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## **Submission to the Presidential Climate Commission on South Africa's Just Energy Transition - Investment Plan**

*March 2023*

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The Institute for Economic Justice<sup>1</sup> (IEJ) and the Climate Finance for Equitable Transitions<sup>2</sup> (CLiFT) welcome the opportunity to comment on South Africa's Just Energy Transition - Investment Plan (JET-IP).

The IEJ is a progressive think tank based in South Africa that provides rigorous economic analysis designed to arm policy-makers and the public with progressive policy options to combat the scourge of poverty, underdevelopment, and inequality in South Africa, the region and the continent.

CLiFT, which forms part of New Frontiers in International Development Finance (NeF DeF), is a multi-institutional and multi-stakeholder initiative aimed at exploring the climate finance supply chain within the context of the multilateral climate change regime, international financial architecture and the multi-layered landscape of international economic law.

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## Executive Summary

**Trillions of Rands are required to avert the climate crisis and to ensure that a ‘just’ energy transition is a key outcome of the decarbonisation agenda.** South Africa’s Just Energy Transition-Investment Plan (JET-IP) has set its ambition to raise and mobilise R1.5 trillion over the next five years. The JET-IP, therefore, represents an important start to responding to the climate emergency.

**The JET-IPs strength is in its problem analysis of South Africa’s decarbonisation agenda.** For instance, it references numerous climate, transitional, and social risks that the country faces. To some degree its framing of what a just energy transition constitutes, and the guiding principles given, have merit. For example, it provides a detailed description of the equitable and sustainable society a just transition should achieve; outlines the current uncertainty and precarious employment of workers in coal value chains and the struggles of many communities

around coal infrastructure; and describes the extensive levels of energy poverty within South Africa and the need for large scale reductions in greenhouse gas emissions.

**To evaluate whether or not the JET-IP will meet the ambitions it sets out in its framing of a just energy transition, the following questions need to be addressed:**

1. Can the needed finance be raised through the approach identified in the JET-IP?
2. What are the risks - fiscal, legal, policy, and socio-economic - associated with this modality of investment plan?
3. Do commitments within the JET-IP go far enough towards South Africa meeting its mitigation targets?
4. Do commitments within the JET-IP go far enough in ensuring that the energy transition is truly just?

This submission sets out to answer these questions. Several concerns are raised by our assessment of the JET-IP which the submission outlines. Importantly, the submission also offers proposals that can help realise the ambition of decarbonisation through a just energy transition. These are summarised as follows:

#### *Meeting the financing gap?*

**The approach adopted in the JET-IP will fail to both channel sufficient private funds towards decarbonisation and redirect finance away from existing dirty industries - in South Africa and abroad - thereby failing to mobilise the required funds for financing the climate transition.** This is because the JET-IP as a financing deal and resource mobilisation strategy draws from, and operates within a risk-based prudential macroeconomic framework that is underpinned by market-fixing and de-risking strategies. .

- Risk-based macroeconomic frameworks systematically under estimate the structural impediments to appropriate resource allocation. Financing is mostly allocated towards established and well-capitalised companies that are able to access large-scale capital market financing. Further, large investors can avoid penalties for dirty investment by using opaque balance sheets, private equity funds and shadow banking.
- The inherently porous regulation of private equity and shadow banking institutions steer huge portions of global capital toward high yield dirty sectors, and away from climate transition financing.
- The risk-based approach, which attempts to internalise climate risks into asset pricing through disclosure initiatives and the use of climate-aligned ratings that are provided by objective third parties, fails to account for the inherently uncertain nature of climate change.
- The maintenance of narrow central bank mandates and instruments over and above mandates that would require central bank alignment with government transitional plans, gives monetary policy a carbon bias.

**It is recommended that the just energy transition is conceived more broadly than the mobilisation of private sector finance through market-fixing and de-risking strategies and that the JET-IP is revised in this regard. This would require:**

- Monetary policy complementing its inflation target and policy tools with broader objectives (structural transformation, environmental sustainability, economic development, and employment) and wider integrated toolkits (green taxonomy, industrial policy, social policy).
- Industrial and monetary policy utilising green allocative credit policies to adjust the relative costs of providing capital to different sectors and intervening directly set the price or quantity of bank credit for particular sectors.
- An assessment of the scope of fiscal policy to raise tax revenue for the JET, a process similar in scope to the David Tax Commission.
- The South Africa government mobilises social partners and developing country allies to push for improved regulatory oversight of shadow banking and institutional capital and to secure a minimum 25% in direct grants (over and above existing ODA) from Global North donor countries.

*Profiling the fiscal, legal, policy and socio-economic risks of the JET-IP*

**The heavy reliance on private financing within the JET-IP, identified above, opens the South African government to a range of significant risks that undermine the objectives of the JET-IP. These risks include:**

- The focus on ‘de-risking’ private finance, using official or state-backed resources, can be a costly exercise and less financially sustainable than direct funding.
- Over reliance on debt instruments and on private capital markets will create greater exposure to external financial dynamics and economic shocks.
- Dependence on external private investors governed by regulatory frameworks in external jurisdictions mean that failures of regulation in these external jurisdictions may create contagion and spillover impacts.
- A financing agenda that is oriented to private investments for decarbonisation can subordinate countries’ priorities, including those established under NDCs, to the interests and priorities of private investors.
- Investment disputes that may arise between foreign investors and the South African government give foreign investors enormous economic rights and can result in regulatory chill limiting public interest regulatory reforms.
- International arbitration tribunals open states up to heavy punitive costs or limit policy autonomy while bilateral investment treaties can unreasonably protect companies at the expense of states.

- In the JET-IP these investment risks manifest vis-a-vis the potential costs of compensation to investors for terminating coal projects before their end of life and with respect to guarantees made to renewable energy investors.
- The relationship that the JETP established between parties risks the Global North financing parties being empowered to put in place structural and policy conditionalities.
- The creation of further debt while attempting to embark on a just and inclusive transition can undermine South Africa's international human rights obligations, including through crowd out financing other sustainable goals.
- Accountability becomes more challenging in a financing landscape where multilateral and bilateral DFIs, commercial lenders, and other private financiers are involved in a fragmented way undermining the rights of affected communities. Inadequate or diluted safeguards end up most adversely impacting the parts of the society that are most prone to being marginalised and disadvantaged.
- Reliance on a risk-based framework rather than a rights-based framework jeopardises compliance with national law as well as human rights obligations of South Africa under its Constitution, national laws, and under international law.

**In the interest of a *just* transition, it is recommended that the JET-IPs governance is framed around a rights-based governance framework rather than a risk based governance framework.** Such a rights based framework would comprise the following.

- Ensuring that innovative finance instruments (thematic bonds, blended finance, Public Private Partnerships) are considered in light of appropriate regulatory safeguards to prevent negative outcomes or failures.
- South Africa should rely on its domestic Act on Protection of Investment as the governing framework of foreign investments, refrain from agreeing to international arbitration for settling disputes with investors, and explicitly require disputes to be settled in domestic courts of South Africa.
- Put in place adequate and effective environmental and social safeguards and standards (human rights, labour standards, health and safety, environmental protection), including access to grievance and redress options for individuals and local communities, for all reasonably foreseeable adverse impacts from JET-IP financed projects.

### *Profiling the mitigation targets of the JET-IP*

**Even if fully implemented, the JET-IP will fail to meet South Africa's mitigation targets under its National Determined Contributions (NDCs) as well as failing to achieve socio-economic objectives within the targeted sectors.** This is because:

- The electrification plan's sole reliance on private renewable energy generation will fail to secure the sufficient scale of energy production;
- The planned transportation investment undervalues the need of shifting to a more sustainable system of public transport; and
- The green hydrogen industrialisation plans are highly ambitious, risky, with little resourcing or security in their viability.

**The following recommendations are made to contribute to meeting the mitigation targets under the NDC and to achieve socio-economic objectives within the targeted sectors.**

- The system of electricity provision needs to ensure that: financial allocations are made to public (including municipal and community owned) renewable energy generation capacity and energy efficiency; and Independent Power Producers (IPPs) are regulated to ensure that viable scale does not compromise affordable electricity supply and ESKOMs debt sustainability.
- Decarbonisation strategies in the transport sector must centre on improving public sector infrastructure and improving energy efficiency of transport.
- The mitigation claims of green hydrogen needs to be fully investigated in terms of consumer uptake, export, sector emissions and environmental impact, and a range of other industrial policy considerations given the riskiness of such investments.

### *Profiling the socio-economic objectives of the JET-IP*

**Social and economic objectives - the 'just' in a just energy transition - are unlikely to materialise within the JET-IP framework.** This is because the development strategy outlined:

- Does not break with the existing structural deficiencies in the prevailing growth path, including the prioritisation of capital-intensive industry;
- Pays little attention to ensuring the jobs created are decent jobs;
- Systematically undervalues and underfunds renewable energy localisation;
- Fails to include the needed range and depth of industrial policy measures required to achieve the developmental and job-creating potential of a renewable energy transition;
- Fails to offer sufficient social protection to impacted workers and communities;
- Risks worsening energy poverty through entrenching cost-reflective energy tariffs; and
- Is built on the basis of a secretive, untransparent, and non-consultative process.

**Instead, funding must be allocated towards green industrialisation that moves the South African economy towards higher value-added and more labour-intensive industries.** This includes renewable-energy-linked light manufacturing and public transport localisation capable of generating high amounts of decent work in the long run. The following means are identified:

- The South African Renewable Energy Masterplan and Green Transport Policies are leveraged as an integral tool to support the JET-IP. These policies incorporate more ambitious industrial policy measures that: integrate developmental trade and technological transfer policies; more strongly enforce local content requirements; and lay out the industrial financing needed to build the capacities and capabilities of the local industry for decent work creation.
- Extensive provision for long-term social security benefits to affected workers (permanent and non-permanent) and communities is essential. This includes: a specific fund that is capitalised as a percentage of private and donor JET financing; sufficient subsidies for energy-poor households and strategic sectors; and affected workers being involved in all JET planning and employment certainty should be sought.
- Investment in green hydrogen should be delayed given its extreme capital intensity, its speculative nature, and high risk until more detailed feasibility studies can be completed.

## 1. Introduction

**Trillions of Rands are required to avert the climate crisis and to ensure that a ‘just’ energy transition is a key outcome of the decarbonisation agenda.** South Africa’s Just Energy Transition-Investment Plan (JET-IP) has set its ambition to raise and mobilise R1.5 trillion over the next five years. The JET-IP, therefore, represents an important start to responding to the climate emergency.

**The JET-IPs strength is in its problem analysis of South Africa’s decarbonisation agenda.** For instance, it references numerous climate, transitional, and social risks that the country faces. To some degree its framing of what a just energy transition constitutes and the guiding principles have merit. For example, it provides a detailed description of the equitable and sustainable society a just transition should achieve; outlines the current uncertainty and precarious employment of workers in coal value chains and the struggles of many communities around coal infrastructure; and describes the extensive levels of energy poverty within South Africa and the need for large scale reductions in greenhouse gas emissions.

**To evaluate whether or not the JET-IP will meet the ambitions it sets out in its framing of a just energy transition, the following questions need to be addressed:**

1. Can the needed funds be raised through the approach identified in the JET-IP?
2. What are the risks - fiscal, legal, policy, and socio-economic - associated with this modality of investment plan?
3. Do commitments within the JET-IP go far enough towards South Africa meeting its mitigation targets?
4. Do commitments within the JET-IP go far enough in ensuring that the energy transition is truly just?

The submission is structured as follows. Section 2 argues that the paradigmatic approach adopted within the JET-IP limits its ability to raise the necessary funds to meet South Africa’s just energy transition objectives. The section recommends a shift away from a risk based prudential macroeconomic framework towards a promotional macroeconomic framework to ensure that the financing gap for the JET is filled. Section 3 outlines how the heavy reliance on private financing within the JET-IP, identified above, opens the South African government to a range of significant risks. The section recommends a shift away from a risk based governance framework towards a rights based governance framework. Section 4 outlines how the JET-IP will fail to realise the NDCs and environmental protection given its sole reliance on a privatised system of electricity provision (falling profit margins constrain required scale), emitting electric vehicles and environmental impact and speculative nature of green hydrogen and makes recommendation. Finally, section 5 outlines how the JET-IP falls short of its socio-economic objectives of decent work creation and social protection and makes recommendations.



## 2. Understanding the JET-IP within a risk-based prudential macroeconomic regime

**We argue that the paradigmatic approach adopted within the JET-IP limits its ability to raise the necessary funds to meet South Africa’s just energy transition objectives.** The ‘risk-based prudential macroeconomic framework’ unpacked below, and the associated climate financing modalities (that is, market fixing and de-risking strategies), will fail to raise the climate financing ambition of R1.5 trillion. Relatedly, they will fail to direct finance away from existing dirty industries - in South Africa and abroad - thereby reducing funds available for financing climate transition. This will mean South Africa will be unable to meet its transitional and climate ambitions.

**The JET-IP is framed by a risk-based prudential macroeconomic framework that is underpinned by monetary dominance<sup>3</sup>.** The South Africa government has called for an enabling policy and regulatory framework with a heavy focus on finance-related policy to support the just transition (see section 2.4.4, p. 33 in JET-IP). In this regard, the JET-IP draws on three national government finance-related policies to effect this goal: the carbon tax; the green financing taxonomy; and the, under construction, climate budget tagging system (see section 2.4.4, p 33 in JET-IP). The carbon tax is identified as the main mechanism for the reduction of greenhouse gases. The green finance taxonomy defines green and dirty energy activities. The taxonomy can be used as an instrument for financial service actors, institutions, and markets to advance their decarbonisation efforts through their financing decisions on a voluntary basis. These are implicitly underpinned by South Africa’s risk-based prudential macroeconomic framework, which itself is premised on monetary policy, fiscal policy, and industrial policy conservatism.

