

Sacrificial communities and the Just Transition: An analysis of policy contradictions in South Africa's Critical Minerals and Metals Strategy

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Abstract: *This chapter argues that South Africa's Critical Minerals and Metals Strategy (CMMS) structurally contradicts the Just Transition Framework because it promotes a model of accelerated green extractivism that is fundamentally misaligned with the core principles of a just transition. The CMMS prioritises economic and geopolitical objectives while paying insufficient regard to community rights and environmental safeguards. Hence, the CMMS risks perpetuating the development model that historically created sacrifice zones. The analysis concludes that pursuing critical minerals under the CMMS will not anchor a just transition but will instead entrench a new form of resource curse and sacrifice vulnerable communities for a green future they will not equitably share. To avert this outcome, this chapter proposes recommendations for the South African government, corporations, investors and civil society. These recommendations focus on achieving policy coherence by embedding justice principles within the CMMS, legislating mandatory human rights due diligence, establishing independent grievance and redress mechanisms, and*

empowering communities to shift from being passive subjects of consultation to active partners in minerals co-governance.

1 Introduction

The global transition from fossil fuels has triggered a new scramble for African raw materials that underpin renewable energy technologies.¹ Transition minerals and metals, such as the platinum group metals, lithium, cobalt and rare earth elements, are essential components for electric vehicles, battery storage systems and wind turbines.² This presents a major economic opportunity for South Africa, as the country holds substantial reserves of these strategic resources.³ However, supply chain security and the geopolitical interests of the Global North largely shape the definition of a 'critical' mineral or metal, rather than the development needs of producer countries like South Africa.⁴ Broadly, critical minerals are those associated with geopolitical supply risks, whereas transition minerals fall within the wider category of materials needed for the energy transition across the globe.⁵ South Africa's Critical Minerals and Metals Strategy

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- 1 BA Bature 'The new scramble for Africa: How global powers are competing for influence in the 21st century' (2025) 2 *British Journal of Interdisciplinary Research* 65; N Ouedraogo & J Kilolo 'Africa's critical minerals can power the global low-carbon transition' (2024) 6 *Progress in Energy* 033004.
 - 2 K Hund and others 'Minerals for climate action: The mineral intensity of the clean energy transition' (2020).
 - 3 SE Zhang and others 'Emerging criticality: Unravelling shifting dynamics of the EU's critical raw materials and their implications on Canada and South Africa' (2023) 86 *Resources Policy* 104247.
 - 4 S Nakanwagi 'Critical minerals and the global energy transition: Recognising Global South perspectives' (2023) 4 *Global Energy Law and Sustainability* 115.
 - 5 S Dou & D Xu 'The security of critical mineral supply chains' (2023) 36 *Mineral Economics* 401; X Xing and others 'Revealing global supply risk of

(CMMS), launched in 2025, defines and classifies critical minerals according to their ‘strategic importance to economic growth, industrial development, job creation and national security’.⁶ This chapter argues that the CMMS frames these materials primarily as a response to external demand instead of grounding them in criteria such as their domestic economic importance, supply risk, and the potential impact of supply disruptions. The exception is coal, which is noted as a critical mineral because of its centrality to South Africa’s energy generation. This tension creates a conflict between the CMMS and the country’s constitutional commitments to social justice, environmental protection, and its internationally recognised Just Transition Framework.⁷

This chapter analyses the structural contradictions between the Just Transition Framework and the CMMS. It assesses how extractive projects facilitated by the logic of green extractivism affect host communities through violence, intimidation, exclusion and inadequate consultation. The inquiry uses three energy justice principles from South Africa’s Just Transition Framework; namely, distributive, restorative and procedural justice, as its analytical framework. These principles represent a concrete, context-specific method for implementing responsible business conduct. Reading the CMMS through these justice principles reveals a systemic accountability deficit in which both state and corporate actors fail in their respective duties and responsibilities. The analysis integrates the United Nations (UN) Guiding Principles on Business and

critical minerals essential for low-carbon energy technologies’ (2025) 498 *Journal of Cleaner Production* 145160.

