

The Justice Junction in the Covid-19, George Floyd and Energy Transition Era

Mr. Rukonge Sospeter Muhongo*

ABSTRACT

***“If you are neutral in situations of injustice, you have chosen the side of the oppressor.”
We need to stand up for justice for all”- Archbishop Desmond Tutu***

The murder of George Floyd has sparked a global outcry for justice by different marginalised communities. The communities’ recognition as people having an inherent right to life, peace, and prosperity, is demised by a simple ruthless knee on the neck for eight minutes. This article makes a cross-analysis of climate change, the COVID-19 pandemic, and institutional racism, and their impact on justice within different communities, ranging from the indigenous people of the Amazon in Brazil to the Sengwer people of Kenya, the Khoi-Khoi of South Africa, and the African Americans of the United States of America. Furthermore, the article shows that injustice occurs due to an unequal relationship between parties, driven by the desire to serve their selfish interests at the expense of the aggregate benefit of the whole society. When this context is taken into the energy industry, it shows the unequal relationship between stakeholders in the tripartite energy engagement. The common denominator is injustice in all three contexts - climate change, COVID-19, and institutional racism. By showing that there will be no justice, without first recognising the recipients of an unjust system, in determining which remedies should be instituted. This article concludes by stating that even with the current need to have a just energy transition, the transition will not include principles of justice if the victims of the other contexts are not explicitly recognised in the decision-making of such a transition.

Key Words: Climate Change, Covid-19, Racism, Justice

* Visiting Lecturer at Eduardo Mondlane University in Mozambique & Visiting Research Scholar at the University of St. Andrews. Scotland, UK

Climate Change and Justice: An Introduction

Climate change has been prevalent for hundreds of thousands of years, but the recent climate change developments are based not only on nature itself but also on the ice-ages and then the post-glacial periods. Climate change refers to those changes in the climate observed over long periods, causing alterations in the composition of the global atmosphere.¹ The International Panel for Climate Change (IPCC) and the United Nations Framework Convention for Climate Change (UNFCCC) attribute climate change as arising from events beyond human control - natural occurrences and human activity - anthropogenic, with UNFCCC further emphasising that human activity can be either direct or indirect.² Human-induced climate change is influenced by several factors like an increase in population growth, economic growth, industrialisation, burning of fossil fuels and other energy-related activities, deforestation, and agriculture.³

Carbon dioxide and other greenhouse gas levels in the atmosphere have soared in recent history, since the Industrial Revolution of the 19th Century, up to date.⁴ As civilisation moved away from human labour to machinery, it led to a new era of combustion engines that led to excessive burning of fossil fuels that release pollutants, including greenhouse gases. In the last century, human activities have released large amounts of greenhouse gases into the atmosphere, leading to global temperature rise.⁵

The coal mining accidents of the 1800s, development of infrastructure to develop urban areas into mega-cities, both World Wars, the increasing economic disparity between the rich and the poor and developing countries forming developed countries, as well as the need of developing countries gaining from their natural resources, have led to different drivers of energy law on multiple levels of energy jurisprudence namely the international, national and local institutions of energy law.⁶ The drivers of energy law have so far been safety, security, infrastructure, economics, and justice.⁷

Since climate change is an ever-time phenomenon, the different changes in drivers of energy law in human history have impacted climate change policy, institutionalism, and activity in global socioeconomic politics. From the perspective of justiciability, the paper *first* seeks to examine if there is justice in tackling climate change, *secondly* if all communities (minorities

¹Andrew E. Dessler & Edward A. Parson, *The science and politics of global climate change: A guide to the debate*, Cambridge University Press (2019).

² *United Nations Framework Convention on Climate Change*, United Nations (1992), <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

³ IPCC, *Climate Change 2014: Synthesis Report*, Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)], IPCC, Geneva, Switzerland, 45-47 (2014).

⁴John Taskinsoy, *No Brainer, Tackle Climate Change by 2030 or Await the Doomsday by 2100*, Tackle Climate Change by 2030 (2020).

