African Journal of
Climate Law
and Justice
(AJCLJ) 2026

OA Bello 'Law, labour, and the limits of justice: Reimagining the normative foundations of just transition in Africa's energy future' (2026) 1
African Journal of Climate Law and Justice 76-104
https://doi.org/10.29053/ajclj.v3i1.0005

Law, labour, and the limits of justice: Reimagining the normative foundations of just transition in Africa's energy future

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Abstract: Across Africa, the global demand for energy transition has intensified the debate around who will shoulder the cost of decarbonisation and who stands to benefit from clean energy investment. Workers and communities in fossil fuel-dependent economies are under strain from three different directions: declining sectors, rising costs of energy, and lack of social security systems. However, the international and regional legal frameworks aimed to protect them remain fundamentally aspirational. This article thus argues that current just transition frameworks suffer from 'procedural drift'. Drawing on doctrinal legal analysis, political economy critique and comparative case studies of Nigeria and South Africa, the article examines whether the current international, regional and domestic frameworks can deliver substantive labour justice to African workers and communities. It demonstrates that each framework fails, in distinct but related ways, to operationalise one or more of these dimensions for labour markets characterised by informality, fiscal constraint and limited social protection infrastructure. The article concludes that achieving labour justice in Africa's energy transition requires not better implementation of existing norms but a fundamental reconstitution of legal instruments toward substantive redistribution and accountability.

Key words: energy; just transition; labour justice; procedural drift

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1 Introduction

Africa currently stands at a crossroads regarding the way in which to respond to the global energy transition. On the one hand, the international climate regime calls for a progressive decarbonisation process involving the elimination of fossil fuels and the fast-paced investment in renewable energy sources. On the other hand, the material realities of most African economies pose an inherently contradictory set of challenges. The most significant challenges include approximately 600 million people without access to electricity, oil and minerals that provide budgetary and livelihood revenues, and social protection that covers only part of the population. The just transition concept has been heralded as emerging purposely to bridge these pressures by promising that the energy shift will protect workers, create decent employment and distribute transition costs fairly.[1] This article asks whether the law has been equal to that promise. The answer to the question is that it has not, and this failure is not simply a matter of inadequate implementation. Instead, it is structural, embedded in the procedural orientation of the frameworks, while the Paris Agreement acknowledges the imperative of a just transition in its Preamble, but imposes no binding labour obligations.[2] The International Labour Organisation (ILO)'s 2015 Guidelines establish a comprehensive social dialogue framework, but cannot be enforced against states or employers.[3] The African Union (AU)'s Climate Change Strategy, for its part, articulates ambitious commitments to employment and social protection but contains no protocols for their delivery,[4] while the African Continental Free Trade Area (AfCFTA) creates institutional space for labour harmonisation, but has not yet produced enforceable labour standards.[5] As will be seen later, domestic climate legislation in Nigeria, South Africa and Kenya mandates consideration of a just transition without specifying the legal content of that consideration, its beneficiaries or its funding sources.

The result is what I refer to in this article as 'procedural drift': a pattern in which legal frameworks substitute participation processes, aspirational declarations and flexible commitments for enforceable obligations, thereby enabling formal compliance without substantive protection. It must be stressed that procedural

1 On this, see African Development Bank African Economic Outlook 2022 (AfDB 2022) 51-52; IEA Africa Energy Outlook 2022 (International Energy Agency 2022) 15; WHO 'Burning opportunity: Clean household energy for health, sustainable development and wellbeing of women and children (World Health Organisation 2016).

2 Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) TIAS No 16-1104 (Paris Agreement) Preamble, 12th recital.

3 International Labour Organisation (ILO) Guidelines for a Just Transition Towards Environmentally Sustainable Economies and Societies for All (2015) (ILO Just Transition Guidelines) paras 12-18.

4 African Union Climate Change and Resilient Development Strategy and Action Plan 2022-–2032 (2022) (AU Climate Strategy) paras 45-52.

5 Agreement Establishing the African Continental Free Trade Area (adopted 21 March 2018, entered into force 30 May 2019) 58 ILM 1024 (AfCFTA) art 3(e); on this view, see STM Makore 'Examining the role of the African Continental Free Trade Agreement in advancing labour standards' (2025) 37 *South African Mercantile Law Journal* 21-47.

drift is not a random outcome. Rather, it reflects the political economy of international climate negotiations, where labour protections were subordinated to the imperative of securing broad state participation. It also demonstrates the structural constraints on African governance, where fiscal limitations, debt burdens and the structural power of transnational capital limit what domestic legislation can realistically deliver. It is therefore argued that overcoming procedural drift requires a different understanding of what labour justice demands in the African context. Labour justice, as defined here, is not satisfied by participatory mechanisms alone. It requires enforceable redistribution: of climate finance, technological capability, and decision-making authority. The mechanisms for such redistribution of resources exist or can be developed using the available doctrinal materials of international human rights instruments, trade instruments and domestic constitutional law. However, the task is to identify such mechanisms, define their legal content and explain how they can be implemented in the two case studies considered in this article: Nigeria and South Africa.

Existing literature has examined national transition plans, environmental justice failures and structural vulnerabilities within global value chains, but has insufficiently translated these analyses into enforceable legal prescriptions.[6] The article, therefore, examines how international climate law, African regional human rights and trade instruments, and domestic climate and labour laws interact with extractive sector governance and Africa's position within global transition value chains. It asks whether existing legal frameworks can deliver substantive labour justice, what analytical framework best explains the distributional conflicts embedded in those value chains, and which legal mechanisms can operationalise enforceable labour protection within international, regional and domestic law. These questions are examined against historically produced vulnerabilities that continue to shape African state capacity and the continent's position within the global order.[7]

Methodologically, the article combines doctrinal and comparative case study analyses. It distinguishes binding legal obligations from non-binding guidelines

6 See SM Patrick and others 'Just energy transition from coal in South Africa: A scoping review' (2025) 112 *Environmental Science and Policy* 103660; V Ibezim-Ohaeri 'Struggles for a just energy transition in Nigeria's Niger Delta: Just for whom?' (2025) 56 *IDS Bulletin* 1; GA Agbaitoro & EO Ekhator 'Just energy transition in Africa: Towards social inclusion and environmental rights-based imperatives' (2025) 10 *Business and Human Rights Journal* 34; O Abe '(Re)examining the intersection between energy justice and just transition in Africa' (2024) 42 *Journal of Energy and Natural Resources Law* 351; P Behuria 'The injustice of just transitions: How the neglect of the green division of labour cements African dependencies (2025) 122 *Energy Research and Social Science* 104007; H Ayazi 'African just transitions' (2023) Othering and Belonging Institute Report.

7 T Mkandawire 'Thinking about developmental states in Africa' (2001) 25 *Cambridge Journal of Economics* 289, 295. Also see A Faus Onbargi & D Malerba 'Surveying just transition pathways in global climate policy' (2026) 26 *Climate Policy* 145; L Rajamani 'The 2015 Paris Agreement: Interplay between hard, soft and non-obligations' (2016) 28 *Journal of Environmental Law* 337; A Quijano 'Coloniality of power, eurocentrism, and Latin America' (2000) 15 *Nepantla: Views from South* 533; W Mignolo *The darker side of Western modernity: Global futures, decolonial options* (2011) 89-156.

and political commitments, while locating legal frameworks within the material conditions of commodity dependence, capital flows, debt and regulatory capacity.[8] Nigeria and South Africa serve as the primary comparative cases because they represent distinct configurations of fossil fuel dependence and labour structures, while Kenya and the Democratic Republic of the Congo (DRC) illustrate specific issues related to mineral governance, renewable energy investment and green hydrogen.[9] The analysis is informed by critical legal theory, particularly the distinction between procedural fairness and substantive outcomes.[10] The article, therefore, proceeds by developing its conceptual framework and the idea of procedural drift, examining international and African legal frameworks and the structural conditions of African energy economies, analysing the Nigerian and South African cases, and proposing reforms centred upon enforceable social protection, transition finance, technology transfer and accountability.