6 Department of Mineral Resources and Energy ‘Critical Minerals and Metals Strategy’ (2025) 9.

7 Presidential Climate Commission ‘A framework for a Just Transition in South Africa’ (2022).

Human Rights (UNGPs)⁸ to benchmark the specific failures of the state to protect and corporations to respect human rights within these justice dimensions. This analysis centres on the perspectives of affected communities, because their experiences of dispossession and resistance illuminate the failures of top-down policymaking. Although this chapter focuses on South Africa, its observations may be relevant to other countries pursuing similar objectives.

The following part 2 establishes the analytical framework and grounds the discussion in the concept of sacrifice zones and the three pillars of the South African Just Transition Framework. Part 3 introduces the CMMS. Part 4 maps the structural contradictions between the CMMS and the just transition principles. Part 5 analyses the accountability deficit in practice by applying the lenses of distributive, procedural and restorative justice to specific case studies. Finally, part 6 offers recommendations to align the CMMS with South Africa's justice commitments.

2 Analytical and theoretical framework

2.1 The context of sacrifice zones and green extractivism

Understanding the justice-based framework requires an appreciation of sacrifice zones. The concept, which helps to explain the human cost of extractive industries, refers to geographical areas and populations designated for exploitation, pollution, and eventual abandonment in

8 Office of the High Commissioner for Human Rights 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011).

the pursuit of profit or technological advancement.⁹ Sacrifice zones are physical manifestations of a political economy that deems certain people and places expendable for a perceived greater common good.¹⁰ New forms of extraction deploy this logic, particularly in South Africa, which is experiencing the emergence of green extractivism.¹¹ This chapter defines green extractivism as an economic model that accelerates the extraction of critical minerals and metals to support renewable energy technologies, while primarily serving external demand and geopolitical interests. This approach often overlooks community rights and environmental protections.

This phenomenon redeploys the logic of sacrifice under the banner of sustainable development and the global energy transition.¹² Although the fight against climate change justifies the extraction of critical minerals,¹³ the process often involves destructive activities such as mines, smelters and processing plants that displace communities, pollute ecosystems and disrupt livelihoods. The creation of a sacrifice zone is an active political project of dispossession and is fundamentally at odds with a project of justice and restitution.¹⁴ Green extractivism constitutes a form of neo-colonial regulatory coercion in which the Global North's green agenda pressures the Global South into accelerated mineral extraction. Geopolitical tensions amplify this

9 C Tornel 'Development as terracide: Sacrifice zones and extractivism as state policy in Mexico' (2024) 21 *Globalizations* 1.

10 ML de Souza "'Sacrifice zone': The environment-territory-place of disposable lives' (2021) 56 *Community Development Journal* 220.

11 CG Gonzalez 'The sacrifice zones of carbon capitalism: Race, expendability, and loss and damage' in M Doelle & SL Seck (eds) *Research handbook on climate change law and loss and damage* (2021) 43.

12 Tornel (n 9) 1-25.

13 Ouedraogo & Kilolo (n 1) 1-2.

14 DN Scott 'The power of "net zero": Seductive dispossession on the critical minerals frontier' (2025) 28 *Law Text Culture* 100.

pressure. The strategic competition between the West and China to secure transition minerals intensifies this pressure. Consequently, South Africa's CMMS functions as a response to these global forces, catching the country between its energy poverty and the demands of the 'green North'.¹⁵

2.2 The primary lens of South Africa's Just Transition Framework

South Africa formally adopted a Just Transition Framework in direct opposition to the logic of sacrifice. The Presidential Climate Commission developed this framework in 2022 following extensive research and multi-stakeholder consultation.¹⁶ The framework functions as a practical planning tool to guide the nation's shift to a low-carbon and climate-resilient economy and society in an equitable and socially inclusive manner.¹⁷ It represents the state-endorsed counter-narrative to the unjust development patterns of the past. The framework is built upon three core, non-negotiable principles that are used in this chapter's analysis. The first principle is distributive justice. This manifests through demands for the equitable distribution of the benefits and burdens associated with the just transition.¹⁸ It requires that the opportunities created by the green economy, such as new jobs, skills and ownership, are accessible to all, with a particular focus on those most affected by the shift

15 S Kalantzakos 'The race for critical minerals in an era of geopolitical realignments' (2020) 55 *The International Spectator* 1; A Kumar & A Vishwanathan 'Race for critical minerals: China's ambitions and challenges' (2025) 44 *Comparative Strategy* 56.