⁵ Peter Erickson, et. al., *Limiting fossil fuel production as the next big step in climate policy*, Nature Climate Change, 8, 1037-1043 (2018).

⁶ Raphael James Heffron & Kim Talus, *The evolution of energy law and energy jurisprudence: Insights for energy analysts and researchers*, Energy Research & Social Science 19, 1-10 (2016), DOI:10.1016/j.erss.2016.05.004.

⁷ *Id.*

and indigenous communities) are included in domesticating the global climate change regime.

Since the beginning of time and humankind's existence, justice has been the fabric that governs human interaction and social cooperation. Such a framework created a social contract that determined the division of social benefits (Daniels, 2000).⁸ Through this framework, a society can determine what is just and unjust, presumably because men make rational decisions regulating claims against one another, as the founding establishment of their society.⁹ When tackling climate change using resources (such as critical minerals driving the energy transition found in remote areas), justice has not been at the forefront of:

- i. achieving the energy transition
- ii. acknowledging the spread of social benefits
- iii. following the right procedures and recognising all affected stakeholders.

The lack of justice in such host communities is said to emanate from the fact that communities are blinded by the veil of ignorance that places them in an unfavourable original position when looking at climate change and the energy transition holistically. The veil of ignorance regarding what the energy transition entails in its entirety leaves communities unaware of key facts and the value of the resources driving the transition.

The lack of understanding of the true value of the resources driving the global energy transition does not come from the veil of ignorance that assumes impartiality in making and reaching favourable policies to foster communal development after the fact (Sen, 2006)¹⁰, rather than disregarding the potential benefits of the energy resources that bring an in-justice in these energy resources' utility value. This is because most indigenous and marginalised communities are incompatible with the concept of social cooperation for achieving a mutual advantage when driving the energy transition, as the stakeholders meant to uphold justice within the energy transition are not equals (Robinson, 2010)¹¹.

Though human interaction and such commercial engagements are ideally aimed for mutual advantage, they are fundamentally marked by conflict due to interests' identity. Furthermore, such conflicts of interests call for a set of principles that are required for choosing among the various social arrangements that determine the division of advantages and guarantee proper distributive shares. This brings about the notion of justice that somehow we must nullify the effects of specific contingencies, which places different stakeholders at odds and lures them to exploit social and natural circumstances to their advantage (Petersen and Roemer, 1997)¹².

The current wave of specific contingencies such as COVID-19, the re-emergence of civil rights due to George Floyd's death in the United States of America, and the never-changing

⁸ Norman Daniels, *Reading Rawls*, Stanford University Press, (2000).

⁹ Id.

¹⁰ Amartya Sen, *What Do We Want from a Theory of Justice?* *Journal of Philosophy*, 103(5), 215-238 (2006).

¹¹ R. Robinson, *Rescuing Justice and Equality*. By G.A. Cohen., (Harvard University Press, 2008.). *The Journal of Politics*, 72(4), 1255-1256 (2010).

¹² T. Petersen & J. Roemer, *Theories of Distributive Justice*, *Contemporary Sociology*, 26(5), 656 (1997).

negative implications of climate change have remained at the forefront of public debate. This paper examines the nexus and correlation between racism, climate change, and COVID-19. Such contingencies affect the distribution, recognition, and procedure of attaining the ills and benefits of energy resources, driving the global energy transition, and have ramifications on achieving justice within this transition. This notion is fundamentally crucial in exhausting and developing energy resources in the current age of climate change.