2 Conceptualising just transition, labour justice and procedural drift

The concept of just transition originated in the North American labour movement, not in climate policy. Tony Mazzocchi of the Oil, Chemical and Atomic Workers Union, first articulated it in the early 1990s as a demand that the costs of environmental remediation fall upon capital and the state rather than displaced workers.[11] This original formulation was explicitly redistributive: Workers should not pay for environmental progress they did not cause. The concept, according to Stevis and Felli, was introduced into international labour law through climate advocacy efforts by the International Trade Union Confederation, which eventually influenced the 2015 ILO Guidelines.[12] Concurrently, climate justice arose in response to criticism of the United Nations Framework Convention on Climate Change (UNFCCC) market-based mechanisms, grounded in arguments concerning intergenerational equality and the idea of proportionate mitigation costs in accordance with responsibility for emissions.[13]

The merging of these two streams, however, has produced several productive tensions. While labour justice addresses issues related to collective bargaining, occupational safety and social protection, climate justice involves a perspective on historical responsibility, the differential capabilities and vulnerabilities of

8 See B Fine and Z Rustomjee *The political economy of South Africa: From minerals energy complex to industrialisation* (1996) 12.
9 AL George & A Bennett *Case studies and theory development in the social sciences* (2005) 21.
10 A Love 'A just energy transition through the lens of Third World Approaches to International Law' (2023) 21 *Opole Studies in Administration and Law* 11.
11 T Mazzocchi 'An answer to the jobs-environment conflict?' (September 1993), cited in J Mijin Cha *A just transition for all: Workers and communities for a carbon-free future* (MIT Press 2024) 25.
12 D Stevis & R Felli 'Global labour unions and just transition to a green economy' (2015) 111 *International Environmental Agreements* 29; ILO Just Transition Guidelines (n 3) para 8.
13 H Bulkeley & P Newell *Governing climate change* (2015) 89-112; also see C Okereke 'Climate justice and the international regime' (2010) 1 *WIREs Climate Change* 462.

stakeholders, and the vulnerability of specific population groups.[14] There is also a profound contradiction since, according to Kara, the assumptions of labour law regarding employment and territorially limited regulation hardly reconcile with the perspective of climate justice that emphasises supply chains and the atmospheric commons.[15]

This tension is resolved in practice by subordinating the redistributive content of just transition to a manageable process. For this, Stevis and Felli trace the concept's migration from radical redistribution to policy discourse,[16] a trajectory that Newell and Mulvaney describe as the emergence of just transition as a 'managerial technique for smoothing the political economy of decarbonisation'.[17] As the concept has been institutionalised in international frameworks, I argue that although its emancipatory vocabulary has been retained, its structural demands have been progressively diluted. While the ILO Guidelines centralise social dialogue and decent work, the Paris Agreement recognises the need for a just transition. However, neither of these instruments provides clarity on who owes what to whom, on funding or on the enforcement of these obligations.

In Africa, where most of the energy and extractive industry work force is involved in artisanal mining, informal fuel trading or agricultural processing rather than formal industrial employment, this dilution has profound ramifications.[18] This is because the conceptual categories of just transition, shaped by the experience of Northern industrial economies, do not map onto African labour markets. Drawing on Chen, they assume the existence of a workforce to be 'transitioned' in formal industrial sectors, of social protection systems to be extended, and of tripartite institutions capable of negotiating terms.[19] The consequence is that where these conditions do not exist, the concept floats free of material grounding.

2.1 Labour justice as a substantive claim: A definition

In this article, I reconceptualise 'labour justice' by drawing on the international climate regime's Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) principle. The principle recognises that developed states bear greater responsibility for historical emissions and, therefore, should bear greater transition costs.[20] This also draws on Fraser's distinction between

14 On this tension, see X Wang & K Lo 'Just transition: A conceptual review' (2021) 82 *Energy Research & Social Science* 102291.
15 See, generally, S Kara *Cobalt red: How the blood of the Congo powers our lives* (2023).
16 Stevis & Felli (n 12).
17 P Newell & D Mulvaney 'The political economy of the just transition' (2013) 179 *The Geographical Journal* 132.
18 See US Department of Labour *Forced labor in cobalt mining in the Democratic Republic of the Congo* (DOL Report 2024).
19 MA Chen 'The informal economy: Definitions, theories and policies' (WIEGO Working Paper 1, 2012).
20 See for commentary D Shapovalova 'In defence of the principle of common but differentiated responsibilities and respective capabilities' in B Mayer & A Zahar (eds) *Debating climate law* (2021) 63-75.

recognition and redistribution,[21] Rawls's difference principle, insofar as it requires that inequalities benefit the worst-off.[22] From these, 'labour justice' can be understood as the equitable distribution of the costs and benefits of the energy transition across workers and communities, and as operating across three interconnected dimensions. The first, financial redistribution, should ensure that workers and communities affected by the transition receive income support, social protection and community investment. This should be funded through enforceable obligations on states, employers and international climate finance institutions, rather than by voluntary pledges subject to fiscal volatility.[23] The second, technological redistribution, requires investment in transition to generate skilled employment in African economies. This is achievable through local content requirements, technology transfer obligations and beneficiation mandates, rather than importing technology that bypasses domestic labour markets.[24] The third, decision-making redistribution, should see workers and communities exercising binding authority over transition decisions that affect their livelihoods, through participation mechanisms that go beyond tripartite consultation to include legally enforceable co-governance rights.[25] This definition departs from purely procedural accounts of just transition by insisting that participatory mechanisms, however well designed, cannot by themselves achieve the substantive redistribution that labour justice requires. It encompasses both formal and informal workers and communities whose livelihoods depend on energy economies without direct employment in them. This extension beyond formal employment is essential for Africa, where informal workers, as we shall see, comprise the majority of those affected by transition and are categorically excluded from the legal protections that just transition frameworks presuppose.

2.2 Procedural drift: A diagnostic concept

The concept of 'procedural drift' is adopted to describe systematic patterns observable across international, regional and domestic just transition frameworks. Here, legal instruments substitute participation processes, aspirational declarations and flexible commitments for enforceable obligations.[26] It does not simply describe weak implementation; rather, it describes a structural characteristic of legal design in which frameworks are deliberately or effectively constructed to enable formal compliance without substantive

21 N Fraser 'From redistribution to recognition? Dilemmas of justice in a post-socialist age' in A Phillips (ed) *Feminism and politics: Oxford readings in feminism* (1998) 430.
22 J Rawls *A theory of justice* (1971), on the difference principle.
23 ILO Just Transition Guidelines (n 3).
24 UNCTAD 'Trade and Development Report 2023: Growth, debt and climate – Realigning the global financial architecture (United Nations Conference on Trade and Development 2023).
25 On this, see DJ Doorey *The law of work: Common law and the regulation of work* (2016) 2-8; K Alsos & SC Trygstad 'Do participation structures affect workers' voice?' (2023) 44 *Economic and Industrial Democracy* 410-431.
26 This view draws on the 'due process' principle; see JL Mashaw *Due process in the administrative state* (1985).

protection in Africa.[27] Procedural drift manifests in five recurring features: first, obligation language that mandates consideration of labour interests without specifying outcomes. Here, frameworks require states to 'take into account' or 'consider' just transition without prescribing what a compliant outcome looks like.[28] Second, it manifests as process rights without substantive entitlements: Frameworks create consultation rights for workers without guaranteeing that the outcomes of consultation bind decision makers. Third, it highlights aspirational finance without quantified obligations: Frameworks acknowledge the need for finance but do not specify minimum flows, funding sources or enforcement mechanisms.[29] Fourth, it shows in flexibility clauses that delegate substantive content to states with vastly unequal capacity to deliver. In this context, the Paris Agreement's nationally determined contribution architecture is the clearest example,[30] and the same pattern appears in AU strategies and domestic climate plans. Fifth, it highlights the absence of individual or collective enforcement rights: Frameworks lack mechanisms through which workers or communities can seek binding remedies when transition commitments are not honoured.[31]

2.3 Global governance hierarchies and transition costs

Within the current global just transition framework, African states occupy a structurally disadvantaged position. As Dunlap and Jakobsen, and Sovacool and others, have observed, current regimes of green extractivism simultaneously require African states to abandon fossil fuel revenues and intensify the extraction of cobalt, lithium and copper, which are essential for renewable technologies.[32] However, this portends a shift toward new forms of resource dependence rather than developmental transformation.[33] Reports from the Organisation for Economic Co-operation and Development (OECD)/AU and the United Nations Conference on Trade and Development (UNCTAD) also confirm that this pattern reproduces historical forms of peripheral specialisation, in which African labour supplies primary commodities for metropolitan energy transitions while remaining excluded from value-added manufacturing.[34]

27 Here I mean it is both weak and fragmented; see M Koskenniemi *From apology to utopia: The structure of international legal argument* (2005).
28 ILO (n 3).
29 S-A Robinson & M Dornan 'International financing for climate change adaptation in developing countries' (2017) 17 *Regional Environmental Change* 1103-1115.
30 D Bodansky 'The legal character of the Paris Agreement' (2016) 25 *Review of European, Comparative & International Environmental Law* 142-150.
31 Stevis & Felli (n 12).
32 A Dunlap & J Jakobsen *The violent technologies of extraction: Political ecology, critical agrarian studies and the capitalist worldeater* (2020); B Sovacool and others 'Sustainable minerals and metals for a low-carbon future' (2020) 367 *Science* 30.
33 As above.
34 UNCTAD 'Economic Development in Africa Report 2024: Unlocking Africa's trade potential' (United Nations Conference on Trade and Development 2024); OECD/African Union Commission 'Africa's Development Dynamics 2024: Skills for Africa's productive transformation' (OECD 2024).