16 Presidential Climate Commission (n 7).

17 As above.

18 SM Patrick and others 'Just energy transition from coal in South Africa: A scoping review' (2025) 167 *Environmental Science & Policy* 104044.

away from fossil fuels, including workers, the poor, women and the youth.¹⁹

The principle of restorative justice complements this approach. It acknowledges the deep historical harms of colonialism, apartheid and environmentally destructive industries.²⁰ Restorative justice calls for the active redress of past damages through remediating environmental degradation in coal-affected areas, supporting the constitutional right to a healthy environment, and ensuring that new inequalities are not created.²¹

Finally, the framework's principle of procedural justice empowers workers, communities and small businesses to define their own development course.²² This moves beyond tokenistic consultation to meaningful participation and ensures that those most affected are central to the decision-making processes that shape their future.²³

19 I Platform 'Empowering the future: Youth policy and employment in Africa' (2024) 3-4.

20 A Minguet 'Environmental justice movements and restorative justice' (2021) 4 *The International Journal of Restorative Justice* 58.

21 K Moeng 'Challenges and opportunities for coal communities in a Just Transition: Towards a transition underpinned by environmental justice' PhD thesis, University of South Africa, 2024 6, in general; D Skosana *No last place to rest: Coal mining and dispossession in South Africa* (2025).

22 B Kilimcioglu 'Procedural justice and due process principle in the context of just energy transition: Learning from South Africa' (2025) 10 *Business and Human Rights Journal* 79.

23 D Lupin & L Townsend 'The right to consultation is a right to be heard' in D Lupin (ed) *A research agenda for human rights and the environment* (2023) 103.

2.3 Responsible business conduct and the role of the UN Guiding Principles on Business and Human Rights

This chapter argues that the South African Just Transition Framework offers a practical, context-specific approach to implementing the concept of responsible business conduct. Compliance with these principles can be measured against established international standards like the UNGPs, which provide the authoritative global standard for preventing and addressing human rights harm caused by business activity. The UNGPs' three pillars of 'protect, respect and remedy' align directly with the just transition principles. Distributive justice aligns with the state's duty to protect human rights by regulating markets for equitable outcomes. Procedural justice becomes operational when corporations meet their responsibility to respect human rights through meaningful due diligence and engagement. Restorative justice cannot exist without the 'access to remedy' pillar, which ensures redress for victims of corporate abuse. Therefore, this chapter uses the UNGPs as a supporting accountability mechanism to critique the incoherence of policy and practice in South Africa and to identify specific points of failure by both state and corporate actors in relation to sacrifice zones.²⁴

3 South Africa's Critical Minerals and Metals Strategy

The CMMS is the state's response to the 'new scramble' for Africa's resources.²⁵ Value addition and industrialisation anchor its central

24 T van Ho 'Business and human rights in transitional justice: Challenges for complex environments' in S Deva & D Birchall (eds) *Research handbook on human rights and business* (2020) 379.

25 Bature (n 1) 65-80.

logic.²⁶ The strategy argues that South Africa must move beyond the historical model of raw extraction to realise the full potential of its mineral wealth. This requires targeted public and private investment in local beneficiation, including the development of processing plants, refineries, and manufacturing facilities for high-value products such as battery components and hydrogen fuel cells.²⁷

The CMMS envisions South Africa becoming a key partner in resilient global value chains for electric vehicles, battery storage and green hydrogen.²⁸ It defines criticality through the lens of national security and economic growth. Although the strategy categorises minerals based on their importance to the global green transition and local economic significance,²⁹ a critical reading reveals that the CMMS promotes a model of green extractivism. It prioritises rapid project development to capture a fleeting global market window. Given South Africa's limited financial capacity and technology, the benefits of this 'value addition' risk accruing to multinational corporations holding patents and capital while the environmental and social costs remain localised in host communities.