The “Call” For Justice: Systematic Racism, Climate Change, And The Impact Of COVID-19; Comparative Analysis:

Justice is a phenomenon that is present within any community and human interaction for the aggregate benefit of society (Holland, 2010)¹³. Such benefits of society are protected and delivered by institutions, either public or private. These institutions are created for the efficient delivery of justice, and they must be reformed or abolished if they are unjust (Sen, 2006)¹⁴. The delivery of the aggregate benefit to society possesses an inviolability founded on justice. By placing this notion of inviolability of justice in different contexts, such as institutional racism, climate change, and the impacts of COVID-19, it is evident that the benefits of particular groups of people can override the inviolability of justice within society. This phenomenon has been collectively prevailing since time immemorial, with the unjust emergence of the Jim Crow era, civil rights movement and currently, the Black Lives Matter (BLM) upspring due to the infamous death of George Floyd (George Floyd unrest: Cities face new looting amid more robust National Guard response, curfews, 2020)¹⁵. As much as, at face value, institutional racism might seem to lack synergy with climate change and COVID-19, the outcry for justice is a collective need that has to be addressed.

The emergence of justice in environmental and energy matters was started by minorities who saw the need to address the inequity of environmental protection in their marginalised communities (Environmental Justice Timeline | US EPA, 2020)¹⁶. The Michigan Flint Case, the United States of America, is probably one of the notable case studies of environmental and racial injustice in recent history. The Flint water crisis was rooted in both social and political dynamics that led to uneven exposure to environmental risk and hazards that was based on the people’s race, socioeconomic status, and, as well as environmental inequality due to the systematic exclusion of certain people from the environmental decision-making process (Butler, Scammell and Benson, 2016)¹⁷. The water crisis in Flint, Michigan, was disastrous to the African American and low-income residents on account of the institutions’ failure to protect the public’s health at various governmental levels. That led to the exposure of lead in young children that were detrimental in intelligence, development, behaviour,

¹³ Nicole E. Holland, *Postsecondary education preparation of traditionally underrepresented college students: A social capital perspective*, Journal of Diversity in Higher Education, 3(2), 111-125 (2010).

¹⁴ Amartya Sen, *supra* note 10.

¹⁵ Louis Casiano, *George Floyd Unrest: Cities Face New Looting Amid Stronger National Guard Response, Curfews*, FOX NEWS, (Jun. 1, 2020), <https://www.foxnews.com/us/george-floyd-riots-looting-national-guard-curfews>.

¹⁶ *Environmental Justice Timeline*, US EPA, (2020), <https://www.epa.gov/environmentaljustice/environmental-justice-timeline>

¹⁷ Lindsey J. Butler, et al., *The Flint, Michigan, Water Crisis: A Case Study in Regulatory Failure and Environmental Injustice*, Environmental Justice, 9(4), 93-97 (2016).

attention, and other neurological functions of the African American and low-income residents of Flint, Michigan (Butler, Scammell and Benson, 2016)¹⁸.

Unlike the Flint, Michigan water crisis caused injustice to African Americans and other low-income residents. Climate change is a predominant threat to humanity and to vulnerable, indigenous, and low-income communities. The climate crisis poses a credible threat to the equality and quality of life throughout the world, causing injustice (Roberts, 2001)¹⁹. Climate change affects people's livelihood across the globe since it threatens food security, water availability, health, housing, and self-determination.

The injustice comes from the burden of climate change impact that is not equally distributed. Communities that are least developed and less-industrialised also have the burden to mitigate the effects of climate change and the adverse effects it brings to the socioeconomic setting of a community (Roberts, 2001)²⁰. Furthermore, those that face the severe repercussions of climate change are the least responsible for causing it.

Due to their low technological advancement, heavy reliance is placed on fossil fuels for these countries' economic development, which they have the least capacity to adapt thereof. Climate change further marginalises and reinforces inequalities to minorities and indigenous peoples. This shows that the crisis's disproportionate effects vary in societies and put their very existence in jeopardy, affecting the very underlying framework of achieving a just energy transition.

Though the Flint, Michigan case of environmental degradation is not caused by climate change per se, such scenarios show the synergy between environmental and racial justice. Without a doubt, the climate crisis leaves no community or country unaffected, but the social impacts of climate change deepen the already existing inequality lacunae that exist between the rich and poor, the indigenous communities as well as the minorities (Timmons Roberts and Parks, 2007)²¹. And although the world is tackling climate change through international and regional integration mechanisms, little progress has been made in addressing the racial injustice that has been deepened by climate change combatting mechanisms.