**Fiscal conservatism means that the JET-IP takes as its starting point a lack of ‘fiscal space’ for the South African government to raise funds through traditional means of taxation and debt.** It accepts the dominant fiscal framework of fiscal consolidation or austerity. Fiscal consolidation means that fiscal resources cannot be allocated to meet development objectives, nor the decarbonisation agenda.

**Monetary policy conservatism limits the objectives of monetary policy to achieving price and financial stability, undermining the potential for monetary policy to serve as a means of resource mobilisation.** The JET-IP self-consciously accepts a very limited role for the South African Reserve Bank (section 5.4.7, p. 117) and accepts inflation targeting as its primary policy framework. Under this framework, monetary policy objectives (and associated tools) are highly circumscribed and do not interact with, or support, fiscal or industrial policy - or aim to achieve development objectives, such as expanding employment or facilitating a just transition.

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<sup>3</sup> Central Banks having the ability to achieve their price stability mandate.

**Industrial policy conservatism implies limited state support for the development of capacities and capabilities in catalytic industrial sectors in general, and green industrial sectors in particular.** In South Africa, this manifests in the misalignment between macroeconomic or financial policies, or financing measures, such as the JET-IP and the ambitions and financing needs of (green) industrial policy and social policy in particular.

**The consequences of this triad is that the state's role in enabling market activity and private finance is posed as the primary means of resource mobilisation.** This is underpinned by the idea that the private sector is superior in efficiently allocating capital and should thus take the lead in providing the resources for developmental objectives. State intervention, through monetary and fiscal policies, that support the ambitions of industrial and climate policy, are perceived to be, by contrast, inflationary, unaffordable, and/or will crowd out private sector investments.

**This macroeconomic framework is operationalised by two interlinked financing modalities that underpin the JET-IP:**

- *Market-fixing strategies:* These are aimed at reducing information asymmetry vis-a-vis climate-related risks so that market actors are empowered to internalise climate risks into their pricing strategies. The National Treasury's Green Finance Taxonomy is part of this approach. National Treasury regulators are assigned the responsibility of providing financial actors with information that defines green and dirty activities and climate risks (see section 2.4.4, p. 33). This information is meant to be internalised by financial market actors to allocate financing towards green sectors and to disinvest in dirty sectors (see section 2.4.4, p. 33).
- *De-risking strategies:* These use public finance (for example, grants and concessional loans) to catalyse private finance to invest in decarbonisation strategies. The use of blended finance and public private partnerships (PPPs) is part of a range of instruments that are used as an attempt to achieve this (see section 5.7.4, p. 123).

**There are numerous barriers that prevent this strategy from actually mobilising sufficient resources - these are unpacked along the lines of structural impediments; regulatory arbitrage; radical uncertainty; and policy incoherence<sup>4</sup>.**

## **2.1 Structural impediments**

**Risk-based macroeconomic frameworks systematically under estimate the structural impediments to appropriate resource allocation.** This makes it impossible to rely predominantly on these frameworks to meet policy objectives. The major structural impediment is an unregulated and anarchic global financial architecture. Therefore, risk-based strategies

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<sup>4</sup> This analysis draws from Kedward, Gabor and Ryan-Collins, 2022, Aligning finance with the green transition: From a risk based to an allocative green credit policy regime, Working Paper WP 2022/11, amongst others.

cannot circumvent the continuation of financial support for long-established dirty activities due to the presence of unregulated finance and actors such as shadow banks and private equity. The relevant aspects of these impediments are captured under two broad themes.

**First, financing is mostly allocated towards established and well-capitalised companies that are able to access large-scale capital market financing.** Investors that manage institutional capital argue the risk/return profile of renewable projects, especially in developing countries, make such projects ‘unbankable’<sup>5</sup>. In response, governments’ financing strategies leverage regulatory, monetary, and fiscal ‘de-risking’ to attract this financing. De-risking, as the name implies, means the state (or state agency) absorbing commercial and political risk in order to make the project more attractive to private financial investors and/or guarantee particular rates of returns. However, regulatory, fiscal, and monetary de-risking cannot systematically make renewable projects any more attractive as there are qualitative differences between renewable projects and the more established carbon-intensive sectors. Some of these differences include:<sup>6</sup>

- The consolidated ownership of the fossil fuel industry creates value for this sector through cost reductions within the value chain, expansionary projects to support growth, and strong negotiating power in contracting. These features of a highly-concentrated industry makes it more attractive to institutional investors and financial capital.
- In contrast, the renewable sector is currently fragmented, with a supply chain that is relatively less integrated. This could be seen as a marker of its nascentness, but it is also a structural feature of the technology. Solar and wind power are more globally distributed than fossil fuel reserves. Renewables are typically not an internationally traded dollar-denominated commodity like fossil fuel, therefore also exposing “would be” institutional investors to currency risk.
- Institutional investors and asset managers apply liquidity criteria as part of their investment decision making process. The majority of renewable assets perform poorly against the liquidity preferences of these investors because of their relative low daily-traded volume and small size. In comparison, the fossil fuel sector has received stable and large contributions from institutional funds in the last two decades.

**Consequently, renewable sector actors leading green innovation are excluded from the sorts of finance that is targeted by the risk-based approach until much later in the innovation cycle.<sup>7</sup>**

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<sup>5</sup> When a project's risk return profile does not meet investors criteria, therefore financing cannot be secured to implement the project.

<sup>6</sup> Ameli, N., Kothari, S. and Grubb, M. (2021), “The misplaced expectations from climate disclosure initiatives”, *Nature Climate Change*, 11(11), 917-924.

<sup>7</sup> Kedward, Gabor and Ryan-Collins, 2022, *Aligning finance with the green transition: From a risk based to an allocative green credit policy regime*, Working Paper WP 2022/11

**Second, large investors can avoid penalties for dirty investment by using opaque balance sheets, private equity funds and shadow banking. This makes risk-based macroeconomic frameworks ineffective at discouraging dirty investment.** Shadow banking refers to “the production (via securitisation) and financing (via wholesale funding and derivative markets) of tradable securities”<sup>8</sup>. Private equity is one such shadow banking institutional type which operates outside of the purview of regulatory oversight. The sector is valued at USD \$7.5 trillion<sup>9</sup>. Private equity has used the regulatory gaps in the international finance architecture as a gateway to invest in and absorb fossil fuel assets that are divested by large fossil fuel companies and investors such as regulated commercial banks.<sup>10</sup> This undermines attempts to direct funds away from fossil fuel investment.

**These structural impediments, therefore, show that a risk-based macroeconomic framework will fail to decarbonise finance sufficiently and fail to raise the climate financing it hopes to raise.** The structural features of the nascent renewable sector vis-a-vis the incumbent fossil fuel sector means that the latter remains exceedingly more attractive to institutional capital and investors than the former. Moreover, penalising dirty investment is not able to confront the presence of a growing trillion dollar shadow banking industry that operates outside of the regulatory purview. The shadow banking industry continues to invest in and absorb fossil fuels assets unabated.

## ***2.2 Regulatory arbitrage***

**The inherently porous regulation of private equity and shadow banking institutions steer huge portions of global capital toward high yield dirty sectors, and away from climate transition financing.** ‘Regulatory arbitrage’ that is synonymous with financial actors that operate outside of the oversight of the regulated banking sectors, such as, shadow banks, hedge funds, private equity, and off balance sheet financing structures, allows the financial sector to avoid attempts at reducing funding for dirty industries. As Kedward et al. (2022, p. 12) note:

“higher relative interest rates for dirty credit are likely to attract yield-hungry shadow lenders, who in many cases are not subject to the same shareholder or regulatory pressures regarding climate risk disclosure. Indeed, such dynamics are now widely acknowledged to be at play in the oil and gas lending space across North America and Europe. As banks pull out, large-scale exploration and production debt deals are now being underwritten by private equity and hedge funds, who are also purchasing loan portfolios at significant discounts from traditional banks (Porter and Deveau 2021). Moreover, the predictable cash flows and respectable credit ratings of mature oil and gas

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<sup>8</sup> Gabor, D. (2021). The Wall Street Consensus. Development and Change.

<sup>9</sup> Seidman, D., Mehta-Neugebauer, R., Giachino, A. and Mendoza, A. (2022). Private Equity’s Dirty Dozen: 12 firms dripping in oil and the wealthy executives who run them [Online]. Private Equity Stakeholder Project. Available at: [https://pestakeholder.org/wp-content/uploads/2022/02/PESP\\_LS\\_PrivateEquityDirtyDozen\\_Feb2022-Final.pdf](https://pestakeholder.org/wp-content/uploads/2022/02/PESP_LS_PrivateEquityDirtyDozen_Feb2022-Final.pdf)

<sup>10</sup> Ibid

companies make them well-suited to raising finance through off-balance sheet securitisation structures, which are growing in popularity (Kang 2021; Allison 2021). While these developments do point to a higher cost of capital for the oil and gas sector, these relative repricing effects have not been enough to curtail investment appetite, especially as we move into a commodity boom cycle.”<sup>11</sup>

### **2.3 Radical uncertainty**

**The risk-based approach, which attempts to internalise climate risks into asset pricing through disclosure initiatives and the use of climate-aligned ratings that are provided by objective third parties, will always fail to account for climate change uncertainties.** With such disclosure, it is imagined that private finance will avoid such investments. This approach, therefore, is premised on climate risk challenges as a series of information-based market failures. This has been criticised on theoretical grounds.

There are unknowable and unmeasurable uncertainties associated with physical and transitional risks related to climate change. Given these uncertainties, pricing instruments are an ineffective instrument at catalysing the financing towards green innovations. This is especially the case as green innovation is associated with non-linear dynamics. These nonlinear dynamics span the spectrum of lock-ins and network externalities. Consequently, what is needed to break through these structural constraints in order to fund climate transition projects is high-risk capital. Therefore, private finance operating in a risk-based market-based framework is not well adapted and suited to this end.

### **2.4 Policy incoherence**

**Finally, the risk-based policy approach prioritises monetary dominance above green mandates that would require central bank alignment with government transitional plans.** The Bank of England, for instance, is notable for being the first central bank to have an explicit environmental mandate. The Bank operationalised this mandate through the ambition to have a risk-based green corporate bond purchase in 2021. This scheme is risk-based because it allows the bank to allot price-based incentives through its corporate bond purchase in a manner that is industrially conservative, that is, it “avoids overt [sectoral] allocative interventions that could be described as industrial policy” or adopts market neutrality”<sup>12</sup> (Kedward, 2022, p. 7). This means that it also purchases fossil fuel corporate bonds that are categorised as best in class based on a climate scorecard metric. However, once the Bank’s environmental mandate came into conflict with its core price stability mandate due to the recent rise in inflation in the aftermath of the Ukraine-Russia war, it abandoned its decarbonisation plans. Quantitative tightening was prioritised instead. This indicates how a risk-based prudential macroeconomic framework -

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<sup>11</sup> Kedward, Gabor and Ryan-Collins, 2022, Aligning finance with the green transition: From a risk based to an allocative green credit policy regime, Working Paper WP 2022/11

<sup>12</sup> Ibid

characterised by the separation of monetary, fiscal and industrial policy - ensures that monetary dominance will trump all else.

**Other tools are available but have failed to gain traction within dominant frameworks.** For instance, the Swedish government has adopted an up to 80% guarantee on long-term loans to green industrial projects France recently extended its zero-interest housing loan scheme, through which domestic banks are incentivised to distribute to green housing projects There are also proposals from the Bank of England and the European Central Bank for a targeted refinancing scheme and differentiated capital requirements (for clean and dirty industries). These banks acknowledge that these schemes can only work if central banks establish and operationalise risk differentials between green and dirty activities. In spite of this acknowledgement, there are no central banks or regulators in high-income countries that are implementing policies aimed at explicitly penalising dirty assets.<sup>13</sup>

**Therefore, market neutrality, a feature of industrial policy conservatism, gives monetary policy a carbon bias.** This means that even if central banks did climate risk signalling well, within the risk-based prudential framework, underpinned by monetary dominance and market neutrality, the ambition for structural transformation characterised by a significant sectoral allocation shift towards green investment will fail. This is because sectoral allocations will ultimately be determined by private finance. Giving the power to private finance to determine the pace and nature of finance towards the decarbonisation agenda, will impair the agenda given the presence of structural impediments and regulatory arbitrage discussed above.

## ***2.5 Towards an allocative credit policy framework***

**Mobilising climate finance to achieve a just energy transition cannot be conceived of as predominantly an effort to use market-fixing and de-risking strategies to entice private finance to move from dirty to clean industries.** Instead, more interventionist strategies are essential.

**Climate finance public policies that feature what Kedward et al<sup>14</sup> call ‘allocative credit policy’ will be crucial to achieve adequate allocation of resources to financing climate transitions.** Allocative credit policies, notably used by the East Asian tigers, are policies that integrate financial, monetary, fiscal, and industrial policy to ensure that finance is directed towards productive investments that can catalyse development. Integrated with environmental policies, these allocative green credit policies are central to directing investments towards sustainable productive investments to ensure a just energy transition or a green transition more broadly. Importantly, under this green macro-financial framework, rather than a prudential role, central banks play a promotional role that aligns “financial regulation, credit and monetary

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<sup>13</sup> Ibid

<sup>14</sup> Ibid

policies with green industrial strategy to ensure that the dynamics of private capital allocation do not undermine this policy effort”<sup>15</sup>

Taking inspiration from the success of financial policies by late industrialisers, Kedward *et al.* (2022) have created a typography of a broad range of direct and indirect green credit instruments for two key financial market actors in the green transitions, namely the banking system and institutional capital. The banking system is understood as a network of licensed financial institutions that provide financial services to the public which includes central banks, commercial banks, and internet banks. Institutional capital include pension funds, insurance funds, and asset managers. Indirect and direct credit policies can therefore be mobilised to ensure that these market players direct investments towards a just transition.