4 Structural contradictions between the Critical Minerals and Metals Strategy and the Just Transition Framework

The CMMS and the Just Transition Framework represent two competing visions of development in a state of structural

26 Department of Mineral Resources and Energy (n 6) 24.

27 As above.

28 Department of Mineral Resources and Energy (n 6) 31.

29 The CMMS under Local Economic Significance (18) notes that, by identifying and prioritising minerals that have strong local economic significance, such as manganese, iron ore, coal and vanadium, the strategy ensures that these resources support inclusive growth and contribute to addressing socio-economic challenges.

contradiction. While the Just Transition Framework acts as the state-endorsed counter-narrative to historical injustice, the CMMS implicitly treats communities and the environment not as rights-holders, but as factors to be managed or constraints to be overcome in the pursuit of economic objectives. The CMMS is conspicuous for its omissions. While it references inclusive growth and environmental, social and governance (ESG) considerations, it provides almost no substantive detail on the mechanisms through which these goals will be achieved.³⁰ Critical analyses of the strategy point to a lack of clarity regarding how community impacts and justice commitments will be addressed in the rush to scale up extraction and industrialisation.³¹ The language of the CMMS is overwhelmingly technocratic and focuses on investment incentives, infrastructure bottlenecks, exploration and geopolitical positioning.³²

This instrumentalist worldview creates a fundamental misalignment with the three pillars of the just transition. The CMMS pushes for an accelerated timeline to capitalise on global demand. This pace makes the deep, time-consuming engagement required by procedural justice nearly impossible.³³ Similarly, the focus on attracting foreign investment without binding social requirements undermines distributive justice, while the forward-looking focus on green tech avoids the restorative justice needed to address the legacy of the resource curse. The table below maps these structural contradictions across key policy dimensions and illustrates

30 Department of Mineral Resources and Energy (n 6) 38.

31 J Hofmeyr 'South Africa's new critical minerals strategy: Promises and paradoxes' *APRI* 15 September 2025, <https://afripoli.org/south-africas-new-critical-minerals-strategy-promises-and-paradoxes> (accessed 21 September 2025).

32 Department of Mineral Resources and Energy (n 6) 31.

33 Hofmeyr (n 31).

the specific conflict between the extractivist logic of the CMMS and the principles of the Just Transition Framework.

Table: Structural contradictions between the CMMS and JTF

Just Transition Framework (JTF)	Critical Minerals and Metals Strategy (CMMS)	Tension
Focuses on social equity, inclusion and decarbonisation.	Focuses on economic growth, industrialisation and competitiveness through mineral development.	JTF aims to reduce dependence on extractives; CMMS intensifies mining activity.
Seeks a low-carbon, climate-resilient economy and ecosystem protection.	Promotes increased extraction and beneficiation of critical minerals for global clean-tech markets. Continued coal extraction with investments in cleaner coal technology pathways, including carbon capture, storage and utilisation.	Mining expansion can contradict JTF's environmental and emission-reduction goals.
Emphasises community participation, social dialogue and bottom-up planning.	Driven by top-down industrial policy and state-led coordination through the Department of Mineral Resources and Energy.	Limited community engagement in CMMS planning compared with JTF's participatory ethos.