However, the European Union (EU)'s Carbon Border Adjustment Mechanism and Corporate Sustainability Due Diligence Directive illustrate this hierarchy directly. Both instruments impose labour and environmental standards on imports that, in practice, are more protective of European workers and consumers than of the African producers they regulate.[35] Transition mineral mining in the DRC and Zambia, as documented by Amnesty International and Kara, occurs under conditions of informal labour, hazardous environments, and suppression of collective bargaining that would be legally intolerable in the jurisdictions where the minerals are in high demand.[36] The result is jurisdictional arbitrage, in which Western economies acquire the environmental benefits of transition while externalising labour and ecological costs onto African peripheries. The creation of the AfCFTA may offer a partial corrective, as discussed later in this article. However, the challenge identified by Asafu-Adjaye remains that justice requires not merely the application of universal labour standards, but a restructuring of global value chains that currently make African labour expendable for metropolitan decarbonisation.[37]

3 International legal framework and its limits

This part critically evaluates the ILO Guidelines in the context of the reference to just transition under the Paris Agreement. From an operational perspective, although they signify genuine progress in recognising labour interests within climate governance, the instruments embody assumptions about state capacity, labour market structure and legal enforceability that fundamentally misalign with African realities.[38]

3.1 The Paris Agreement and just transition

The Paris Agreement represents the most significant instrument of the international climate regime, which makes its treatment of just transition merit careful doctrinal attention. The Agreement's just transition language lies in the Preamble, acknowledging 'the need to take into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities'.[39] This formulation is significant as an acknowledgment; however, it lacks binding legal force. This is

35 Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] OJ L 130/52; Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence [2024] OJ L 1760.

36 Amnesty International 'Powering change or business as usual? Forced evictions at industrial cobalt and copper mines in the Democratic Republic of the Congo (Amnesty International 2023); Kara (n 15) 89-156.

37 P Asafu-Adjaye 'Labour provisions for the African Continental Free Trade Area: Some policy options' (2025) 1 *LRS Policy Brief* 2.

38 See KW Mohammed 'Political economy, marginalisation, and human security: Just energy transition in Africa' (2026) 184 *Energy Policy* 113892.

39 Paris Agreement (n 2) Preamble, 12th recital.

because the preambular language in international conventions provides context but does not create obligations, unlike operative articles. Article 2 is commonly mistaken for the just transition article. However, it sets out the Agreement's principal objectives, including limiting global temperature rise to 'well below 2°C above pre-industrial levels' and pursuing efforts to limit the temperature increase to '1.5°C above pre-industrial levels'. It also highlights the adaptive capacity goal and seeks to promote financial flows aligned with a pathway to low greenhouse gas emissions. Paragraph 2 also provides for the principle of equity and the common but differentiated responsibilities of the states.[40] These provisions are foundational for understanding the Agreement's approach to differentiated obligations, but do not impose specific just transition requirements. The relevant national obligations regarding just transition, insofar as they arise under the Agreement, flow from the nationally determined contribution (NDC) architecture of articles 4 and 7, which require states to communicate and progressively strengthen their climate plans but leave substantive content to national determination.[41] This procedural orientation is not accidental. As Rajamani demonstrates, the deliberate use of flexible language in the Paris Agreement reflects the political economy of its negotiation, where broader state participation required abandoning binding emissions targets.[42] Labour protections were subordinated to the same imperative. The result, as Kilimcioğlu observes in the context of South Africa's Just Energy Transition Partnerships (JETP), is a framework that prioritises procedural justice, ensuring that just transition commitments are made and communicated, without guaranteeing substantive outcomes.[43]

For African states, the procedural flexibility of the Paris Agreement's architecture proves to be a double-edged sword. While it formally respects developmental sovereignty, it delegates the substantive content of just transition to states with profoundly unequal capacity to deliver. The NDC architecture assumes that states can symmetrically assess employment impacts, design social protection systems and manage workforce transitions. These assumptions, as Amani demonstrates, ignore how structural adjustment programmes and debt burdens have systematically eroded African regulatory capacity over decades.[44] The Agreement's transparency framework, comprising the global stocktake and the enhanced transparency framework under articles 13 and 14, contains no social indicators for labour market outcomes or social protection coverage.[45] This renders African workers' welfare invisible within the regime's accountability structures.

40 Paris Agreement (n 2) arts 2(1)(a)-(c), 2(2).
41 For commentary on these provisions, see Bodansky (n 30); and World Resources Institute 'Article 2.1(c) of the Paris Agreement, explained' (WRI 2023).
42 Rajamani (n 7).
43 B Kilimcioğlu 'Procedural justice and due process principle in the context of just energy transition: Learning from South Africa' (2025) 102 *Business and Human Rights Journal* 215.
44 K Amani 'How the structural adjustment era continues to shape urban Africa's energy future' (Social Science Research Council 2025).
45 Paris Agreement (n 2) arts 13-14; Bodansky (n 30).

3.2 The ILO Guidelines for a Just Transition: Contested significance

The ILO Just Transition Guidelines, adopted in 2015 as a recommendation of the ILO governing body, are the most comprehensive attempt in international law to specify the content of labour protection within climate policy. They establish a tripartite model of social dialogue that centres on decent work, social protection floors and labour market policies as necessary accompaniments to the environmental transition. Their normative content integrates environmental sustainability into the ILO Decent Work Agenda,[46] thus theoretically grounding the notion of climate action within an existing body of labour rights, rather than market efficiency.

However, the Guidelines are recommendations, not conventions. They do not contain supervisory mechanisms and individual complaint procedures that give binding force to international labour standards. Their effectiveness thus depends entirely on domestic institutionalisation through social dialogue processes, in economies that frequently lack the tripartite structures the Guidelines assume. This assumes that autonomous trade unions with sectoral coverage, employer organisations capable of collective bargaining, and administrative state capacity to deliver social protection.[47] The ILO itself acknowledges that only 17 per cent of the unemployed in sub-Saharan Africa receive unemployment benefits, making the Guidelines' emphasis on social protection floors aspirational in most African contexts.[48]

Despite acknowledging that just transition will require capital-intensive retraining and income support programmes, the Guidelines are silent about the financing mechanisms through which states under fiscal constraint might meet these obligations.[49] This omission arguably, in effect, creates a normative framework that expresses what should be achieved without indicating how it will be funded. Therefore, for African states under debt distress, the gap between aspiration and capacity is not merely a technical problem, but a structural feature of the global financial architecture.

3.3 Comparative assessment: A normative mismatch?

In examining the Paris Agreement and ILO Guidelines together in African contexts, a systematic normative mismatch across five dimensions is evident. These dimensions are summarised in the comparative table presented in part

46 ILO Just Transition Guidelines (n 3) paras 8-14.
47 ILO 'Rules of the game: A brief introduction to International Labour standards' (2023); see also ILO Just Transition Guidelines (n 3), introductory section.
48 ILO 'World Social Protection Report 2020-2022: Social protection at the crossroads' (2021) 45.
49 ILO Just Transition Guidelines (n 3) paras 28-32; R Pollin & B Callaci 'The economics of just transition: A framework for supporting fossil fuel-dependent workers and communities in the United States' (2019) 58 *Labour Studies Journal* 135.

5, but warrant preliminary analysis here. First, both frameworks assume a linear process of energy transition from fossil fuel industrialism to renewable economies. This, for Brew-Hammond and others, mischaracterises African energy landscapes, in which increased energy access, management of residual fossil fuels and integration of renewables must occur simultaneously, in the absence of the historical precedent of universal electrification.[50] Second, they presuppose the existence of regulatory states capable of implementing policies of social protection and environmental regulation. However, governance in Africa is marked by the fragmentation of authority, predominance of the informal economy and the power of transnational corporations, which always exceeds regulatory capabilities. Third, both frameworks treat transition costs as primarily affecting formal industrial workforces in declining fossil fuel sectors, ignoring the informal populations, artisanal miners and fuel distribution workers who face transition impacts without institutional voice.[51] Fourth, both are silent on financing mechanisms adequate to African fiscal conditions, creating unfunded mandates that expose the gap between normative aspiration and material possibility. Lastly, neither framework creates individual or collective enforcement rights that workers or communities could invoke before domestic or international tribunals.[52]

The lived experience of these mismatches is documented in the contexts that appear repeatedly in this article. Coal miners in South Africa's Mpumalanga province take on transition commitments in presidential speeches and international partnership documents, yet face retrenchment without adequate social protection.[53] Artisanal cobalt miners in the DRC supply materials essential for global electric vehicle transitions under conditions of extreme precarity, entirely outside the coverage of either the Paris Agreement's mechanisms or the ILO's prescriptions. These are not implementation failures; they are the predictable outcomes of frameworks designed without regard for the structural conditions of African energy economies.