**Indirect allocative policies are monetary policies that “aim to adjust the relative costs of providing capital to different sectors, hence influencing capital allocation through incentive rather than coercive means”<sup>16</sup>.** Monetary policy instruments that can adjust the relative costs of finance for a sector through the banking system on favourable or unfavourable terms, depending on whether that sector is ‘dirty’ or ‘green’. These policies are more interventionist (and successful) than assuming the signalling, information-provisions, and de-risking approaches discussed under the risk-based framework above. For instance, reserve requirement adjustments<sup>17</sup> can be made high (or low), credit guarantees can be dispensed (or not), and loan refinancing terms can be made favourable (or unfavourable) depending on whether the sector being financed is green (or dirty).

There is also the need to have monetary policy instruments that prevent back door shadow banking that provides an avenue for institutional capital to invest in dirty energy<sup>18</sup>. Monetary policy instruments that can adjust the relative costs of finance for institutional capital for green investments are, for instance, high capital requirements for allocations to dirty assets, punitive leverage ratios for dirty assets, or collateral haircut adjustments.

**Direct allocative policies are more “coercive credit allocation” policies “that intervene to directly set the price or quantity of bank credit for particular sectors”** (Kedward *et al.*, 2022, p20).<sup>19</sup> This is another policy toolkit with a long history in developed, as well as East Asian tigers, countries. These monetary policy instruments can take the form of “interest rate controls such as ceilings, floors or subsidised rates; and they can also take the form of quantitative

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<sup>15</sup> Kedward, K., Gabor, D. and Ryan-Collins, J. (2022). Aligning finance with the green transition: From a risk-based to an allocative green credit policy regime. UCL Institute for Innovation and Public Purpose, Working Paper Series (IIPP WP 2022-11). Available from: <https://www.ucl.ac.uk/bartlett/publicpurpose/wp2022-11>

<sup>16</sup> Ibid

<sup>17</sup> These services include receiving deposits and withdrawals, offering loans, lending funds etc.

<sup>18</sup> Kedward, K., Gabor, D. and Ryan-Collins, J. (2022). Aligning finance with the green transition: From a risk-based to an allocative green credit policy regime. UCL Institute for Innovation and Public Purpose, Working Paper Series (IIPP WP 2022-11). Available from: <https://www.ucl.ac.uk/bartlett/publicpurpose/wp2022-11>. Accessed on: 7 November 2022.

<sup>19</sup> Ibid

targets on lending for certain sectors”<sup>20</sup>. For example, lower interest rates have been set for green sectors by the central banks of Bangladesh and South Korea. Similarly, the Peoples Bank of China has “launched a green targeted refinancing scheme stipulating that banks must lend to green activities at close to benchmark rates in order to qualify for discounted funding”<sup>21</sup>.

**These green allocative credit policies are well suited not only to encourage investment in renewable energy generation but also to support the expansion of domestic renewable sector manufacturing.** They, therefore, can contribute to the dual objectives of expanding clean energy capacity while ensuring industrial development and creating decent work. In contrast to the de-risking, private-sector prioritising approach of current JET-IP financing, such policies work in the public interest rather than allowing the financial elite to profit from the climate emergency at the potential expense of the majority.

**In this regard, we recommend:**

- That just energy transition financing be conceived more broadly than the mobilisation of private sector finance and that the JET-IP be revised in this regard.
- The South African government spearheads an initiative for developing countries to use multilateral policy spaces to secure agreement that all climate financing deals will have a minimum 25% in direct grants (over and above existing ODA) from Global North donor countries.
- The SARB should be instructed to complement its inflation target with the broader objectives of structural transformation, environmental sustainability, and economic development and employment creation. This would require the SARB to make use of a broader policy toolkit and not rely overwhelmingly on interest rates as the primary monetary policy tool. This is in line with the international trend of reconceptualising both the factors impacting financial stability (including climate risks) and the role of monetary policy in advancing climate transitions.
- The SARB and National Treasury should jointly design and implement green allocative credit policies (direct and indirect) that are integrated with green taxonomy responsive to climate policy, industrial policy, and social policy. This could include, for example: subsidised interest rates for public and private renewable energy projects; requirements for private banks to dedicate a portion of their loan book, or institutional investors a portion of their investments, to green projects at discounted rates; and differentiating reserve requirements, credit guarantees, capital requirements, leverage ratios, and loan financing terms according to green sectors.
- The South Africa government mobilises social partners and developing country allies to push for improved regulatory oversight of shadow banking and institutional capital.
- A comprehensive review be undertaken (along the lines of the Davis Tax Commission) to identify the possibility of raising tax revenue for the just energy transition.

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<sup>20</sup> Ibid

<sup>21</sup> Ibid



### 3. Multiple risks raised by the JET-IP

**The heavy reliance on private financing within the JET-IP, identified above, opens the South African government to a range of significant risks.** These risks are premised upon:

1. An over reliance on debt instruments as a means of financing the JET-IP;
2. A reliance on private sector financing and the use of official sector finance to ‘de-risk’ financial investments, notably through blended finance instruments and public-private partnerships (PPPs); and
3. Limited financing and social safeguards to fully operationalise a ‘just transition’.

These risks manifest themselves in terms of financial regulatory and policy risks; investment law risks; and social and economic transition and governance risks, these are unpacked within subsections below. Before turning to those it is useful to contextualise the JET-IP within broader international climate financing frameworks to better understand the obligations incumbent on all parties.

#### ***3.1 Contextualising the JET-IP within the Multilateral Climate Finance Architecture***

**The JET-IP is embedded within the broader international architecture of climate finance and obligations that countries have agreed to under the multilateral climate regime of the United Nations Framework Convention on Climate Change (UNFCCC).** As it is a financing platform intended to support decarbonisation plans established in South Africa’s National Defined Contribution (NDC), it is important that the financial arrangements entered into between South Africa and its Just Economic Transition Partnership (JETP) partners, the European Union (EU), France, Germany, the United Kingdom (UK), and the United States (US), conform to commitments of all parties who are signatories to the UNFCCC and the Paris Agreement. It is therefore important to examine the provisions of the JET-IP in light of how it meets the obligations of South Africa and its international partners under the multilateral climate regime.

The JET-IP recognises that climate finance is central to all parties meeting their international legal obligations under the UNFCCC and Paris Agreement (Sections 5.6, p. 120 and Section 5.7 p. 121, of the JET-IP).<sup>22</sup> It reiterates the principle of “common but differentiated responsibilities and respective capabilities” (CBDR-RC) underpinning the multilateral climate regime and emphasises that financing arrangements under the JET-IP is located within the context of “international climate agreements, commitments and institutional arrangements” (Section 1, p. 20 of the JET-IP).

**It is important to note here that under Article 4.7 of the UNFCCC, as a developing country, South Africa’s commitments under the UNFCCC and Paris Agreement to undertake**

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<sup>22</sup> South Africa (2022), ‘South Africa’s just Energy Transition Investment Plan (JET IP) for the Initial period 2023-2027’, The Presidency of the Republic of South Africa, pp 120 – 121.

**climate change mitigation and adaptation measures, are dependent on developed countries meeting their commitments to provide financial resources and technology transfer to developing countries.** This includes meeting the “agreed full incremental costs” of mitigation and adaptation (Articles 4.3 and 4.4 of the UNFCCC). Financial resources have to be “new and additional” (Article 4.3 of the UNFCCC) which means that the financial resources provided by South Africa from JETP partners to finance the JET-IP should be additional to official development assistance (ODA) and other financial flows for other sustainable development purposes. The Paris Agreement notes “the significant role of public funds” and emphasises support for “country-owned strategies” and the transparency and predictability of financial support from developed countries (Article 9(3) and 9(7) of the Paris Agreement).

**Alongside the principles of the CBDR-RC - additionality, predictability, and country ownership - the JET-IP states that financing arrangements should also be guided by considerations of a broad range of socio-economic measures.** These measures include debt sustainability, cost-effectiveness, harmonisation of climate action with social and economic impacts of low-carbon transition, and the establishment of governance and safeguards to manage risks (section 5.6 JET-IP). The JET-IP, therefore, places emphasis on the alignment of financial packages from its International Partners Group (IPG) with these principles and the strategic priorities identified in the JET-IP. The JET-IP states that the financing arrangements emerging from discussions between South Africa and its investment partners “will need to align with South Africa’s fiscal realities and demands and uphold the development and climate finance in the context of the country’s commitment to a just energy transition” (section 5.1). It also emphasises that the financing package “must address the social costs associated with achieving the updated NDC targets and broader climate response” (section 5.3).

**As indicated above, we have identified three concerns in the financing package that could undermine the aforementioned climate and sustainable development objectives and fiscal alignment, and that potentially give rise to legal, regulatory, policy, and governance risks beyond the JET-IP.** These are all premised on the prioritisation of private debt financing within a ‘de-risking’ framework with insufficient social and legal protections. In the following subsections, we outline some key considerations the South African government should take into account in moving forward with the financing and implementation of the JET-IP. We believe that aspects of the financing approach and proposed financial instruments may generate legal and regulatory risks as well as social and economic risks and may have broader implications for governance and policymaking on climate action and sustainable development posed by these features of the JET-IP.

### ***3.2 Financial regulatory and policy risks***

**The JET-IP is heavily reliant on debt instruments and market-based mechanisms to finance decarbonisation and economic transition plans.** The significant financing needs (estimated at R1.5 trillion or USD \$98.7 billion over the next five years) requires a broad range

of financial instruments and investments. The current IPG offer of USD \$8.5 billion (funding only 12% of the total projected costs of the JET-IP) consists primarily of concessional loans and commercial loans and guarantees, with the bulk of financing geared towards catalysing other official and commercial sources of financing (section 6). Grant financing makes up only USD \$29.7 million or less than 4% of the total financial package and is targeted primarily at technical assistance and advisory services (section 6 of the JET-IP).

**The over reliance on debt instruments – official and commercial – and private investments generates significant financial, regulatory, and legal risks for the country.**

**This reliance on loans, even on concessional terms, to finance the JET-IP will have an impact on the fiscal position of South Africa given the pressures of financing other sustainable goals, including health and education, and increase the country’s vulnerability to external financial dynamics and economic shocks.** Beyond official sector financing in terms of direct project loans and programmatic support, a sizeable portion of committed IPG finance will be channelled through bilateral development finance institutions (DFIs), such as UK’s British International Investment (BII) and the US’ Development Finance Corporation (DFC), and public-private platforms such as the Private Infrastructure Development Group (PIDG), to provide loans, guarantees, and insurance to private investors. These commercial financing instruments increase the state’s debt risks in a number of ways: (1) they form contingent liabilities on the state if backed by state guarantees or funded through blended finance instruments (see discussion below); (2) the contractual terms of these arrangements may stipulate high financial exit costs for state parties (see section 2.2 below); and (3) they heighten the state’s exposure to volatility in international financial markets (see discussion below).

A significant part of the JET-IP and the financial package agreed with the IPG will be geared towards creating enabling environments, including regulatory reforms, to facilitate the development of financial markets and investment opportunities for private capital engagement in transition finance. It is unclear what these initiatives will be, but they could potentially include direct financial support through blended finance instruments and reforms to the domestic financial architecture and legal landscape to incentivise the development of ‘sustainable finance’ markets and the issuance of thematic sovereign and corporate bonds, such as green or sustainability bonds (see sections 5.7.4, 5.7.5 and 6.7 of the JET-IP). Thematic bonds (sometimes known as ‘labelled bonds’) are fixed-income securities which target investments in specified thematic areas, such as climate action, biodiversity, marine conservation, or sustainable development more generally.<sup>23</sup>

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<sup>23</sup> See for example, UN ESCAP (2021), ‘[An Introduction to Issuing Thematic Bonds](#)’, United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP).

This is certainly a trend emerging in the international development landscape where official sector finance is deployed towards the mobilisation of private finance through policy, regulatory, and financial interventions to: (1) create pipelines for investable projects attractive to private investors; and (2) engage in 'market building' through development of regulatory standards and institutional mechanisms for sustainable finance markets, such as disclosure and reporting standards and taxonomies.<sup>24</sup> Many of the latter regulatory initiatives and reforms in other jurisdictions have focused more on due diligence and protection for the investor rather than host states or communities.<sup>25</sup>

**This focus on 'de-risking' private finance using official or state-backed resources can be a costly exercise and less financially sustainable than direct funding of transition projects.** There have been several high-profile collapses of PPP and outsourcing companies in developed countries (with more sophisticated regulatory and public administration oversight frameworks) over the years which have highlighted the precarity of reliance on private investors to deliver infrastructure, development, and essential services. When such contractors fail to deliver, it is the end user - hospital patients, schoolchildren, or care home residents - who are impacted by the collapse in services and governments who will have to pick up the tab for recontracting out services or, in some cases, renationalising projects to maintain viability of the infrastructure projects or continuity of service delivery.<sup>26</sup>

**Over reliance on debt instruments and on private capital markets will create greater exposure to shifts in global economic conditions and create new transmission nodes for financial instability.** The rigour of the domestic legal and regulatory architecture outlined in section 5.4 of the JET-IP aside, existing systemic regulatory gaps in the global financial system mean that the turn to private debt instruments will increase South Africa's vulnerability to the speculative and pro-cyclical nature of financial markets. Without systemic reform of the current international financial architecture, including changes to the fragmented sovereign debt regime, reliance on private finance and bond finance in particular, creates significant legal and regulatory risks on top of financial risks which can undermine the viability of projects and programmes financed by the JET-IP.