Just Transition Framework (JTF)	Critical Minerals and Metals Strategy (CMMS)	Tension
Prioritises decent work, reskilling and social protection for affected workers.	Focuses on competitiveness, investment attraction and export growth, with less emphasis on labour transition.	Risk of job losses or inequality if mining automation increases without safety nets.
Guided by environmental justice and sustainability principles.	Guided by resource efficiency and industrial policy objectives.	Economic imperatives may override ecological limits.
Promotes intergenerational equity and long-term resilience.	Seeks short- to medium-term economic gains and foreign exchange earnings.	Potential lock-in to extractive dependence may hinder future sustainability.
Encourages policy coherence and collaboration across sectors.	Calls for regulatory alignment (mining, energy, environment) to reduce red tape.	Shared intent, but CMMS's regulatory drive is economic, not social-justice-oriented.
Supports green industrialisation aligned with renewable energy and local manufacturing.	Targets beneficiation and localisation of critical minerals (e.g. batteries, hydrogen technologies).	Can align with JTF if beneficiation is powered by clean energy and socially inclusive.

Source: Author, this chapter

As illustrated above, one of the first issues with the CMMS is its top-down industrial policy, which conflicts with the principles of public

consultation and free, prior and informed consent (FPIC).³⁴ This approach erodes social protections and distributive justice advocated by scholars³⁵ and compromises environmental and other human rights.³⁶ Consequently, the CMMS inadvertently undermines the just transition objectives of reducing inequality, poverty and carbon emissions.³⁷ Thus, it is clear that economic nationalism and geopolitical ambition drive the CMMS.³⁸ The strategy seeks to transform South Africa from a raw material supplier into a manufacturing hub.³⁹ Although these are valid economic goals, their pursuit without integrating just transition principles risks creating a new generation of sacrifice zones. This contradiction manifests in the daily reality of mining-affected communities. The resulting accountability deficit, when analysed through the three justice principles, provides compelling evidence for integrating the Just Transition Framework into the CMMS.

5 Analysis of the accountability deficit in practice

This part of the chapter analyses how structural contradictions manifest in practice. It applies the three justice principles as an analytical lens and the UNGPs' 'protect, respect and remedy' framework as a measure of accountability to map the specific deficits creating sacrifice zones in South Africa.

34 See Lupin & Townsend (n 23) 103 for a discussion of the importance of these principles.

35 Patrick and others (n 18).

36 Skosana (n 21).

37 Presidential Climate Commission (n 7).

38 Department of Mineral Resources and Energy (n 6) – see the executive summary.

39 Department of Mineral Resources and Energy (n 6) 8.

5.1 Distributive justice and the failure of the state's duty to protect

Distributive justice mandates the equitable allocation of economic benefits, environmental burdens and legal protections.⁴⁰ Under the UNGPs, this aligns with the state's duty to protect human rights against abuse by third parties. The state must take appropriate steps to prevent, investigate, punish and redress abuse through effective policies and legislation.⁴¹ The current implementation of the CMMS reveals a failure of this duty. The state's promotion of an aggressive extraction agenda without embedding binding human rights safeguards has created a policy environment that prioritises investor certainty over community protection.⁴² This policy incoherence falls short of the state's obligation to create a regulatory environment that enables business respect for human rights.⁴³

The unequal distribution of physical security constitutes the most severe violation of distributive justice. While the state deploys significant resources to protect mining infrastructure, it fails to extend similar protection to community activists who question those operations. Environmental human rights defenders face a daily reality of harassment, intimidation and violence.⁴⁴ This systemic environment of fear aims to silence dissent and ensure project

40 DJ Karp 'Fixing meanings in global governance? "Respect" and "protect" in the UN guiding principles on business and human rights' (2020) 26 *Global Governance* 628.

41 Office of the High Commissioner for Human Rights (n 8).

42 T Glazebrook & E Opoku 'Defending the defenders: Environmental protectors, climate change and human rights' (2018) 23 *Ethics and the Environment* 83.

43 Human Rights Watch "We know our lives are in danger": Environment of fear in South Africa's mining-affected communities' (2019).