Different minorities and indigenous communities have been affected mainly by the climate change crisis - such as South-East Asia's Dalits. First and foremost, Dalit means "oppressed", and these are members of the so-called lower castes that are subjected to "untouchability" in South-East Asia, including India and Nepal (Dalits – The Oppressed in South Asia, 2020)²². The caste system is so engraved in Nepal and India such that regardless of the position such minorities obtain in society, their hierarchy in the socioeconomic status

¹⁸ Id.

¹⁹ J. Timmons Roberts, *Global Inequality and Climate Change*, Society & Natural Resources, 14(6), 501-509 (2010).

²⁰ Id.

²¹ J. Timmons Roberts & Bradley C. Parks, *Fuelling Injustice: Globalisation, Ecologically Unequal Exchange and Climate Change*, Globalizations, 4(2), 193-210 (2007).

²² Sushmita Lama, *Dalits – The Oppressed In South Asia*, ATLAS CORPS, (Oct.31,2017), <https://atlascorps.org/dalits-oppressed-south-asia/>.

will be unaffected (Dalits – The Oppressed in South Asia, 2020)²³. When Cyclone Fani hit Odisha's coast in May 2019, it destroyed the lives and properties of 16 million people (Swati Gupta, 2020)²⁴. The worst affected were the Dalit landless farmworkers who were forced to live on the margins of villages, where they got almost no relief due to the caste system (Long Read: Landless Dalits Hit Hardest by Disasters Are Last to Get Relief, 2020)²⁵.

In the United States, African Americans and other minorities have been primarily affected by the climate crisis. In 2017 Hurricane Maria hit Puerto Rico, where Maria's destruction was devastating with everlasting socioeconomic and political effects in Puerto Rico (Hurricane Maria Exposed the U.S.'s Long Neglect of Puerto Rico, 2020)²⁶. The damage amounted to \$94.4 billion – crippling an Island indebted economy.²⁷ Hurricane Maria exposed the depth of poverty and human rights violations in Puerto Rico, which was a territory of the United States of America, acquired in the Spanish-American War (The Insular Cases: Constitutional experts assess the status of territories acquired in the Spanish-American War (video) - Harvard Law Today, 2020)²⁸. The Island has a complicated legal status that leads to poverty and civil rights issues. The Insular Cases determined that the U.S. Congress owns Puerto Rico without granting them full constitutional rights, as are enjoyed by those living in the United States of America.²⁹ This obstructs access to health care programs like Medicaid and Medicare, fair and equal access to government resources, that help vulnerable communities.

Similar outcomes have been seen in the wake of disasters such as Hurricane Sandy in coastal New Jersey in 2012 and Hurricane Katrina in New Orleans in 2005, where the marginalised communities have been primarily affected both by race and the climate crisis (Lomborg, 2020)³⁰.

As mentioned earlier, the least contributing communities towards the climate crisis are the most affected by climate change ramifications, either due to the crisis itself or adaptation and mitigation mechanisms deployed to address the climate crisis throughout the world. Though these affected communities are at the epicentre of experiencing the adverse effects of climate change, these communities are nowhere near the decision-making process in addressing

²³ Id.

²⁴ Swati Gupta, et al., *Cyclone Fani Makes Landfall In Odisha*, CNN (May 3, 2019), <https://edition.cnn.com/india/live-news/cyclone-fani-live-updates-wxc-intl/index.html>.

²⁵ Mahima A. Jain, *Landless Dalits Hit Hardest by Disasters Are Last to Get Relief*, LSE SOUTH ASIA CENTRE, (Nov.1,2019), <https://blogs.lse.ac.uk/southasia/2019/11/01/long-read-landless-dalits-hit-hardest-by-disasters-are-last-to-get-relief/>.

