



# Land and the Just Transition

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**A GUIDE** FOR LOCAL  
GOVERNMENT

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A PARI-IIED-SALGA-ALIGN PROJECT

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**Land and the Just Transition:  
A guide for local government**

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# Foreword

The just transition requires a just approach to land administration. This is particularly critical and complex in South Africa, where the country's history of spatial inequality continues to undermine access to land. Any actions to advance a just transition must consider the spatial impacts of South Africa's apartheid history, as well as the country's ambitious land reform programme. The concept of the just transition embodies the hope that in our justified urgency to move away from a carbon-intensive economy, we do not neglect the people most affected by climate change and the energy transition. Indeed, through the process of transition we must also advance towards a more inclusive and equitable economy and society. A just land administration system has the potential to strengthen people's adaptive capacity and facilitate transformative resilience from climate impacts. It also ensures more strategic and sustainable land-use decisions are made.

While the transition narrative has focused on the Just Energy Transition – the strategic and central issue of land has been marginalised. The National Development Plan 2030, the Presidential Advisory Panel on Land Reform and Agriculture, and the Presidential Climate Commission (PCC) have all recognised the connection between land reform and climate resilience, noting the potential of inclusive and redistributive land policies to provide security and flexibility in the face of climate change. The PCC articulated three principles to guide the just transition work in South Africa. These are Distributive Justice, Procedural Justice and Restorative Justice. Given South Africa's history, no discussion about justice can exclude land and no meaningful transformation is possible without considering the role of land. South Africa's land reform programme, comprising restitution, redistribution and tenure security, is foundational to the just transition. Advocate Tembeka Ngcukaitobi argues that, "while the property clauses of the 1993 Interim Constitution were seen by some as a clumsy compromise, it is worth noting its philosophical lens, whereby land was viewed as part and parcel of the right to equality. Landlessness was a proxy for inequality".<sup>1</sup>

Despite numerous efforts on the part of government to acquire and redistribute land and settle land claims, the land reform programme has been painstakingly slow. And there are a multitude of issues beyond the transfer of ownership. If we are to catalyse the just transition, we must focus on the role of land in correcting historic injustices, promoting economic inclusion, enhancing food security, and allowing communities to adapt to climate change.

Too often land is understood narrowly as a financial asset, to be disposed of or leveraged primarily for short-term revenue. This Guide, the result of a collaborative effort between the South African Local Government Association (SALGA), Public Affairs Research Institute (PARI) and the Advancing Land-Based Investment Governance (ALIGN) project, starts from a different premise: that land is a strategic public resource with social, spatial, economic, and ecological value. Because land has a crucial role to play in mediating climate impacts and responses, how it is governed will shape whether the energy transition deepens inequality or advances justice.

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1 Ngcukaitobi, T. (2021) *Land Matters*, Penguin Books, Cape Town.

Local government, represented by municipalities in South Africa, is already playing a frontline role in the climate response. The role of local government in climate response is becoming increasingly recognised in global policymaking and discussions. However, worldwide, less than 10% of climate finance reaches city and regional governments.<sup>2</sup>

Across South Africa, municipalities are struggling to cope with runaway fires, water shortages, tenure insecurity, flood damage, and closing coal mines and power stations. Besides being the climate ‘first responders’, municipalities are also reckoning with how to handle new renewable energy or transition minerals investments, and how to balance the competing demands these create on land. It must be said that much of this is being done on an *ad hoc*, case by case basis. This Guide offers considerations for municipalities to shape their land governance response.

As the climate becomes more extreme, it is more important than ever to work together. Collaborative governance is arguably the only way to comprehensively address a cross-cutting crisis such as this: no single sphere of government, institution, or sector can deliver a just transition alone. This Guide also highlights the need for the different arms of government to work together more effectively with one another and communities. Close co-ordination between municipalities, national and provincial government, communities, traditional authorities, state-owned entities, the private sector, and civil society is essential to unlock land more effectively and ensure that the voices of those most affected can shape our spatial futures.

In the short term, SALGA has identified the urgent need to focus on partnerships to build the capability of the local state to professionalise, acquire relevant skills and adapt their delivery models to reflect reliance principles as espoused in the Just Transition Framework, while introducing necessary innovation to build resilience in their spatial development framework, service delivery and designs for infrastructure.

The Guidelines have been released during the review of the local government founding White Paper. The 2025 review of South Africa’s 1998 White Paper on Local Government seeks to modernise the municipal framework, focusing on enhanced service delivery, financial sustainability, climate resilience, and spatial equality. It is our hope that the review will produce needed reforms that can address the structural limitations of the local government system in South Africa.

SALGA is proud to be associated with this Guide which is a critical resource for municipalities navigating questions around land in just transition action and mediating between the communities they serve and the broader government institutions of South Africa. This work shall go a long way in guiding the role that municipalities can sustainably play in advancing just transitions.



**SITHOLE MBANGA**

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South African Local Government Association (SALGA)*

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<sup>2</sup> LGMA (2025) ‘LGMA COP30 Joint Position’. Local Governments and Municipal Authorities Constituency, South Africa: p3.

# Acronyms

<b>COGTA</b>	(Department of) Cooperative Governance and Traditional Affairs
<b>CPA</b>	Communal Property Association
<b>DRDLR</b>	Department of Rural Development and Land Reform
<b>DFFE</b>	Department of Forestry, Fisheries and the Environment
<b>DHS</b>	Department of Human Settlements
<b>DMPR</b>	Department of Mineral and Petroleum Resources
<b>DPW</b>	Department of Public Works
<b>ESTA</b>	Extension of Security of Tenure Act 62 of 1997
<b>FPIC</b>	Free, Prior and Informed Consent
<b>GIS</b>	Geographic Information System
<b>IDP</b>	Integrated Development Plan
<b>IPCC</b>	Intergovernmental Panel on Climate Change
<b>IPILRA</b>	Interim Protection of Informal Land Rights Act 31 of 1996
<b>IUDF</b>	Integrated Urban Development Framework
<b>JET</b>	Just Energy Transition
<b>LUS</b>	Land Use Scheme
<b>NDM</b>	Nkangala District Municipality
<b>NDP</b>	National Development Plan 2030
<b>PCC</b>	Presidential Climate Commission
<b>PIE</b>	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998
<b>SDF</b>	Spatial Development Framework
<b>SDG</b>	Sustainable Development Goal
<b>SOE</b>	State Owned Enterprise
<b>SPLUMA</b>	Spatial Planning and Land Use Management Act 16 of 2013
<b>STLM</b>	Steve Tshwete Local Municipality

# Glossary

<b>Adaptive capacity</b>	The ability of institutions and communities to anticipate, respond to, and recover from climate impacts.
<b>Climate adaptation</b>	Adjustments to natural and human systems in response to climate impacts that limit or reduce harm or take advantage of beneficial opportunities.
<b>Climate mitigation</b>	Actions that reduce or prevent greenhouse gas emissions or enhance carbon sinks.
<b>Climate resilience</b>	The capacity of social, economic and environmental systems to cope with a hazardous event or disturbance and respond to maintain that system's essential function, identity and structure.
<b>Distributive justice</b>	A fair sharing of risks and benefits.
<b>Just transition</b>	The dual process of shifting the economy towards a more sustainable, low-carbon energy system while ensuring that this move also contributes to a more just and inclusive society.
<b>Land administration</b>	The management processes that implement policies and laws about land into practice.
<b>Land governance</b>	The policy and use decisions around land resources.
<b>Land tenure</b>	The relationship that individuals and groups hold to land and related resources. Tenure rules define the ways in which rights to land are allocated, transferred, used, or managed in a particular society.
<b>Land tenure security</b>	The certainty that an individual's or group's rights to land will be recognised and protected by others.
<b>Land unlocking</b>	The process of acquiring, processing planning and zoning approvals for, and disposing of, land for a given development.
<b>Land use planning</b>	Planning of human activity on land to ensure that land is put to its optimal use, taking into account the different effects that land-uses can have in relation to social, political, economic and environmental concerns.
<b>Off-register land rights</b>	Those tenure rights recognised and protected by law but not formally registered.
<b>Procedural justice</b>	Making decisions through fair, inclusive and empowering processes.
<b>Restorative justice</b>	Redress of historical damages against individuals, communities and the environment, that begins with acknowledgment of previous harm.
<b>Spatial transformation</b>	A change in the structure and organisation of settlements and economic activities from the segregated spatial patterns established during colonial and apartheid times, to address the inefficiencies, injustices and inequalities in access to opportunities resulting from these patterns.
<b>Spatial justice</b>	The fair distribution of opportunities and resources across space.



## About this work

This work set out to explore how the just transition is being understood and implemented at the local government level in South Africa, what bottlenecks exist for the implementation of transition linked projects, and how municipalities are responding to increasing transition-linked land pressures. With the aim of providing practical guidance to those grappling with the emerging challenges, work was undertaken through an action research approach, working with stakeholders to both identify gaps and collectively seek solutions to articulated challenges.

The Guide draws from the iterative and collaborative work which was undertaken in the Nkangala District of Mpumalanga Province. The Nkangala District municipality covers an area that dominates national coal production and use, with 42 registered coal mines and eight coal-fired power stations (including the already decommissioned Komati power station). Many of these investments are due to be decommissioned in the next decade<sup>3</sup> thus putting the just transition and practical questions of how to deliver it at the very centre of activities.

The Guide draws on the processes, discussions, and evolving approaches that emerged during the implementation of this work, with the process to develop the guidance being as important as the final output. This has assisted in ensuring local ownership and institutional embedding. The focus of the Guide is on land governance. It does not engage with the technical details of how to source investors, secure climate finance or advise on implementing adaptation or mitigation projects. This document underlines the importance of land in the just transition and highlights key issues for municipalities to engage with as they undertake their own planning processes. Accordingly, it emphasises broad considerations for municipalities and offers examples of possible practical actions to take.

