



**Submission on National Guideline for the Consideration of
Climate Change Implications in Applications for
Environmental Authorisations, Atmospheric Emission
Licences and Waste Management Licences**

**By: The African Synthesis Centre for Environment,
Development and Climate Change (ASCEND) synthesis
project team on a Climate Justice Centred-Approach to
Environmental Impact Assessment in Rural Southern
Africa of the ('EIA4ClimateJustice Team')**

To: Department of Forestry, Fisheries and the Environment

Lead authors:

Project co-lead, Adjunct A/Professor Melanie Jean Murcott
(melanie.murcott@uct.co.za)

Project co-lead, Ncedo Mngqibisa (ncedo.mngqibisa@uct.ac.za)

Project postdoctoral fellow, Dr Christiaan van Schalkwyk (vscchr011@myuct.ac.za)

24 November 2025

About ASCEND and the synthesis team

The [African Synthesis Centre for Environment, Development and Climate Change \(ASCEND\)](#) is the first climate change synthesis centre for Africa, hosted at the University of Cape Town, South Africa. A

key aim of ASCEND is to facilitate collaborative research that integrates climate science, legal research, and community perspectives. Our EIA4ClimateJustice Team [is developing a climate justice centred-approach to environmental impact assessments \(EIA\)](#), concerning the experiences of communities in rural Southern Africa, with lessons from the legal systems of South Africa, Zimbabwe, and Lesotho.

1 Scope of submission

This submission provides input on the National Guideline for the Consideration of Climate Change Implications in Applications for Environmental Authorisations, Atmospheric Emission Licences and Waste Management Licences ('National Guideline') from a climate justice perspective. More specifically, the submission analyses key paragraphs in the National Guideline that relate to inclusive and meaningful participation of vulnerable communities, such as rural communities, and local and indigenous communities. Related issues, such as informal land rights and the linkages between indigenous knowledge and climate science, are also considered.

As a point of departure, this submission welcomes the second draft of the National Guideline. It was vital to incorporate public comments from the 2022 comment period. Nevertheless, the delay from 2022 in developing the second draft of the National Guideline exacerbate the legislative and policy lacuna on the incorporation of climate change considerations in environmental impact assessments ('EIAs') and emission licences. Given the grave justice implications of the climate crisis, it is of critical import that a published and gazetted guideline should be in operation as a matter of urgency. Doing so would give effect to judicial interpretation of section 24O of the National Environmental Management Act 107 of 1998 ('NEMA') as requiring climate change to be considered by decision makers at the environmental authorisation stage.¹ Moreover, putting the National Guideline in place will align with South Africa's duty to exercise due diligence in preventing significant harm to the environment arising from climate change, as expressed by the International Court of Justice in its Advisory Opinion on the Obligations of States in respect of Climate Change, of 23 July 2025 (paras 295-298).

Before commencing with substantive comments, we convey our support and endorsement of the comments submitted by the Centre for Environmental Rights and Natural Justice on the National Guideline. These organisations advance the protection, promotion and fulfilment of the environmental rights of vulnerable communities, and their submissions provide a substantive account of issues that we believe to be of great import when considering the National Guideline. We do not intend to duplicate their analysis or findings, but rather to provide supporting

¹ Murcott & Vinti ["The Judge-Made "Duty" to Consider Climate Change in South Africa"](#) (2024) 126, 133.

submissions on aspects of the National Guideline on inclusive and meaningful community participation through the lens of climate justice.

2 Substantive comments

Our overarching concern is that the National Guideline should advance greater clarity and emphasis on the role of vulnerable communities as stakeholders in EIAs and licencing where climate change is concerned. We submit that to give effect to climate change cases handed down by South Africa's judiciary more guidance must be included in the National Guideline on making information accessible to communities, ensuring communities' participation is meaningful and inclusive, and a recognition of the impact on informal land rights of vulnerable communities in climate change impact assessments.² Admittedly, the purpose of the National Guideline is to provide general principles on participation, and their focus is on setting out technical guidance on the content of climate change impact assessments, the role of environmental assessments practitioners (or 'EAPs') and specialists, and what constitutes adaptation, risk, and significance in the context of assessing climate change impacts. However, as vulnerable communities are most acutely affected by climate change, climate justice dictates that the National Guideline promotes the normative recognition of the role of vulnerable communities in EIAs and licencing. Importantly, climate justice is intertwined with social justice, while social justice is an overarching imperative of South Africa's constitutional dispensation.