4 African energy economies and attendant fragilities

The configuration of African energy economies contradicts the underlying assumptions of international just transition frameworks. For example, in petroleum-exporting countries, including Nigeria, Angola and Algeria, rents

50 A Brew-Hammond, GS Mensah & O Amponsah 'Energy poverty in sub-Saharan Africa: Poverty amidst abundance' in A Halff, BK Sovacool & J Rozhon (eds) *Energy poverty: Global challenges and local solutions* (2014) 45.

51 See S Sassen *Expulsions: Brutality and complexity in the global economy* (2014); Abe (n 6) 351.

52 ILO World Employment and Social Outlook 2022: Informality and the Future of Work (2022).

53 E Nel & L Marais 'South Africa's sustainability transition: The case of the Mpumalanga Province and its coal-dependent communities' in M Halonen, M Albrecht & I Kuhmonen (eds) *Rescaling sustainability transitions* (2025) 247; Amnesty International (n 367); Kara (n 15).

from oil and gas production have traditionally supported state machinery and elite consumption, with little industrial development and limited universal energy access.[54] The petroleum sector in Nigeria employs only 0,1 per cent of the working population, while generating 60 per cent of budget revenues.[55] Such an economic structure produces a unique vulnerability. The population that will be affected by the energy transition is not the formal industrial workers who could be easily reskilled, but the informal population involved in the hydrocarbon supply chain, fuel distribution and the spending of the Petrodollar.

The problem of energy poverty adds another layer of vulnerability. The approximately 600 million Africans lacking access to electricity, a demographic particularly affected by the health risks of biomass cooking, are part of the transition not accounted for by any international framework.[56] Thus, for the transition to be just, it must be more than a shift from fossil fuels to renewables; it must also address the issue of energy poverty that millions of Africans have failed to resolve. This makes Africa's just transition qualitatively different from northern just transitions. It is not a transition from an abundance of fossil fuels to the sufficiency of renewables, but a simultaneous struggle to access energy, control extraction, and ensuring that the burden of the transition does not fall on populations who have never reaped the benefits of the modernity they are meant to leave behind.

4.1 Neoliberalism: Legacy, investment flows and labour market

Africa's just transition governance operates within an institutional landscape shaped by decades of neoliberal reforms. The International Monetary Fund (IMF)'s conditionalities imposed on states in the 1980s and 1990s destroyed public energy utilities, privatised state enterprises and weakened regulation on the continent.[57] The legacy of neoliberalism is also observable in the current climate finance architecture, where investments for a just transition pass through blended financing schemes and public-private partnerships, with the prioritisation of investors' gains over labour protection rights. Previous research analysing the experiences of South Africa and Nigeria[58] has already described this phenomenon in detail.

Investment flows into Africa's renewable energy sector show the same pattern. As Eberhard and Gratwick observe, solar and wind plants in Kenya provide

54 M Ross *The oil curse: How petroleum wealth shapes the development of nations* (2012) 45-78; J Ovadia *The petro-developmental state in Africa: Making oil work in Angola, Nigeria and the Gulf of Guinea* (2016).
55 NNPC Limited Disclosures 2022 (Nigerian National Petroleum Corporation 2023); CBN 2022 Annual Economic Report (Central Bank of Nigeria 2023).
56 IEA Africa Energy Outlook 2022 (n 1) 15; WHO (n 1).
57 On this, see R King *The neoliberalisation of heritage in Africa* (2025); Amani (n 44).
58 See the analysis in the cited prior scholarship, including on the South African JETP and the Nigerian Energy Transition Plan context.

employment mostly during the construction phase. However, they offer few permanent operational jobs and skills that are not available in the local labour market for technology-intensive positions.[59] Also, in Namibia and Mauritania, new projects in green hydrogen production promise industrial transformation but risk becoming another example of enclave economies characteristic of fossil fuel extractivism.[60] Indeed, the investment agreements in such ventures as power purchase agreements and the contracts signed by host states always favour financial and investor protection measures over those of labour. In this case, according to Mushemeza and Okiira, local content regulations are never stringent enough and can be side-stepped via sub-contractors.[61] This should not be considered purely a matter of policy preference, as the neoliberal legacy manifests in juridical infrastructure. It endures in the standard terms of energy contracts, the investment treaty architecture, and the conditionalities attached to climate finance, systematically constraining the space for labour-protective regulation. This structural constraint must be confronted directly by any legal reform framework.

4.2 Labour market dualism and the reinforcement of inequality

African labour law systems, with their colonial heritage and subsequent influence from post-independence developmentalism and neoliberal economic policies, exhibit a structural duality that transition governance threatens to widen. Arguably, this is why formal sectors with legal protections, as Cassim and others observe, coexist with vast informal economies excluded from regulatory coverage.[62] To this end, mining legislation has historically distinguished between industrial operations and artisanal mining, with the latter criminalised or marginalised despite employing significantly more labourers than formal extraction.[63] Consequently, as demand for cobalt, lithium and copper accelerates amid global growth in electric vehicle and battery manufacturing, this juridical distinction enables the systematic externalisation of labour costs. As documented in the DRC context by Amnesty International and Kara, formal operations maintain superficial compliance with international standards while relying on informal supply chains in which child labour, hazardous conditions and

59 A Eberhard & K Gratwick 'Independent power projects in sub-Saharan Africa: Lessons from five key countries' (World Bank 2011); D Ockwell & R Byrne 'Improving technology transfer through climate finance: Implications for theory and practice' (2016) 16 *Climate Policy* 4.

60 OECD 'Hyphen hydrogen energy ammonia – Namibia' (OECD Case Study 2024); S Bisping & F Loria *Green hydrogen in Namibia: Unequal partners? Risks and realities of German-Namibian hydrogen cooperation* (2025).

61 E Mushemeza & J Okiira 'Local content frameworks in the African oil and gas sector: Lessons from Angola and Chad' (2016) ACODE Policy Research Series 72; US Department of Labour (n 18).

62 A Cassim and others 'Informality and inclusive growth in sub-Saharan Africa: Evidence and lessons from Latin America' (2016) Working Paper 201602, DPRU, University of Cape Town.

63 J de Haan, K Dales & J McQuilken 'Mapping artisanal and small-scale mining to the Sustainable Development Goals' (2020) University of Delaware (Minerals, Materials and Society programme in partnership with PACT).

suppression of collective action prevail.[64] While the AU Mining Vision and domestic mining codes articulate local content and beneficiation commitments, implementation remains constrained by capacity limitations, regulatory capture and the structural power of transnational corporations, which threatens capital flight.[65]

The outcome is a juridical environment in which just transition commitments circulate as discursive resources for state and corporate legitimacy without substantively transforming labour conditions. This necessitates, as Ostřanský of the International Institute for Sustainable Development has argued in the roadmap for rethinking investment treaties, a fundamental restructuring of property relations and trade regimes that currently subject African workers to a subordinate position within the just transition process.[66]

4.3 Comparative case studies: Nigeria and South Africa

The translation of just transition norms into national legal frameworks reveals how political-economy contexts fundamentally shape the possibilities for labour justice. This part examines Nigeria and South Africa as contrasting cases that illuminate the variable geometry of transition governance across African energy economies.

4.3.1 Nigeria: Petro-dependency, transition planning and labour's peripherality

The position of Nigeria in global energy markets illustrates the contradictions that rentier fossil fuel economies face in the just transition. As Africa's largest oil producer, with hydrocarbon extraction generating approximately 90 per cent of foreign exchange earnings and 60 per cent of fiscal revenue,[67] Nigeria exemplifies the petro-dependency conundrum identified by Karl and others.[68] The petroleum sector directly employs less than 0,1 per cent of the formal workforce, but sustains a vast informal economy related to fuel distribution, artisanal refining and services.[69] This creates a distinctive challenge for the population deserving transition protection; it is dominated by an informal workforce whose

64 Amnesty International (n 37); Kara (n 15).
65 AU Africa Mining Vision (African Union 2009); T Ambe-Uva 'Whither the state? Mining codes and mineral resource governance in Africa' (2017) 51 *Canadian Journal of African Studies* 81.
66 J Ostřanský *Rethinking investment treaties: A roadmap* (International Institute for Sustainable Development 2024).
67 NNPC Limited (n 56); CBN (n 56).
68 See TL Karl *Oil-led development: Social, political, and economic consequences* (2007); TL Karl *The paradox of plenty: Oil booms and petro-states* (1997).
69 ILO Nigeria Decent Work Country Programme III (DWCP) 2023-2027 (2023) 34; M Watts 'Petro-violence: Community, extraction, and political ecology of a mythic commodity' in M Watts & N Peluso (eds) *Violent environments* (2001) 189.

dependence on hydrocarbon supply chains is invisible to standard just transition frameworks.

