability to trade carbon credits within formal financial markets.[123]

Recognising carbon credits as financial instruments would enhance market stability, attract institutional investors, and facilitate access to credit for community-based carbon initiatives.[124] This approach, adopted in the EU under the Directive on Markets in Financial Instruments (MiFID II),[125] could advance Kenya's JET. By enabling small-scale project developers and local communities to leverage carbon credits as collateral, financial recognition would unlock capital for decentralised renewable energy projects in underserved areas.[126]

Moreover, a structured carbon market integrated into Kenya's financial system would help ensure that revenue from carbon credits flows into JET-aligned initiatives, such as off-grid solar projects and clean cooking solutions, improving access to affordable energy for marginalised communities.

2. Implementation of ITMOs and Equity in Carbon Trading

The current legal framework grants the DNA the mandate to authorise ITMOs,[127] a mechanism under article 6 of the Paris Agreement that allows for the transfer of carbon credits between countries.[128] This

[122] Inamdar (n 51).

[123] Larry Gilman, 'Carbon Credits' in Brenda Wilmoth Lerner and K. Lee Lerner (eds), *Climate Change: In Context,* vol 1 (Gale 2008) 146.

[124] ibid.

[125] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), Annex I, s C, para 11.

[126] Janardhana Anjanappa and Shridhar Samant, 'Exploring Financing Mechanisms for Scaling Clean Energy Solutions in India's Social Enterprises for Energy Poverty Alleviation' (17 March 2024) 29 <https://ssrn.com/abstract=4762727>.

[127] Carbon Markets Regulations 2024, regs 23(1) and 29.

[128] Paris Agreement, Art 6(2) and (3); Stephanie La Hoz Theuer, Lambert Schneider and Derik Broekhoff, 'When Less Is More: Limits to International Transfers under Article 6 of the Paris Agreement' (2019) 19(4) Climate Policy 401, 402.

authority is to be exercised in coordination with the Cabinet Secretary.[129] However, the law does not establish clear guidelines on how ITMOs should be authorised, the conditions under which credits can be transferred, or how Kenya will ensure that the sale of its mitigation outcomes does not undermine domestic decarbonisation efforts.[130] The Draft Climate Change (Carbon Trading) Regulations, 2025, (Draft Carbon Trading Regulations 2025) published by NEMA in February 2025 for public participation, propose a more structured framework for ITMOs transactions.

The Draft Carbon Trading Regulations 2025 introduce a 90-day decision timeline for ITMOs authorisation[131] and a mediation process for disputes[132] adding procedural clarity. However, the effectiveness of these mechanisms centres on their eventual enforcement. To mitigate risks of excessive ITMOs exports, the Draft Regulations require the Climate Change Directorate to advise on how many credits should be retained for Kenya's NDCs.[133] Similarly, corresponding adjustments are mandated to prevent double counting,[134] a key obligation under article 6 of the Paris Agreement.[135]

Yet, questions remain about whether these safeguards are sufficient. While the Draft Regulations link ITMOs transactions to sustainable development and poverty reduction,[136] and allows the Cabinet Secretary to exclude certain projects,[137] these provisions lack detailed enforcement mechanisms. The requirement for public disclosure of ITMOs agreements is a step towards transparency but does not guarantee equitable benefit-sharing.[138]

Overall, while the Draft Carbon Trading Regulations 2025 signal progress in defining Kenya's ITMOs framework, they do not yet resolve the fundamental tension between carbon credit exports and domestic decarbonisation goals. Strengthening corresponding adjustments, reporting obligations, and equitable benefit-sharing provisions will be critical to ensuring that ITMOs transactions support rather than undermine Kenya's JET objectives.

3. Addressing Sectoral Gaps: Expanding Carbon Trading to Blue Carbon and Urban Planning

Kenya's Carbon Markets Regulations 2024 limit eligible carbon projects to specific sectors, including energy, transport, agriculture, forestry and land use, industrial processes and product use, and waste. [139] However, the exclusion of other sectors such as marine and coastal ecosystems (blue carbon)[140] and urban

[129] Climate Change Act 2016, s 8(2)(g); Carbon Markets Regulations 2024, reg 23(2).

[130] Carbon Markets Regulations 2024, reg 23.

[131] Draft Carbon Trading Regulations 2025, reg 10(1).

[132] ibid reg 10(2)–(3).

[133] ibid reg 9(1) – (2).

[134] ibid reg 7(3).

[135] Paris Agreement, Art 6(2).

[136] Draft Carbon Trading Regulations 2025, reg 7(3).

[137] ibid reg 7(5).

[138] ibid reg 7(7).

[139] ibid reg 13(1).

[140] Blue Carbon refers to the carbon captured and stored in coastal and marine ecosystems. Jack Sheehy and others, 'Redefining Blue Carbon with Adaptive Valuation for Global Policy' (2024) 908 Science of the Total Environment 1

planning[141] from the list of eligible sectors creates an unnecessary legal constraint. This limitation restricts the scope of projects that could contribute to a JET, despite the potential for additional sectors to emerge as science evolves.