With the above in mind, we focus on the following paragraphs that could provide greater clarity and guidance:

2 1 Paragraph 3(c)³ – deviations from the National Guideline

Paragraph 3(c) contemplates that the National Guideline will be applied in a flexible manner and that deviation from the National Guideline will be permitted 'if reasonable and for good and scientifically sound cause'. However, clarity is required regarding how and at what stages deviations are to be communicated to communities and other stakeholders during public participation processes, and what potential consequences

² As shown in *Minister of Mineral Resources and Energy and Others v Sustaining the Wild Coast NPC* 2024 (5) SA 38 (SCA) (3 June 2024) and *South Durban Community Environmental Alliance and Another v Minister of Forestry, Fisheries and the Environment and Others* (479/2023) (2025) ZASCA 134 (17 September 2025).

³ National Guideline page 7.

arise (with reference to NEMA or the EIA Regulations) when participation is not meaningful in communicating deviations. Too often communities are merely informed of and not consulted about deviations from good governance requirements, whereas many deviations occur and are irreversible.

2 2 Paragraph 5(g)⁴ – generic principle on interaction amongst stakeholders

Paragraph 5(g) establishes a generic principle that underpins the National Guideline, namely to ‘allow for efficient and effective interaction between climate change specialists and the EAP, the applicant, the authorities, other specialists...and other stakeholders to improve the quality of the EIA process and outcomes’. In this principle, vulnerable communities/groups are relegated to ‘other stakeholders’. They should be specifically mentioned as a key stakeholder. See further our discussion of the use of the terms ‘stakeholders’, ‘consultation’ and ‘role players’ in paragraph 2 5, of this submission below.

Moreover, the word ‘allow’ in this paragraph does not adequately convey the mandatory nature (given the constitutional right to public participation in administrative decision-making, which is particularly important where the environmental right and protection of the climate system are at stake)⁵ of involving vulnerable communities in EIAs on climate change. Finally, there is little to no guidance on how specialists (and EAPs) are to make information accessible to vulnerable communities, or what the (potential) means are to achieve this objective. These points are particularly important considering the emphatic requirements to involve vulnerable communities and develop their capacities in environmental decision making in section 2(4)(f) of NEMA, which is highlighted in climate change cases such as *Sustaining the Wild Coast*.⁶

Further, more guidance on the demographics and communities who are particularly vulnerable to climate change should be incorporated to ensure clarity on who should be involved, such as women, children, the elderly, those with disabilities, black African and coloured communities, particularly local and indigenous communities. Moreover, it would be beneficial for the National Guideline to provide for examples and a non-

⁴ National Guideline page 12.

⁵ As illustrated by the cases of *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* 2022 (6) SA 589 (ECMk) and *Minister of Mineral Resources and Energy and Others v Sustaining the Wild Coast NPC* 2024 (5) SA 38 (SCA) (3 June 2024).

⁶ Refer to note 5 above.

closed list of the different forms of participation that would meet the criteria of meaningfulness and inclusivity, identifying focus groups, and using particularised media for rural settings, such as radio and social media, including translations into languages communities understand. Paragraph 7(d)⁷ is an example where participation becomes slightly more particularised, by specifically identifying interviews as a means of meaningful and inclusive engagement for vulnerable communities and those with indigenous knowledge of the land in question.

2 3 Paragraph 5(h)⁸ – generic principle on local and indigenous knowledge

It is positive that the National Guideline establishes as a generic principle that stakeholders must ensure that findings are informed by local and indigenous knowledge and experience, as ascertained through meaningful, inclusive and effective public participation. However, the words ‘by those adversely affected by climate change, particularly those most vulnerable’ should be added to this paragraph. The current phrasing of this paragraph renders vulnerable communities invisible, whereas climate justice dictates that their views, concerns and experiences be at the centre of decision-making about climate change. Further, more guidance should be included in the National Guideline regarding how and at what stages of EIAs local and indigenous knowledge and experience should be taken into account. For instance, the need to assess climate change impacts on cultural practices and heritage should be specifically addressed.

Frequently, participation is utilised as a ‘one off’ mechanism by developers and environmental authorities. However, involving communities only at the findings stage is detrimental to ensuring sustained participation throughout the participatory process, and risks introducing an unjust, colonial hierarchy where scientific (‘specialist’) knowledge is prioritised over indigenous knowledges and experiences of communities. Paragraph 9.4.5 (g)⁹ is a good example of the level of detail, clarity and guidance that

⁷ National Guideline page 20.

⁸ National Guideline page 12.

