



CORPORATE ACCOUNTABILITY, RESILIENCE AND PARTICIPATION FOR AN EQUITABLE TRANSITION (CARPET) PROJECT BRIEF No. 001

STRATEGIC LITIGATION AS A TOOL FOR CLIMATE AND SOCIAL JUSTICE IN SOUTH AFRICA JUST TRANSITIONS

Wycliffe Amakobe and Furaha Charo

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OVERVIEW

Despite growing international consensus that just transition processes must uphold the United Nations Guiding Principles on Business and Human Rights, South Africa's ongoing transition continues to pose significant human rights risks as policy design and implementation increasingly favour market-driven approaches that prioritise foreign direct investment at the expense of social protections. Since 2015, over 95 cases have been filed globally to challenge and seek recourse for various harms linked to just transition efforts, and yet only 10 cases originate from Africa, with very few having been finalised (BHRRC, 2025). This highlights the continent's structural and systemic constraints in relation to effective enforcement of corporate accountability mechanisms. Research further shows that only six African countries actively incorporate justice considerations into their energy transition policies, South Africa among them. Persistent gaps remain in procedural justice, equitable benefit-sharing and community protection (Müller et al, 2020). With Africa's transition costs projected at US\$2.8 trillion by 2030, and South Africa alone requiring over US\$100 billion but securing only a fraction through the JET-IP (Sidiropoulos, 2024), there is a serious risk that the shift to a low-carbon economy will deepen inequality, accelerate land dispossession, and undermine livelihoods particularly for workers, women, youth, indigenous peoples and rural communities. This highlights the urgent need for states and business enterprises to embed human rights principles as non-negotiable safeguards in the design and implementation of transition policies.

BOX 1: KEY MESSAGES

- Policy coherence is essential to overcome fragmented and poorly coordinated frameworks, aligning climate, energy, labour, and social protection strategies to eliminate duplication, institutional gaps, incoherent planning and likely non-compliance.
- Public interest litigation must be adequately financed and strategically deployed as a rights-enforcement tool to compel ambitious, rights-based climate action.
- Protection of environmental defenders is essential to safeguard civic space and enable communities to participate meaningfully in just transition (JT) decision-making without fear of retaliation.
- Accountability mechanisms should be embedded in climate laws through legal instruments that mandate cooperation between civil society organisations, NHRIs, and oversight bodies.
- Economic diversification in the just transition must go beyond the energy sector, with parallel investments in social services, education, and alternative livelihoods to avoid unemployment spikes and rising inequality in coal-dependent regions.

BOX 2: ABOUT CARPET AND METHODOLOGY

This policy brief was developed under the Corporate Accountability, Resilience and Participation for an Equitable Transition (CARPET) Project, co-funded by the European Union and implemented by NANHRI, the Business and Human Rights Resource Centre. CARPET aims to address the urgent need for a just and inclusive transition to green economies in four key countries in Africa and Asia (South Africa, Kenya, Indonesia, and the Philippines). Drawing on primary data from a stakeholder consultative workshop in June 2025, peer review, and validation processes, the brief demonstrates how strategic litigation can empower communities, hold corporations accountable, and shape government policies to ensure South Africa's just transition is equitable, inclusive, and grounded in human rights, thereby directly advancing CARPET's broader objectives.

UNDERSTANDING THE CONTEXT

The concept of a just transition has gained global prominence as countries, including South Africa, pursue low-carbon, climate-resilient economies while striving to uphold social and economic equity. At its core, a just transition seeks to align climate action with social justice by safeguarding livelihoods, promoting decent work, and protecting vulnerable groups throughout the shift from high-carbon to sustainable industries (PCC, 2022). South Africa's just transition strategy, as outlined in the Framework for a Just Transition, is positioned as a planning tool to guide government and social partners in achieving a fair, inclusive and equitable low-carbon future. The country's success in this endeavour depends on embedding equity considerations into every stage of policy design and implementation, ensuring predictable and adequate financing, and creating sector-specific pathways that protect vulnerable communities from socio-economic shocks (ILO, 2022). However, persistent legal, institutional, and participatory deficiencies continue to marginalize vulnerable groups. Many affected workers and communities lack access to remedy, legal protection, or mechanisms to hold duty-bearers accountable (Centre for Environmental Rights, 2021; Republic of South Africa, 1996)

Weak institutional coordination, insufficient financing for community-led initiatives, and the absence of robust social protection measures risk leaving vulnerable groups behind. Strategic litigation presents an underutilized but potentially transformative tool to bridge this gap, drawing on domestic cases like *Earthlife Africa v Minister of Environmental Affairs* and international precedents including *Neubauer v Germany* (2021), *KlimaSeniorinnen v Switzerland* (2024), and *Held v Montana* (2023), which have affirmed climate justice as a constitutional or human rights imperative. Embedding just transition principles into binding legislation, such as Climate Change Act, while strengthening collaboration between civil society, National Human Rights Institutions (NHRIs) and affected communities will be an essential step towards ensuring that no one is left behind during South Africa's transition.