²⁶ Gabriela Melendez Olivera, *Hurricane Maria Exposed the U.S.'s Long Neglect of Puerto Rico*, AMERICAN CIVIL LIBERTIES UNION (Dec.11,2017), <https://www.aclu.org/blog/human-rights/hurricane-maria-exposed-uss-long-neglect-puerto-rico>.

²⁷ Id.

²⁸ Lana Birbrair, *The Insular Cases: Constitutional Experts Assess the Status of Territories Acquired In The Spanish-American War*, Harvard Law Today (Mar.18,2014), <https://today.law.harvard.edu/insular-cases-constitutional-experts-assess-status-territories-acquired-spanish-american-war-video/>.

²⁹ Id.

³⁰ Bjorn Lomborg, *Welfare in the 21st century: Increasing development, reducing inequality, the impact of climate change, and the cost of climate policies*, Technological Forecasting and Social Change, 156(12), 119981 (2020).

climate change adaptation and mitigation mechanisms.³¹ The social, economic, and political power shifts and inequalities have left these affected communities on the peripheries of climate change negotiations with an outcry for justice.

Governments have caused injustice not only in the manner of neglecting remedies for climate injustice to minorities and indigenous communities; but also in their attempts at both climate mitigation and adaptation (Helm, 2010)³². Brazil, the largest democracy and economy in South America, has not afforded the indigenous people rights as the rest of the population (Guedes et al., 2012)³³. During Brazil's military dictatorial age, the indigenous people were reduced to "obstacles to progress", opening their lands to massive abusive human rights developmental schemes.³⁴ The Brazilian indigenous inhabitants of the Amazon have paid the price for Brazil's economic growth in the last six (6) decades. In the rich Amazonian state of Roraima, prominent leaders and politicians backed a draft mining bill (Watson, 2013)³⁵. This bill opened the indigenous territories to large-scale mining. Furthermore, the rich Amazon's indigenous inhabitants have been displaced due to the construction of hydroelectric dams such as Belo Monte.³⁶ This means that in Brazil, the indigenous inhabitants of the rich Amazon rainforests have paid both for the industrialisation of Brazil and the energy transition mechanisms, deployed to combat climate change in Brazil.

In Sub-Saharan Africa, many different groups have been affected by both the climate crisis and mechanisms used to combat the same threat, which the government claims to protect these communities. In countries such as Chad, Nigeria, South Sudan, and the Central African Republic, changes in climate have resulted in desertification, drought, and reduced rainfall (Serdeczny et al., 2016)³⁷. These changing weather patterns have been detrimental to the pastoralist communities, as a lack of resources has disrupted traditional migration routes and intensified competition and conflict between one another. As much as climate change calls for immediate measures to combat the crisis and protect the livelihood and way of life of all humanity and civilisation, some of these measures have been unjust to these communities. In Kenya, the Sengwer Indigenous people of Embobut Forest have been forcibly removed from their homes and dispossessed of their ancestral lands by the Kenya Forest Service, all in the name of forest conservation (redd-monitor.org, 2019)³⁸. The indigenous people have relied on their local ecosystems for centuries. Such a predisposition should make such

³¹ Id.

³² Dieter Helm, *Government Failure, Rent-seeking, and Capture: The Design of Climate Change Policy*, 26(2), Oxford Review of Economic Policy, 182–196 (2010).

³³ Gilvan R. Guedes, et al., *Poverty and Inequality in the Rural Brazilian Amazon: A Multidimensional Approach*, Human ecology: An Interdisciplinary Journal, 40(1), pp.41–57, (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3426830/>.

³⁴ Id.

³⁵ Fiona Watson, *Brazil's treatment of its indigenous people's treatment, violates their rights*, THE GUARDIAN, (May 29, 2013), <https://www.theguardian.com/commentisfree/2013/may/29/brazil-indigenous-people-violates-rights>.