**An increased dependence on external private investors governed by regulatory frameworks (including corporate governance or financial conduct rules) in external jurisdictions mean that failures of regulation in these external jurisdictions (such as**

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<sup>24</sup> Tan, C (2022), 'Private Investments, Public Goods: Regulating Markets for Sustainable Development', *European Business Organization Law Review*, Vol 23, No 1 and Tan, C (2022), 'Regulating Financial Markets for Sustainable Development Investments', ['Regulating Financial Markets for Sustainable Development Investments'](#), NeF DeF Policy Brief Series No 3, September 2022.

<sup>25</sup> See IEJ (2022), ['Towards a Just Energy Transition: A Framework for Understanding the Just Energy Transition Partnership on South Africa's Just Transition'](#), Climate Finance Policy Brief Series No 1, Institute for Economic Justice (IEJ), November 2022.

<sup>26</sup> Tan, C and Cotula, L (2018), ['Regulating Development Partnerships: PPPs, Blended Finance and Responsible Investment Provisions'](#), UNCTAD Investment Policy hub Blog, 23 March 2018; Jubilee Debt Campaign (2017), ['The UK's PPPs Disaster: Lessons on Private Finance for the Rest of the World'](#), February 2017.

**banking supervisory failures in the investors' home state) may create contagion and spillover impacts on investments located in host states, such as South Africa.** Changes in the regulatory system in developed countries (such as pension fund, securities, or capital requirements regulations) may also impact on investor behaviour and the value and security of investments abroad. Although potentially more attractive to certain classes of investors focused on expanding their sustainable finance portfolio, thematic bonds carry similar financial and regulatory risks as traditional sovereign bonds and may not be a sustainable or predictable option for transition finance (spelt out in the bullet below). The regulatory framework for thematic bonds is not dissimilar to conventional securities regulation and is unlikely to insulate developing countries, such as South Africa, from these risks and can exacerbate some risks, including the risk of an 'environmental, social, and governance' (ESG) 'bubble'<sup>27</sup> leading to the accumulation of unsustainable debt or the risk of large-scale divestiture in a financial crisis.<sup>28</sup>

**Moreover, in the absence of a formal sovereign insolvency process, the introduction of new creditors and new debt instruments into an already complex and challenging fiscal and financing landscape is likely to complicate efforts to restructure sovereign debt should this become necessary.** Recent experience with developing country debt restructuring processes have demonstrated the reluctance and/or refusal of private creditors to engage in multilateral negotiations, prolonging access to financing and debt restructuring. Middle-income countries, such as Sri Lanka, and low-income countries, such as Zambia, have faced significant hurdles in receiving debt relief due to protracted negotiations since the start of the global Covid-19 pandemic, with private creditors holding out on debt relief to these countries.<sup>29</sup> It is important that policymakers consider not only the financial impact of the contracting of further debt to fund the JET-IP (see section 7.3, Table 10) but also the legal risks associated with contracting debt with different classes of private creditors, the terms of the debt, and the jurisdiction in which the debt is governed. Debt governed by domestic law will be easier to restructure than debt governed by an external jurisdiction as this may be subject to international and contractual obligations (see section 2.2 below).

**There is also a risk that a financing agenda that is oriented to private investments for decarbonisation can subordinate countries' priorities, including those established under NDCs, to the interests and priorities of private investors.** The United Nations Conference on Trade and Development (UNCTAD) has previously warned that efforts to create enabling environments for private investments in public goods, such as climate action, can accelerate the loss of policy and regulatory autonomy in developing countries. Regulatory reforms which purport to incentivise or mobilise private finance are mostly aimed at protecting the financial and

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<sup>27</sup> The lack of harmonisation of green or sustainability standards has led to concerns over 'greenwashing' and an inflated pricing of ESG products, including green and sustainability securities, which may lead to a market contraction that can affect the sustainability of the projects and programmes that are being financed by such instruments.

<sup>28</sup> See note 4 above.

<sup>29</sup> See for example Elliot, L (2023), '[Hedge Funds Holding Up Vital Debt Relief for Crisis-Hit Sri Lanka. Warn Economists](#)', *The Guardian*, 8 January 2023; Inmna, P (2022), '[Lenders Urged to Cancel Zambia Debt as Country Faces Economic Collapse](#)', *The Guardian*, 16 September 2022.

legal interests of investors (for example, see section 3.3. below) over community rights. These reforms often include the deregulation and liberalisation of economic sectors without the scope for corresponding social, economic or financial safeguards, thereby also outpacing governments' ability to regulate key and strategic economic sectors for sustainable development and climate action.<sup>30</sup> UNCTAD has also cautioned that the use of bilateral or multilateral Development Finance Institution (DFI) financing can often bypass state agencies as DFIs contract directly with private actors within the host state.<sup>31</sup>

**With respect to these financial regulatory and policy risks we recommend:**

- In order to ensure that the JET-IP meets the quality of governance and management it establishes in section 7 and its objective to create a coordinated transition programme, focus should be on ensuring that projects and programmes under the JET-IP are prioritised according to domestic and local need and not primarily driven by investor or donor interests.
- It is important that the financial criteria for prioritisation of investment decisions under the JET-IP carry equal weight with the social and economic considerations for just transition outcomes outlined in section 2.3 below.
- Legal, regulatory, and policy reforms linked to financing instruments, such as development policy loans from multilateral development banks (MDBs) or bilateral aid agencies, must be evaluated against the broader risks to the financial system and fiscal position of the South African government.
- Policymakers need to recognise that broadening the funding base to private actors and PPPs via DFIs and philanthropic funding does not necessarily mitigate the high financial risk the JET-IP identifies in section 7.3, Table 30, but can correspondingly generate the aforementioned additional risks.
- It is important that the use of so-called 'innovative finance' instruments, including blended finance and thematic bonds, be considered in light of appropriate regulatory safeguards to prevent negative outcomes of failures, including consideration of South Africa's exposure to international markets and external legal jurisdictions which govern foreign financial actors, such as pension funds and other institutional investors.

### **3.3 Investment law risks**

**The focus on catalysing private capital for decarbonisation and climate action necessitates consideration of how this may impact South Africa's legal obligations elsewhere.** This raises potential areas of legal risks associated with transitions to a green economy, both in terms of transition away from existing investments in coal, oil, and gas, and

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<sup>30</sup> UNCTAD (2019), *Trade and Development Report 2019: Financing a Global Green New Deal*, UN Conference on Trade and Development (UNCTAD): New York and Geneva; UNCTAD (2019) *The Least Developed Countries Report 2019. The Present and Future of External Development Finance: Old Dependence, New Challenges*. UNCTAD: New York and Geneva.

<sup>31</sup> Ibid.

future deals with foreign investors in the renewable energy sector who hold the technology and know-how. The JET-IP commits South Africa to an ambitious investment plan to attract foreign investors in the renewable energy sector through private investments and PPPs whilst phasing out its domestic coal production.

**Such an ambitious plan raises potential risks through potential costs of future investment disputes that may arise between foreign investors and the South African government investment obligations spelt out in several legal instruments.** These instruments include: South Africa's investment treaties, investment contracts entered into when establishing PPPs, the terms of licensing agreements, or permits issued to investors in the relevant sectors. The issuance of thematic bonds, notably sovereign bonds, to finance the JET-IP can also attract liability under investment law.<sup>32</sup>

- *Regulatory chill*: International and domestic legal frameworks that promote and protect foreign investments run in parallel to JET-IP's implementation and may pose significant legal risks including regulatory chill. Regulatory chill describes situations where governments refrain from, or postpone, regulating due to potential or actual threats of investment disputes and exposure to significant financial burdens for breaches of investment protection standards.<sup>33</sup> Investment disputes span a whole litany of cases from a range of industries with a notable 42% of recorded cases up to date filed by investors in mining and energy sectors.<sup>34</sup> Most recently, an international arbitration tribunal found Italy liable to pay €250 million in damages to an oil company for an offshore drilling project that was denied an exploration licence in order to protect the marine environment from risks of offshore oil drilling.<sup>35</sup> Such risks can increase the cost of transition for South Africa and cause delays where regulators refrain from or postpone introducing necessary reforms, in order to avoid liability for excessive damages awards rendered by arbitration tribunals.
- *Limiting public interest*: Investment treaties and contracts typically guarantee economic rights of foreign investors. Moreover, investment treaties safeguard foreign investors against interference from regulatory changes that diminish the value of investments, even where such regulatory reforms are in the public interest, such as environmental regulations or climate action. As such, these legal instruments create protection bubbles for a privileged few while undermining public policy reforms.<sup>36</sup> For instance, when

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<sup>32</sup> *Abaclat and Others v Argentine Republic*, ICSID Case No. ARB/07/5.

<sup>33</sup> Tienhaara, K and Cotula, L (2020), 'Raising the Cost of Climate Action? Investor-State Dispute Settlement and Compensation for Stranded Fossil Fuel Assets', October 2020, Institute for Environment and Development (IIED) Land, Investment and Rights Series, London: IIED.

<sup>34</sup> ICSID Caseload - Statistics, Issue 2023-1 p.12, accessible at [https://icsid.worldbank.org/sites/default/files/Caseload%20Statistics%20Charts/The\\_ICSID\\_Caseload\\_Statistics.1\\_Edition\\_ENG.pdf](https://icsid.worldbank.org/sites/default/files/Caseload%20Statistics%20Charts/The_ICSID_Caseload_Statistics.1_Edition_ENG.pdf)

<sup>35</sup> *Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd, and Rockhopper Exploration Plc v. Italian Republic*, ICSID Case No. ARB/17/14

<sup>36</sup> Yilmaz Vastardis, A (2020), 'Investment Treaty Arbitration: A Justice Bubble for the Privileged' in T Schultz and F Ortino (eds) *The Oxford Handbook of International Arbitration*, Oxford: Oxford University Press.

governments amend the terms of, or cancel, projects in the energy sector for public policy reasons, this may give rise to investor-state disputes.

**International arbitration tribunals, which operate under a largely opaque process and under which investor state disputes in the energy sector are typically settled, open states up to heavy punitive costs or limit policy autonomy.** Most significantly, damages for breaches are typically assessed using a method called ‘discounted cash flow’ (DCF). This method “locates value in an asset’s future profitability (rather than historic costs)” and “works by adding up the expected cash flows, but subject to a discount factor in order to reflect associated risk”.<sup>37</sup> Use of this method has resulted in tribunals awarding excessive amounts of damages to cover investor loss, paid from the public purse. At its most excessive, in 2019 an international arbitration tribunal held Pakistan liable to pay a mining company USD \$5.84 billion in damages for a copper mine project in Pakistan that never went beyond the exploration phase.<sup>38</sup> Around the time this award was published, Pakistan entered into an agreement with the International Monetary Fund (IMF) for a lending programme of roughly the same amount to keep the country solvent.<sup>39</sup>

**While it may be necessary for South Africa to attract foreign investments to implement its plan for a just energy transition, the terms under which such investments are made and protected play a crucial role in giving South Africa the necessary flexibility to respond to evolving socio-economic conditions and scientific evidence during this transition.**

In its Sixth Assessment Report in 2022, the Intergovernmental Panel on Climate Change (IPCC) noted that international investment protections may act as a hindrance to green transition policies.<sup>40</sup> The risks are most acute for fossil fuel asset stranding, but a recent wave of at least 80 investment treaty claims by renewable energy investors against Spain, Italy, the Czech Republic, Romania, and Bulgaria act as a reminder that governments should carefully consider the impact of international investment treaty and contract commitments on just transition policies.<sup>41</sup> These European renewable energy disputes arose from respective governments taking the decision to reduce or eliminate the generous subsidies and incentives to existing renewable energy projects giving rise to a reduction in investor profits. The rollback of subsidies was triggered in various European countries as they became unaffordable for governments after the 2008 financial crisis.

**Bilateral investment treaties (BITs) can unreasonably protect companies at the expense of states.** While South Africa has terminated some of its BITs, and currently it does not have

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<sup>37</sup> Marzal, A (2023), ‘Polluter Doesn’t Pay: The Rockhopper v Italy Award’, *EJIL: Talk!* 19 January 2023

<sup>38</sup> *Tethyan Copper Company Pty Limited v Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1.

<sup>39</sup> IMF (2019), ‘IMF Executive Board Approves US\$6 billion 39-Month EFF Arrangement for Pakistan’, Press Release No 19/264, 3 July 2019.

<sup>40</sup> IPCC (2022), *Climate Change 2022: Impacts, Adaptation and Vulnerability*, chapter 14, pp.1505-1506.

<sup>41</sup> UNCTAD, IIA Issues Note, ‘Treaty-based investor-state dispute settlement cases and climate action’ September 2022, Issue 4, pp.5-6.



active investment treaties with most of the JET-IP partners, it does still have investment treaties with some states within the EU (for example Sweden). It is possible for investors from JET-IP home states to incorporate investment vehicles in South Africa's existing BIT partner states (so called 'treaty shopping' practice) in order to benefit from investment treaty protections.<sup>42</sup> Additionally, existing coal investments due for phase-out may benefit from the survival clauses of the terminated South African BITs if they fall within the coverage of those BITs. Investment protections and international arbitration can also be embedded into contracts, permits or licences. South Africa has adopted a new Act on Protection of Investment in 2015 which curtails many excesses of the investment treaty and arbitration framework. Reliance on the domestic act for investment protection may provide a more suitable framework for just transition investments.

