CARBON MARKET WATCH

Carbon Market Watch consultation response

For the Kenyan climate change amendment bill 2023 that relates to carbon markets

We welcome the opportunity to provide feedback on this climate change amendment bill. While we see merit in the proposed amendment to regulate carbon markets (PART IVA—REGULATION OF CARBON MARKETS), we urge the Kenyan government to take this amendment back to the drawing board and revise it in its entirety. This is because as it currently stands, the amendment is bound to lead to confusion and misinterpretation, with potentially serious consequences for the environmental and social integrity of carbon markets.

Our main concern with this bill is that most of the wording is vague or ambiguous. In some places, we were not even able to decipher what the intention behind some of the bill's requirements was. It is important to clearly define which interpretation is the right one by using specific wording, and using this consistently. Otherwise, the bill risks to be misunderstood, or even intentionally misinterpreted, at the expense of the environment and human rights.

To address this issue, the bill should use precise language and ideally draw from existing terminology to avoid confusion. A more complete list of definitions should be provided, and these terms should then be used in a logical and consistent fashion throughout the text.

Furthermore, The objective of covering 'All carbon markets', i.e. including the voluntary carbon market, raises questions about the enforceability of the bill. While we strongly support the aim, we urge more careful wording to ensure that text is targetted at the right actors and is enforceable.

Actors in the voluntary market are often dispersed globally, and it would be difficult to assess when they fall under Kenyan jurisdiction. This is especially the case for some of the bill's provisions that relate to the trading of credits. If this bill is intended to cover the VCM, then it should be made clear which actors specifically this pertains to. Would it cover project developers? Brokers? What about buyers of credits? Throughout the amendments, different actors are being used interchangeably while they have very distinct roles in the carbon credit chain.

To illustrate our concerns, the following section provides a non-exhaustive list of examples of sections where the Bill is unclear or erroneous. Preferably, rather than merely addressing the instances given as an example below, the Bill should be rewritten and restructured completely.

PART IVA—REGULATION OF CARBON MARKETS

23A. (a)

'Aim to reduce emissions' leaves room for credits with low environmental integrity because it doesn't focus on the actual emissions reductions. An aim alone is not enough. Moreover, the credits themselves do not reduce emissions, but they *represent* emissions reductions.

23A. (b)

'Use' of captured carbon dioxide should not be allowed to qualify for removal credits, as it does not actually represent a removal of carbon dioxide, because 'use' of carbon dioxide implies that it is released back into the atmosphere. Moreover, all removal and sequestration should have strict permanence criteria if it is to qualify for credits.

23A. (d)

This subsection is confusing and misplaced. It is structured as an item of a list that enumerates the elements covered by the Bill, but it is actually the start of a new list, that would enumerate activities that the Kenyan government does not recognise as valid for the carbon market. The way it is currently phrased allows to interpret this list as activities that will not be regulated, which is presumably not the intention. This should therefore be a separate section and does not belong in this part of the Bill.

23A. (d) (i)

Previously ‘used’ emission credits does not refer to a clear definition of ‘use’. We suggest either defining the term “used”, or replacing it with “retired or cancelled”.

23A. (d) (iv)

The last word of this section should be ‘or’ rather than ‘and’. ‘And’ implies that the entire list of exclusion criteria has to be met in order to qualify for exclusion, while this is not the case.

23A. (d) (vi)

In this list of excluded activities, a new section should be added that excludes "emission reductions that have been issued against inflated baselines or by non-additional activities".

23B.

The ‘trade’ in carbon markets is something different from the development of projects with the goal of generating emission reduction units. Throughout the Bill, projects, trade, and transactions are used interchangeably without a clear definition. Using ‘trade’ here does not make sense.

23B. (a)

Related to the previous point, ‘transactions in carbon trading’ covers a large range of activities, making it unclear what the scope of this Bill is. Also, ‘aiming towards’ emission reductions is too broad and does not reflect environmental integrity. Activities should deliver reductions, and not simply “aim towards” this.

23B. (c)

‘Carbon offset projects’ is a very limited definition. This should instead cover all activities generating mitigation outcomes that lead to issuance of carbon credits. Moreover, keeping emissions out of the atmosphere for a ‘reasonable length of time’ leaves room for interpretation. Permanence should be guaranteed. A clear timeframe should be indicated, for example: emissions are to be kept out of the atmosphere for a time commensurate with the lifetime of CO2 in the atmosphere. In addition to this, the treatment of reversals should also be addressed.

23C. (1)

"The participation in an initiative authorizing trade in carbon credits" is extremely vague, it is not clear whose participation this concerns, as well as what is meant by authorization.

23C. (2)(a)

'Trade carbon for emissions reductions and removals' does not make sense.

23C. (2)(b)

'Offset carbon emissions' should be changed to 'sell mitigation outcomes'. Selling credits should not be equated with offsetting, because this is not the only (nor the ideal) use of mitigation outcomes.

23E. (1)

While there are different environmental, economic and social benefits to be gained from carbon market projects, it should be noted that without actual emissions reductions or removals, these projects have no environmental integrity even if they are beneficial in other ways. All other benefits can complement, but cannot replace, emissions reductions or removals.

23E. (2) (b)

An 'incentive' is not an environmental benefit in itself. An incentive can exist without resulting in any environmental benefits. It should therefore not be included in the definition of environmental benefits.

23E. (2) (c)

This seems intended to ensure there are ecological safeguards in place for projects. If this is the case, then that should be made more clear.

23E. (2) (e)

It is unclear in what way this point adds anything that isn't already stated in point (a) of this subsection.

23E. (5) (c)

This insufficiently addresses stakeholder grievances.

23E. (5) (d)

How does this benefit sharing relate to the 25% contribution that is proposed in point (b) of this subsection? This is not clear.

23E. (6)

Not only should the community development agreements be recorded in the Registry, they should also be publicly available, and this should be explicitly stated.

23G. (3)

It should be made clear here that the Registry should be publicly available.
Furthermore, this list is not structured logically. It does not make clear in what way the Registry should be set up, what is a subsection of what, what goes where, etc. Rather than just a summation of what should be included in the Registry, this section should give a clear overview of all elements of the Registry, organized in a hierarchical manner. The format of the Registry should also be discussed.

23G. (3) (h)

This point should be followed by "including the ultimate beneficiary and purpose of that cancellation, as well as the identity of any intermediary involved in that cancellation'.

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