Coastal communities in Kenya, which are among the most vulnerable to climate change, could significantly benefit from carbon projects that restore and conserve mangroves, seagrass beds, and other blue carbon ecosystems.[142] Similarly, integrating urban planning into the carbon market framework could incentivise the development of sustainable cities with low-carbon infrastructure.[143] To align the carbon market with a JET, the legal framework should provide for the adaptive inclusion of emerging carbon project categories based on scientific advancements and national climate priorities.

4. Strengthening Compliance Mechanisms and Avoiding Exploitation of Indigenous Communities

One of the most pressing concerns regarding carbon trading in Kenya is the potential for projects to infringe upon the constitutional rights of Indigenous communities. The Environment and Land Court in *Osman v Northern Rangelands Trust*,[144] underscored the significant human rights violations associated with the *Northern Kenya Rangeland Carbon Project*, where carbon offset initiatives were linked to land dispossession, restricted access to grazing lands, and violations of the rights of pastoralist communities. The *Blood Carbon* report has documented these injustices, raising serious questions about the ethical implications of carbon trading in Kenya.[145]

The current legal framework does not contain explicit protections to prevent similar occurrences. For a JET to be realised, Kenya's Carbon Markets Regulations 2024 must incorporate stronger safeguards to prevent land grabs and human rights violations in the name of carbon offsetting. This could include mandatory Free, Prior, and Informed Consent (FPIC) for carbon projects on community land, transparent grievance mechanisms, and legal provisions requiring independent human rights assessments as part of project approvals.[146]

5. Institutional Coordination and the Risk of Regulatory Overlap

The delineation of roles among the Cabinet Secretary, DNA, Climate Change Directorate, MTSC, and Climate Change Council creates the potential for regulatory

[141] Shadnoush Pashaei and Chunjiang An, 'Assessment of Urban Greenhouse Gas Emissions Towards Reduction Planning and Low-Carbon City: A Case Study of Montreal, Canada' (2024) 13(1) Environmental Systems Research 1.

[142] Sheehy (n 140) 1.

[143] Pashaei and An (n 141) 1.

[144] *Osman & 164 Others v Northern Rangelands Trust & 8 Others* (Environment & Land Petition 006 of 2021).

[145] See Counsell (n 11).

[146] See Thuy Thu Pham and others, 'Adapting Free, Prior, and Informed Consent (FPIC) to Local Contexts in REDD+: Lessons from Three Experiments in Vietnam' (2015) 6(7) Forests 2405.

conflicts. The Climate Change Council is responsible for overarching policy direction,[147] while the Climate Change Directorate serves as the lead government agency for national climate change plans and actions.[148] The DNA (NEMA) is tasked with project approvals.[149] The Climate Change Directorate's mandate to coordinate and mobilise sectoral stakeholders in managing carbon markets,[150] risks overlapping with the DNA's role in project evaluation and approval.

While the DNA oversees project approvals and ensures compliance, the Directorate's stakeholder engagement may result in conflicting policy directives, redundant oversight, and regulatory inefficiencies, fostering uncertainty for project developers and market participants.

This challenge is compounded by the non-operational status of the Climate Change Council and Climate Change Fund, both vital to effective climate governance, which heightens regulatory ambiguity and weakens Kenya's carbon market framework. The Cabinet Secretary's authority to approve ITMOs[151] further intersects with the DNA's project approval and National Carbon Registry responsibilities.[152] Likewise, the MTSC, mandated to advise the DNA on carbon projects, may indirectly shape approval decisions, clouding the decision-making process. Without defined institutional boundaries, these overlapping roles could obstruct efficient regulation, discourage investment in Kenya's carbon markets, and jeopardise the nation's climate commitments.

A more coherent institutional framework would strengthen the effectiveness of Kenya's carbon market in supporting a JET. One approach may be to enhance collaboration between NEMA, as the Designated National Authority (DNA), and the Climate Change Directorate. This could be achieved by clearly delineating their respective roles, NEMA retaining responsibility for project approvals and registry oversight, while the Directorate focuses on policy alignment and stakeholder coordination. Such clarity would help ensure a streamlined and transparent process, maximising the carbon market's contribution to the JET.

6. Transitional Provisions and the Burden on Existing Projects

The Carbon Markets Regulations 2024 require all existing carbon projects to align with the new legal framework within two years of its commencement, in May 2024, and to conduct an environmental audit within six months of that date.[153] This imposes significant financial and administrative burdens, especially on projects with internationally recognised certifications such as the Verified Carbon Standard or Gold Standard. One example is the *EcoSafi Clean Cooking Project*, which provides energy-efficient cooking solutions and is certified under the Gold Standard.[154]

147 Climate Change Act 2016, s 6.

148 ibid s 9(2); Carbon Markets Regulations 2024, reg 8.

149 Carbon Markets Regulations 2024, reg 7.

150 ibid reg 8(b).

151 Climate Change Act 2016, s 8(2)(g); Carbon Markets Regulations 2024, reg 23(2).

152 Carbon Markets Regulations 2024, regs 7 and 11.

153 ibid reg 38.