³⁶ Id.

³⁷ Olivia Serdeczny, et al., *Climate Change Impacts in Sub-Saharan Africa: from Physical Changes to Their Social Repercussions*, 17(6), Regional Environmental Change, 1585–1600 (2016).

³⁸ *The Sengwer walk for justice and ask for recognition of their land rights in the Embobut Forest, Kenya*, REDD MONITOR, (Oct. 8, 2019), <https://redd-monitor.org/2019/10/08/the-sengwer-walk-for-justice-and-to-ask-for-recognition-of-their-land-rights-in-the-embobut-forest-kenya/>.

indigenous communities a relevant component in the decision-making process when addressing the climate crisis worldwide to achieve justice.

Climate change and institutionalised racism have not been the only architects of injustice towards minorities and indigenous people worldwide. The COVID-19 pandemic has pushed injustice in unparalleled measures and limits. The pandemic has led to the loss of life and severe global human suffering, causing an unprecedented economic, social, and political crisis (Cocks, 2020)³⁹. Once again, the vulnerable groups disadvantaged from their country's governing structure have been placed in a vulnerable position both by the COVID-19 pandemic and measures addressing the global crisis. For example, South Africa, a country that twenty-six years ago attained freedom from the tyranny of the apartheid minority regime (Cocks, 2020)⁴⁰, had a fully inclusive democratic election that saw the icon Nelson Mandela elected as the country's first-ever black president by a majority rule ending the tyrannical apartheid regime. The critics of Mandela's legacy and the African National Congress (ANC) claim that the ANC has not done enough to redress inequalities in South Africa, including wealth and land redistribution, leaving the looming hangover and legacy of the apartheid regime favouring the white minority population in the biggest economy of Sub-Saharan Africa (Malatsi, 2019)⁴¹.

The two socioeconomic realities of South Africa revealed themselves during the COVID-19 pandemic outbreak, where the lockdown measures were put in place to face the pandemic. The social distancing and self-isolation measures, accompanied by the police and army task force enforcing the lockdown laws, instituted grave injustice to the already disadvantaged black majority of South Africans (Swart, 2020)⁴². The black majority, in dire financial situations with massive unemployment rates and poor quality housing conditions, were socially isolated from the wealth creation value chain of their own country, which put these black communities in a more vulnerable position. On April 10, just two weeks into the country's lockdown due to COVID-19, Mr Collins Khosa died because of injuries to the head, beaten by the security forces in Johannesburg's marginalised community of Alexandra Township (*Khosa and Others v. Minister of Defence and Military Defence and Military Veterans and Others*, [20202])⁴³. Judgment was given by the Pretoria-based High Court, declaring that "everyone (both black and white) in the country is entitled to several human rights including the rights to life, the rights not to be tortured in any way and the right not to be treated or punished in a cruel, inhumane or degrading way even during an emergency"

³⁹ Tim Cocks, *Coronavirus stirs rancour in South Africa on Democracy Anniversary*, REUTERS, (Apr. 27, 2020), <https://uk.reuters.com/article/uk-health-coronavirus-safrica/coronavirus-stirs-rancour-in-south-africa-on-democracy-anniversary-idUKKCN229269>.

⁴⁰ Id.

⁴¹ Solly Malatsi, *Manifesto Delivers More Empty Promises from the ANC*, DAILY MAVERICK, (Jan. 13, 2019), <https://www.dailymaverick.co.za/opinionista/2019-01-13-manifesto-delivers-more-empty-promises-from-the-anc/#gsc.tab=0>.

⁴² Mia Swart, *S Africa Court Issues Orders to End Police Abuse during Lockdown*, ALJAZEERA, (May 17, 2020), <https://www.aljazeera.com/news/2020/05/africa-court-issues-orders-police-abuse-lockdown-200516105512595.html>.

⁴³ Id.

*(Khosa and Others v. Minister of Defence and Military Defence and Military Veterans and Others, [20202])*⁴⁴.