Although the work draws from a specific context, which experience cannot be generalised across the 257 municipalities in South Africa, the document provides useful insights and guidance that can inform policy and decision makers negotiating the land-just transition nexus.

The research findings from this work have been published in a report entitled *The Intersection of Land and Local Government in the Just Transition in South Africa* (PARI, forthcoming).

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3 Mameetja, E. (2025) 'Climate Adaptation in Nkangala District Municipality', Presentation to Nkangala District Climate Change Forum, 18 June 2025.

## INTRODUCTION

# The Just Transition, Municipal Responsibilities and the Central Role of Land

### The importance of land in the just transition

Land is the foundation for South Africa's just transition to a low-carbon, climate-resilient, and inclusive economy. Renewable energy sources such as wind, solar, or biofuel and biomass production, as well as climate mitigation and adaptation activities, such as the expansion of protected areas, afforestation or reforestation efforts, and ecosystem conservation, all come with large land footprints. As the urgency to shift from fossil fuels to a low-carbon economy builds, investments in all the above areas will be priorities. Such initiatives, while crucial for our climate response, will also increase pressures on already contested land resources. This can come into conflict with food security, ecosystem resilience, and tenure rights.<sup>4</sup> Strategic land governance, and integrated land-use planning, will be vital to balance the competing demands and ensure effective use of South Africa's limited land resources.



At the same time, **land is not simply the site hosting an investment but rather an asset supporting diverse rights and interests, all of which are relevant to delivering a truly just transition.** Land is an environmental asset which can reduce climate impacts through carbon absorption or providing ecosystem services. It can generate new 'green' jobs linked to biodiversity and conservation. It provides a social safety net in times of crisis, can mitigate the climate vulnerability of marginalised communities, and contribute towards sustainable livelihoods, poverty reduction and socio-economic transformation. It is also the thread that binds cultural histories and identities. No discussion of justice can exclude land in South Africa.

### The role of municipalities

Municipalities are the foundation of South Africa's state machinery. They are the coalface of the state's interface with citizens and play key roles in service delivery, land governance and economic growth. The Constitution assigns a duty to municipalities to administer local planning including land use planning, management and regulation. Additionally, municipalities have a constitutional duty to ensure a safe and healthy environment by providing sustainable basic services, enforcing by-laws, and managing local natural resources. Key responsibilities include air pollution control, waste management, sanitation, water services, and land-use planning.



<sup>4</sup> Self, A., R. Burdon, J. Lewis, P. Riggs and K. Dooley (2023) 'Land Gap Report Briefing Note: 2023 Update'. The Land Gap Report. Fitzroy: Climate Resource.

The Spatial Planning and Land Use Management Act (SPLUMA) of 2013 provides a legal framework for municipal spatial planning and land use management functions in South Africa. It outlines five core development principles aimed at addressing historical spatial imbalances and promoting sustainable, equitable development. These principles, binding on all spheres of government, are: **Spatial Justice, Spatial Sustainability, Efficiency, Spatial Resilience, and Good Administration**. These principles provide a robust mandate baseline for municipal roles in the just transition on land.

Municipalities play a pivotal role in reconciling competing land uses and functions. Responsive land use planning, environmental management and land unlocking processes are needed to balance the land-intensive needs of clean energy, economic diversification, and climate adaptation and mitigation efforts, while also addressing historical inequalities, overlapping land tenure systems, and spatial transformation.

Despite this, many municipalities lack the necessary capacity and tools needed to deliver a truly just transition. This is partly because many municipalities have only recently begun to engage with the complications and impacts of climate change. Municipalities have also had very little direct involvement in broader policy and decision-making around the just transition. Consequently, the role of municipalities in the just transition has until recently been fairly neglected.

## Purpose of this guide

*Land and the just transition: A guide for local government* is intended to be a resource for municipalities as they navigate issues of climate change, the just transition, and land governance. As such, this Guide seeks to support municipalities by:

- Highlighting the importance of land in just transition planning, specifically the role of land in social and spatial transformation in South Africa. This is to complement and diversify the focus on the national just transition framework, the SALGA strategy on just transition and the Just Energy Transition (JET) programmes.<sup>5</sup>
- Mapping the potential role of municipalities in governing land for the just transition. This includes clarifying relevant regulations, policies, and planning practices that shape the transition at a municipal level, including through land use planning and management that can unlock land development opportunities and spatial transformation
- Providing key considerations for municipalities to ensure decisions around land advance redistributive, restorative, and procedural justice, the three pillars of justice underpinning the transition.
- Supporting municipal engagement with the need to leverage spatial planning, improve public participation, strengthen cooperative governance between traditional and municipal authorities and protect land tenure rights for just outcomes and sustainable livelihoods, including through a series of broad considerations.
- Suggesting approaches through which municipalities can balance competing land use priorities, environmental concerns, and facilitate sustainable and socially responsible investments into land.

<sup>5</sup> PCC (2022). 'A Framework for a Just Transition in South Africa'. Pretoria: Presidential Climate Commission.; SALGA (forthcoming) 'Local Government Strategy for the Just Transition'. Pretoria: South African Local government Association; RSA (2023) 'Just Energy Transition Implementation Plan 2023-2027'. Pretoria: The Presidency.

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## Target audience

This Guide is primarily intended to assist municipalities in leveraging their land governance, environmental management and planning functions towards realising a just transition. However, it has relevance to broader policy and governance discussions at the national and provincial level, and institutions at this level who are involved in land governance – particularly since improved intergovernmental co-operation and co-ordination is clearly needed. It may also be of value to investors and private sector institutions who are interested in understanding municipal dynamics around land acquisition, regulation and delivery for the just transition, as well as offering insight to institutions of traditional leadership, communities and civil society engaging with municipalities. It is also part of an emerging international body of work exploring the role of land and the role of local government in the just transition.

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## How to use this document

This Guide is intended to serve as a practical resource for municipalities and other stakeholders in their response to climate change and the just transition as it relates to land.

**The first section** introduces the framework for the just transition and lays out the key legislative and policy drivers for this process in South Africa, alongside key legislation framing the role of municipalities.

**The second section** explores the importance of land in the just transition as well as the three pillars of transition justice and considerations for decision-making around land.

**The third section** focuses on the role of municipalities in the just transition, the land governance challenges they face, and key municipal land governance and administration processes, offering considerations for each process.

## SECTION 1

# The Just Transition

*The concept of the ‘just transition’ refers to the dual need to shift the economy towards a more sustainable, low-carbon energy system while ensuring that this move also contributes to a more just and inclusive society.<sup>6</sup>*



### Just Transition Framework

A key objective at the core of the just transition is to ensure vulnerable stakeholders are not negatively impacted by the shift to a low-carbon economy but are in fact made better off. There are risks, as existing industries decline, as well as opportunities, through improved integration of the planning processes that facilitates the transition.

South Africa adopted its *Framework for the Just Transition* in 2022.<sup>7</sup> It anchors the just transition in the country’s historical context of land dispossession, dual land governance realities, spatial imbalances, inequality, unemployment, and environmental injustice, while aligning with global climate commitments. The framework is underpinned by three principles of justice:

- i. Distributive justice** – Fair sharing of the costs and benefits of the transition. The costs of transition-linked adjustment should be carried by those responsible for the problem. Those most impacted should share in the benefits of the transition.
- ii. Restorative justice** – Addressing historical social, economic, health, and environmental harms. Redress through acknowledgement of previous harm should be facilitated. New forward-looking approaches that promote greater justice and fairness should be adopted.
- iii. Procedural justice** – Inclusive, participatory decision-making, empowering processes, and protection of transition-impacted groups’ rights (“nothing about us without us”). Ensure processes where people can define their own development and are empowered.

Environmental justice and resilience cut across all three principles.

<sup>6</sup> Climate Change Act 22 of 2024.

<sup>7</sup> PCC (2022). ‘A Framework for a Just Transition in South Africa’. Pretoria: Presidential Climate Commission.

The Framework provides a definition for a just transition in South Africa that lays out critical elements to be considered when making development decisions. These elements include:

- Decisions should ensure a quality life for all South Africans.
  - They should help create decent work for all.
  - They should ensure everyone is recognised, considered and heard.
  - They should reduce poverty.
  - They should equip people with new opportunities in the future.
- Decisions should work towards reducing greenhouse gas emissions through, for example, renewable energy systems.
- Decisions should allow for the future ability to adapt to climate change, as well as improved resilience to climate impacts, through for example, the conservation of natural resources and environmental stewardship, ensuring equitable access to water, or the provision of a healthy environment.
- Decisions must consider the concerns and voices of the people.
  - This includes the voices of concerned and impacted people.
  - This includes the voices of the poor, women, indigenous people, people with disabilities and the youth.
  - This includes the voices of those with a claim to land.
  - Decisions must facilitate sustainable, equitable, and inclusive land use for all.

## Key legislative and policy drivers for a just transition in South Africa

In addition to providing a comprehensive frame for transition-linked decisions, the pillars of justice build on the progressive principles contained in key existing laws and policies that recognise the importance of land to a just transition.

- **The Constitution of the Republic of South Africa (1996):** The Constitution has at its core the intention to heal past injustice and foster an environment that can improve the lives of all citizens. This resonates strongly with the framework established for a just transition in South Africa. In addition, just transition decisions have the potential to impact many of the rights protected in the Bill of Rights (e.g. equality, dignity, environment, housing, property, access to information, etc.).<sup>8</sup>
- **National Development Plan 2030 (NDP):** Sets the pathway for transitioning to a just, inclusive, sustainable and resilient society by 2030. This includes mitigation – ensuring that emissions have peaked and plateaued by that date – as well as adopting adaptation strategies and investing in new sustainable technologies.<sup>9</sup> Strengthening economic and social resilience by decreasing poverty and inequality, creating employment, and building a strong economy with high energy, water, food and natural resource security, amongst others, are key features of the NDP.