BOX 3: KEY STAKEHOLDER REFLECTIONS DURING THE CONSULTATIVE WORKSHOP

Just energy transition in South Africa demands urgent structural reforms, equitable financing, and binding corporate accountability mechanisms to prevent deepening inequality and erosion of human rights and liberties. Communities must be empowered through enforceable benefit-sharing agreements, participatory governance, and locally grounded economic diversification that phases-in sustainable industries alongside fossil fuel phase-outs. Green financing and JET funds should be conditional on tangible social and environmental restoration, ensuring that benefits reach workers and vulnerable groups rather than being captured by the elite few. Integrated legal and economic strategies, paired with mediation and transparent oversight, are essential to align climate action with social justice. Without these measures, the transition risks becoming another vehicle for green imperialism and socio-economic exclusion.

REVIEW OF KEY INSTRUMENTS IN REGARD TO SOUTH AFRICA'S JUST TRANSITION

South Africa has developed several policy and strategic instruments to guide its journey of realising a Just Transition characterised by low-carbon, climate-resilient economy and grounded in principles of equity, social justice, and human rights. First, The Framework for a Just Transition in South Africa provides a roadmap for balancing decarbonisation imperative with social protection and economic inclusion

considerations. The framework emphasizes addressing historical inequalities, safeguarding workers and communities affected by coal phase-outs, and ensuring participatory governance in climate action (PCC, 2022). Another key instrument is the National Climate Change Response White Paper (2011), which sets out South Africa's vision for climate resilience and emissions reduction, introducing the concept of a Just Transition within broader climate policy (Republic of South Africa, 2011). It links mitigation efforts to job creation and poverty reduction.

The Integrated Resource Plan (IRP, 2019) provides South Africa's electricity generation roadmap, aiming to diversify the energy mix while phasing down coal. While it references Just Transition principles such as phased and managed coal decommissioning, equity and promoting cleaner energy industries as new job drivers, the IRP does not adequately address the socio-economic risks particularly for coal-dependent regions, raising questions about its alignment with community needs (Republic of South Africa, 2019). The Nationally Determined Contribution (NDC) 2021 update under the Paris Agreement explicitly commits to a Just Transition, signalling South Africa's intent to integrate equity considerations into climate mitigation targets (Republic of South Africa, 2021). Further, the Just Energy Transition Investment Plan (JET-IP 2023–2027) outlines how international and domestic financial resources will be mobilised to support clean energy infrastructure, reskilling programmes, and community development in coal regions. However, civil society critiques highlight limited community participation and inadequate transparency in funding decisions (Republic of South Africa, 2022).

Despite these instruments, issues persist. First, while there is broad recognition of the need for a just transition, policy coherence remains limited, and so is policy implementation, with different instruments sometimes lacking alignment in timelines, reporting, financing, and social protection measures. Second, participatory governance is uneven, with affected communities and other vulnerable stakeholders, particularly in Mpumalanga's coal belt, often being excluded from meaningful decision-making. Third, funding allocation mechanisms lack transparency, leading to scepticism over whether climate finance will directly benefit workers and vulnerable groups equitably and sustainably. Finally, there is a deficit in enforceable social safeguards, meaning that job displacement, livelihood loss, and energy access inequality could persist or worsen if transition policies are not strengthened (PCC, 2022; Baker et al., 2021; Huxham et al., 2023).

Community Testimonies Illustrating Key Gaps in South Africa's Rights-Based Just Transition

Table 1: Community Testimonies Illustrating Key Gaps in South Africa's Rights-Based Just Transition

	Gap	Illustrating Stakeholder Voice
1.	Weak legal and regulatory enforceability and fragmentation	"We win cases in court, yet licences are not cancelled, judges are too afraid to halt projects already underway, so justice never actually reaches our communities."
2.	Poor enforcement of Social and Labour Plans (SLPs)	"The Dingleton settlement collapsed because SLP promises are never monitored, we see no development, just paper commitments that companies easily escape."
3.	Participation, transparency, and access to remedy deficits	"I've spent three years trying to get basic documents from a state office, while women in our villages are arrested and children are shot at, yet we're told this transition is participatory."
4.	Misaligned sequencing: 'phase-down' without 'phase-in'	"They refuse to stop destructive projects because they've 'already created jobs', but there's no plan for how we'll actually survive once our land and water are gone."
5.	Environmental trade-offs and resource pressures	"Renewable projects are pushed onto our land without proper safeguards. We want to say 'No', but our rights are too weak and our voices ignored."