Nigeria's Energy Transition Plan, launched in 2022 with an ambitious net-zero target for 2060, exemplifies the limits of contemporary transition planning in this context. While the Plan acknowledges the necessity of a just transition and estimates investment requirements of approximately $10 billion per year,[70] its labour provisions remain underdeveloped and its implementation mechanisms largely undetermined. The Petroleum Industry Act 2021, which has comprehensively restructured Nigeria's oil governance through its provisions on fiscal terms and regulatory authority, however, makes minimal provisions for workforce transition in its local content sections.[71] To this extent, Nigeria's treatment of gas as a transition fuel, which the plan retains for the foreseeable future, can be argued to embed continued fossil fuel dependence, pending a structural economic transformation that the plan does not concretely schedule.[72]

Yet, the dimensions of energy poverty in Nigeria add further complexity. A plethora of evidence from the Niger Delta, the source of Nigeria's petroleum wealth, shows that, despite its proximity to power-generation infrastructure, most households lack access to the national electricity grid. It is also a region where decades of environmental degradation from extraction activities have accumulated.[73] The implication of these realities is that a transition that reduces petroleum operations without resolving the energy access deficit will impose costs on communities already marginalised by extractive processes without generating alternative employment. As Oyefusi and others have shown, Nigeria illustrates how petro-dependency without industrial employment creates a situation in which just transition discourse circulates without real labour protection, and the frameworks designed for industrial workforces encounter structural incompatibility with rentier economies.[74]

The implications of Nigeria's case for the labour justice dimensions are financial, technological and decision making. Financially, Nigeria's transition planning lacks enforceable social protection obligations, quantified funding commitments or a mechanism for converting fiscal revenues into transition support for informal

70 Sustainable Energy for All '*Nigeria Energy Transition and Investment Plan update* (November 2024) 7-10.

71 See Petroleum Industry Act 2021 (Nigeria), secs 4–6, sec 94 on local content.

72 IEA Africa Energy Outlook 2022 (n 1); also see G Owoeye and others 'The technical and policy challenges of renewable and sustainable energy transition in Nigeria' (2025) *NIPES Journal of Science and Technology Research* 1.

73 See OS Edobor & G Baffoe 'The paradox of poverty and resource wealth: Stakeholder perspectives on environmental degradation in Nigeria's Niger Delta' (2025) *Journal of Developing Societies* 546; JC Ebegbulem, D Ekpe & TO Adejumo 'Oil exploration and poverty in the Niger-Delta region of Nigeria' (2013) 4 *International Journal of Business and Social Science* 279.

74 A Oyefusi 'Oil and the probability of rebel participation among youths in the Niger Delta' (2008) 45 *Journal of Peace Research* 539; also see, for comparison, D Reay 'The uneven foundations of a just transition for workers: A UK perspective' (2024) 6 *Frontiers in Climate* 1498156.

workers. Technologically, the Petroleum Industry Act's local content provisions are weakly enforced and do not extend to the informal economy. In decision making, labour participation in transition planning remains consultative rather than binding, and the vast informal workforce dependent on petroleum supply chains has no institutional voice in transition governance.

4.3.2 South Africa: Coal dependence, labour and spatial inequality

South Africa presents a contrasting configuration where fossil fuel dependence has generated substantial formal employment and a powerful labour organisation, creating both the capacity for worker protection and distinctive obstacles to rapid decarbonisation. The country's electricity system remains approximately 80 per cent coal dependent, directly employing approximately 120 000 workers and sustaining perhaps ten times that number in dependent industries and communities.[75] Unlike Nigeria's enclave extractive system, South African coal mining has historically generated an embedded labour organisation through the National Union of Mine Workers,[76] creating institutional capacity for worker voice that is simultaneously a resource for and a constraint on transition governance.

South Africa's Just Energy Transition Partnership (JETP), announced at COP26 with an international commitment of $8,5 billion by France, Germany, the UK, USA and the EU, is the most notable effort to implement a just transition in Africa.[77] The Investment Plan of the Partnership aims to phase out coal in Mpumalanga province while protecting workers' rights and promoting economic diversification.[78] A critical examination, however, reveals important tensions. The $500 million allocated for social protection and job creation is insufficient for the approximately 100 000 workers facing direct retrenchment, and only approximately 4 per cent of the initial $8,5 billion commitment arrived as grants rather than loans. This raises significant concerns about the debt implications of transition finance for a state already under fiscal pressure.[79] Also, the Plan's emphasis on renewable energy and green hydrogen investments may generate fewer permanent jobs than the coal sector, while the skills requirements for

75 MJ Cole, E Canpolat & B Sijapati 'Profiling risk in South Africa's just transition: Who is left behind?' (2025) 129 *Energy Research and Social Science* 104351; I Todd & D McCauley 'Assessing policy barriers to the energy transition in South Africa' (2021) 158 *Energy Policy* 112529.

76 S Buhlungu & A Bezuidenhout 'Union solidarity under stress: The case of the National Union of Mineworkers' (2008) 33 *Labor Studies Journal* 262.

77 S Selvaraju and others 'Just Energy Transition Partnership grants and country platforms: Lessons from Indonesia and South Africa' (2025) Grantham Institute, London School of Economics, https://www.lse.ac.uk/granthaminstitute/publication/just-energy-transition-partnership-grants-and-country-platforms-lessons-from-indonesia-and-south-africa/ (accessed 22 March 2026).

78 As above.

79 Patrick and others (n 6); on the 4% grant figure, see M Aklin 'The political logic of just transition policies' (2025) 25 *Climate Policy* 319.

these industries risk excluding existing workforces without substantial retraining investment.[80]

The spatial inequality dimension of South Africa's labour dynamics compounds these challenges. For example, Mpumalanga's coal communities were established under apartheid as labour reserves with single-industry economies and limited diversification.[81] The legal framework governing this transition, including the Presidential Climate Commission's Just Transition Framework, the Climate Change Act 22 of 2024, and municipal planning instruments, struggles to address these spatial dimensions in line with constitutional commitments to socio-economic rights and spatial justice.[82] For these, a transition that fails to incorporate substantial spatial restructuring risks concentrating new investment in urban centres with superior infrastructure while abandoning coal-dependent communities to long-term unemployment. The South African case also demonstrates how formal labour organisation, while creating capacity for worker protection, simultaneously excludes informal workers in waste picking, informal mining, and service sectors who face transition impacts without institutional voice. As Swilling and others stress, the very formality that enables legal protection for mineworkers reproduces the categorical exclusion that the transition must overcome.[83]

Just as in the case of Nigeria, the implications for the labour justice dimensions in South Africa are financial, technological and decision making. Financially, JETP's structure prioritises loans over grants, creating debt burdens rather than redistributive finance, and the allocation for social protection is inadequate relative to the affected workforce. Technologically, the emphasis on renewable energy and green hydrogen investments risks skill-set displacement without corresponding transfer obligations. In decision making, the Presidential Climate Commission provides structured worker consultation but not binding co-governance authority over transition decisions.

The structural features that transcend the distinctive configurations of both countries emerge from the Nigeria-South Africa comparison. Both cases exhibit institutional fragility in the face of transition imperatives. In Nigeria, regulatory capacity is undermined by rentier state dynamics and fiscal volatility, while South Africa's institutions struggle with implementation gaps despite more developed

80 On this, see COSATU 'Submission to the Presidential Climate Commission on the Just Energy Transition Investment Plan (JET-IP)' (2023) Congress of South African Trade Unions; A Karg, J Gupta & Y Chen 'Just energy transition partnerships: An inclusive climate finance mechanism or a geopolitical tool?' (2025) 125 *Energy Research & Social Science* 104103.

81 See L Marais, E Nel & R Donaldson 'Secondary cities in South Africa: National settlement patterns and urban research' in L Marais, E Nel & R Donaldson (eds) *Secondary cities and development* (2016) 1.

82 Climate Change Act 22 of 2024 (South Africa) secs 15–19; Presidential Climate Commission Just Transition Framework for South Africa (2022).

83 M Swilling, JK Musango & J Wakeford 'Developmental states and sustainability transitions: Prospects of a just transition in South Africa' (2015) 5 *Journal of Environmental Policy & Planning* 1.

formal frameworks. Both cases also exhibit distributive blind spots shaped by the categories through which legal frameworks recognise labour. While Nigeria's transition planning focuses on fiscal stability, it neglects informal labour dependent on petroleum distribution, South Africa's planning addresses formal mine workers, but insufficiently attends to informal sector participants and spatially concentrated community impacts. These blind spots are not accidental omissions; they are echoes of social classes that have been marginalised in industrial modernity.