<sup>8</sup> Constitution of the Republic of South Africa 1996: Preamble and Chapter 2.

<sup>9</sup> NPC (2012) 'National Development Plan 2030'. Pretoria: National Planning Commission

- **Final Report of the Presidential Advisory Panel on Land Reform and Agriculture:** Notes the risks climate change pose to South Africa, with historical land-linked inequalities rendering the country particularly vulnerable to the effects of climate change. The report highlights that land reform must contribute towards the achievement of a just transition by promoting sustainable land-use practices in ways that create jobs, livelihoods and reduce climate vulnerability. It recommends mainstreaming ecosystem-based adaptation, increased coherence between land reform and sectoral policies on climate change, improved land and natural resource information, and the linking land reform to transition initiatives.<sup>10</sup>
- **Climate Change Act 22 of 2024:** Provides for a coordinated response to climate change and its impacts, including by managing its impacts, improving adaptive capacity and reducing vulnerability, making a fair contribution to global efforts to stabilise atmospheric greenhouse gas levels, and protecting the planet by ensuring a just transition to a low carbon economy. The Act requires municipalities to assess climate vulnerability, develop climate response plans, and integrate these into Integrated Development Plans (IDPs) and Municipal Spatial Development Frameworks (MSDFs). Metro and district municipalities must publish climate needs and response assessments and update these every five years.<sup>11</sup>
- **Intergovernmental Relations Framework Act 13 of 2005:** Mandates coordination between municipalities, provinces, and national departments (e.g., COGTA, DFFE), which is essential to resolving overlapping land jurisdictions, particularly where traditional authorities are involved; and provides for a mechanism for vertical technical support across tiers of government.
- **Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA):** Empowers municipalities to enforce zoning aligned with just transition goals, including renewable energy projects and climate-resilient settlements. SPLUMA also requires robust public participation in spatial planning and land-use decisions.
- **Municipal Systems Act 32 of 2000:** Establishes core principles for municipal governance, including community participation and the progressive realisation of social and economic rights.
- **Integrated Urban Development Framework 2016 (IUDF):** Sets a policy framework to guide the development of inclusive, resilient and liveable urban settlements, with the overall goals of spatial transformation, access to services and opportunities, economic growth and effective governance. The IUDF recognises the need for urban spaces which are resilient to climate, social and economic shocks, and the role of urban and land governance in achieving this, including through promoting more compact settlements, providing resilient basic infrastructure and undertaking conservation and restoration of ecosystems.
- **The National Spatial Development Framework (NSDF):** Sets a strategic long-term spatial plan towards 2050. The NSDF is legally mandated by SPLUMA, and must be aligned with the NDP. It aims to correct apartheid-era spatial inequalities, creating a “shared, smaller, better-connected, and more sustainable” nation. Key objectives include accelerating spatial transformation, promoting efficient, climate-resilient infrastructure, and focusing investment on high-potential urban and rural areas.

<sup>10</sup> RSA (2019) ‘Final Report of the Presidential Advisory Panel on Land Reform and Agriculture’. Advisory panel report to the President of South Africa.

<sup>11</sup> Climate Change Act 22 of 2024 s 17.

## SECTION 2:

# The Land and Just Transition Nexus

*All assessed modelled pathways that limit warming to 1.5°C or well below 2°C require land-based mitigation and land-use change, with most including different combinations of reforestation, afforestation, reduced deforestation, and bioenergy.” – Intergovernmental Panel on Climate Change (IPCC) report on climate change and land (2019).*



Renewable energy sources, as well as climate mitigation and adaptation activities are all land-intensive – indeed, even more so than fossil fuel investments.<sup>12</sup> Worldwide, more than one billion hectares of land have been proposed for carbon removal-linked climate mitigation activities alone.<sup>13</sup> Investments in all the above areas will likely be priorities but will put considerable pressures on already contested land resources.<sup>14</sup>

### Examples of transition-relevant land uses requiring strategic planning:

- Renewable energy investments (such as wind or solar)
- Mining sites (new and closed)
- Human settlements (including informal and island settlements)<sup>15</sup>
- Conservation and environmentally sensitive areas (relevant for climate mitigation and biodiversity)
- Afforestation and reforestation
- Infrastructure developments
- Agriculture (food and bio-fuel)



12 King, R., T.G. Benton, A.. Forggart, H. Harwatt, D.. Quiggin, and L. Wellesley (2023) 'The Emerging Global Crisis of Land Use: How Rising Competition for Land Threatens International Law and Environmental Sustainability, and How the Risks can be Mitigated'. London: Chatham House.

13 Self, A., R. Burdon, J. Lewis, P. Riggs and K. Dooley (2023) 'Land Gap Report Briefing Note: 2023 Update'. The Land Gap Report. Fitzroy: Climate Resource.

14 RSA (2023) 'Just Energy Transition Implementation Plan 2023-2027'. Pretoria: The Presidency.

15 'Island settlements phrasing drawn from STLM (2017) 'Spatial Development Framework Draft Report'. Steve Tshwete Local Municipality: p53.

The just transition can place stress on land resources in a municipality in at least four ways:

1. **Infrastructure and spatial reconfiguration:** Transition involves expanding and reconfiguring land uses (industrial, residential, ecological, waste, transport, and energy-related).
2. **Risk governance and climate-proofing:** Climate risks are experienced spatially (floodplains, heat islands, degraded land, water-stressed zones).
3. **Justice and distribution:** Land is a site where costs and benefits are allocated (who receives serviced land, who is relocated, who gains from investment, who absorbs pollution burdens, and whose livelihoods are displaced).
4. **Legitimacy and consent:** Transition projects frequently trigger conflict when participation is weak, information is not shared, or consent processes are treated as compliance rituals rather than meaningful engagement.<sup>16</sup>

Careful and strategic land use planning is needed to balance competing land pressures and priorities. Well aligned land and climate policies can save resources, support livelihoods and foster collaboration between multiple stakeholders. Disjointed and unconsidered transition decisions, however, can undermine the many different functions of land, undermine the sustainability of communities, and ultimately limit the ability to effectively respond to the impacts of climate change.<sup>17</sup>

**Land governance** refers to policy, development and land use decisions around land resources. Robust land governance should pave the way for smooth land administration – the management process that implements policies and laws into practice – which includes management of 1) land tenure; 2) land valuation; 3) land use; and 4) land development.

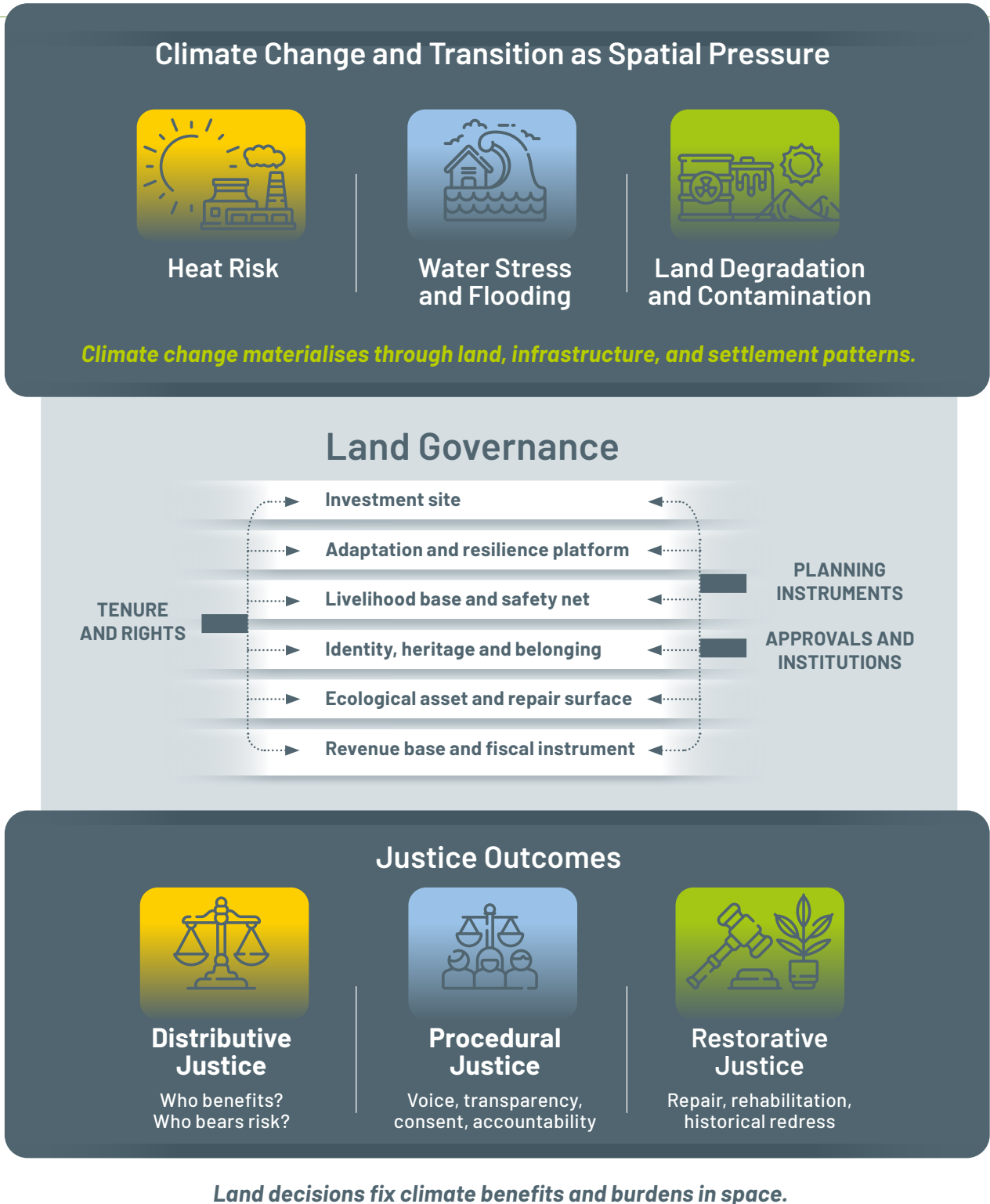
**Land use planning:** Planning of human activity on land to ensure that land is put to its optimal use, taking into account the different effects that land-uses can have in relation to social, political, economic and environmental concerns.

