



Environmental Law

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KENYA

- What the Climate Change (Non-Market Approaches) Regulations, 2026 mean for climate projects in Kenya



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What the Climate Change (Non-Market Approaches) Regulations, 2026 mean for climate projects in Kenya

The Climate Change (Non-Market Approaches) Regulations, 2026 (Regulations) mark an important development in Kenya's evolving climate change regulatory landscape. In recent years, climate policy discussions in Kenya have largely focused on carbon markets and the implementation of Article 6.2 and 6.4 of the Paris Agreement. Against this backdrop, the Regulations, which were gazetted on 12 February 2026, are particularly significant because they reflect a broader policy shift towards establishing a legal framework for non-market approaches (NMAs) to climate change in Kenya. The Regulations also operationalise Article 6.8 of the Paris Agreement, which encourages co-operation on climate action outside traditional carbon-credit trading systems.

In Kenyan law, the concept of NMAs is anchored in the Climate Change Act, Cap. 387A, which defines non-market approaches as approaches intended to promote mitigation and adaptation ambition, enhance public and private sector participation in implementing nationally determined contributions (NDCs), and enable co-ordination across instruments and institutional arrangements. The First Schedule to the Regulations identifies a wide range of priority sectors and interventions that qualify as NMAs. These include:

- **Adaptation and resilience measures**, such as climate-smart agriculture, water resource management, ecosystem restoration and early warning systems.
- **Mitigation initiatives**, including afforestation and reforestation, sustainable waste management and low-emission transport.
- **Clean energy development**, including renewable energy projects, mini-grids, energy storage and clean cooking solutions.

The Regulations are broadly framed to apply to "each person engaged in non-market approaches".



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This is particularly significant for developers, investors and organisations involved in climate-related activities that are not structured around carbon-credit issuance or trading in Kenya. As such, initiatives aimed at advancing Kenya's climate objectives and broader sustainable development goals, including renewable energy, resilience, adaptation, conservation and community-based sustainability initiatives, may fall within the scope of the Regulations, where no carbon credits are generated or traded.

Another central feature of the Regulations is the establishment of the National Non-Market Approaches Platform (Platform), maintained by the Climate Change Directorate (Directorate). The Platform serves as a submission platform for project proposals, public registry of approved projects and information-sharing mechanism for co-operation opportunities.

To obtain approval for projects, proponents are required to submit their proposals in the prescribed form to the Directorate. Projects are assessed against both domestic and international criteria. At the domestic level, key considerations include alignment with the national priorities, contribution to sustainable development, including poverty eradication, effective public participation where proposed projects are on community or public land and the existence of transparency mechanisms. Proponents must also demonstrate that their projects do not involve carbon credit transactions and do not duplicate existing initiatives.

For projects seeking international recognition under Article 6.8, eligibility requires that the proposed non-market approach demonstrates the ability to go beyond Kenya's NDCs, including through scalable mitigation and adaptation interventions, multi-stakeholder participation from the public, private and civil society sectors and the ability to mobilise international support. Taken together, these requirements create an important due-diligence consideration for NMA project proponents.

The Directorate will, where necessary, constitute a multi-stakeholder committee to review the application. The committee is then required to provide its recommendations within 30 days, after which the Directorate must issue its decision to the proponent within 90 days. Where an application is declined, written reasons must be provided, and the proponent may request a review of the decision.



FPIC, community rights and public engagement

The Regulations establish a set of mandatory safeguards that apply to all NMAs. They require that all projects respect human rights and fundamental freedoms, promote gender equity and consider vulnerable groups, facilitate meaningful public participation, and secure free, prior and informed consent (FPIC) where community land is involved. Conceptually, FPIC originates from international best practice on community and indigenous rights in land and resource governance. In the Kenyan context it aligns closely with constitutional principles of public participation, transparency and protection of community land rights. In practice, FPIC requires far more than formal consultation or a single stakeholder meeting. It demands a genuine, transparent and well-documented process of engagement that enables affected communities to meaningfully understand proposed activities, assess their potential impacts, and influence decision-making.

FPIC is further reinforced by the provisions of the Community Land Act, Cap. 287 (Community Land Act). Section 36 of the Community Land Act imposes specific requirements for investments in community land. It provides that such investments be preceded by a free, open and consultative process involving the relevant community. The Community Land Act further requires that investment agreements address key issues such as environment, social, cultural and economic impact assessments, stakeholder consultations and community participation, monitoring of project impacts and arrangements relating to compensation. Importantly, the act also establishes a threshold for community approval. Any agreements between investors and communities are only valid if approved by at least two-thirds of adult community members at a properly convened community assembly meeting, called to consider the offer and at which a quorum of two-thirds of the adult members of that community is represented.

For proponents, these requirements create important compliance and governance considerations. Projects that fail to demonstrate meaningful community engagement and participation or adequate environmental and social safeguards may face regulatory rejection, delays or disputes. Effective FPIC therefore requires ongoing communication, representative engagement, culturally appropriate consultation methods and documentation demonstrating that affected stakeholders were meaningfully involved throughout the project lifecycle.



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Practical implications for climate projects

The Regulations create both opportunities and governance obligations for organisations operating in the climate and sustainability sectors. They provide clarity on the implementation of Article 6 of the Paris Agreement by extending Kenya's regulatory framework beyond the carbon-market mechanisms established under the Climate Change (Carbon Markets) Regulations, 2024.

The Regulations also create opportunities for projects to be recognised as eligible NMAs within the broader framework of international climate cooperation under Article 6.8 of the Paris Agreement. Projects that relate to renewable energy, ecosystem restoration, sustainable development, and climate resilience will be well-positioned to attract financing opportunities due to the existence of a formal NMA framework that enhances regulatory certainty and investor confidence.

At the same time, the Regulations introduce ongoing governance, reporting and stakeholder-engagement obligations. In addition to seeking project approval, project proponents must submit annual progress reports on the implementation of their projects. Compliance obligations therefore extend beyond the initial project approval stage and require continued oversight throughout the project lifecycle.

Viewed more broadly, the Regulations signal a shift in how climate-related investment and international climate co-operation will be structured in Kenya. By formally recognising NMAs, Kenya is creating additional pathways for climate initiatives centred on resilience, sustainable development, technology transfer, community benefits and public-private collaboration without necessarily relying on carbon-credit monetisation. For investors, developers and organisations operating in the sustainability sector, understanding the scope and practical implications of the Regulations will become increasingly important when structuring projects and assessing long-term project viability in Kenya.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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