### **Two specific areas in the JET-IP require closer scrutiny for investment law impacts - coal phaseouts and renewable energy investments.**

**First on coal phase-outs, the JET-IP refers to funding for decommissioning and repurposing of coal-fired power stations and coal-mining land (see section 5.9 of the JET-IP) but does not consider the potential costs of compensation to investors for terminating coal projects before their end of life.** Exposure to international arbitration claims can also come from the terms of contracts, permits or licences for mining or electricity production, and distribution. Investment treaty claims from coal investors can climb up to significant amounts as demonstrated by the 2021 claim by the German energy company RWE against the Netherlands requesting EUR €1.4 billion compensation for the impact of the latter's coal phaseout plan on the company's investment.<sup>43</sup> A Dutch court decision relating to the same claim held that despite the plan infringing ownership rights, no compensation was due to the investors, as the interference was not unlawful and measures "taken by the government to reduce CO<sub>2</sub> emissions have been proportionate, and the interests of the owners have been sufficiently taken into account".<sup>44</sup> Judging by past arbitral awards, it is unlikely for the arbitral tribunal in *RWE v the Netherlands* to agree with the assessment of the Dutch court on whether the Netherlands owes compensation to RWE for the impact of its coal phase-out policy on RWE's business. Past arbitral awards dealing with the impact of environmental regulations and restrictions on expected or actual investment value have found states liable without giving due consideration to the public purpose, necessity, and proportionality of the measures taken.<sup>45</sup>

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<sup>42</sup> Yilmaz Vastardis, A (2020), *The Nationality of Corporate Investors under International Investment Law*, London: Hart Publishing.

<sup>43</sup> *RWE AG v the Kingdom of the Netherlands RWE AG and RWE Eemshaven Holding II BV v. Kingdom of the Netherlands*, Request for Arbitration, 20 January 2021.

<sup>44</sup> Investment Treaty News (2022), *Dutch Court Denies Compensation to RWE and Uniper*, 26 December 2022.

<sup>45</sup> *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States* (Case No. ARB(AF)/00/2); *Clayton and Bilcon of Delaware Inc. v. Government of Canada* (PCA Case No. 2009-04); *Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v. Italian Republic* (ICSID Case No. ARB/17/14); *Eco Oro Minerals Corp. v. Republic of Colombia* (ICSID Case No. ARB/16/41).

While it appears that the largest coal investments in South Africa are held by domestic investors, this alone is not a barrier to investment treaty or contract claims to recover future lost profits resulting from a coal phaseout under JET-IP. Domestic investors have previously successfully relied on ‘round-tripping’ to transfer holdings to an investment vehicle located in a state having a BIT with the host state, to benefit from investment treaty protections.<sup>46</sup> Risk of international arbitration claims by coal investors and the potential financial costs of such claims should be carefully considered as part of the JET-IP.

**Secondly, on renewable energy investments, the JET-IP identifies (section 7.4) the need for a predictable regulatory environment and political risk mitigation to attract private green investments which could increase the costs of future policy adjustments.** While political and regulatory risk mitigation are important considerations for green energy investments, with high upfront costs, the South African government should carefully consider the commitments it makes in this regard. If South Africa commits itself to overly generous guarantees and commitments of profit for renewable energy investors in implementing the JET-IP, investment law protections can significantly increase the costs of future policy adjustments required for responding to changing conditions and science. For example, if funding arrangements or subsidy commitments later become untenable and unaffordable for the country, even if profits remain reasonable for the investors, reductions resulting from withdrawal or adjustments of state support can give rise to investment law claims.

A recent analysis reviewing the renewable energy investor claims arising from the rollback of renewable energy support schemes against Spain and Italy has found that a notable number of tribunals, relying on the DCF method to assess compensation, awarded overly generous compensations to investors for reduction in profits brought by the rollback of subsidies.<sup>47</sup> Approximately 80 investment treaty claims were filed in response to changes in renewable energy support schemes within the EU showing an emerging picture of the risks posed by investment law’s inflexibility towards policy evolution in the context of transition into a just green economy. In light of these developments, South Africa would benefit from a careful evaluation of its promises to green economy investors and the extent of its investment law commitments as it develops its JET-IP further.

**With respect to investment law risks we recommend the following:**

- JET-IP aims to attract renewable energy investors from South Africa’s partner countries, whilst committing to phase out South Africa’s reliance on domestic coal production. In planning this transition, policy-makers in South Africa would benefit from carefully considering the potential legal and financial impacts of South Africa’s investment law

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<sup>46</sup> For example, *Yukos Universal Limited (Isle of Man) v The Russian Federation*, (PCA Case No AA 227); see note 16 above.

<sup>47</sup> Fermeiglia, M (2022), ‘Cashing-In on the Energy Transition? Assessing Damage Evaluation Practices in Renewable Energy Investment Disputes’, *Journal of World Trade and Investment*, Vol 23, pp 982 – 1019.

commitments on its ability to regulate in the public interest whilst navigating a just energy transition.

- For new investments in the renewable energy sector, contracts and/or terms of licences should be designed carefully to ensure South Africa has adequate policy space for responding to the evolving energy transition landscape.
- South Africa could rely on its domestic Act on Protection of Investment as the governing framework of foreign investments, refrain from agreeing to international arbitration for settling disputes with investors and explicitly require disputes to be settled in domestic courts of South Africa.

### **3.4 Social and economic transition and governance risks**

**The move towards blended and private financing in the provision of public goods, especially in large-scale transformative programmes such as the JET-IP, can generate significant social and economic transition and governance risks that can compromise the objectives of the JET-IP and key cornerstones of the plan laid down in section 7, as well as undermining South Africa’s human rights and environmental obligations.** As discussed in section 3.1, the JET-IP relies on debt instruments primarily to finance decarbonisation and transition projects and programmes, as well as financing modalities aimed at mobilising private finance, such as blended finance instruments.

**The relationship that the JETP established between parties risks the Global North financing parties being empowered to put in place structural and policy conditionalities.** There is a danger that as the JETP itself remains a donor-dominated process which sits outside the official financial mechanism established under the auspices of the UNFCCC and supervised by the Conference of Parties (COP), it will remain premised on an aid framework rather than as part of the multilateral legal regime. This means that the strategic priorities of the JETP will continue to be driven by the interests of the developed countries as financiers and financial resources continue to be disbursed on the principle of conditionality, notably those linked to programmatic lending and budget support. These may include structural and policy conditionalities which may undermine rather than progress the objectives of decarbonisation and just transition outlined in the JET-IP.

**The creation of further debt while attempting to embark on a just and inclusive transition can undermine South Africa’s international human rights obligations.** The UN Guiding Principles on Foreign Debt and Human Rights stress that ‘economic reform programmes arising from foreign debt should maximise the policy space of developing countries in pursuing their national development efforts, taking into account the views of relevant stakeholders in a way that ensures balanced development conducive to the overall realisation of all human rights’.<sup>48</sup> There is a risk that the current form of the JET IP will create project-based debt obligations

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<sup>48</sup> UN (2011), ‘[UN Guiding Principles on Foreign Debt and Human Rights](#)’, A/HRC/20/23, 10 April 2011, para 20.

incumbent upon South Africa<sup>49</sup> without creating the policy and fiscal space for South Africa to move towards ‘the overall realisation of all human rights’ in the country, including through the progressive realisation of economic, social and cultural rights.<sup>50</sup>

**This constraint on national policy making is compounded by the risk posed by a financing agenda that prioritises the mobilisation of private finance.** Aside from the concerns over the influence of private commercial investors over national policymaking outlined in sections 3.1 and 3.2 above, the involvement of philanthropic foundations proposed in the JET-IP, such as increasing the grant component of the package through partnerships with such actors, carries its own risk of policy capture by unaccountable actors. The dangers around the imposition of externally-determined development or policy agendas on developing countries by powerful philanthropic actors and the subsequent shrinking of these countries’ national policy space has been well documented in academic and policy literature.<sup>51</sup>

**Additionally, it is also unclear whether resources committed to by the IPG constitutes additionality and whether it will affect existing ODA and other official development financial flows to South Africa for other purposes.** For example, climate finance from the UK government is classed as ODA and it is not clear whether the resources pledged to the JET-IP would represent additional resources committed by the UK for other sustainable development purposes, whether to South Africa or to other developing countries. The diversion of ODA towards climate finance undermines the principle of ‘additionality’ under the multilateral climate regime and can have a material impact on countries’ ability to mobilise resources to meet other sustainable development objectives and social and economic obligations, including those enshrined under national and international human rights law.

**Another area of risk is social and economic risks associated with project financing as there will be significant social and economic dislocation accompanying the decarbonisation plans, both in terms of the shift away from coal but also the shift to green technologies.** Without adequate safeguards, the financing and implementation of the JET-IP can compromise existing accountability and environmental, social, and governance safeguards mechanisms for local communities. The JET-IP recognises that the plan carries a high social risk and proposes mitigation measures based on regular monitoring and coordination across government and implementing agencies alongside regular stakeholder consultation (section 7.3, Table 10 of the JET-IP). It also recognises a safeguard risk to the environment, vulnerable communities, and excluded groups who may be impacted by project development

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<sup>49</sup> Cotula, L (2008) ‘Regulatory Takings, Stabilization Clauses and Sustainable Development’. Paper prepared for the OECD Global Forum on International Investment VII ‘Best Practices in Promoting Investment for Development’, Paris, 27–28 March 2008.

<sup>50</sup> Erdem Türkelli, G (2021) ‘Private Actors in Development Projects: Reflections on Human Rights between Power and Resistance’, *International Journal of Law in Context*, Vol 17, No 1.

<sup>51</sup> See McGoey, L, Thiel, D and West, R (2018). ‘Le philanthrocapitalisme et les « crimes des dominants’, *Politix*, 121, and Martens, J and Seitz, K (2015), ‘Philanthropic Power and Development: Who Shapes the Agenda?’, MISEREOR, Global Policy Forum and Brot für die Welt.

associated with carrying out the JET-IP. The plan proposes mitigation measures that will include adherence to national government and implementing agencies safeguards measures (section 7.3, Table 30).

**However, some of the suggested reforms and investment strategies proposed in the JET-IP may undermine existing safeguards mechanisms because of the shift in financing modalities proposed by the JET-IP.** The reliance on private finance, mobilised primarily through DFIs and private capital markets, can exacerbate existing gaps in project finance safeguards and compromise limited recourse available to communities displaced or harmed by project operations. JET-IP (section 7.3, Table 30, p. 142) states that safeguards and mitigation strategies centre mainly on “regular monitoring and coordination across government and implementing institutions, along with regular stakeholder consultations”. For individuals and communities that may be in a more vulnerable situation, JET-IP foresees implementation of “national government and implementing institutions’ safeguards measures” that are based on good practice. The focus on good practices and Monitoring & Evaluation (M&E) as safeguarding is demonstrative of the risk-based accountability and government that JET-IP espouses. Often, this model of risk-based management of accountability and governance falls short of delivering rights and entitlements to project-affected individuals and communities by relying on governance frameworks of implementing and financing institutions that do not match the substantive and procedural content of obligations owed to rights-holders under national and international law.

**Accountability becomes more challenging in a financing landscape where multilateral and bilateral DFIs, commercial lenders, and other private financiers are involved in a fragmented way undermining the rights of affected communities.** There is greater opacity surrounding private sector projects in development projects compared to those undertaken by the public sector through an official sector grant or loan (for example, through a multilateral development bank). DFIs and PPPs tend to have weaker transparency and information disclosure policies than their public counterparts on grounds of commercial sensitivity or client confidentiality.<sup>52</sup> Additionally, where projects are structured through a PPP between the state and a private investor, it becomes apparent that the fragmented legal structure of PPP projects presents unique challenges for community participation and access to information, both at the pre-project consent stage and at the later grievance/complaint stage.<sup>53</sup> Overall, the turn to new modes of financing through blended finance mechanisms and PPPs, poses serious challenges to project-affected peoples’ access to remedies. Many bilateral DFIs do not have centralised grievance or dispute resolution mechanisms but rely on fragmented project-level mechanisms which tend to have limited operational independence from their project sponsor and lack

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<sup>52</sup> Vervynck, M (2015), ‘[An Assessment of Transparency and Accountability Mechanisms at the European Investment Bank and the International Finance Corporation](#)’, Eurodad, 30 September 2015.

<sup>53</sup> Tan, C, Erdem Türkelli, G and Jebechii Sago, J (2023), ‘Call for Input on ‘Development Finance Institutions and Human Rights’, Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Human Rights Council: Submission by researchers on the New Frontiers in International Development Finance (NeF DeF) Project’, 3 March 2023.

independent verification or scope for appeal.<sup>54</sup> The JET-IP did not escape this criticism because there was little meaningful consultation and engagement with civil society, organised labour and other stakeholders during the negotiation process of the deal. Requests made by civil society for access to information were either ignored or groups were informed that it is too sensitive to discuss as it is a government to government deal.

**There is a risk that the JET-IP may prioritise private investor interests over community rights.** For example, the JET-IP notes that a government review of the PPP policy framework ‘will simplify approval and compliance requirements for the participation of private investors in the JET-IP’ (section 5.3). It should be recalled that renewable / green energy and transition projects are not exempt from creating negative outcomes for local populations such as involuntary resettlement or loss of livelihoods. While the simplification of bureaucratic procedures has often been hailed as a positive contributor to improving private sector investment outlook, there are clear environmental and social risks attached to inadequate safeguards and standards that may jeopardise the objectives of the JET, which seek to foster a just transition that protects livelihoods and the rights of people and communities.