A transition can only be just when decisions on land allocation and use contribute to the delivery of distributive, restorative, and procedural justice. To do this effectively, municipalities will need to have a good understanding of the importance of land in achieving a just transition. Transition-aligned decisions will need to depart from a business-as-usual view of land focused mainly on its potential to generate revenue. Instead, decisions must consider land as an asset that hosts diverse complementary functions – each with the potential to contribute towards the social, environmental and economic change necessary for transition responsive developments. A solid understanding of the legitimate tenure claims that exist over land in South Africa is also vital. In the sections that follow these three elements will be unpacked.

16 PARI (forthcoming) 'The Intersection of Land and Local Government in the Just Transition in South Africa'. Report prepared for Advancing Land-based Investment Governance (ALIGN). Johannesburg: Public Affairs Research Institute.

17 IPCC (2019) 'Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security and Greenhouse Gas Fluxes in Terrestrial Ecosystems'. International Panel on Climate Change.

The graphic below shows the intersection of transition pressures and opportunities with the many roles of land.<sup>18</sup>



18 PARI (forthcoming) 'The Intersection of Land and Local Government in the Just Transition in South Africa'. Report prepared for Advancing Land-based Investment Governance (ALIGN). Johannesburg: Public Affairs Research Institute.

## Diverse functions of land and the just transition

Supporting just transition land governance requires adopting a broader view of land and its value. It should not be considered simply as the site hosting an investment. Rather land is an asset supporting complementary claims and interests, all of which may be relevant to the achievement of a just transition. Land can function as an environmental asset, climate impact mitigator or multiplier, generator of jobs, social safety net, and a key source of identity. These diverse and at times competing functions will need to be carefully balanced during transition land use planning and land unlocking processes. The table below highlights some of the possible functions of land in the just transition.

Functions of land in the just transition	
Function of land	How this plays out in the just transition
Site of transition investments and business opportunity	Large tracts of land are needed for wind, solar, biomass, and conservation projects as part of South Africa's low-carbon transition. Land is a key economic asset for new investments and infrastructure.
Generator of income	Land enables both formal and informal income generation and economic diversification. It generates municipal revenue through taxes and rates and serves as collateral for investment.
Environmental asset	Land hosts vital ecosystems underpinning the "biodiversity economy", including restoration, tourism, and traditional medicine.
Mitigator or multiplier of climate impacts	Land can act as a carbon sink and help mitigate climate change, but is vulnerable to degradation and extreme weather. Changing land conditions impact temperatures, extreme events, and livelihoods, health, and food systems.
Enabler of climate adaptation and resilience	Secure land tenure protects against eviction and supports livelihood diversification and investment. Recognising diverse tenure systems and flexible policies is vital for climate adaptation and community resilience.
Social safety net	Land is a crucial resource for marginalised and vulnerable groups, providing subsistence and survival, especially in rural and communal areas.
Enabler of rights	Land is fundamental to realising constitutional and international human rights. Decisions about land use impact rights to equality, dignity, housing, and more, and states must ensure investments do not interfere with land rights.
Site for spatial justice	Land has been a site of historic injustice in South Africa. Reform efforts aim at restitution, redistribution, and symbolic recognition, and are essential for building resilience and addressing unequal access that exacerbates climate vulnerability.
Basis of identity	Land shapes social relationships, identity, and cultural practices, often viewed as ancestral inheritance and sacred space. Restitution can restore lost identity and non-economic benefits.
Site for carbon markets	Land stores carbon and generates credits for carbon markets, supporting nature-based solutions. Inclusive governance and community rights are critical to ensure benefits and avoid harm.
Site for reconciling diverse interests and promoting peace, stability and security	Land is where stakeholder interests and jurisdictions intersect, often with power imbalances. Just transition management brings together policymakers and stakeholders to decide on fair land use.

## SDGs at the land-just transition nexus

 <p><b>1 NO POVERTY</b></p>	 <p><b>2 ZERO HUNGER</b></p>	 <p><b>5 GENDER EQUALITY</b></p>	 <p><b>7 AFFORDABLE AND CLEAN ENERGY</b></p>	 <p><b>11 SUSTAINABLE CITIES AND COMMUNITIES</b></p>	 <p><b>13 CLIMATE ACTION</b></p>	 <p><b>15 LIFE ON LAND</b></p>	 <p><b>16 PEACE, JUSTICE AND STRONG INSTITUTIONS</b></p>
<p><b>No poverty</b></p>	<p><b>Zero hunger</b></p>	<p><b>Gender equality</b></p>	<p><b>Affordable, clean energy</b></p>	<p><b>Sustainable cities and communities</b></p>	<p><b>Climate action</b></p>	<p><b>Life on land</b></p>	<p><b>Peace, justice and strong institutions</b></p>
<p>Promoting equitable land access as part of a just transition can help to alleviate poverty by creating green jobs, sustainable agriculture and eco-tourism.</p>	<p>Sustainable land use and regenerative agricultural practices can boost food production and improve food security.</p>	<p>Strengthening women's access to land, resources, and decision-making processes help reduce gender disparities in rural development.</p>	<p>A just transition will ensure communities benefit from renewable energy projects by sharing revenue, creating jobs, and providing access to clean energy.</p>	<p>More compact, connected cities, and improved public services will help to build the resilience of poor and vulnerable communities.</p>	<p>Sustainable land use management and land restoration efforts are integral to climate action.</p>	<p>Conservation, reforestation and land restoration will help to protect life on land.</p>	<p>Transparent governance and inclusive decision-making is essential in land management.</p>

Linked to this, land plays an important role in the achievement of the Sustainable Development Goals within the context of a just transition. It is an enabler of food security, livelihoods, and economic development and an identified indicator under SDG goal 1 (no poverty) and goal 5 (gender equality).<sup>19</sup>

**Consideration:** A just transition-aligned view of land is that of a finite resource, which forms part of delicate and complex ecosystems, and which needs to be strategically used and preserved.

**Consideration:** Transition related investments should take into consideration the prioritised investments and activities in South Africa. These include the conservation of high-carbon ecosystems such as wetlands, peatlands, rangelands, mangroves and forests.

**Consideration:** Land can host diverse complementary and competing functions, as well as multiple overlapping legitimate tenure claims.

<sup>19</sup> Sustainable Development Goal 1, target 1.4.2(a) and 1.4.2(b) and Sustainable Development Goal 5, target 5.a.1 and 5.a.2

## Land rights in South Africa

The land tenure system in South Africa is as complex as its history. Tenure in South Africa comprises a dualistic system: formal, registered rights (such as ownership/sectional title) and informal or 'off-register' rights (such as customary tenure, often managed by traditional authorities). Major tenure types include formal title, long-term lease, and customary tenure, with different rights guaranteed by the Constitution, the Extension of Security of Tenure Act (ESTA), Prevention of Illegal Evictions Act (PIE), Interim Protection of Informal Land Rights Act (IPILRA), the Labour Tenants Act and various rental laws. The legislation creates responsibilities for municipalities and establishes clear obligations to recognise and protect off-register land tenure rights.

Land tenure rights exist on a continuum, with each step providing a different level of security and responsibility.<sup>20</sup> The different tenure types inform land rights holders' level of security and the extent to which they are likely to experience transition justice or injustice. The form of land tenure can also be relevant to how climate risks are addressed. Many climate solutions require more flexible land tenure, and customary or collective tenure systems should be considered in just transition planning and decision-making processes to enable flexible resilience and adaptation responses.

### Land tenure essentials<sup>21</sup>

**Land tenure:** The relationship between land and people. Land tenure defines rights of access, utilisation and transfer of land, as well as the obligations of those who hold tenure rights. Tenure encompasses the rights of individuals and communities on land. The rules of tenure may also be customary or established through practice. Examples of tenure types include private tenure, common tenure, open access, and state tenure.

**Off-register land rights:** Those tenure rights recognised and protected by law but not formally registered in the deeds office. These can range from customary land rights to the rights of people living in informal settlements and as labour tenants or farm labourers.

#### Characteristics of off-register land rights in South Africa

- Rights are constitutionally recognised in South Africa
- Rights may not necessarily have a formal agreement with the institution who holds the primary land right.
- Rights are often embedded in social networks.
- Rights may in some cases overlap one another; different people may hold different rights to the same piece of land.

20 Du Plessis, J., C. Augustinus, M. Barry, C. Lemmen and L. Royston (2016) 'The Continuum of Land Rights Approach to Tenure Security: Consolidating Advances in Theory and Practice'. Paper presented at the 17th Annual World Bank Conference on Land and Poverty, Washington D.C., 14–18 March 2016.

21 FAO (2002) 'What is Land Tenure?' in 'Land Tenure and Rural Development, Land Tenure Studies'. Rome: Food and Agriculture Organization of the United Nations; Payne, G. (2001) 'Urban Land Tenure Policy Options: Titles or Rights?'. Habitat international 25(3); Hornby, D., L. Royston, R. Kingwill and B. Cousins (2017) 'Tenure practices, concepts and theories in South Africa', in D. Hornby et al. (eds) Untitled: Securing Land Tenure in Urban and Rural South Africa. Pietermaritzburg: UKZN Press; Wicomb, W. (2024) 'What are the challenges of incorporating the diverse land rights of the majority of South Africans into the existing formal land registration system?'. LRC/PARI Policy Brief 1/3. Johannesburg: Public Affairs Research Institute.