44 Human Rights Watch (n 43) 28.

implementation. A Human Rights Watch report details this reality in mining-affected communities across KwaZulu-Natal, Limpopo, the Northwest and the Eastern Cape.⁴⁵ The report documents abuses including killings and physical attacks. At least three activists were killed between 2016 and 2019, including the murder of Sikhosiphi 'Bazooka' Rhadebe, an anti-mining activist in Xolobeni, Eastern Cape.⁴⁶ Other activists report assaults, property damage and death threats.⁴⁷ There is a documented pattern of targeting women who lead resistance movements.⁴⁸ The perpetrators are often unknown, but communities consistently allege links to mining companies, private security or local officials. The failure to investigate these crimes and protect citizens effectively distributes impunity to perpetrators and insecurity to communities.

5.2 Procedural justice and the failure of corporate responsibility to respect

Procedural justice requires that communities function as active participants in defining development, not merely as recipients.⁴⁹ This principle necessitates deep, meaningful engagement and the power to influence decisions. Under the UNGPs, meaningful stakeholder engagement is an integral part of the corporate responsibility to respect human rights. To fulfil this responsibility requires

45 Human Rights Watch (n 43) 36.

46 Human Rights Watch (n 43) 48-49.

47 A Ramasastry 'Corporate social responsibility versus business and human rights: Bridging the gap between responsibility and accountability' (2015) 14 *Journal of Human Rights* 237.

48 NHRI 'Eastern-Southern African National Human Rights Institution (NHRI) business and human rights peer learning initiative submission of views and experiences to the UNGPs+10/next decade project' (2020).

49 Lupin & Townsend (n 23) 103.

companies to 'do no harm' by conducting ongoing human rights due diligence to identify and mitigate their impacts on communities.⁵⁰ Evidence from the South African mining sector suggests that companies misunderstand and neglect this responsibility. While many companies have sophisticated ESG policies, research shows most fail to translate these commitments into concrete action plans. A common shortcoming is conflating the 'responsibility to respect' with voluntary corporate social responsibility initiatives.⁵¹ Philanthropic projects, such as building a healthcare clinic or school, are frequently used to offset or distract from human rights harms caused by core business operations. This approach turns consultation into a performance rather than a dialogue.⁵²

The Platinum Belt in the North West province illustrates this dynamic. Producing approximately 80 per cent of the world's platinum, this region should be a centre of development. Instead, it is characterised by deep-seated poverty, social fragmentation and environmental decay.⁵³ For decades, the wealth extracted has flowed to multinational corporations and a small elite, while host communities have borne the costs.⁵⁴ The 2012 Marikana massacre, in which police killed 34 striking mineworkers, was a violent eruption of unresolved grievances stemming from this exclusionary model.

The socio-economic impacts of this failure to respect procedural rights are devastating. The promise of jobs has led to rapid, unplanned

50 Responsible Mining Foundation 'Time to normalise respect and remedy for human rights in mining' (2021).

51 Ramasastry (n 47).

52 NHRI (n 48).

53 L Marais and others (eds) *Mining and community in the South African platinum belt: A decade after Marikana* (2021).

54 C Schultz 'The Marikana massacre and the unstable geographies of capital: Spatialising financialisation' (2020) 47 *Politikon* 42.

urbanisation and the proliferation of informal settlements lacking basic services.⁵⁵ The social fabric has been damaged by crime and conflict between migrant workers and local residents competing for scarce opportunities.⁵⁶ Furthermore, promises of local economic participation have largely failed to materialise. Procurement opportunities are often structured to reinforce existing monopolies rather than empower local entrepreneurs. This legacy of exclusion is a warning that without genuine procedural justice giving communities a meaningful role in decision making, the ‘critical minerals’ boom will replicate the tragedy of the Platinum Belt.

5.3 Restorative justice and the remedy gap

Restorative justice requires acknowledging harm and actively redressing past and present damages.⁵⁷ The UNGPs framework operationalises this principle through access to remedy. This pillar requires that victims of human rights abuses linked to business activities have access to effective judicial and non-judicial grievance mechanisms.⁵⁸ However, a profound remedy gap exists in South Africa. The judicial system, while independent, is slow, expensive, and often inaccessible to rural communities.⁵⁹ Meanwhile,

55 M Nkomo ‘Migrants and the politics of presence on the South African platinum mining belt’ (2023) 15 *International Development Policy* 29.