**Inadequate or diluted safeguards in turn end up most adversely impacting the parts of the society that are most prone to being marginalised and disadvantaged, such as children, women, persons with disabilities, older persons, and indigenous communities.**<sup>55</sup> In this respect, the simplification of PPP approval and compliance requirements should not result in the dilution of legal safeguards and standards around approval and compliance requirements, including but not limited to *ex-ante*, continuous, and *ex-post* environmental and social impact assessments (ESIAs), and follow-up requirements such as monitoring, reporting, and auditing. The importance of preparing and conducting ‘human rights impact assessments with regard to development projects [and] loan agreements’ was also highlighted by the UN Guiding Principles on Foreign Debt and Human Rights.<sup>56</sup> This approach is also in line with the United Nations Guiding Principles on Business and Human Rights, which are applicable in the context of the activities of business enterprises, including within development and green transition-related projects and in PPPs.

**Reliance on a risk-based accountability and governance framework for projects outlined in section 7.3 of the JET-IP instead of a rights-based accountability and governance**

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<sup>54</sup> See Erdem Türkelli, G (2022), ‘Multistakeholder Partnerships for Development and the Financialisation of Development Assistance’, *Development and Change*, Vol 53, No 1; Tan, C (2021), ‘Audit as Accountability: Technical Authority and Expertise in the Governance of Private Financing for Development’, *Social and Legal Studies*, Vol 31, No 1; Tan, C (2019), ‘Creative Cocktails or Toxic Brews? Blended Finance and the Regulatory Framework for Sustainable Development’, in Gammage, C and Novitz, T (eds), *Sustainable Trade, Investment, and Finance: Toward Responsible and Coherent Regulatory Frameworks*, Edward Elgar.

<sup>55</sup> G. Erdem Türkelli, (2021) Children’s Rights when Financing Development through Multilateral Development Banks: Mapping the Field and Looking Forward, *The International Journal of Children’s Rights*, 29(1), 199-238. doi: <https://doi.org/10.1163/15718182-29010008>

<sup>56</sup> Note 21, para 23.

**framework jeopardises compliance with national law as well as human rights obligations of South Africa under its Constitution, national laws and under international law.** The JET-IP Risk Management Framework defines risk, particularly social risks, safeguards risks and public health risks, in a very narrow manner, which excludes many rights-holders, particularly those most prone to being marginalised. The Framework defines social risks, for instance, mainly as social risks to communities in the coal regions arising from the transition while much larger parts of the South African population may be adversely impacted by policies, programmes, and projects under JET-IP if adequate social, labour, and environmental standards are not effectively respected.

From a macroeconomic standpoint, decreasing public revenues from traditional energy production sources may curtail South Africa's public expenditure on public services such as education and healthcare. This would curtail the progressive realisation of human rights if the transition is not accompanied and offset by alternative funding sources, such as those made available through international assistance and cooperation (in line with Article 2.1 of the International Covenant on Economic, Social and Cultural Rights). In addition, when concessions such as tax or tariff exemptions are extended to investors, these may limit the economic benefits and contributions to public finances, instead creating value exclusively or primarily for investors. Investment projects focusing on renewables and green energy may also cause displacements of communities and loss of livelihoods through large-scale land acquisitions that disproportionately impact human rights along gender lines.<sup>57</sup> The long-term sustainability of 'green' / 'renewable' energy projects, which are supposed to create benefits not only in lowering carbon emissions but also creating jobs and therefore livelihoods, also depends heavily on investor appetite. If investments do not generate the levels of profits desired by investors, investors may lose that appetite and exit projects even after displacement of communities. In such cases, when there are no additional social safety nets in place for project-affected persons and communities, they are left in limbo, often without any recourse and often no possibility to resume their previous economic activities.<sup>58</sup>

**The narrow framing of risks also results in mitigation strategies being limited in scope and content, rendering them incomplete at best and ineffectual at worst.**<sup>59</sup> The risk-based approach also fails to address questions of remedy and redress in cases where the possible risks materialise and negatively impact individuals and communities.

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<sup>57</sup> A case in point is the Addax Bioenergy project in Sierra Leone (Addax Bioenergy Sierra Leone/ ABSL Ltd.) touted as a model sustainable bioenergy project for Africa and set up as a Public-Private Partnership financed by funding from a number of DFIs. It is an important example of a sustainable energy investment that has had negative human rights repercussions has been studied by civil society organisations for its land tenure and gender impacts. See: <https://www.cidse.org/wp-content/uploads/2021/12/EN-Land-Briefing-Addax.pdf> and [https://dawnnet.org/wp-content/uploads/2021/01/Womens-Rights-and-Public-Private-Partnerships-in-Sierra-Leones-Agro-Energy-Sector -A-Case-Study-of-Addax-Bioenergy-Sierra-Leone-Ltd-ABSL\\_DAWN-discussion-paper-29.pdf](https://dawnnet.org/wp-content/uploads/2021/01/Womens-Rights-and-Public-Private-Partnerships-in-Sierra-Leones-Agro-Energy-Sector-A-Case-Study-of-Addax-Bioenergy-Sierra-Leone-Ltd-ABSL_DAWN-discussion-paper-29.pdf)

<sup>58</sup> This happened to communities in Sierra Leone impacted by the Addax Bioenergy project (see above).

<sup>59</sup> G. Erdem Türkelli (2020) *Children's Rights and Business: Governing Obligations and Responsibility*, Cambridge University Press.

With regards to social and economic transition and governance risks we recommend:

- Adequate and effective environmental and social safeguards and standards should be put in place for all reasonably foreseeable adverse impacts from JET-IP financed projects. This includes safeguards and standards on the protection of the environment; biodiversity; labour standards; health and safety; human rights, including of most disadvantaged parts of the population such as women, children, persons with disabilities, older persons and indigenous populations; protections in cases of involuntary displacement and land acquisition; as well as protections of cultural heritage.
- In addition to self-regulatory standards used by DFIs and MDBs themselves, which often fall short of providing full protection for the environment and for labour and human rights, projects financed by the JET-IP must be designed and implemented in compliance with the Constitution, national law, and international human rights, labour law and environmental law obligations of South Africa, as well as of international law obligations of foreign financiers from IPG countries.
- Projects should ensure free, prior, and informed consultations with and consent by local communities.
- In order to make these safeguards and standards effective, individuals, and local communities that are adversely affected by the projects must have access to a variety of grievance and redress options, which may include non-judicial remedies such as those provided by project-level grievance mechanisms but should also extend to judicial remedies that can generate temporary injunctions and guarantees of non-repetition.

#### 4. General and sectoral mitigation targets

**Worryingly, even if the JET-IP were fully implemented according to plan, the mitigation strategy will fall short of South Africa's Nationally Determined Contributions (NDCs), which themselves are insufficient to meet the global 1.5C warming target.** The JET-IP is anchored on South Africa's NDCs (see section 1, p. 19), which were established in accordance with its commitments under the Paris Agreement. South Africa's NDCs were revised in 2021 to reflect more ambitious targets and updated to a range of 350-420 Mt CO<sub>2</sub>-eq by 2030. However, while the lower end of this range comes close to the global fair share pathway towards limiting warming to 1.5C, the upper bound falls short of ensuring that drastic warming and associated impacts are avoided.

According to the Climate Action Tracker,<sup>60</sup> South Africa's proposed policies are in line with the upper bound of their NDC target, indicating that planned actions are insufficient to meet the global 1.5C warming target. Moreover, the country's implemented policies and actions are significantly below the NDCs, which is a pattern observed in many countries worldwide (Höhne et al., 2020). In the context of the JET-IP, all International Partner Groups are similarly faced

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<sup>60</sup> Climate Action Tracker, (2022) <https://climateactiontracker.org/>



with inadequate NDCs, poor planned policies, and insufficient policy actions to achieve the 1.5C goal.

**The JETP is therefore based on insufficient goals and all the partners are complicit in failing to meet their targets. However, the NDCs are currently the nationally recognised goal and increasing ambition does not fall in the realm of what the JETP aims to do.**

**The JET-IP does not follow the sequencing of emission reductions contained within the NDCs.** The first NDC under the Paris Agreement (2021) states that: “The long-term decarbonisation of the South African economy will in the 2020s focus primarily on the electricity sector; in the 2030s, a deeper transition will take place in the electricity sector, coupled with a transition in the transport sector towards low emission vehicles; while the 2040s and beyond will be characterised by the decarbonisation of the hard-to-mitigate sectors.” The NDCs commit South Africa to an initial sole focus on the electricity sector transition. In some respects the JET-IP places financing towards the correct initiatives with 69% of funding over the next 5 years dedicated towards the electricity sector. However (for better or worse) two other major sectors are invested in detracting from a sole focus on the highest emitter. And even within the electricity sector the financing remains dubious in terms of meeting the country’s mitigation agenda. This is expanded upon in this section

The JET-IP as a planned policy action to meet the NDCs therefore falls short in realised emission reductions. Contrary to the NDCs, financing is being directed towards orientating South Africa within potential new international “green” value chains for export. Participation in these value chains may not directly help South Africa meet its own NDCs. Further, these value chains may be based on technologies, such as individualised electrical transport, which have a limited role to play in a meaningful international transition.

**While pursuing industrial development may be a valid objective of the JET-IP (indeed, if done correctly this could be a significant economic boon), we should be cautious of JET-IP financing being directed towards investments that support the profitability of the financial sector, or particularly corporate sectors, within a limited industrial policy framework (see discussion in section 5) while simultaneously failing to meet emission reduction targets.** This is investigated in the subsections below.

#### ***4.1 Decarbonising the electricity sector***

**While directing a significant portion of financing towards electricity is necessary, the funding provided by the JET-IP will not necessarily produce the decarbonisation that it intends to.** The JET-IP allocates R1030 billion (69%) of financing towards the electricity sector over the next five years (see Table 1, p. 7 of the JET-IP). The document states that the “JET-IP contextualises reasons for the centrality of South Africa’s electricity sector in the country’s approach to building a low-carbon economy; the economic importance of the sector; and the

impact of decarbonisation initiatives on coal workers and communities in the Mpumalanga province” (see section 4.2, p. 43). The electricity sector produces the largest proportion of emissions in the country, responsible for 43% of total GHG emission in South Africa. Budgeting a significant proportion of the financing is inline with a decent decarbonisation strategy that addresses key issues such as energy poverty and load shedding is therefore sensible. However, a number of problems stand out.

**While money is being directed to important preliminary strategies, including increasing grid and distributional capacity, decommissioning plants, and diversifying coal-reliant economies, new renewable energy provision relies on private generation capacity (see Table 27, p. 126 of the JET-IP) that is unlikely to provide this on scale.** An over reliance on private provisioning also raises a range of other concerns, including undermining energy affordability, security and racking up government debt (this is discussed further in Sections 3 and 5 in this document).

The Renewable Independent Power Producer Programme (REIPPP), established in 2011, has, in recent years, failed to produce the promised level of electricity production. In general, procurement has not been as smooth, and investment has not been as high as intended in the face of competing political interests, corruption, and the most recent crisis of profitability.<sup>61</sup> Bid Window 5 intended to close 25 wind and solar projects, but saw only 3 projects come online, meaning that only 150MW of the intended 2000MW capacity was actually built.<sup>62</sup> Successful bidders in Bid Window 5 may have bid at prices that were too low and thus made investments unprofitable.<sup>63</sup> Renewables have become the least cost option over time and overall profit margins have been squeezed. This has become more apparent due to rising input costs brought about by several factors, such as global instability leading to supply chain issues and instability in renewable energy infrastructure pricing. These have hindered the growth of renewable energy. Therefore, we are not seeing the scale we should be seeing due to deteriorating profit margins.

**The inability for the private sector to deliver sufficient generation capacity is increasingly being recognised globally.** In New York State, for instance, the current budget bill includes provisions for the state electricity generator to build renewable generation capacity should the private sector fail to meet targets.

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<sup>61</sup> Bloom, K. (2022). Grim Reipp(er) — Undoing the choke-hold on SA’s renewable energy programme. [https://www.dailymaverick.co.za/article/2022-09-26-grim-reipp\(er\)-undoing-the-choke-hold-on-sas-renewable-energy-programme/](https://www.dailymaverick.co.za/article/2022-09-26-grim-reipp(er)-undoing-the-choke-hold-on-sas-renewable-energy-programme/)

<sup>62</sup> BusinessTech (2022). A brief history of renewable energy procurement in South Africa, <https://businesstech.co.za/news/business-opinion/628224/a-brief-history-of-renewable-energy-procurement-in-south-africa/>

<sup>63</sup> Paton, C. (2022). SA’s new renewable energy programme in trouble, many projects no longer financially viable, <https://www.news24.com/fin24/economy/sas-renewable-energy-programme-in-trouble-many-projects-no-longer-financially-viable-20220720>

**In South Africa, this is compounded by being an extremely energy-intensive country. The JET-IP gives too little attention to energy demand reduction.** The JET-IP recognises this problem saying: “Both national and international research has shown the benefits of energy efficiency programmes, which include the lowering of investment costs in generation capacity and in the transmission and distribution grids, as well as significant employment benefits’.” (see section 4.2, p. 45). The plan also recognises the importance of demand side management strategies. The JET-IP relies on policies being implemented by the DMRE’s post-2015 National Energy Efficiency Strategy (NEES) claiming that this strategy would “significantly reduce investment requirements for meeting the 2030 target and has positive economic outcomes” (section 4.2, p. 46). However, the plan misses the opportunity to reduce energy intensity by investing and allocating significant financing in energy efficiency in order to realise NEES policies. With energy needs increasing through the new electric vehicle sector, it is vital to reduce overall energy expenditure in other ways. The JET-IP does not allocate any financing towards energy efficiency.