## Key legislation on tenure rights and protections

<b>The Constitution of South Africa</b>	Section 25(6) of the Constitution states that people or communities whose tenure on land is insecure because of past racially discriminatory laws, are entitled either to secure tenure or comparable redress.
<b>Upgrading of Land Tenure Rights Act 112 of 1991 (ULTRA)</b>	Provides for the conversion or 'upgrading' of 'old-order' rights such as permissions to occupy (PTOs) or deeds of grant, to ownership. This upgrading can happen where land has been cadastrally surveyed. <sup>22</sup>
<b>Land Titles Adjustment Act 111 of 1993</b>	Intended to regulate the allocation and devolution of land in respect of which one or more persons claim ownership, but who do not have registered title deed for that land.
<b>Restitution of Land Rights Act 22 of 1994</b>	Intended to provide for the restitution of rights in land lost by individuals or communities as a result of racially discriminatory laws and practices.
<b>Land Reform (Labour Tenants) Act 3 of 1996</b>	Intended to protect the rights of labour tenants living on land formally owned by someone else but who have, or have had, the right to use cropping or grazing land in exchange for their labour.
<b>Communal Property Associations Act 28 of 1996</b>	Enables communities to form legal entities known as communal property associations to acquire, hold and manage property on a basis agreed to by members of the community in terms of a written constitution. This allows the beneficiaries of land reform and restitution to register 'communally' owned land.
<b>Interim Protection of Informal Land Rights Act 31 of 1996 (IPIIRA)</b>	Intended to protect the land rights of those living in the former Bantustans. The Act recognises informal rights to land and provides for "rights inquiries" before subdivision or disposal of land. It provides that no person may be deprived of an informal right to land without his or her consent, except where this is in accordance with custom and usage of a particular community, and subject to appropriate compensation.
<b>Extension of Security of Tenure Act 62 of 1997 (ESTA) as amended in 2018</b>	Intended to protect the tenure rights and use rights of farm workers and occupiers living on land outside of a formally declared urban areas, and to regulate the circumstances under which these rights may be terminated and the people evicted.
<b>Housing Act 107 of 1997</b>	Protects occupants with insecure tenure who live in urban areas.
<b>Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE)</b>	Intended to prohibit the unlawful occupation of land and establish fair procedures for the eviction of unlawful occupiers who occupy land without permission.

However, despite the suite of legislation described above, many people's land rights remain insecure. A just transition on land also depends on secure tenure. Tenure (in)security shapes the incentives and risks which households face in regards to how they use and invest in their land, their visibility to state support efforts and their access to financial instruments. As explored in the table below, this means that transition justice depends on tenure security.

22 RSA (2019) 'Final Report of the Presidential Advisory Panel on Land Reform and Agriculture'. Advisory panel report to the President of South Africa: p36; *Rahube v Rahube and Others* (CCT319/17)(2018) ZACC 42; 2019 (1) BCLR 125 (CC); 2019 (2) SA 54 (CC).

## How secure tenure can impact a just transition<sup>23</sup>

### Secure tenure can facilitate transition justice for communities

**Communities are better able to prevent displacement from their land;** can ensure land for transition projects is accessed fairly.

**Legal recognition of land rights** enables communities to negotiate access to climate finance mechanisms and recover more quickly from climate-induced losses and damage.

Allows for **investment in long-term land management practices** such as agroforestry and reforestation, vital for climate mitigation and adaptation.

Provides the **stability** needed for communities to adopt adaptive agricultural practices and other resilience-building activities.

Begins to **address the historical and ongoing injustices** faced by marginalised communities who are often disproportionately affected by climate change.

Marginalised groups with secure land tenure are better able to **secure climate justice**.

### Insecure tenure can undermine transition justice for communities

**Vulnerable to exploitation or dispossession** through transition projects and fossil fuel developments alike.

**Negative impact on adaptive capacity** and exacerbates vulnerability to climate risks, as well as land disputes, land grabbing and forced displacement.

**No incentive to pursue long-term development.** Destabilisation of local structures undermines the capacity of local communities to manage climate risks.

**Without proof of their land rights,** people may opt to remain in dangerous situations rather than migrate out of fear of losing their land.

**Marginalised groups are excluded from interventions and decision making** when they are not recognised as legitimate landowners or land users.

Groups without secure tenure are **more likely to be excluded from climate benefits or burdened with disproportionate impacts**.

**Consideration:** Beyond registered ownership, there are other land tenure rights or 'off-register' land rights. Many of these require the **informed consent** of land tenure rights holders if their land rights are impacted. For some categories of tenure rights, the State is required to treat these rights in the same way required for Deeds office registered owners.

**Consideration:** The just transition requires a more equal recognition and support of the different types of land tenure rights. Without tenure security, households risk exclusion from decision-making and support programmes within the just transition. By contrast, inclusion can help to unlock land and community support for the just transition.

<sup>23</sup> Compiled from: Pelkmans, I. and F. Klümper (2024) 'Rights4land: Towards an Agenda for Just Land Governance'. 2 Land Governance. Berlin: ThinkTank for Sustainability (TMG); Paradza, G. and J. Hlatshwayo (2023) 'Why Indigenous Land Tenure Security is a Condition for Indigenous Community Engagement in Energy Transition in South Africa, Land Governance and Local Government'. PARI Policy Brief. Johannesburg: Public Affairs Research Institute; Buthelezi, M. (2022) 'KZN Floods – The Dangerous Cocktail of Traditional Authorities and Local Government', *Daily Maverick*, 24 May 2022; Unruh, J.D. (2008) 'Carbon sequestration in Africa: The land tenure problem'. *Global Environmental Change* 18(4); Santini, M. (2022) 'Indigenous Land Rights and Climate Action: A Pathway to Sustainable Development'. *World Development* 151.

## Land and the three pillars of transition justice

Land has a role to play in realising the three core elements of justice that define South Africa's just transition. The just transition is not simply about moving to a low carbon economy or shifting industrial policies. It requires that developments are done differently and land is a key element for facilitating the envisaged changes. Land tenure rights and status will shape how costs and risks that arise from the transition are shared. Recognising how tenure can mitigate negative impacts and improve local economic development outcomes will be important (distributive justice). In addition, ensuring new transition investments do not further entrench historic inequalities will be vital for a transition that delivers change and enjoys social community support. Considering the impacts of spatial apartheid on land tenure and the different legislative protections put in place to mitigate the continuing impacts in decision-making processes is also necessary (restorative justice). Lastly, obtaining community support for just transition initiatives will require agreement and understanding. Fostering social legitimacy through meaningful consultations, information sharing, and tenure informed consent processes is vital (procedural justice).

### Pillar I: Land and distributive justice



*Land can contribute to distributive justice by informing how costs and benefits of just transition investments are shared between stakeholders. This includes assessing the impacts of transition proposals on existing land tenure rights and how best to balance the competing functions of land to determine what would be just and fair.*

Land is one of the most vital livelihood assets for vulnerable groups and transition-linked developments should recognise this. To ensure distributive justice, the uneven impacts of increasing demand for land and natural resources will need to be mitigated. When making transition-linked land-use decisions the questions of who is living on, using or managing a specific piece of land must be carefully considered, alongside an understanding of the history that shaped the rights held by those living on, using or managing the land. This is necessary to facilitate a fair distribution of the risks and benefits associated with transition investments.

Legitimate land rights must be protected.<sup>24</sup> Recognising and recording off-register land rights, particularly those of vulnerable groups, is a key step toward ensuring just outcomes and breaking historic patterns of poverty and exclusion.<sup>25</sup> The PCC recognises the importance of secure tenure for enabling South Africans, particularly vulnerable groups, to fully participate in the transition economy.<sup>26</sup> Transition planning will also need to consider gender, race, and class inequalities, particularly in relation to how those factors can influence land rights. Different groups may experience the impacts of changing land-use differently and this needs to be taken into account. In addition, the nature of existing land rights will be relevant when considering how benefits from new developments are allocated and shared.

24 Self, A., R. Burdon, J. Lewis, P. Riggs and K. Dooley (2023) 'Land Gap Report Briefing Note: 2023 Update'. The Land Gap Report. Fitzroy: Climate Resource.

25 RSA (2019) 'Final Report of the Presidential Advisory Panel on Land Reform and Agriculture'. Advisory panel report to the President of South Africa.

26 PCC (2022). 'A Framework for a Just Transition in South Africa'. Pretoria: Presidential Climate Commission.

**Spatial justice** is a key objective of the Spatial Planning and Land Management Act (SPLUMA) and refers to the fair distribution of opportunities and resources across a specific area. It calls for the transformation of living environments to ensure equal access to services, livelihood opportunities, and public space, as well as inclusive processes of decision-making.

## Insecure land tenure amongst vulnerable groups <sup>27</sup>

<b>Women</b>	Women continue to be marginalised through gender-linked land tenure insecurities and dispossession. Tenure insecurity limits women's physical wellbeing, living conditions, access to economic opportunities and equality.
<b>Youth</b>	Land tenure insecurity is closely linked to economic exclusion. South Africa's youth (adults under 35 years of age) experience extremely high unemployment.
<b>Older persons</b>	Elderly persons (over 60 years old) and their families, often rely on informal land tenure rights to secure their homes and livelihoods.
<b>Poor persons</b>	Many poor households have insecure tenure rights. Municipalities provide for the poor, who they refer to as indigents, to receive some free basic services. The type of dwelling a household resides in (formal and informal) is one of the criteria considered.
<b>Persons living with disability</b>	Access to well-designed housing and neighbourhoods contributes significantly to the quality of life of persons with disability, conditions which are often absent, particularly in rural areas and informal settlements.
<b>LGBTQI+ persons</b>	LGBTQI+ persons are at greater risk of homelessness and insecure housing than the general population. Many LGBTQI+ persons also migrate to urban areas in the hope of greater safety and community, generating unique housing needs in those areas.
<b>Persons living in informal settlements</b>	Labour migration is a key driver of population flows from rural to urban areas. Residents within informal settlements experience multiple interlinked deprivations, some linked to insecure tenure.
<b>Farm dwellers and labour tenants</b>	Farm dwellers and labour tenants are amongst the most marginalised due to their combination of invisibility, poverty, and tenure insecurity. State services tend not to extend to private farms, which leaves farm dwellers very under-served. When they lose access to land they also lose their means of subsistence, economic assets, cultural and ancestral connections and homes.
<b>Mine workers</b>	Mineworkers are often migrants, living far from their families on rental/lease arrangements in the surrounding communities.
<b>Indigenous people</b>	Indigenous people of South Africa were deeply affected by colonisation and loss of their ancestral lands. Today many indigenous people continue to have inadequate access to education, health care and housing.