56 M Kanyane ‘Life in the platinum belt: Socio-economic struggles in the village of Luka’ (2025) 23 *HSRC Review* 26.

57 L Lizarazo-Rodríguez ‘The UN “Guiding principles on business and human rights”: Methodological challenges to assessing the third pillar: Access to effective remedy’ (2018) 36 *Nordic Journal of Human Rights* 353.

58 Office of the High Commissioner for Human Rights (n 8).

59 Federal Ministry for Economic Cooperation and Development ‘Study on grievance mechanisms to promote human rights in the mining industry’ (2024).

corporate-led grievance mechanisms at the operational level are frequently flawed. Under the UNGPs, an effective mechanism must be legitimate, accessible, predictable, equitable and transparent.⁶⁰ Instead, operational-level grievance mechanisms are often opaque, controlled by the company, and used to manage risk rather than resolve grievances.

Furthermore, corporate actors frequently weaponise the legal system against those seeking remedy. Instead of providing redress, corporations increasingly use the courts to harass activists through strategic lawsuits against public participation.⁶¹ These meritless lawsuits are designed to intimidate, silence, and exhaust the financial resources of activists and civil society organisations.⁶² A clear example is the case of *Mineral Sands Resources (Pty) Ltd v Reddell*,⁶³ in which a mining company sued environmental lawyers and activists for defamation. While the courts have begun to push back against this tactic, the mere threat of litigation creates a chilling effect on free expression.⁶⁴ This failure of remedy creates a vicious cycle. When formal consultation channels (procedural justice) are flawed and grievance mechanisms (restorative justice) are ineffective, communities are often left with no option but to protest. This

60 Benchmarks Foundation 'Mine's grievance mechanisms intimidate stakeholders and are ineffective' (2014).

61 T Murombo & H Valentine 'SLAPP suits: An emerging obstacle to public interest environmental litigation in South Africa' (2011) 27 *South African Journal on Human Rights* 82.

62 Human Rights Watch (n 43) 4.

63 2023 (2) SA 68 (CC).

64 Z Emmamally 'Slapping down SLAPP suits in South Africa: The need for legislative protection and civil society action' (2022) 139 *South African Law Journal* 1; L Chamberlain 'Growing threats to environmental human rights defenders: The latest SLAPP suit developments in South Africa' (2020) 26 *South African Journal of Environmental Law and Policy* 5.

legitimate exercise of rights is then met with state suppression, a failure of distributive justice, which further erodes the trust required for constructive engagement.

6 Recommendations toward policy coherence

Resolving the structural contradictions between the CMMS and the Just Transition Framework requires South Africa to move beyond voluntary principles and high-level policy statements. The following recommendations propose concrete actions for the state, the private sector and civil society to address the current accountability deficit.

6.1 For the government

The Department of Mineral Resources and Energy should subject the CMMS to a formal review overseen by the Presidential Climate Commission to harmonise it with the Just Transition Framework. This review must amend the strategy to establish distributive, restorative and procedural justice as key performance indicators for the mining sector, with a weight equal to economic output. Furthermore, Parliament should translate the legal precedents from the *Wild Coast* and *Maledu* judgments into binding amendments to the Mineral and Petroleum Resources Development Act, thereby codifying the right to say no.⁶⁵ These amendments must define meaningful consultation not as a bureaucratic exercise but as a consensus-seeking process requiring FPIC for any project that threatens the land rights or cultural heritage of customary communities.

65 *Minister of Mineral Resources and Energy v Sustaining the Wild Coast NPC* 2024 (5) SA 38 (SCA); *Maledu v Itereleng Bakgatla Mineral Resources (Pty) Ltd* 2019 (2) SA 1 (CC).