DEEP-DIVE INTO CLIMATE CHANGE ACT IN OPERATIONALIZING JUST TRANSITION

Key Provisions in the Climate Change Act

The Climate Change Act of 2024 embeds a rights-based just transition into its core objectives and principles, aligning climate action with sustainable development and constitutional environmental rights. It establishes statutory structures such as the Presidential Climate Commission (PCC) to advise on socio-economic matters and report publicly, alongside provincial and municipal climate forums that integrate local plans into municipal IDPs. National planning tools, including greenhouse gas trajectories, sectoral targets, carbon budgets and phase-out measures create measurable obligations that are subject to judicial review. The Act also mandates adaptation planning, a finance mechanism for climate actions, as well as provisions for broader public participation, consultation and access to information, thereby fostering transparency and civic oversight.

Main Limitations and Gaps

Despite its progressive framing, the Act relies heavily on delegated rule-making, leaving crucial operational details such as carbon budgets and financing rules to Ministerial discretion. This undermines predictability, transparency, and accountability in climate governance. Such concentration of power risks political interference, weakens public oversight, and may lead to inconsistent or short-term decisions that fail to secure the long-term, rights-based outcomes central to a just transition. The PCC's advisory role lacks enforcement power, while social safeguards remain principle-based without practical and enforceable entitlements for retraining, social protection, or community benefits. Participation rights are provided for within the framework but lack dedicated remedies for human rights defenders. Further, there is no explicit protection against SLAPP suits, intimidation or any suppressive conduct by the state or private actors.

Strategic Litigation Opportunities

The Act creates multiple litigation pathways, including compelling the Minister to issue delayed regulations (Ch. 5, Ch. 6) or challenging weak or procedurally flawed targets through judicial review grounded in constitutionally-entrenched environmental rights (s. 24, Constitution). Public participation provisions (ss. 31–34) allow challenges to decisions taken without adequate consultation or transparency, while PCC reports (s. 15) can be used as evidence to demonstrate state inaction. Other avenues include contesting finance mechanism designs that lack community safeguards (s. 18), pursuing constitutional claims when transition decisions infringe on socio-economic rights, and leveraging corporate accountability provisions to pursue both domestic and transnational claims where enforcement is inadequate.

Practical Recommendations for Litigation and Advocacy

Litigation strategies should prioritise compelling missing regulations, especially for the finance mechanism and carbon budgets, forcing meaningful re-consultation, and challenging inadequate targets that undermine socio-economic rights. Building robust evidence from PCC reports, environmental and social impact assessments, and Just Energy Transition Investment Plan (JET-IP) data is essential. A coalition approach involving civil society organisations, trade unions, communities, and the South African Human Rights Commission can strengthen both legal and political pressure. Protecting rights defenders should be integral, using court orders for anonymity and anti-SLAPP protections where possible. Finally, integrating administrative and constitutional remedies, starting with access-to-information requests before escalating to constitutional litigation, can ensure progressive, enforceable implementation of the Act's just transition principles.

BOX 4: Case Study 1 (Kenya).

Lake Turkana Wind Power Project: Strategic Litigation to Uphold Land Rights in the Renewable Energy Transition

The Lake Turkana Wind Power Project in northern Kenya, Africa's largest wind energy installation, became a landmark test of rights-based just transition after the Environment and Land Court ruled in 2021 that the 150,000-acre land acquisition underpinning the project was illegal, unconstitutional, and procedurally defective (Environment and Land Court, 2014, 2016). Although promoted by the Kenyan government and private investors as vital for delivering clean, affordable energy and socio-economic benefits, pastoralist communities filed suit claiming that the 99-year lease violated their customary land and human rights due to lack of meaningful consultation and free, prior, and informed consent (Cormack & Kurewa, 2018). The court held that public-interest arguments, including expected economic and social gains, do not justify overriding constitutional requirements for trust-land allocation or procedural safeguards (Environment and Land Court, 2014). It further emphasized that even a company's legitimate expectation that government had complied with regulations cannot excuse unlawful expropriation of community land (Government of Kenya, 2007).

BOX 5: Case Study 2 (Zambia).

Lungowe v Vedanta: Transnational Corporate Liability for Environmental Harm in Just Transition Contexts

In a landmark case highlighting the role of transnational litigation in advancing rights-based just transitions, 1,826 Zambian villagers sued UK-based Vedanta Resources in 2015 over pollution from its subsidiary, Konkola Copper Mines, which they argued had contaminated waterways and destroyed farming and fishing livelihoods (Lungowe v Vedanta Resources Plc, 2017). The claim alleged that toxic effluent from the Nchanga Copper Mine caused severe environmental damage and health problems in communities such as Shimulala, Kakosa, Hippo Pool and Hellen. In 2019, the UK Supreme Court ruled that the lawsuit could proceed in English courts, holding that Vedanta, as a parent company, arguably owed a legal duty of care to affected communities in Zambia. This decision marked a significant step in parent-company accountability for environmental harms committed abroad. The case concluded in 2021 with a settlement, signalling the strategic importance of litigation in enforcing corporate responsibility for climate and social justice impacts.