⁹ National Guideline page 26. ‘A description of the surrounding social environment, including all communities and settlements, whether formal or informal, in order to ascertain the full scope of impacts, including disproportionate impacts on certain groups and to enable adequate and proactive public participation, to ensure that the needs of all affected parties are able to be engaged with and addressed’.

should be incorporated in elaboration of paragraph 5(h) in relation to indigenous knowledge and local experiences.

While the best available science principle must apply and scientific findings should fundamentally guide EIAs and licencing, communities experience a diminution and devaluing of their knowledge and experiences when not treated equally, equitably and with parity. Moreover, indigenous knowledge and local experiences can supplement or support scientific findings regarding climate change impacts. The National Guideline should therefore elaborate on paragraph 5(h) to promote greater recognition of indigenous knowledge and local experiences in the EIA process concerning climate change impact assessment, as opposed to merely proposing that findings be 'informed' by indigenous knowledge and local experiences. For instance, 'integrating' indigenous knowledge and local experiences would ensure a greater emphasis is placed on indigenous knowledge and local experiences.

2 4 Paragraph 6 step 2 (d)¹⁰ – failure to refer to 'lawful occupiers' and holders of 'informal land rights'

In paragraph 6 step 2 at (d), stakeholder engagement is listed. Whereas 'landowners', 'adjacent landowners' and 'communities' are specifically mentioned as stakeholders who must be consulted, 'lawful occupiers' and holders of 'informal land rights' should also be specifically mentioned. More specifically, cross reference and harmonisation with the definitions of 'lawful occupiers' and 'landowners' with the definitions in the Mineral and Petroleum Resources Development Act 28 of 2002 and the Interim Protection of Informal Land Rights Act 31 of 1996 would be beneficial in creating greater legal certainty that vulnerable communities should be involved in consultations. The definitions section of the National Guideline already refers to the definitions of the Climate Change Act 22 of 2024. It would therefore promote consistency and harmonisation to also refer to other specific environmental management acts that could provide content to concepts in the National Guideline.

2 5 Use of the terms 'stakeholder', 'role players' and 'consultation'

The term and concept of 'stakeholder' is often used generally and is not particularised to the specific context of meaningful and inclusive participation. For instance,

¹⁰ National Guideline page 14.

paragraph 4.1 omits to identify vulnerable communities as stakeholders and only references the 'general public'. Climate justice dictates recognising that some communities experience the causes and impacts of climate change disproportionately, despite having contributed the least to the problem of climate change.

The use of 'stakeholders' and 'role players' also seems to create confusion and the terms are used interchangeably at times. For instance, it is unclear whether 'role players' are only persons that commence or control the EIA, and whether 'stakeholders' are persons that are merely involved in the EIA or whether they control the process or initiate scientific reports or award environmental authorisations. It would be beneficial to define the terms and explain what the differences are between their use in the Definitions section of the National Guideline. Moreover, there ought to be greater reference to interested and affected parties that constitute both 'stakeholders' and 'role players', by harmonising the definitions in other specific environmental management acts¹¹ to include groups such as informal land right holders, particularly in paragraph 4.1.

Additionally, 'consultation' is often used generally and vaguely and is not particularised in certain crucial contexts. For instance, consultation with civil society or NGOs would be inherently different to consultation with vulnerable communities, and consultation would have to account for power and epistemic disparities and hierarchies. Greater clarity is required on what consultation would require by EAPs, such as in paragraph 6 step 2(f),¹² and how their consultation would promote accessibility of information and promoting the capacities of vulnerable communities.

The National Guideline's use of 'consultation' often conveys a top-down model of participation, often only requiring consultation after specialists' reports have been developed or findings have been established. This is not consistent with the development of meaningful and inclusive participation emerging from judgments in climate cases and practice, which envisages participation as a process-driven mechanism that should be utilised at most stages of environmental decision making.

¹¹ Such as the definitions of 'interested and affected parties' in the Mineral and Petroleum Resources Development Act 28 of 2002 and the Interim Protection of Informal Land Rights Act 31 of 1996.

¹² National Guideline page 14.

3 Conclusion

The revised National Guideline represent a significant improvement on the 2022 version. There is greater clarity on the content and technical requirements for climate change impact assessments, as well as the role of EAPs and specialists. However, there is remains a need to define key terms and utilise them with greater specificity, recognising that some groups are disproportionately vulnerable to the causes and impacts of climate change, and that more guidance is required at what stages of the EIA process this is taken into account, as well as how vulnerable communities and indigenous and local knowledge is to be taken into consideration.

Thank you for the opportunity to make comments on the National Guideline. We hope that these comments will be helpful as the National Guideline are finalised.

Yours in the pursuit of climate justice,

EIA4ClimateJustice Team