Parliament should enact binding legislation that requires all companies in the extractive sector to conduct ongoing human rights due diligence. Such legislation, unlike current voluntary reporting, would impose penalties for non-compliance and mandate public disclosure of human rights risks. This would align the sector with the mandatory due diligence standards emerging in the European Union.⁶⁶ The government should also establish and fund an independent mining ombud for mining-affected communities. This body could have the statutory power to investigate complaints, mediate disputes and issue binding remedial awards, thereby offering a viable alternative to the prohibitively expensive High Court system for restorative justice.

6.2 For corporations and investors

Corporations and investors need to transition from a compliance mindset to one of co-governance. Mining companies should abandon top-down engagement models and transform social and labour plans, often treated as mere compliance documents, into binding community development agreements co-designed with host communities. These agreements should establish clear, legally enforceable obligations for benefit sharing, environmental management and local procurement, which would operationalise procedural justice. Furthermore, industry bodies like the Minerals Council South Africa should adopt a strict zero-tolerance policy against attacks on human rights defenders. Such a policy would require member companies to terminate contracts with private security providers found to have violated the Voluntary Principles

⁶⁶ NHRI (n 48).

on Security and Human Rights and to cooperate fully with police investigations into violence against activists.

Institutional investors and development finance institutions funding the green transition should integrate just transition principles into their lending criteria. Before approving capital for new critical mineral projects, investors should demand evidence of restorative justice planning, particularly fully-funded mine closure and rehabilitation plans.

6.3 For civil society

Civil society must consolidate counter-power through litigation aimed at co-governance. Civil society organisations should use the *Maledu* precedent not only to stop mining but also to renegotiate the terms of extraction.⁶⁷ Communities and their legal allies can advocate for active co-governance models, demanding seats on project oversight committees and ensuring community equity stakes, such as community trusts, confer voting rights instead of just passive dividend rights. Environmental justice organisations can also strengthen solidarity networks through enhanced collaboration between established coal-mining communities facing the fossil fuel transition and emerging critical mineral communities facing the new scramble. Innovative information-sharing networks would help new host communities anticipate corporate strategies and adopt successful resistance tactics from the Platinum Belt and the Wild Coast.

⁶⁷ *Maledu & Others v Itereleng Bakgatla Mineral Resources (Pty) Limited & Another* (CCT265/17) [2018] ZACC 41; 2019 (1) BCLR 53 (CC); 2019 (2) SA 1 (CC).

7 Conclusion

South Africa faces a fundamental contradiction in its national development strategy. The government's CMMS, designed to capitalise on the global green energy boom, is structurally and ideologically misaligned with the country's Just Transition Framework. The Just Transition Framework promises a future built on distributive, restorative and procedural justice, whereas the CMMS promotes a model of 'green extractivism' that prioritises rapid industrialisation and geopolitical posturing over human rights and environmental well-being. This contradiction creates tangible accountability deficits. Distributive justice is subverted when the state uses police power to protect mining investments while leaving community activists exposed to fear and violence. Procedural justice is undermined when the rush for critical resources justifies fast-tracked consultations that ignore the rights of customary landholders to refuse consent.⁶⁸ Restorative justice is denied when legal and corporate systems fail to provide accessible remedies for environmental degradation and social dislocation, leaving communities to bear the resource curse of a new era.

The case studies from the Platinum Belt and the Wild Coast demonstrate that without a significant change in approach, the extraction of minerals for the green economy will replicate the injustices of the fossil fuel economy. To avoid creating a new generation of sacrifice zones, South Africa must anchor its CMMS in the principles of its Just Transition Framework. The state must move beyond the rhetoric of growth to fulfil its duty to protect, and

68 *Baleni & Others v Minister of Mineral Resources and Others* (73768/2016) [2018] ZAGPPHC 829; [2019] 1 All SA 358 (GP); 2019 (2) SA 453 (GP).

corporations must move beyond the optics of ESG to fulfil their responsibility to respect human rights. Only then can the transition be just and the country's mineral wealth serve as a foundation for genuine and inclusive prosperity.

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