154 See <https://ecosafi.com/category/carbon-credits/>.

A proposed mechanism to integrate certified projects into the national registry without duplicative approvals could enhance equity and efficiency, aligning with international standards under the Paris Agreement, though it requires clear criteria to balance regulatory oversight with market continuity.

7. Capacity Building and Equitable Participation in Carbon Markets

A just transition cannot be achieved without ensuring that communities directly affected by carbon projects are equipped with the knowledge and resources necessary to engage meaningfully in carbon markets.[155] While the Carbon Markets Regulations 2024 mandate community involvement,[156] they do not provide sufficient support for capacity-building initiatives that would empower local actors to participate actively in project design and benefit-sharing negotiations.

Historically, affected communities have been marginalised in decision-making due to the technical complexity of carbon markets and limited access to financial and legal expertise.[157] To address this, Kenya's legal framework should integrate structured capacity-building programs, ensuring that community representatives receive training on carbon accounting, legal rights, and financial management.[158] This would enhance local ownership of carbon projects and ensure that the benefits of carbon trading contribute directly to a JET.

8. Streamlining the Carbon Project Approval Process

Finally, the complexity of Kenya's carbon project approval process creates significant barriers to entry, particularly for community-led initiatives, due to its multi-stage structure and associated costs, such as separate fees for validation, verification, and registration.[159] This bureaucratic complexity inflates expenses and administrative demands, disproportionately excluding smaller stakeholders from participating in Kenya's carbon market despite their potential to advance local climate goals.[160] Streamlining this into a single, cost-effective approval process could democratise access, bolster inclusivity, and align with the constitutional principle of equitable resource distribution,[161] all while preserving regulatory integrity through targeted oversight mechanisms.

Well-drafted regulations ought to detail simple processes to facilitate easier compliance and promote greater participation in carbon market activities.[162]

155 Vivek Mathur, 'Experiences of Host Communities with Carbon Market Projects: Towards Multi-Level Climate Justice' (2014) 14(1) Climate Policy 42, 56.

156 Carbon Markets Regulations 2024, reg 16(i).

157 Mathur (n 155) 44.

158 ibid 52.

159 Carbon Markets Regulations 2024, reg 21-29.

160 Rebecca Pearse and Steffen Böhm, 'Ten Reasons Why Carbon Markets Will Not Bring About Radical Emissions Reduction' (2014) 5(4) Carbon Management 325, 326.

161 Constitution of Kenya 2010, Art 10.

162 Olivia Rumble and Andrew Gilder, 'African Countries Move to Regulate Domestic Carbon Markets and Claim Revenue' (*African Climate Wire,* 13 June 2023) <https://africanclimatewire.org/2023/06/african-countries-move-to-regulate-domestic-carbon-markets-and-claim-revenue>.

Simplifying these procedures can enhance the efficacy of the regulatory framework and support the growth and development of carbon trading in Kenya.

CONCLUSION

Kenya's carbon trading framework holds significant promise as a vehicle for supporting and accelerating a JET. However, this potential can only be realised through purposeful legal and institutional reform. This article has proposed a set of actionable recommendations aimed at enhancing the equity, efficiency, and transparency of the existing framework—ensuring that carbon markets contribute not only to emission reductions but also to inclusive socio-economic development.

Some of the proposed reforms, such as, issuing clear rules on carbon credit issuance, and strengthening community capacity to participate meaningfully in carbon markets, may be adopted through operational guidelines issued by the Cabinet Secretary under the Climate Change Act 2016.[163] These measures require no legislative amendment and could be actioned swiftly through administrative processes.

Others, however, demand more substantive legal and institutional changes. These include the recognition of carbon credits as financial instruments, broadening the scope of eligible carbon projects, clarifying institutional mandates, addressing transitional burdens on existing projects, and streamlining the project approval process. These reforms will require amendments to the Carbon Markets Regulations 2024, as well as coordinated action by relevant government entities.

If implemented, these reforms would help establish a carbon trading regime that is not only functional and internationally credible, but also grounded in Kenya's constitutional values of equity, public participation, and sustainable development.[164] They would enhance investor confidence, improve benefit-sharing with local communities, and enable Kenya to lead by example in designing a carbon market framework that advances environmental and social justice in equal measure.

However, potential barriers to implementing these changes must be realistically acknowledged. Resource constraints, such as funding and adequate technical staffing, within key institutions, could impede progress.[165] Political will is also essential; sustained commitment from government leaders is needed to drive and maintain these reforms.[166]

Ultimately, achieving a JET through carbon trading is not a question of ambition but of design. With deliberate, equity-oriented reforms, Kenya can harness carbon markets not only as a source of climate finance, but as a pathway to a more just and sustainable future.

[163] Carbon Markets Regulations 2024, reg 36.

[164] Constitution of Kenya 2010, arts 10, 42, and 69.

[165] Ambreena Manji, 'Land Reform in the Shadow of the State: The Implementation of New Land Laws in Sub-Saharan Africa' (2001) 22(3) Third World Quarterly 327, 332.

[166] ibid.

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