27 Compiled from: RSA (2019) 'Final Report of the Presidential Advisory Panel on Land Reform and Agriculture'. Advisory panel report to the President of South Africa; StatsSA (2020) Protecting South Africa's Elderly. Statistics South Africa; COGTA (2019) 'How Are Indigent Households Registered?' Blog post. Department of Cooperative Governance and Traditional Affairs; Royston, L. (2013) 'Incrementally Securing Tenure: Promising practices in informal settlement upgrading in South Africa'. Cape Town: Urban LandMark; DSD (2016) 'White Paper on the Rights of Persons with Disabilities'. Department of Social Development; Stanley, V. and V. Lisher (2023) 'Why Land and Property Rights Matter for Gender Equality'. Gender Thematic Policy Notes Series: Evidence and practice. Washington D.C.: World Bank Group: p6; SACN (2014) 'Migration, Mobility and Urban Vulnerabilities: Implications for Urban Governance in South Africa'. Johannesburg; South African Cities Network; Mitlin, D. and D. Satterthwaite (2004) Empowering Squatter Citizen: Local Government, Civil Society and Urban Poverty Reduction. London: Routledge; Cowling, M. D. Hornby and L. Oettle (2017) 'Research Report on the Tenure Security of Labour Tenants and Former Labor Tenants in South Africa'. Commissioned for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, SA Parliament. Association for Rural Advancement (AFRA).

As industries close, particularly those linked to coal, communities face the loss of economic opportunities, as well as severe ecological degradation, the loss of productive land, and changed social dynamics. While decision makers will need to consider the different functions of land and determine how best to make use of the changing land uses, those who have been most impacted should not be further burdened. Robust investment closure plans should be put in place and could, for example, consider how land can be reallocated for the benefit of local authorities and communities. In accordance with the 'Polluter Pays Principle', those responsible for problems, such as pollution, land degradation or deforestation, should contribute toward the costs of needed transition adjustments.

**Consideration:** Municipal decision-making should ensure that decisions result in an equitable share of risks and benefits, do not result in further dispossessions or environmental damage, and are made through fair, inclusive processes. Tenure rights recognition can help to include vulnerable groups in transition processes.

**Consideration:** Innovative approaches towards processes such as mine land rehabilitation, as well as land relinquishment or transfer of ownership by companies in the context of post-closure land use should be considered throughout the planning process. Using these processes to provide secure tenure would realise elements of both distributive and restorative justice within the just transition context.

**Consideration:** Impacted workers and communities should not carry the overall burden of the transition. Those responsible for problems, such as pollution, insecure tenure, and land degradation should contribute toward the costs of needed transition adjustments.

## Pillar II: Land and restorative justice



*Restorative justice aims to repair the harm done by colonial and apartheid land dispossession, forced removals and broader spatial injustice, as well as address their continuing impacts. This history continues to shape settlement patterns and must be considered in just transition land administration, governance and management. Decisions will need to consider historical reasons for insecure tenure, as well as national efforts to bring about land reform and restitution.*

Land in South Africa has historically been used as a mechanism for social, economic and political exclusion. In recognition of this, much policy and law have strong commitments to delivering restitutive and restorative land justice. For South Africans the transition is taking place within a context of deep spatial inequality. Addressing this issue is seen by many as the first step towards achieving a transition that is truly just. Land and secure land tenure is a key means of delivering restorative justice, which is about 'healing people and the land'.<sup>28</sup>

When dealing with land and land use decision making, the achievement of spatial justice is a primary objective.<sup>29</sup> Securing and recognising diverse land tenure rights through transition linked development decisions is one way to achieve social and spatial justice.<sup>30</sup>

28 PCC(2022). 'A Framework for a Just Transition in South Africa'. Pretoria: Presidential Climate Commission.

29 Spatial Planning and Land Use Management Act 16 of 2013.

30 Marcuse, P. (2009) 'Spatial Justice: Derivative but causal of social injustice'. *justice spatiale | spatial justice* 1: 1-6.

The recognition of existing land practices to facilitate tenure security within communities, whether through customary, administrative, or legal means, is another potential mechanism to ensure livelihoods are not unnecessarily disrupted by transition-linked decision making.<sup>31</sup> This is also relevant for the recognition of traditional knowledge and practices, which are often beneficial for climate adaptation responses.

Most of South Africa's land and land tenure law requires a consideration of what a just and equitable outcome of decisions impacting land will be. Transition planning decisions can only be just if their land impacts are just and equitable – homelessness, loss of livelihoods or the means of food production, and continuing spatial inequality must be avoided.

Restorative justice in transition-linked land use decisions will require innovative approaches to how past fossil-fuel linked developments have impacted communities. Pollution and land degradation from mining activities, for example, will need to be addressed through enforcement of land rehabilitation requirements, which can also release land for alternative uses. 'Island settlements' established in proximity to mines or other large investments create complex issues of overlapping tenure rights and compounding tenure insecurity, as well as institutional mandate underlaps and overlaps that create additional pressures on local government.

### Island settlements

Investments and developments require labour, which in turn requires housing and associated infrastructure. This often results in the formation of what the Steve Tshwete Local Municipality refers to as 'island settlements' around mines, industries and large infrastructure developments.<sup>32</sup> These can sit outside of formal municipal infrastructure and planning but nonetheless require municipal intervention and assistance. These settlements create complex issues of overlapping tenure rights and compounding tenure insecurity, as well as institutional mandate underlaps and overlaps that create additional pressures on local government. Careful consideration should be given to these issues when initial transition investments are planned, as well as within the closure and exit plans for these investments.

The importance of land as the principal basis for livelihoods, as well as the role of secure land tenure for the realisation of other constitutional rights must also be recognised in land use decision-making processes.<sup>33</sup>

31 Manara, M. and E. Pani (2023) 'Institutional pluralism and pro-poor land registration: Lessons on interim property rights from urban Tanzania'. Land Use Policy 129; Royston, L. (2014) 'Incrementally Securing Tenure: Promising Practices in Informal Settlements Upgrading in South Africa'. Paper presented at 2014 World Bank Conference on Land and Poverty, Washington D.C., 24–27 March 2014.

32 STLM (2017) 'Spatial Development Framework Draft Report'. Steve Tshwete Local Municipality.

33 IPCC (2019) 'Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security and Greenhouse Gas Fluxes in Terrestrial Ecosystems'. International Panel on Climate Change.

**Consideration:** An incremental approach, which priorities increased tenure security within identified areas as a first step, rather than promoting one tenure arrangement, could assist in delivering restorative justice within the just transition.

**Consideration:** It is important that transition-linked decision making does not increase tenure insecurity or shift the burden of land tenure insecurity onto other tenure rights holders.

**Consideration:** Many settlements and communities may consist of a mix of different land rights, where 'off register' rights holders, registered rights holders, as well as protected and unlawful occupiers all exist within the same space.

### Pillar III: Land and procedural justice



*A fair process requires transparency, consistency, access to information, opportunities for interested and affected communities to be consulted, mechanisms for rights holders to consent, and formalised opportunities for follow-up and feedback.*

Procedural justice is an important democratic principle and helps to ensure that any decision made enjoys the support of impacted individuals and communities by facilitating more legitimate and context-appropriate decisions. This is particularly important in the just transition context, which requires careful balancing of complex issues around advancement of human rights, protection of the environment, and supporting fair economic outcomes. Social legitimacy and greater community support for transition linked decisions is important for long-term sustainability and conflict avoidance. Procedural justice is recognised in many of South Africa's transition policies (Just Energy Transition (JET) Investment Plan, JET Implementation plan, Just Transition Framework) as key to achieving distributive and restorative justice.

Governance systems that are procedurally fair are generally more capable of dealing with complex issues such as those presented by the just transition.<sup>34</sup> Secure land tenure can both assist in ensuring procedural justice, as well as be strengthened through robust and effective consultation and consent seeking processes. Land rights and secure tenure determine the terms on which stakeholders engage on issues of land governance, management and administration. For example, a landowner or legitimate land right holder, such as a former labour tenant or person holding customary land rights, will have different consultation and consent entitlements to someone protected under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). The nature of the tenure right will determine when free, prior, and informed consent is required, as well as who should be included in consultation and public participation processes. A robust consultation process can help identify land tenure rights, which will reduce the risk of conflict and ensure decisions are made on the basis of all relevant information.

Elements of procedural justice are strongly linked to the restorative justice pillar of the Transition Framework. To protect both land tenure rights, as well as the other rights secure tenure backstops there needs to be clear mechanisms to address potential violations or grievances that arise from just transition decision-making.

<sup>34</sup> Lindvall, D. (2021) 'Democracy and the Challenge of Climate Change'. International IDEA Discussion Paper 3. Stockholm: International Institute for Democracy and Electoral Assistance.