Most significantly, both cases reveal the difficulty of transitional justice due to uneven bargaining power among labour, capital and the state. In Nigeria, multinational oil corporations and state elites dominate energy governance while labour remains peripheral. In South Africa, unions possess substantial institutional power but are challenged by transnational climate finance conditionalities and investor demands that constrain the possibilities for worker-protective transition outcomes. Thus, legal frameworks in both jurisdictions, including petroleum legislation, Climate Change Acts and transition partnerships, prioritise investment security and fiscal stability over labour protection. This priority reflects the structural power of mobile capital relative to territorially fixed labour in ways that legal reform must directly address if transition justice is to be achieved.[84]

5 Regional and domestic legal frameworks: promises and gaps

This part examines AU's climate frameworks, the potential of AfCFTA, and the trajectory of domestic climate legislation to assess whether these instruments can go beyond the limitations of international frameworks. The analysis will demonstrate that while African instruments articulate distinctive priorities regarding energy access, development sovereignty and vulnerable populations, they remain fettered by implementation deficits, fiscal dependencies and the structural power of transnational capital. As we shall see, the result is a pattern of procedural drift where ambitious commitments circulate without operational force, particularly regarding labour market transformation.

5.1 The African Union climate architecture: Labour justice deficit

The AU has developed an elaborate climate governance architecture that positions the continent as an active agent in global transition rather than a passive recipient of international norms. The AU Climate Change and Resilient Development Strategy and Action Plan 2022-2032 sets out ambitious continental objectives prioritising African ownership of transition pathways and rejecting the false

84 UK Parliament Climate Finance for Equitable Transitions (CLiFT) Written Evidence on Just Energy Transition Partnerships (2024); Institute for Economic Justice 'A worker-centred framework for financing the just transition' (Institute for Economic Justice 2025).

choice between decarbonisation and industrial development.[85] The African Common Position on Energy Access and Just Energy Transition complements this by insisting on the primacy of universal energy access alongside transition imperatives, recognising that an estimated 600 million Africans lack electricity at a time the continent faces external pressure to abandon fossil fuel assets.[86]

However, the legal status of these instruments requires clarity. While the AU Climate Change Strategy is a policy strategy adopted by AU organs, it is not a binding treaty. Its obligations on member states are political rather than juridical because they are expected to align their national policies with its objectives, but face no legal consequences for non-compliance. The African Common Position is a political declaration adopted by the AU Executive Council. It carries moral and political weight in international negotiations and provides a legitimate basis for African states to resist internationally imposed transition timelines, but it creates no enforceable obligations on states or other actors.

A close examination of their substantive content confirms their limitations. Although the Strategy acknowledges the employment and labour justice implications of climate action and makes a passing reference to the ILO Guidelines, it contains no specific protocols for workforce transition, social protection, harmonisation or enforcement of labour rights across member states.[87] This also manifests in the Common Position, which emphasises financial flows and technology transfer, while treating labour impacts as derivative concerns.[88] This reflects a broader pattern in AU governance, where aspirational declarations precede institutional capacity to create normative frameworks that rely on member-state implementation, without any mechanism to ensure compliance.[89] The African Commission on Human and Peoples' Rights (African Commission) has now addressed these gaps through its Resolution 586 of 2024, which explicitly calls for scaled-up financial flows, protection of populations in vulnerable situations and consideration of just transition modalities. This Resolution is yet the most advanced articulation of just transition within African human rights law and draws on the broader jurisprudential development around the collective rights provisions in the African Charter on Human and Peoples' Rights (African Charter).[90] However, as Kah and Mbom observe, it remains a resolution, not

85 AU Climate Strategy (n 4) paras 12-28; African Union Agenda 2063: The Africa We Want (African Union 2015).

86 African Union Executive Council African Common Position on Energy Access and Just Energy Transition (Lusaka: 41st ordinary session, 15 July 2022) (African Common Position) para 14.

87 P Behuria 'The injustice of just transitions: How the neglect of the green division of labour cements African dependencies' (2025) 122 *Energy Research & Social Science* 104007.

88 African Union Executive Council (n 86) paras 3-4.

89 See C Nbazira 'Twenty years of redundancy, progression and significant strides: The African Commission on Human and Peoples' Rights and socio-economic rights' (2006) 6 *African Human Rights Law Journal* 358.

90 African Commission on Human and Peoples' Rights 'Resolution on the preparation of a General Comment on the right to development in Africa' ACHPR.Res.586 (LXXIX) 2024, para 6 (scaled-up financial flows) and para 9 (populations in vulnerable situations); see also 'Resolution on Climate Change and Human Rights in Africa' ACHPR/Res.342 (LVIII) 2016.

a binding decision, and the African Commission lacks jurisdictional reach to adjudicate individual labour disputes or enforce social protection standards.[91]

5.2 AfCFTA: Potentials and limits

AfCFTA represents one of the potential instruments to reshape Africa's place in the world of energy and labour governance.[92] For Yang and others, as the biggest free trade area given the number of participating countries, it could enable harmonisation of the regulation of energy, labour and climate change beyond the capabilities of individual states.[93] The Agreement's Protocol on Trade in Services and its emerging investment provisions also create institutional spaces where continental labour mobility and environmental standards could be developed in mutually reinforcing ways.[94] The potential for collective energy sovereignty through regional integration is particularly significant. AfCFTA's collective bargaining potential could be leveraged to establish coordinated positions on technology-transfer terms, climate-finance conditionalities and transition mineral-processing requirements. This could facilitate the replacement of fragmented national markets with a unified African negotiating position capable of resisting external conditionality. The AU Protocol on Free Movement of Persons, Right of Residence and Right of Establishment, ratified in 2022 and not yet in effect, offers additional possibilities for labour mobility to support cross-border workforce transitions amid the evolution of energy economies.[95]

However, it is important to clearly distinguish between these two instruments, as they are sometimes conflated. The Protocol on Free Movement of Persons, Right of Residence and Right of Establishment is an AU protocol separate from the AfCFTA, developed under the broader AU integration agenda. The AfCFTA itself addresses trade in goods, trade in services and investment, but does not include the free movement provisions of the separate AU protocol. Any analysis of labour mobility in the context of African energy transition must maintain this distinction. AfCFTA's specific provisions on labour matters remain limited. The Agreement contains minimal references to worker protection beyond general commitments to ILO standards, and labour standards were

91 HK Kah & JN Mbom 'Human rights in Africa and challenges of the African Commission on Human and Peoples' Rights (ACHPR)' (2024) 8 *International Journal of Research and Innovation in Social Science* 736.

92 AfCFTA (n 5); K Kuhlmann & AL Agutu 'The African Continental Free Trade Area: Toward a new legal model for trade and development' (2020) 51 *Georgetown Journal of International Law* 753.

93 X Yang and others 'Environmental policies and green technologies: Impacts on energy sustainability in the African continental free trade area' (2025) 238 *Renewable Energy* 121876.

94 AfCFTA (n 5); Protocol on Trade in Services; T Apiyo & PN Ngang 'Africa's energy potential under the African Continental Free Trade Area: Case study of East Africa' (2024) DOI: 10.1080/13673882.2024.12466428.

95 Protocol on Free Movement of Persons, Right of Residence, and Right of Establishment (adopted 2022, not yet in force); A Bisong 'Labour mobility as a key element of the AfCFTA: What role for the AU's free movement protocol?' (2022) ECDPM Briefing Note 148.

not central to AfCFTA negotiations.[96] The regulatory harmonisation required for substantive labour protection still lags well behind tariff negotiations in the implementation trajectory. Thus, without explicit labour protection protocols, the AfCFTA risks accelerating the race to the bottom in regulatory standards, undermining just transition objectives, as more industrialised economies capture value-added employment while less developed states remain confined to resource extraction.[97] The promise of energy sovereignty through regional integration thus remains contingent on political choices not yet reflected in the Agreement's legal architecture.