The effects of institutional racism, climate change, COVID-19, call for justice, and a redress of the social contract to attain a just energy transition. Drawing from the constructivism as well as humanism theories, there needs to be a determination of what is just to ensure the collective well-being of everyone through active citizenship and accountability, which will develop a new social contract within the just transition (Nair, 2020)⁴⁵. Automatically, such a re-dress of the social contract will acknowledge the minority and disadvantaged indigenous communities as both the custodians and victims of the climate crisis remedy measures. Hence there is the explicit inclusion in the decision-making process for the sole purpose of achieving justice.

Conclusion

The common denominator between COVID-19, racial injustice, and climate change is purely based on inequality. In the last century, minorities and indigenous communities have been divided along racial lines, beginning with the expulsion and extermination of indigenous people's such as the Khoi-Khoi of South Africa, the aboriginals of Australia, and the Red Indian Americans in the United States of America, whose land and livelihood was and still is occupied by the "oppressors" that wield the system for their capitalistic gain (Azmanova, 2010)⁴⁶. Even before the Great Depression, profit-driven institutions such as the Imperial British East African Company (IBEAC), and the colonial machinery in different parts of the world, maintained a race superiority caste system that led to wars, genocides, and massive abuse of human rights (Hodge et al., 2016)⁴⁷. The aftermath of such inequality persists today in the era of seeking to attain Sustainable Development Goals.

It would be shocking to acknowledge that climate change, COVID-19, and institutional racism, all perpetuate the same effects on justice. As little debate would be given on racism, much can be argued on climate change. Yet, climate change indeed has the same dreadful ramifications to people of colour, marginalised, and the indigenous people. This does not mean that climate change puts a knee on any minority or indigenous person's neck for eight (8) minutes, as in the George Floyd Case. But the system that calls for the mitigation and adaptation measures in combating the imminent climate crisis are all based on the same system that promoted injustice and marginalised communities in the first place. This includes the real-estate redlining mechanism in the United States, that placed people of colour in

⁴⁴ *Khosa and Others v. Minister of Defence and Military Defence and Military Veterans and Others*, (2020) ZAGPPHC 147 (South Africa Constitutional Court).

⁴⁵ Soraya Nair, *An Inconvenient truth: Virus Presents Symptoms of Socio-Economic Injustice*, MAIL & GUARDIAN, (Apr.23,2020), <https://mg.co.za/article/2020-04-23-an-inconvenient-truth-virus-presents-symptoms-of-socio-economic-injustice/>.

⁴⁶ Albenaz Azmanova, *Capitalism Reorganized: Social Justice after Neo-liberalism*, 17(3), *Constellations*, 390–406 (2010).

⁴⁷ Joseph M. Hodge et al., *Developing Africa: Concepts and Practices in Twentieth-Century Colonialism*, Manchester University Press (2016).

unfavourable living conditions (Doan, 2017)⁴⁸, the creation of the Bantustans to marginalise most people of colour in South Africa that later became the modern slums or Townships (Evans, 2014)⁴⁹, the exploitation of the Amazon rainforests as well as placing industries in areas of low socioeconomic status (Napolitano, 2007)⁵⁰.

This history, infested with inequality and injustice along socioeconomic and racial lines, has negative consequences to the current waves of attaining sustainable development - such as achieving the Sustainable Development Goals, Just Energy Transition, and eradicating the COVID-19 pandemic. This is because, as people living under these harsh conditions comprise most of the world's population, they cannot adequately mitigate the impacts of COVID-19, build infrastructure that serves the energy mix, as well as have the financial and technological capability to meet the demands of climate change mitigation and adaptation in a just energy transition.