## Public participation, consultation and consent

*Public participation* is an umbrella term which refers to engaging the public and communities in legislative processes, oversight, or other decision-making or accountability processes. It can run a spectrum from simply informing the public, to collaborating and empowering them to fully engage.<sup>35</sup>

*Consultation* is an exchange of views. It does not grant outright decision-making power to those being consulted but is often required as part of regulated processes. Who is consulted and the level of engagement can often be shaped by the nature of existing land and tenure rights.<sup>36</sup>

*Consent* allows for the **"right to say no"**. This is a legal requirement for both formal registered land titles, as well as for certain off-register land rights, such as those protected under IPILRA.

**Consideration:** The just transition represents an opportunity to do things differently and avoid deepening inequalities. Governance systems that embody procedural justice are generally more capable of dealing with the complex issues presented by a just transition.

**Consideration:** Consultation and information sharing should happen at all stages of a project lifecycle - prior to decisions being made, during planning and implementation, at closure, and post-closure.

<sup>35</sup> Involve (2025) 'Public Participation'. Blog post. [www.involve.org.uk](http://www.involve.org.uk)

<sup>36</sup> Koen, M. (2024) 'A statement in support of evidence of the importance of free prior informed consent to communities in Africa'. An AIDC Statement. Cape Town: Alternative Information and Development Centre.

## SECTION 3:

# The Role of Local Government in the Just Transition

South Africa's 257 municipalities have been recognised as the "frontline responders to climate change and the just transition".<sup>37</sup> They are tasked with a variety of essential functions relating to the planning, regulation, and execution of transition-linked activities. Chapter 10 of the JET Implementation Plan (2023 – 2027) focuses on municipal energy planning and strategy development, municipal distribution infrastructure upgrades; municipal revenue models; and capacity building and skills development in these areas.<sup>38</sup> The Climate Change Act of 2024 has further expanded the responsibilities and duties of large (metropolitan and district) municipalities to require the consideration of spatially defined vulnerabilities, risks and needs for communities, ecosystems, and the municipal area.<sup>39</sup> These additional considerations must form part of a municipality's Integrated Development Plan (IDP).<sup>40</sup> This is in addition to the existing mandates to deliver basic services and utilities, facilitate economic development and ensure equitable land-use planning.<sup>41</sup>

The key roles identified for local government in South Africa's Just Transition Framework include:

- **Climate and just transition impacts and vulnerabilities:** As described above, municipalities must identify risks and vulnerabilities and incorporate these into IDPs and local plans.
- **Adaptation projects:** Municipalities must implement projects to improve community resilience.
- **Economic diversification and planning:** Local authorities must lead in developing new local economies, particularly in coal-dependent areas (e.g. Mpumalanga).
- **Spatial transformation and land use management planning:** Municipalities must regulate planning and land use management to support the goals of the just transition (in addition to the guiding principles within SPLUMA).
- **Inclusive stakeholder engagement and partnerships:** Municipalities are essential in bridging local needs with national strategies through participatory dialogues, ensuring social justice and community participation in decision-making. They should also facilitate collaboration with social partners.
- **Infrastructure and service delivery:** Improving local infrastructure to be climate-resilient and ensuring access to basic services (water, electricity, waste) during the transition.<sup>42</sup>

37 PCC (2024) 'State Assessment Report, July 2024'. Presidential Climate Commission: p4.

38 RSA (2023) 'Just Energy Transition Implementation Plan 2023-2027'. Pretoria: The Presidency: ch 10.

39 Climate Change Act 22 of 2024 s 17.

40 Climate Change Act 22 of 2024 s 17; Hermanus, L., G. Montmasson-Clair, M. Patel and P. Wolpe (2022) 'Local Government Toolbox for a Just Energy Transition in South Africa'. Pretoria: Trade and Industrial Policy Strategies.

41 Constitution of the Republic of South Africa 1996 ch 7 s 152 and Schedule 4(b).

42 PCC (2022). 'A Framework for a Just Transition in South Africa'. Pretoria: Presidential Climate Commission: pp. 21-22.

Two key municipal roles sit at the nexus of land governance and the just transition, namely spatial and land-use planning and land unlocking. These processes present an opportunity for municipalities to play a key role in the just transition and integrate the principles of restorative, distributive, and procedural justice into land-use planning decisions; open opportunities to explore all available avenues for the fast and effective unlocking of land; strengthen public participation to ensure affected community members can meaningfully shape transition planning from the earliest stages; and respect and record off-register land rights to ensure transition developments do not displace people without their consent. Municipalities, however, face several structural, technical, and financial constraints and challenges to effectively fulfil these roles and use the spatial and land-use planning processes to deliver what is needed a truly just transition.<sup>43</sup>



<b>Challenges and constraints for municipalities responding to the just transition</b>	
<b>The invisibility of land from the just transition discourse</b>	The implications of climate change for land and land governance and the role this resource can play in the just transition are not widely known or understood. The value of land as a strategic resource, beyond simply an income-generating asset, has not been clearly articulated.
<b>Limited municipal engagement with or understanding of the just transition beyond energy discourse</b>	Municipalities have limited and inconsistent engagement with just transition issues and policies. For example, as of 2024 few municipalities had formally incorporated the policy commitments of the JET Implementation Plan into their own plans and smaller municipalities were often unaware of the just transition. <sup>43</sup>
<b>Just transition initiatives increase pressure on existing municipal structures, policies and processes designed to manage land</b>	Municipalities have limited capacity for planning and managing renewable energy or climate response projects. They are constrained by outdated and irrelevant regulatory frameworks, and a lack of alignment between municipal, provincial, and national structures working on the just transition. Municipalities also lack policies for acquiring and disposing of land, the integration of land-based transition initiatives with municipal processes, practices and infrastructure, and the reconciliation of competing transition land demands including enhancing security of tenure rights.
<b>Municipalities are unable to proactively plan and implement policy aligned responses</b>	Actual developments, especially new settlements, do not match existing spatial plans. Land hunger gives rise to informal occupations in areas with no bulk infrastructure or which are not suitable for human settlement. Municipalities find themselves playing catchup and must incur large costs to provide services to these areas, rather than proactively plan for housing, development, and climate risk needs.
<b>Municipalities have limited authority over land and natural resource governance processes taking place within their jurisdictions</b>	Much of the land within municipal jurisdictions is owned by other government departments, State-Owned Enterprises, private individuals and businesses, or is under the control of traditional authorities and Communal Property Associations. This constrains the effectiveness of municipal strategies to advance a just transition. While SPLUMA gives municipalities wall-to-wall authority over land governance in their jurisdiction, municipalities grapple with unresolved legacy and policy contestations.

43 PCC (2024). 'Synthesis report on the State of Readiness for the JET in Municipalities'. Pretoria: Presidential Climate Commission: p4.

44 PCC (2024). 'Synthesis report on the State of Readiness for the JET in Municipalities'. Pretoria: Presidential Climate Commission: pp. 77-83.

<h2>Challenges and constraints for municipalities responding to the just transition</h2>	
<p><b>Municipalities lack fit-for-purpose land information systems</b></p>	<p>Municipalities lack the consistent, up to date, and consolidated land information needed to effectively manage and deploy land for transition responsive planning. Land information is held by a variety of different institutions at the national, provincial, district and local level, as well as with private and business entities. This information is held in different formats which municipalities cannot always afford to access. Off-register rights are not recorded on any visible database in the country and land-use zoning is often out of date, for example, in some municipalities, mines or other industrial developments are still zoned as farmland.</p>
<p><b>Municipalities are marginalised from transition processes and decision-making processes</b></p>	<p>Decisions and processes impacting the resources of municipal authorities are often taken at the provincial or national level, for example mining licensing and closure procedures, environmental impact assessments, water rights allocations, and state land release. Further, just transition policy processes have until relatively recently tended to take place at, and focus on, the national level. This makes it difficult for municipal authorities to inform and contribute to how investment initiatives take place, and how they impact municipal dynamics, planning, and long-term strategies.</p>
<p><b>Municipal finances are in a dire state with limited funding for transition projects</b></p>	<p>Municipalities have limited financial resources with which to respond to the just transition. They often have weak financial governance and are dependent on grants from national or provincial government for infrastructure spending. In smaller municipalities, these grants often make up over half the overall municipal budget. In addition, municipalities have little appetite for transition and climate finance which is delivered as loans (rather than grants) because they are already over-burdened with debt, including to Eskom. In 2024 total municipal debt to Eskom stood at R78 billion.<sup>44</sup></p>
<p><b>Municipalities struggle to recognise and protect off-register land rights</b></p>	<p>Municipalities struggle to recognise and protect informal or ‘off-register’ land rights which are protected through laws such as IPILRA, ESTA, and the Land Reform (Labour Tenants) Act. This affects how they approach public participation, consent seeking processes, planning for infrastructure provision, and land acquisition and release processes. This can result in conflicts with the affected land rights holders, which can in turn spill into lengthy court battles or the deprivation of land rights.</p>
<p><b>Municipalities have limited capacity and legitimacy to facilitate inclusive decision-making</b></p>	<p>Many municipalities lack effective mechanisms and capacities to convene inclusive engagements with their diverse stakeholders, build community trust and facilitate inclusive participatory land governance, administration, and management processes. Limited awareness and understanding of the tenure security rights of marginalised communities has impacted municipalities’ perceived independence and social legitimacy and limited their ability to ensure needed public participation and consent-seeking processes.</p>

45 PCC (2024). ‘Synthesis report on the State of Readiness for the JET in Municipalities’. Pretoria: Presidential Climate Commission: pp. 9, 77-83.

## Local government climate response: SALGA's Just Transition Strategy

SALGA's **Just Transition (JT) strategy** is focused on transforming the local government sector from dependency on fossil fuels to a low-carbon, resilient economy, while ensuring that municipalities are not left behind in terms of land governance, spatial transformation, revenue, infrastructure and job security. The strategy is designed to be inclusive, ensuring that the transition to green energy and secure land tenure provides rather than sacrifices important social cohesion, employment and economic opportunities.