5.3 Domestic climate legislation: Aspirations versus operational impetus

Domestic climate legislation has evolved exponentially across Africa, with Nigeria, South Africa and Kenya, among the states that have incorporated comprehensive transition language into decarbornisation frameworks. An appraisal of their legal architecture reveals a recurring pattern of aspirational commitment without operational force. South Africa's Climate Change Act 2024 provides the most advanced example. The Act is a binding domestic statute. It imposes a legal obligation for climate action and requires consideration of socio-economic implications and just transition principles in sectoral response plans. It also establishes a Presidential Climate Commission with advisory responsibilities regarding just transition planning and requires climate change response strategies to address employment implications.[98] These provisions have entered into force, although the full commencement of the Act's regulatory mechanisms and some implementing regulations remain outstanding. However, while the Act's just transition provisions are notable for their breadth, they appear to share the characteristic weakness across the field. As Tamasiga observes, there is no specific enforcement mechanism for worker protection, no guaranteed funding streams for social protection, and no clear standards against which transition plans could be judicially reviewed by affected workers or communities.[99]

Nigeria's Climate Change Act 2021 is similarly a binding domestic statute that establishes a National Council on Climate Change, a carbon budget framework, and a requirement to mainstream climate considerations across sectoral policies.[100] However, the Act's provisions regarding labour protection remain underdeveloped. As Olujobi and Odogbo note, the National Council's mandate contains no mandatory labour consultation requirements, and the Act's social dimensions are subject to ministerial discretion without substantive

96 AfCFTA (n 5) art 3(e); Makore (n 5).
97 See P Tamasiga 'Workforce transition in South Africa's just energy transition: An analysis of needs, policy gaps and socioeconomic implications' (2025) Megatrends Afrika Policy Brief, German Institute of Sustainability and Development 3.
98 Climate Change Act 2024 (South Africa) secs 15-19.
99 Tamasiga (n 97) 5-6.
100 Climate Change Act 2021 (Nigeria) secs 4-6.

standards.[101] Kenya's Climate Change Act of 2016, amended in 2023, establishes county-level climate planning and an emerging carbon market framework, with increasing references to just transition in national action plans. The framework's principal focus is adaptation and mitigation, with employment impacts treated as secondary considerations.[102] However, this hierarchy of concern reflects the structure of international climate finance, which primarily funds mitigation and adaptation rather than labour protection.

5.4 Comparative assessment and outcomes

The analysis of international, regional and domestic instruments permits a comparative assessment of how each framework performs against the three dimensions of labour justice earlier discussed. Several patterns emerge from this comparison. First, across all instruments, financial redistribution is either absent or aspirational, with no instrument providing quantified, enforceable obligations on funding sources, minimum flows or individual entitlements. Second, technological redistribution is almost entirely unaddressed: No instrument imposes binding technology transfer obligations or local content standards with meaningful enforcement. Third, decision-making redistribution is universally limited to consultation processes as no instrument provides workers with binding co-governance rights or veto authority over transition decisions. Fourth, enforceability is mostly developed at the domestic level through judicial review, but the substantive standards against which domestic plans could be reviewed remain underdeveloped. The overall pattern is consistent with the concept of procedural drift: Frameworks proliferate and language develops, but the redistributive content necessary for substantive labour justice remains consistently absent. Table 1 below summarises this assessment.

101 OJ Olujobi & IS Odogbo 'Strategic evaluation of the 2021 Nigeria Climate Change Act: Surmounting challenges, paving the way for success, and envisioning future trajectories' (2024) 10 *Social Sciences & Humanities Open* 100928.

102 Climate Change Act 2016 (Kenya), as amended by the Climate Change (Amendment) Act 2023; Kenya National Climate Change Action Plan 2023-2027 ch 5.

Table 1: 'Just transition' instruments, legal status, and labour justice assessment

Instrument	Legal Status	Financial redistribution	Technological redistribution	Decision-making redistribution	Enforcement
Paris Agreement Preamble (just transition)	Binding treaty; Preamble language is non-obligatory	Acknow-ledged but unquantified	Not addressed	Nationally determined; no worker participation standard	Non-specific to labour
Paris Agreement Art 2 (equity/ CBDR-RC)	Binding treaty obligation	Contextual (finance flows in Art 2(1)(c))	Not addressed	State-level differen-tiation; no labour compo-nent	Facilitative only
ILO Guidelines 2015	Non-binding recommen-dation (soft law)	Social protection referenced; no funding mechanism	Training and retraining; no transfer obligation	Tripartite social dialogue recommen-ded	No enforcement mechanism
AU Climate Change Strategy 2022–2032	Policy strategy (non-binding)	Finance flows referenced; no quantified commitment	Technology transfer aspirational	Member state implemen-tation; no regional standard	No enforcement mechanism
African Common Position on Energy	Political declaration (non-binding)	Finance flows emphasised	Technology transfer requested	State-level; no labour participation standard	No legal force
ACHPR Resolution 586/2024	Human rights resolution (authori-tative non-binding)	Scaled-up flows called for	Not addressed	Vulnerable populations prioritised	Persuasive; no enforcement jurisdiction
AfCFTA (Agreement + Protocols)	Binding treaty; investment protocol binding	Minimal; no transition-specific provisions	Services protocol creates space; not operationa-lised	General ILO references; no specific labour standard	Dispute settlement; labour claims not covered

South Africa Climate Change Act 22/2024	Domestic statute (binding)	No guaranteed funding streams	Employ-ment implications to be considered	Consul-tation required; not binding on outcomes	Judicial review available; weak substantive standards
Nigeria Climate Change Act 2021	Domestic statute (binding)	No transition social protection fund	No local content obligation for transition	Ministerial discretion; no mandatory consultation	Judicial review in principle; ministerial discretion limits scope
Kenya Climate Change Act 2016/2023	Domestic statute (binding)	Not addressed	Skills development referenced	County planning required	Judicial review available

6 Recommendations and conclusion

The preceding analysis demonstrates the systematic failure of existing frameworks across the three dimensions of labour justice. This part proposes a legal reform framework designed to overcome procedural drift through specific, enforceable mechanisms. The framework does not propose a new international treaty, which would face obvious political obstacles, but works within and extends available doctrinal materials in existing legal regimes.

6.1 A decolonial and worker-centred approach

A decolonial critique of existing just transition frameworks identifies their embeddedness within developmental teleologies that position African economies as perpetually catching up to northern industrial modernity. As Zografos has argued, the dominant transition narrative assumes a linear evolution from fossil fuel extraction through industrial employment to post-industrial service economies.[103] This is a historical sequence that Amin demonstrated long ago to misrepresent African realities where most populations never experienced mass formal industrialisation.[104] African workers are being asked to transition from economies they have never fully inhabited into futures shaped by others' development priorities. A worker-centred governance framework requires a fundamental reorientation of legal subjectivity. Current instruments construct the worker as what Fraser calls 'an object of management', a category requiring retraining and social protection to facilitate macro-economic transformation.[105]

103 C Zografos 'The contradictions of Green New Deals: Green sacrifice and colonialism' (2022) 80 *Soundings* 37.
104 S Amin *Unequal development: An essay on the social formations of peripheral capitalism* tr B Pearce (1976).
105 Fraser (n 21); also see G Standing *The precariat: The new dangerous class* (2011).

The reconstituted framework proposed here constructs workers as agents of transition governance, with legally enforceable rights to participate in decisions affecting their livelihoods, to receive adequate social protection funded by identifiable sources, and to claim redress when transition commitments are not honoured. The African Charter provides the normative foundation for such rights through its emphasis on peoples' self-determination and economic development rights under articles 19 to 24.[106] Thus, jurisprudential development of these provisions in the transition context is required but not unprecedented.

The concept of free, prior and informed consent (FPIC), developed primarily for indigenous territorial rights under international instruments, provides a useful model for worker participation rights, although the legal framework differs. FPIC in the extractive industries addresses indigenous territorial sovereignty over land and natural resources; worker participation rights in the transition context address employment relations and workplace governance under labour law principles.[107] Where, as in many African contexts, communities have customary resource relationships that intersect with employment in extractive industries, hybrid consent mechanisms drawing on both frameworks may be appropriate. However, the doctrinal basis and the institutional forum differ: FPIC claims are adjudicated by human rights bodies, whereas worker co-governance rights are enforced by labour tribunals and industrial relations mechanisms. The proposed framework uses FPIC-like procedural standards, specifically meaningful consultation with binding outcomes, without conflating labour rights with indigenous rights.

6.2 From voluntary guidelines to enforceable social protection guarantees

To transform the just transition from a voluntary guideline to an enforceable guarantee, four components of specificity currently absent in the existing framework are required. The transformation of the just transition from voluntary guidelines to binding guarantees requires four elements of specificity that are currently lacking in frameworks: eligible beneficiaries, triggering events, funding mechanisms and enforcement fora. For eligible beneficiaries, all workers, formal and informal, employed in the extractive and processing industry, transportation and distribution should be included. This category would also include workers in industries economically dependent on the extractive industry's supply chains, including artisanal refining and fuel distribution, as well as communities whose primary livelihood derives from the industry. Such communities are to be defined by an economic dependence threshold established in domestic legislation. This

106 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217 arts 19-24; also see *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).