BOX 6: Key International Court Rulings In Line With State Obligations Relate To Just Transitions

States are legally obligated to strengthen just transition measures and ensure corporate accountability in addressing climate change. The Inter-American Court of Human Rights recently recognized an autonomous human right to a healthy climate derived from the right to a healthy environment, affirming that states have duties to respect, ensure, and cooperate in preventing climate harm, explicitly including the regulation and remediation of corporate activities that threaten climate stability (Gibson Dunn, 2025; Yale Climate Connections, 2025). Similarly, the International Court of Justice's landmark advisory opinion of July 23, 2025, affirmed that states have binding legal obligations under treaty and customary international law to protect the climate system from harmful emissions, including through regulation of private sector actors. The Court further held that failure to act could constitute an internationally wrongful act, potentially triggering liability for reparations (DLA Piper, 2025; The Guardian, 2025). These rulings collectively establish that climate inaction, by either governments or corporations under their jurisdiction, breaches international legal duties and undermines a just transition.

POLICY RECOMMENDATIONS

1. Operationalise and Strengthen the Legal Framework for a Rights-Based Just Transition

Urgently implement the Climate Change Act with binding social provisions, enforceable participation rights, and justiciable remedies.

- Regulations should impose duties on state agencies to coordinate Just Energy Transition (JET) planning.
- Parallel reforms should strengthen the Mineral and Petroleum Resources Development Act (MPRDA) and Social and Labour Plan (SLP) enforcement by requiring independent audits, public SLP registries, community sign-offs, and sanctions for non-compliance.
- 2. Embed Human Rights Safeguards in Energy Transition Laws and Policies**
States must integrate human rights protection into all just transition frameworks across energy, climate, biodiversity, trade, extractives, environmental, and investment policies.
- These frameworks should uphold the rights of workers, communities, and vulnerable groups while ensuring coherence between domestic and international obligations under the Paris Agreement and the Sustainable Development Goals.
- 3. Tie Financing to Social and Environmental Conditions**
JET financing, whether from national or international sources, must be conditional on published community benefit agreements, grievance mechanisms, independent monitoring, and transparent disbursement.
- Section 18 of the Climate Change Act's finance mechanism should be operationalised to prioritise community resilience, worker protection, and equitable benefits, avoiding concentration of funds in large-scale corporate projects.
- 4. Institutionalise Oversight, Transparency, and Public Participation**
Establish a public JET transparency portal to host Environmental and Social Impact Assessment (ESIA) documents, SLP status reports, JET fund disbursements, and procurement/contracts.
- Strengthen the oversight role of the Presidential Climate Commission, the South African Human Rights Commission (SAHRC), and NEDLAC by granting them authority to monitor and, where necessary, trigger remedial action.
- 5. Guarantee Social Protection Packages for Affected Workers and Communities**
Mandate just transition social safety nets, including guaranteed retraining, unemployment insurance top-ups, local procurement quotas, and localisation commitments in new industries.
- These measures should be codified in law and linked to project approvals to ensure no one is left behind.
- 6. Standardise and Strengthen Environmental Safeguards**
Require cumulative water-use and biodiversity impact assessments for renewable energy and other transition projects, with no-net-loss or ecosystem restoration obligations where feasible.
- Integrate traditional and indigenous knowledge into risk assessments, mitigation design, and monitoring processes.
- 7. Expand Access to Justice and Litigation Support**
Create a Strategic Litigation Support Fund to resource legal aid, paralegal networks, technical experts, and public interest cases.
- Remove legislative, institutional, and procedural barriers that limit community access to remedies, and enact protections against Strategic Lawsuits Against Public Participation (SLAPPs) to safeguard defenders.
- 8. Align Litigation with Economic and Social Planning**
Adopt litigation strategies that compel missing regulations, challenge inadequate targets, and enforce participation obligations, while mapping legal actions to phased economic transition plans to minimise disruption.
- Use multi-jurisdictional approaches to hold parent companies and financiers accountable where domestic enforcement is weak.
- 9. Promote Continuous Learning, Monitoring, and Accountability**
Encourage NHRIs, civil society, and media to expand research and reporting on just transition litigation in Africa, sharing lessons across jurisdictions.
- Use PCC reports, ESIA data, and JET implementation records as evidence in both litigation and advocacy to close policy gaps and strengthen state and corporate accountability.

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