**With regards to decarbonisation in the electricity sector we recommend:**

- Independent Power Producers (IPPs) Independent Power Producers must be regulated to ensure that viable scale does not compromise affordable electricity supply and Eskom’s debt sustainability.
- Financial allocations need to be made towards public (including municipal and community-owned) renewable energy generation capacity.
- Financial allocations need to be made towards energy efficiency to decrease the utilisation rate on current energy production.

#### ***4.2 Decarbonising the transport sector through new electric vehicles***

**The transportation strategy outlined in the JET-IP does not ambitiously decarbonise the sector.** The transportation sector emits 57 Mt CO<sub>2</sub>e/y and is South Africa’s third largest source of greenhouse gas emissions. Within the transport sector 91% of emissions stem from road transport (see section 4.3, p. 73 in the JET-IP). As a result, tackling transportation for a decarbonisation strategy, and specifically focusing on road vehicles, seems like a feasible decarbonisation strategy. Yet the plan focuses more on maintaining the current private automotive export industry with phase 1 of the referenced new energy vehicles (NEV) Roadmap of the Department of Trade, Industry and Competition (DTIC) focusing on assembling NEVs for export. The investment plan also leans towards ‘techno fixes’ instead of a strategy that enables structural changes to the transport industry that produces more just outcomes. This is seen by only 4.7% of transportation financing dedicated towards public transport and even then the financing does not address a modal shift that allows ease of travel of low-income citizens. These issues are expanded on below.

**First, while maintaining jobs in the auto sector is a developmental imperative, we must recognise that only funding private vehicle production to maintain South Africa's export market is not a means of inclusively decarbonising the local transport sector.** 60% of current vehicle production in South Africa is exported for foreign markets. The plan aims to make this market feasible under newly imposed international carbon tax laws. Some financing is intended to ensure the domestic uptake of new energy vehicles but the JET-IP intends to decrease emissions of both South Africa and its trading partners - indicating that this financing is not solely to meet domestic NDCs but also to contribute to the NDCs of trading partners (UK/EU). In addition, private sectors are already, naturally, investing in NEVs to adapt to this changing market, the scope of concessionally financing needed must therefore be carefully weighed up. This does not mean the JET-IP should not invest in this sector, but that we must be honest about the tradeoffs and interrogate them as part of a holistic agenda of advancing mitigation, local development and decent work creation (see below).

**Secondly, the investment plan fails to use the financing to create a just system of mobility that could also meet decarbonisation targets.** According to the Green Transport Strategy the plans for South Africa are to 'Reduce, Shift and Improve', meaning that interventions that should follow an order that:

- First prioritises "lessening the movement of goods and people". This relies on reducing trip length and decreasing the need for motorised transport. This can be achieved through urban planning strategies, such as co-locating residential and commercial areas.
- Second, to "shift to low carbon modes of transport" which encompasses moving away from heavy polluting transportation strategies, such as cars, towards other forms of mobility, including walking and cycling and expanding the public transport system.
- Third, to "improve energy and fuel efficiency" which includes improving the efficiency of public transport.

The JET-IP has prioritised an improve strategy through a relatively higher carbon mode of transport over implementing a Reduce, Shift, first and then Improve strategy. In a country that is plagued by the historical Group Areas Act, where Black people were positioned in urban peripheries with little access to efficient and integrated transport systems, many people spend 1-2 hours commuting a day. In addition the existence of low-density urban sprawl makes creating efficient transport networks difficult and increases commuting time. Therefore prioritising strategies that aim to 'improve' transportation is absolutely vital. Yet, the plan leans towards a techno fix that fails to solidify a more robust and reliable transportation system that will promote the ease of livelihoods for most South Africans. The JET-IP recognises unequal transportation and inefficient public transport, poor use of rail for freight, and ageing infrastructure. The plan also recognises the need for improved urban design to decrease the need for motorised transport including improved access and affordability for poor people (see

section 4.3, pp 73-74). This is backed up by the fact that only 43.5% of workers use private vehicles to get to work and the rest rely on public transport.<sup>64</sup>

**Yet no financing is directed to improve any of these identified deficits in the current public transport system.** Overall the plan allocates 4.7% of transport financing towards public transport - which is largely going towards developing charging infrastructure rather than creating a modal shift towards public transportation. Thus while the plan seems to tackle the highest emitting form of transport (such as private cars), it is essentially just supporting a middle- to high-income transition over a more holistic 'just transition' that will both decrease emissions and ease the cost of living for many<sup>65</sup>.

**With respect to decarbonising the transport sector we recommend:**

- Decarbonisation strategies in the transport sector must centre on the reduction of private car use; improving public transport infrastructure; and improving the energy efficiency of transport. Financing within the JET-IP should be allocated accordingly.
- The limited contribution of growing a NEV sector for export will make towards achieving mitigation targets must be acknowledged.
- Pursuing strengthening the NEV sector should be pursued within the broader framework of the reallocation and dislocation of employment during the transition and centre the objectives of industrialisation and decent work creation.
- The framework for approaching transport within the transition should be of a modal shift that enables a holistic pro-poor transport system that improves mobility and therefore ease of livelihoods for millions of South African. Increasing public transport also has the potential to spur job creation and economic growth as discussed in section 5.

### ***4.3 Decarbonising through Green Hydrogen***

**Green Hydrogen is identified as a key sector within the JET-IP but its role in a decarbonisation strategy remains murky.** The JET-IP claims that GH2 will potentially remove 10-15% of South Africa's emissions without referencing an appropriate scientific source for this claim (see section 4.4, p. 89). Later in the document, when the Green Hydrogen Commercialisation Strategy is discussed, the percentage is said to be 18 or 20% of annual emissions by 2050 (see section 4.4, p. 96).

**Emission reduction claims remain weak and therefore the significance of green hydrogen as a decarbonisation strategy remains questionable.** The GH2 section in the JET-IP, unlike the NEV section of the plan, does not lay out clear decarbonisation strategies and emission scenarios, nor does it give solid references to their emission reduction claims. The NEV section

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<sup>64</sup> Harber, J. (2023). Land Transport and a Just Transition: A Primer, Institute for Economic Justice, Working Paper Series, forthcoming

<sup>65</sup>Ibid

produces a range of scenarios that consider industrial policy and consumer uptake to determine the level of emissions reductions that will occur. The GH2 section of the investment plan produces no such insight. The projected emission reduction potential of green hydrogen seems to be a calculation based on displaced CO2 rather than tangible sector-based emission reductions. This means that if 7.0 MTPA of GH2 is produced then 541Mtons of CO2 is displaced, yet the plan fails to consider which sectors will use the GH2 produced, how much of it will be exported, and what industrial policies to enable this should be implemented. This is to say that you cannot equate a certain level of GH2 production to a certain level of domestic GHG emission reduction without considering the factors hindering uptake.

**While developing a green hydrogen sector may seem a sensible development strategy in so as it may be able to decarbonise hard to abate sectors, we must recognise that it will do little to achieve majority of South Africa's NDC targets, contains significant risks and will decrease justice.** These risks include:

- *Insufficient renewable capacity:* The JETP notes that in order to realise the job potential (650 000 construction, 50 000 permanent) the country would need the support of 100GW of renewable capacity. Yet South Africa currently only produces 58GW of energy from all sources<sup>66</sup>. This indicates that double the total amount of current energy usage of the country is needed to support a GH2 industry.
- *Capital intensity:* The JET-IP estimates a need for \$164 billion by 2040 for 3.8 Mta GH2 production and an additional \$133bn in the following 10 years to achieve 7mta GH2 production. This requires nearly R5,5 trillion to establish the single industry. The level of financing for the sector is more than the entire JET-IP. In this context, interrogating both its development and emission-reduction potential more thoroughly is critical.
- *Competition with other decarbonisation strategies:* Creating that much renewable energy capacity to feed this industry may compete with other, more substantial, decarbonisation strategies. For example, investing in renewables for GH2 without resolving the energy crisis and decarbonising the highest emitting sector in the country, may produce negative outcomes. Failing to fully electrify South Africa also undermines the NEV plans as there may not be enough energy to supply this industry's needs. Hence we should interrogate GH2's place in the hierarchy of what renewables are needed for and where they will produce the most substantial mitigation and developmental outcomes.
- *High investment needs:* The JET-IP recognises the major challenges of GH2 include the significant capital input, the low return on investment, and the high levels of state intervention to de-risk this sector to a competitive price point.
- *Crowding out other mitigation or adaptation objectives:* Given scarce resources all investments must be weighed against alternative possibilities. The JET-IP does not grapple with a range of these, particularly adaptation needs, such as achieving a just transition in the food system.

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<sup>66</sup> <https://www.usaid.gov/powerafrica/south-africa>

- *Water risk*: The JET-IP recognises that GH2 production can incur a major water risk through industrial processes. The plan projects this risk as a positive and claims that GH2 will contribute positively to water security, stating that desalination plants will have to be established to create water security. However, no financing is directed towards these plants which can also be energy intensive. Failing to secure these plants directly undermines adaptation initiatives in South Africa which is a water-scarce country.

**With regards to green hydrogen we recommend:**

- In the context of green hydrogen being a risky sector to invest in both from a developmental (discussed in section 5 of this document) and mitigation perspective, we recommend further research is needed before deciding to centre this as one of the key aspects of the JET-IP.
  - The mitigation claims of GH2 needs to be fully investigated in terms of consumer uptake, export, sector emissions, and a range of other industrial policy considerations. The complexities of this sector needs to be fully investigated before larger investments such as investing in ports are made
  - The full extent of the role of GH2 in developing a new market needs to be explored and stakeholders in civil society, communities, and business need to be made aware of the social and environmental risks involved.

## **5. Looking for ‘justice’ in the JET-IP**

A wide range of - potentially contradictory - priorities are listed within the JET-IP (presented in Sections 3.1 and 3.2). The hierarchy of these priorities, and the manner in which they should be reconciled is left unclear. These priorities include:

- Showing clear reductions in emissions according to NDC targets by 2050;
- Being complementary and catalytic to private sector investment;
- Having principles of justice embedded in all areas of focus;
- Ensuring a social safety net is in place to match the pace of decommissioning fossil fuel infrastructure; and
- Enabling localisation with an emphasis on empowering women and youth.

**Unfortunately, the central role given to encouraging private sector investment (both local and international) undermines any just, or even sustainable, vision of development within the JET-IP, sidelining such stated priorities.** The JET-IP packages a minimal set of political settlements to pacify fossil fuel workers and affected communities as the most ambitious limits of what a just transition could be. This is explored along two dimensions: economic development and decent work creation; and social protections.

## **5.1 Economic development and decent work**

**The JET-IP problematically reaffirms key features of South Africa's existing growth path.** Despite the break from coal, the capital-intensive Minerals-Energy Complex is reaffirmed within a new green economy framework and the transformative vision for South Africa's currently highly unequal and unjust economy is advanced.

The JET-IP outlines a plan to use public finance to catalyse the creation of a set of vertically integrated industries, using renewable power generation and electrical infrastructure to support massive green hydrogen (Section 4.4.4, p. 93) and green heavy chemicals and minerals beneficiation sector (Section 4.4.1, p. 91, and Section 4.4.3, p. 92), as well as providing electricity for an electrified road-based transport system (Section 4.3.2, p. 78). In parallel, there will be a large investment in changing auto manufacturing. The plans for electric auto manufacturing and electrification of South Africa's transport are at best loosely connected. Electric car manufacturing will be focused on export markets, while much of the demand due to the electrification of South Africa's transport will be met through imports (Section 4.3.4, p. 82). A number of problems emerge from the industrial development foreseen within the JET-IP.

**The JET-IP insufficiently finances the localisation of renewable energy manufacturing which poses transitional risks and limits job creation.** While, the JET-IP cites the South Africa Renewable Energy Masterplan's (SAREM) estimate that renewable manufacturing could create 365 000 direct new jobs by 2030 and account for an R420 billion to GDP, it only allocates R1.6 billion, about 1% of overall financing, to localising renewable energy manufacturing (Section 4.2.4.1, p. 70). This half-page section includes a seeming tangent about funding for localisation of grid infrastructure, such as batteries and transformers, as well as mining and beneficiation of critical minerals (which are not included in the actual funding allocated to localising renewable manufacturing).

**The needed industrial policy measures to achieve the developmental and job-creating potential of a renewable transition are absent.** Local content requirements, for example, are hardly mentioned. By contrast, the SAREM job and economic development potential (mentioned above) is based on an estimate of 70% local content for renewable installations. This requires a far more committed industrial policy focus and will be unlikely to be realised without more government support. The large anticipated demand from transport electrification and green hydrogen generation, for instance, could be used to ensure a domestic demand for renewable components, but there appears to be no clear link drawn between these potential markets to catalyse local renewable manufacturing. The SAREM, only tangentially referenced, itself reflects a limited and unambitious industrial policy. It is undermined by the reliance on IPPs; a lack of integration with developmental trade or technological transfer policies; a lack of enforcement of



local content requirements; and a dearth of industrial finance support to build the capacities and capabilities of the local industry for decent work creation.<sup>67</sup>

**The JET-IP insufficiently finances public transport, posing climate, social, and economic risks** (the former discussed in section 4 of the submission). In order to maximise its potential for a just transition transport policy should be focused on a model of reduce, shift, and improve. As discussed above in section 4.2 of this document, this approach gives priority first to reducing the need for transport through improved urban planning, secondly to shift consumption away from private and low-capacity options towards high-capacity public transport, such as buses and rail, and finally to improving the efficiency and emissions of private and low-capacity transport after the first two options have been fully exhausted. This model can rapidly decrease emissions while reducing transport poverty and increasing quality of life.