What is the nexus between all the injustice in COVID-19, climate change, institutional racism, and energy systems? In this regard, sources of energy and energy systems cause the current revolution throughout the world. Sources of energy are presently the driver of political change and predominantly a wave of neo-colonial expansion to unlock and require new sources of energy for economic development (Meadowcroft, 2009)⁵¹. As the world seeks to move to cleaner sources of energy, such as renewable energy showing an unprecedented abandonment of the use of fossil fuels as the primary source of energy, the key stakeholders of this transition must ensure that the already marginalised and indigenous people, whose livelihood depends on fossil fuels, should not face the same fate as the aboriginals of Australia, the Sengwer people of Kenya, or the black majority of South Africa. The energy transition must be a just transition in the wake of attaining Sustainable Developmental Goals throughout the world (Williams and Doyon, 2019)⁵². Heffron states that *"to see the just transition requires a new social contract. To deliver such a social contract, there is a need for collaboration from all, not limited to labour unions but also the entire communities of researchers and practitioners from across the areas of energy, environment, climate change and sustainability"* (Heffron, 2019)⁵³. This means that the interpretation of justice within just transition must gravitate back to the Rawlsian principles. Each person possesses an inviolability founded on justice that even the welfare of the whole society cannot override.

⁴⁸ Michael D. Doan, *Epistemic Injustice and Epistemic Redlining*, *Ethics and Social Welfare*, 11(2), 177–190 (2017).

⁴⁹ Laura Evans, *Resettlement and the Making of the Ciskei Bantustan, South Africa, c.1960–1976*, *Journal of Southern African Studies*, 40(1), 21–40 (2014).

⁵⁰ Dora A. Napolitano, *Towards Understanding the Health Vulnerability of Indigenous Peoples Living in Voluntary Isolation in the Amazon Rainforest: Experiences from the Kugapakori Nahua Reserve, Peru*, *EcoHealth*, 4(4), 515–531 (2007).

⁵¹ James Meadowcroft, *What about politics? Sustainable Development, Transition Management, and Long-Term Energy Transitions*, *Policy Sciences*, 42(4), 323–340 (2009).

⁵² Stephen Williams & Andreanne Doyon, *Justice in energy transitions*, *Environmental Innovation and Societal Transitions*, 31, 144–153 (2019).

⁵³ Raphael Heffron, *Justice in the Energy Transition: The Challenge of Our Time*, UKERC, (March 6, 2019), <https://ukerc.ac.uk/news/justice-in-the-energy-transition-the-challenge-of-our-time/>.

As much as the term ‘Just Transition’ is becoming a fundamental concept in the realm of energy law, the just transition phenomenon should not promote the inequality framework in existence since the age of extractive industry popularity. A just transition must ensure that all groups of people enjoy the same rights to happiness, health, safety, and peace. It is also a point to worry that for there to be a just transition, certain minerals should be used to further advance the technology into achieving the goals set out in international instruments such as the Paris COP21 Agreement (Heffron, 2019)⁵⁴. Marginalised and indigenous communities might be placed in the same position as in the 19th and 20th Centuries and shall be looked at as a source of raw materials for this energy transition. Justiciable Energy Transition should be based on the foundations of recognising communities, fair distribution of ills and benefits, and the adherence to the right procedures in order to avoid gravitating back to the excruciating turbines that propelled inequality through the years.

Conclusively, it is vital to note that, for there to be a just and sustainable energy transition that has a direct favourable impact on communities, the recognition of indigenous and marginalised communities and people of colour must be self-determined. Regarding the energy transition, different stakeholders have served their self-interests, there has been minimal research on justice as recognition on the issue (Williams and Doyon, 2019)⁵⁵. As energy transition mainly affects the global community’s economic and political structure, little is being said of the people most affected by such a transition. Hence, for there to be a just transition policy, the regulatory experts must consider the history of energy source exploitation. A historical analysis should be taken from a Western perspective and include non-Western policy experts, scholars, and regulators so that a just transition can be applied without leaving any community behind.

⁵⁴ Id.

⁵⁵ Stephen Williams & Andreanne Doyon, *Justice in energy transitions*, Environmental Innovation and Societal Transitions, 31, 144–153 (2019)