107 UN Declaration on the Rights of Indigenous Peoples, GA Res 61/295 (13 September 2007) A/RES/61/295 art 32; D Szablowski 'Operationalising free, prior, and informed consent in the extractive industry sector?' (2010) 30 *Canadian Journal of Development Studies* 111.

definition extends coverage beyond formal employment in ways that current frameworks do not, and it can be incorporated into domestic climate change acts and petroleum legislation through amendment.

Triggering events should include plant or mine closure; sector phase-down plans approved under national climate change frameworks; foreign divestment from fossil fuel assets exceeding a specified threshold; and the commencement of transition mineral extraction without an approved community benefit agreement. Automatic triggering ensures that social protection obligations arise at the point of transition impact rather than depending on discretionary ministerial action.

Funding mechanisms should include mandatory transition levies on fossil fuel companies (a rate of 1 to 2 per cent of gross revenue would be consistent with existing African petroleum fiscal regimes and defensible under domestic tax law). The same should apply to renewable energy project developers (at approximately 0,5 per cent of project value, integrated into power purchase agreement terms) and transition mineral exporters (at 1 to 3 per cent of export value, consistent with existing mineral royalty frameworks). Proceeds should be deposited in a constitutionally protected national Just Transition Fund, insulated from general revenue appropriation. This design is compatible with domestic tax law across most African constitutional systems, where earmarked levies tied to regulated activities are well established. Compatibility with investment treaty obligations requires designing the levies as general regulatory measures of broad application rather than measures targeting specific foreign investors, which would provide a defence to expropriation claims under most bilateral investment treaty standards. The AfCFTA Protocol on Investment's public-interest carve-outs under article 46 provide additional shelter for the social-protection rationale.[108]

Enforcement fora should include domestic High Courts with mandatory standing for trade unions, community organisations and individual workers. This would involve an expanded jurisdiction for the African Court on Human and Peoples' Rights through an Optional Protocol on Socio-Economic Rights and Transitional Justice, enabling individual and collective petition rights. This should also include a specialised African Labour Tribunal within the AU system, modelled on the African Committee of Experts on the Rights and Welfare of the Child, but with adjudicatory jurisdiction over individual and collective claims arising from transition obligations.

Duration and content of benefits should include income replacement at a level not less than 70 per cent of previous earnings for formal workers for a minimum of five years, 60 per cent for informal workers for a minimum of three years, and employer-funded or state-funded healthcare continuation throughout the

108 AfCFTA Protocol on Investment (2023) art 46; RS Avi-Yonah 'Hanging together: A multilateral approach to taxing multinationals' in T Pogge & K Mehta (eds) *Global tax fairness* (2016) 113.

benefit period. Access to retraining programmes with skills should be assessed against actual labour market demand in the transition economy rather than generic green economy projections. The ILO Guidelines' reliance on existing social protection infrastructure proves inadequate where that infrastructure was never constructed. The proposed framework creates legal obligations for social protection rather than assuming its existence, constitutionalising entitlements that are individually enforceable against states and, through the employer levy mechanism, against employers and investors benefiting from transition processes.

6.3 Binding finance, technology and accountability commitments

The historical responsibility of developed states for climate change creates legal and moral obligations that current frameworks operationalise inadequately. Climate finance is to be redefined as a reparative obligation in line with international law of state responsibility and the Declaration on the Right to Development.[109] There are clear doctrinal implications in this reframing: The reparative obligation differs from a voluntary pledge in its legal weight, and its violation is considered an internationally wrongful act rather than a political disappointment. The Paris Agreement's NDC architecture, with its nationally determined flexibility, is structurally incompatible with binding finance obligations. The proposed framework would supplement the Paris Agreement through a separate protocol or a binding decision of the Conference of the Parties, establishing differentiated responsibilities with automatic triggers. This would make developed states' emission-reduction commitments legally linked to specified minimum financial and technology-transfer flows to states meeting defined vulnerability criteria. Failure to deliver would constitute a breach of international obligations, triggering state responsibility and available remedies. For African workers, this creates enforceable claims to technology transfer that generates employment rather than merely importing equipment, and to climate finance that funds social protection rather than merely subsidising private investment.

Technology transfer obligations should specify not merely the transfer of intellectual property licences, but the establishment of local manufacturing capacity and skills development programmes as conditions of transition project approval. The African Mining Vision's principles regarding mineral beneficiation and local content provide partial models for this approach,[110] although their implementation has been weak. The proposed framework would require that transition projects above a specified investment threshold establish domestic

109 UN General Assembly 'Declaration on the Right to Development' Res 41/128 (4 December 1986) A/RES/41/128; M Salomon 'Legal cosmopolitanism and the normative contribution of the right to development' (2008) LSE Law, Society and Economy Working Paper 2/2008.

110 AU Africa Mining Vision (n 65); also see N Nhede 'Africa's mining policy reset signals a shift toward beneficiation' (Energy Capital Power 2025), https://energycapitalpower.com/africas-mining-policy-reset-signals-a-shift-toward-beneficiation/ (accessed 29 March 2026); P Jourdan 'Continental frameworks for mineral resource governance in Africa: Strategies for enhanced domestication' (International IDEA Stockholm Sweden 2025).

supply chains, training programmes linked to domestic educational institutions, and technology licensing terms that permit local adaptation and improvement. Accountability mechanisms should enable African states and affected workers to enforce these commitments against defaulting developed states and private actors. The UN Human Rights Council's resolutions on the right to work in the context of climate change and on human rights and climate change provide an existing framework for accountability,[111] although their non-binding character limits their practical force. The African Commission's Resolution 586 represents a nascent recognition of enforceable financial obligations in the African human rights system, and jurisprudential development is required to confer individual enforceability on its provisions.

6.4 Worker assemblies and co-governance mechanisms

The decision-making dimension of labour justice requires institutional mechanisms that go beyond the tripartite social dialogue model of the ILO Guidelines to binding co-governance arrangements. The proposed framework would require states, as a condition of approving transition plans, to establish worker and community assemblies with four powers: first, the right to receive full information about transition plans in advance of approval; second, there would be the right to nominate independent technical experts to assess the plans. The third right is the right to propose alternative transition pathways; and, fourth, in cases where the assembly rejects a proposed plan, a mandatory re-engagement process before final approval, with judicial review available if the assembly's substantive concerns are not adequately addressed. This framework falls short of a full veto right, which would create unworkable governance, but goes significantly beyond current consultation requirements by making worker and community concerns legally cognisable in the approval process. Community benefit agreements, on the model identified by Gunton and Markey in natural resource governance, should be legally required for all transition projects above a specified scale, with their terms enforceable in domestic courts and before the proposed African Labour Tribunal.[112]

6.5 Conclusion

This article has argued that contemporary just transition governance does not adequately deliver substantive labour justice in Africa because its prevailing

111 UN Human Rights Council 'The right to work in the context of climate change' Res A/HRC/RES/55/9 (5 April 2024); 'Human Rights and Climate Change' Res A/HRC/RES/53/6 (13 July 2023); UN Secretary General Synthesis Report on Opportunities, Best Practices, Actionable Solutions, Challenges and Barriers Relevant to Just Transition and the Full Realisation of Human Rights for All People A/HRC/60/52 (2025) paras 45-52.

112 C Gunton & S Markey 'The role of community benefit agreements in natural resource governance and community development: Issues and prospects' (2021) 73 *Resources Policy* 102152.

legal architecture privileges procedural inclusion, flexibility and dialogue over redistribution, enforcement and accountability. The concept of procedural drift explains why the expansion of normative commitments has not translated into material protection. Applying the article's three dimensions of labour justice, financial, technological and decision-making redistribution, demonstrates that no existing framework examined provides comprehensive protection across all three dimensions. The proposed reforms, therefore, move beyond aspirational commitments by advancing enforceable social protection guarantees, binding technology transfer obligations linked to local manufacturing and skills development, and legally meaningful worker participation in transition decision making.

The comparative analysis further demonstrates that transition justice cannot be pursued through a uniform legal model. Nigeria's rentier petroleum economy requires protection that extends beyond formal employment to informal workers and affected communities, while South Africa's coal transition requires responses to organised labour displacement, spatial inequality and community exclusion. The article remains limited by its reliance on doctrinal analysis and secondary scholarship and by its focus on two primary jurisdictions, but these limits define rather than displace its central claim: Inclusion without redistribution cannot secure labour justice. The necessary legal materials already exist within international law, the African Charter, domestic constitutional frameworks and the AfCFTA. The central task, therefore, is to construct, from them, enforceable mechanisms capable of redistributing financial resources, technological capacity and decision-making power. Africa's energy transition is underway; whether it produces justice will depend substantially on whether law is used not merely to organise participation, but to secure materially fair outcomes.