Public transport also has the potential to create 390 000 jobs in a sustainable public transport system.<sup>68</sup> In addition to direct job creation, public transport has the potential to stimulate wider economic growth and employment, as it can dramatically decrease transport costs and the time workers spend in transit.<sup>69</sup> While there are occasional mentions of public transport in the JET-IP the plan appears to focus only on decarbonising existing public transport rather than expanding it. Some of the framing within the JET-IP discusses a larger role for public transport. (Section 4.3.1, p. 73-74) outlines the need for an expanded, improved and more equal public transport system accompanied by urban densification. Further, Annex B (p. 168-169) argues that uptake in public transport and the use of rail for freights is important in modelling emissions reduction scenarios, but the remainder of the document gives no support to this or any funding. Funding transportation within the JET-IP is, instead, split in the following manner:

- National level funding for public transport accounts for only R6.8 billion aimed at electrifying buses and taxis and government fleets (Section 4.3.5, p. 87) rather than expanding public transport.
- Section 4.6.1 (p. 105) suggests that municipal public transport fleets will also be targeted for electrification, though it is unclear how much if any of the ZAR R73 Billion allocated for municipal support for new energy vehicle infrastructure will be aimed at public transport (section 4.6.1, p. 111).
- Concerningly, no funding will be given to rail as it is argued it is difficult to electrify current infrastructure (Section 4.3.2, p. 76). This is despite the importance that higher-capacity transport must play in reducing emissions and providing basic services at affordable prices.

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<sup>67</sup> Institute for Economic Justice (2021) *Climate, Energy And Infrastructure Series Policy Brief #2 Sarem Policy Brief Challenging Privatisation, Centring Public Ownership And Decent Work*

<sup>68</sup> Alternative Information and Development Centre (AIDC), "One Million Climate Jobs" (Cape Town, 2016), <https://aidc.org.za/download/climate-change/OMCJ-booklet-AIDC-electronic-version.pdf>.

<sup>69</sup> COSATU (2022) *Just Transition Blueprint for Workers*

**The investment in new energy vehicles (NEVs) is poorly conceived and the proposed investment in NEVs is split between demand and supply which appear to be partially coordinated, if at all.** NEV manufacturing is allocated R41.4 billion for industrial investment, R1.6 billion for strategic planning, and R1.8 billion for innovation (Section 4.3, p. 87). A broad range of policies and subsidies are discussed to help support the sector. These include setting up Special Economic Zones, skills development, financing battery supply chains for international export competitiveness, and installing charging infrastructure as renewable energy capacity increases and as grid infrastructure is improved. However, the plan suggests that encouraging imports rather than maximising local content will result in the quickest emissions reduction path (p.83 of the JET-IP), supporting policies like tariff reduction which could undermine local manufacturing ignoring the more important role which a modal shift can play. Further, the current industrial policy supports job creation by scaling up final assembly while potentially undermining deepening the local component manufacturing chain.<sup>70</sup> The JET-IP (Section 4.3.3.2, p. 78) argues that early investment in NEVs is necessary in order for the existing auto manufacturing sector to remain competitive, but the protection of decent work is not explored except in relation to maintaining overall industrial competitiveness.

**There is a half-hearted attempt to frame this prioritisation of private transport as progressive, though it clearly fails to achieve the transformative vision which a shift towards a green public transport system could unlock.** The JET-IP argues (p. 77) that “To avoid a regressive impact, there needs to be a focus on swaying entry-level buyers (upper-middle-income households) to purchase EVs, instead of ICE vehicles, and on electrifying public transport to extend the benefits of e-mobility to low-income and lower-middle-income households.” The attempt to frame subsidies for private electric vehicle ownership as part of a policy to include low-income groups in the just transition is strained as only 30.6% of South African households own cars,<sup>71</sup> and probably far fewer are in the position to purchase new electric vehicles any time soon, even given generous subsidies.

**Green hydrogen investment - a potentially viable though highly speculative sector for investment - is given a prominent position by the JET-IP both in terms of financing and claims of employment creation but just transition principles appear poorly embedded.** Large-scale investment in green hydrogen risks entrenching and expanding South Africa’s existing growth path rather than creating space for a more inclusive and just green economy. The industry is highly capital intensive and requires large economies of scale, and is therefore likely to produce powerful monopolies or oligopolies. It also relies on prioritising industrial access to large amounts of natural resources including land, mineral resources, and water. This may come into conflict with local communities’ access to land and water rights (Discussed in

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<sup>70</sup> Mashilo A and Sikwebu B (2021) *SA joins race to electric cars, but state policy means it'll end with a crash* Times Live

<sup>71</sup> STATSSA (2018) *General household survey*

Section 3.3 of this document).<sup>72</sup> Accompanying desalination plants to ensure water security for this water-intensive industry is mentioned but no funding is allocated. Similarly, the JET-IP suggests that there is a large amount of land available for renewable deployment to support green hydrogen but overlooks existing land use.<sup>73</sup> This development path also introduces the risk of creating dependence on a single commodity (which may be supplied by a highly competitive international market), rather than diversified industrial development which can better support decent work creation, as occurred for example in the industrial development of the Asian tigers.<sup>74</sup> Despite these concerns, large investments in green hydrogen appear to be the bulk of the industrial policy contained within the JET-IP.

**This aside, the allocated investment of R319 billion is a small fraction of the total investment needed to create a potentially competitive green hydrogen sector.** This sector is estimated to require a \$133 billion investment by 2050 (Section 4.4.1, p. 90). The full vision for this sector will require 100 GW of renewable capacity by 2050, which is over double Eskom's current total capacity. Hydrogen itself is only used in a small number of applications although it is expected to gain competitiveness during an international transition. Further, green hydrogen is considerably more expensive to produce than grey hydrogen. However green hydrogen is promising for a collection of hard-to-abate heavy chemical and mineral beneficiation processes as well as heavy transport and is expected by the international energy agency to account for between 10-20% of the global energy mix by 2050.

**Although the JET-IP allocates the green hydrogen economy large amounts of finance it is unclear whether this is accompanied by a larger more sophisticated industrial policy toolkit which will be necessary.**<sup>75</sup> Further, while demand uncertainties could be reduced by bilateral offtake agreements, terms are likely to be set by buyers in the global North with large-scale production being planned for many regions in the global South.<sup>76</sup>

**More broadly, while the JET-IP overview provides a clear commitment to decent work creation, there seems to be little attention given to ensuring the jobs created are decent jobs,** apart from a minor allocation to skills development which could potentially allow for higher job quality. The sectoral focus, as pointed out above, relies heavily on capital-intensive plans which, therefore, offer limited opportunities for job creation.

There appears to be limited coordination of investment with a wider industrial policy toolkit.

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<sup>72</sup> Gevaert, S., & Pause, L. (2022). Green Hydrogen in the Global South A literature review.

<sup>73</sup> Contested Transition: State and Capital Against the Community the groundWorks Report 2022

<sup>74</sup> Lin, J., & Chang, H. J. (2009). *Should Industrial Policy in developing countries conform to comparative advantage or defy it? A debate between Justin Lin and Ha-Joon Chang*. Development policy review, 27(5), 483-502.

<sup>75</sup> Andreoni, A. and Roberts, S. (2022) 'Green hydrogen for industry and the challenges for an entrepreneurial-regulatory state'. CCRED-IDTT Working Paper 2022/11

<sup>76</sup> Gevaert, S., & Pause, L. (2022). *Green Hydrogen in the Global South A literature review*. Utrecht University

Instead, becoming deeply entrenched in supplying cheap and capital-intensive raw materials and energy in a potentially highly competitive market to the global North to aid in their decarbonisation, risks trapping South Africa in a cycle of debt and underdevelopment.

**With respect to economic development and decent work we recommend:**

- Funding must be allocated towards industrialisation that moves the South African economy towards higher value-added and more labour-intensive industries, such as renewable-energy-linked light manufacturing and public transport localisation capable of generating high amounts of decent work in the long run.
- South African Renewable Energy Masterplan and Green Transport Policies are leveraged as an integral tool to support the JET-IP. These policies must be made to be a more ambitious industrial policy that does not merely rely on IPPs and EVs; integrates developmental trade and technological transfer policies; more strongly enforces local content requirements; and lays out the industrial financing needed to build the capacities and capabilities of the local industry for decent work creation. A diverse set of industrial policies are needed, including those followed historically by countries which have successfully developed through industrialisation.
- Investment in green hydrogen should be delayed given its extreme capital intensity, its speculative nature, and high risk until more detailed feasibility studies can be completed (see above). However, once they have been made, caution and strategic focus accompanied by a suitable range of industrial and social policies would be required. These must include protecting the water and land rights of marginalised communities. Additionally, the industry should be used to support more labour-intensive value-added manufacturing upstream by linking to a renewable manufacturing sector.

## **5.2 Social protection**

The JET-IP includes a variety of projects which are aimed at creating social protection for communities directly affected by the transition away from fossil fuel-based value chains. However, these projects amount to a very very small fraction of investment, and much less of this is going directly to workers and affected communities. These programs are unlikely to fully compensate affected communities for their loss of livelihood or result in meaningful economic security for those affected.

**A small fraction of the overall investment goes directly to affected coal communities, one of the constituencies most negatively impacted by the existing energy system.** The plan to protect the livelihoods of coal communities can be found in section 4.2.1.4 of the JET-IP. The overall proposed spending is R60 billion, with R12 billion allocated for upgrading infrastructure, R24 billion for economic diversification, R13 billion for mine repurposing and R6.5 billion for the direct care of coal communities. However, there is no clear industrial plan, with little assessment of the viability of particular industries and everything from a circular economy to ecotourism

suggested. Additionally, infrastructure investment seems to be focused on private sector needs not communities.

**While there are numerous projects designed to retrain and relocate workers, and to employ a fraction of the current coal workforce in mine rehabilitation, there is no general guarantee of employment or actual security for workers.** Instead, the programmes offer enhanced retirement or retrenchment packages, and short-term income support. Without firm commitments, workers and communities have no certainty and are likely to oppose the transition. There is no de-risking the transition for workers and affected communities only for private sector investors.

**The drive for cost-reflective energy tariffs risks worsening energy poverty.** Energy pricing, discussed in Section 4.2.1.2 (p. 46) and Section 4.6.1 (p. 110) insists on near-universal cost-reflective tariffs, in order to encourage private sector investment. In privatised systems, tariffs reflect not only actual costs but also competitive profit and interest rates in order to attract the private sector. The plan allocates no funding to extending electricity subsidies for poor households. The plan suggested that a future expansion of free basic electricity would be important but suggests an expansion from 50 MWH to 100 MWH, citing a paper which argues that households need at least 250 to 300 MWH per month to escape energy poverty.<sup>77</sup> Cost-reflective tariffs are a rarity in both developed and developing countries<sup>78</sup> and cross-subsidisation is important. Ending energy poverty has large developmental and economic payoffs and should be urgently pursued. This does not mean that policy should continue maintaining the sort of general and industrial subsidies we have, but such subsidies should not be an afterthought.

We also need to keep energy costs down and avoid exploitative types of privatisation. Eskom has argued that IPPs account for the largest portion of required tariff increases.<sup>79</sup> This is largely due to high prices locked in purchase agreements from early bid rounds. Additionally, highly privatised systems can often result in drastic price increases in times of crises, such as large increases in the UK following the Ukraine war, and large price increases in Texas following a large storm in 2021 which damaged grid infrastructure<sup>80</sup>

**With respect to social protection we recommend:**

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<sup>77</sup> Ledger, T. and Rampedi, M. (2022) 'Hungry for Electricity', Public Affairs Research Institute (PARI)

<sup>78</sup> Huenteler, J. et al. (2020) *Cost Recovery and Financial Viability of the Power Sector in Developing Countries: Insights from 15 Case Studies*. World Bank, Washington, DC. Available at: <https://doi.org/10.1596/1813-9450-9136>.

<sup>79</sup> Multi-Year Price Determination (MYPD) 5 Revenue Application for FY2023 – FY2025. Eskom submission to NERSA

<sup>80</sup> Oelofsen, D.B. and J. (2023) *ENERGY CRISIS OP-ED, PART ONE: If Eskom's tariff increase is to go, its financing model needs to bite the dust too*, *Daily Maverick*. Available at: <https://www.dailymaverick.co.za/article/2023-02-08-if-eskoms-tariff-increase-is-to-go-its-financing-model-needs-to-bite-the-dust-too/> (Accessed: 2 March 2023).

- A specific fund for workers and affected communities should be established that is capitalised (on a compulsory basis) as a percentage of all (private and donor) JET financing moving forward.
- Extensive provision must be made for long-term social security benefits to be paid to all those impacted from the transition, including if workers in dirty industries need to be reskilled or retrenched.
- Affected workers (permanent and non-permanent) should be involved in all just energy transition planning, employment certainty should be sought and workers' should be well-informed of future plans.
- Renewable generation costs should be contained, with a move away from privatisation.
- Sufficient subsidies for energy-poor households and strategic sectors must be put in place before any removal of general subsidies for electricity.