The local government strategy for just transition emphasises the following:

- **Modernising land use planning and regulation:** The strategy prioritises upgrading of tenure rights, integration of customary practices into formal municipal spatial development frameworks and land use regulation schemes.
- **Promoting cooperative governance:** Strengthening relations between structures of elected municipal governance and traditional leadership, especially in areas like Mpumalanga province where the main case study sites for the research in this document are located.
- **Modernising local electricity infrastructure:** Upgrading aging municipal distribution infrastructure to handle decentralised, renewable energy sources, such as solar and wind.
- **Decentralisation and Independent Power Producers (IPPs):** SALGA is supporting municipalities to procure power from IPPs and develop their own renewable energy projects to end reliance on Eskom, aiming to have over 50% of municipalities ready for this new landscape.
- **Economic diversification and job creation:** Mitigating the loss of coal-related jobs by focusing on green industrial opportunities, such as green hydrogen, electric vehicle (EV) infrastructure, and retraining the workforce for the green economy.
- **Strengthening municipal fiscal health:** Advocating for sustainable financial models and municipal revenue sources.
- **Integrating climate action into planning:** Requiring municipalities to incorporate just transition principles into their Integrated Development Plans (IDPs) and Spatial Development Frameworks (SDFs).<sup>46</sup>

## Intergovernmental relations

Land governance in South Africa is an outcome of interactions between diverse authorities operating at national, provincial and local levels. Different government departments, NGOs and local institutions like traditional authorities all have some mandates over land resources.

Nonetheless, South Africa's Constitution provides that spatial and land-use planning are core functions of municipalities. Further, municipalities have wall-to-wall jurisdiction and authority.<sup>47</sup> This means every square meter of land within South Africa falls within one or other municipal area. In turn all this land must be covered by a municipal land-use scheme developed under the Spatial Planning and Land Use Management Act (SPLUMA).<sup>48</sup> This arrangement is intended to ensure there is no planning vacuum, as was the case under apartheid. It also means that municipal land use schemes and spatial development frameworks overlap with land under the jurisdiction of traditional authorities, as well as areas of provincial or national sectoral competence. For example, the Preservation and

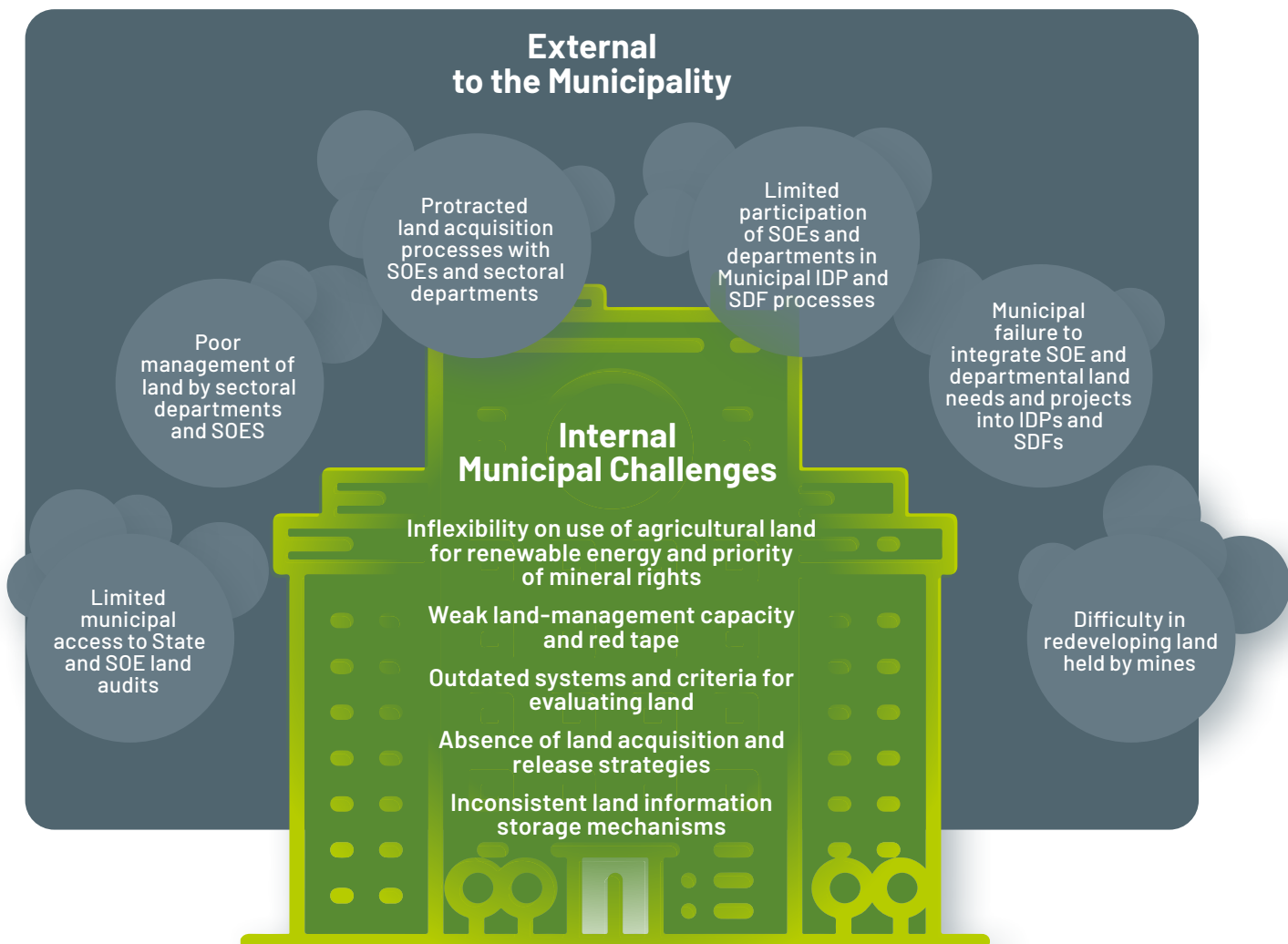
46 SALGA (forthcoming) 'Local Government Strategy for the Just Transition'. Pretoria: South African Local government Association.

47 Constitution of the Republic of South Africa 1996 at s 151(1) read with the Municipal Demarcation Act, 27 of 1998.

48 Spatial Planning and Land Use Management Act 16 of 2013.

Development of Agricultural Land Act gives provincial government the authority to develop agriculture sector plans for purposes of protecting and preserving agricultural land, which municipalities need to take into account when developing integrated development plans, municipal land use schemes or spatial development frameworks.<sup>49</sup> It also means that municipalities need to consider all land use changes, including rezoning or departures that may be needed for transition-linked developments. These instruments must be in accordance with provincial and national laws.

Intergovernmental co-ordination is regulated by the Intergovernmental Relations Framework Act<sup>50</sup> which mandates coordination between government institutions in accordance with the constitutional principles of co-operative governance.<sup>51</sup> Despite this, many of the intergovernmental interactions around land do not currently run smoothly, with gaps in existing policies and processes that cause bottlenecks for transition-linked projects. Some of these can be summarised as follows:<sup>52</sup>



49 Preservation and Development of Agricultural Land Development Act 39 of 2024 s 9.

50 Intergovernmental Relations Framework Act 13 of 2005.

51 Constitution of the Republic of South Africa, 1996 at ch 3 'Co-operative government'.

52 ALIGN (2026) 'The Intersection of Land and Local Government in the Just Transition in South Africa'. Research report. Advancing Land-based Investment Governance; SALGA (2019) 'Municipal Urban Land Acquisition and Release'. Presentation KZN Provincial SPLUM Forum, 23 August 2019.

**Consideration:** There are currently no regulations to inform the integration of renewable energy projects into existing land use schemes (LUS) and alternative energy generation initiatives.

**Consideration:** Given the limits to municipal authority, such as limited land ownership, and given the cross-cutting nature of climate change, it is more important than ever that different arms of government work together to build a coherent climate change response.

**Consideration:** The Climate Change Act provides that a Municipal Forum on Climate Change may establish an intergovernmental technical support structure in terms of section 30 of the Intergovernmental Relations Framework Act.<sup>53</sup> Additionally, the Act makes district intergovernmental fora into Municipal Climate Change Fora.

## Traditional authorities

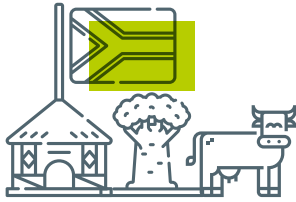
The role of traditional authorities and how municipal land-use planning authority is exercised in areas where land is held under customary tenure remains a contentious issue. Traditional authorities in many former homeland areas play a role in customary land administration, endorsed by the Constitution.<sup>54</sup> This role overlaps with municipal authority, which is understood to be 'wall-to-wall'. Municipalities retain responsibility for spatial and land-use planning in these areas. Traditional land allocation is often not aligned with municipal spatial planning and there is currently a regulatory gap in this regard. The observer status afforded to traditional authorities on Municipal Planning Tribunals does not match their current role in land allocation and they do not always choose to participate.

**2011 estimates put the number of people living in the former homelands at 17 million. Based on figures from 2017, 27% of households in the country lived in areas under traditional councils, which made up 11% of the total area of the country. In the Eastern Cape, KwaZulu-Natal, Limpopo and Northwest Province, these areas make up over 15% of the province.<sup>55</sup>**

53 Climate Change Act 22 of 2024 s9(4).

54 Poswa, X. (2019) 'Land Use and Management: Where traditional and municipal governance meet in rural areas'. Local Government Bulletin 14(2). Dullah Omar Institute, University of the Western Cape.

55 Hornby, D., L. Royston, R. Kingwill and B. Cousins (2017) 'Tenure practices, concepts and theories in South Africa', in D. Hornby et al. (eds) *Untitled: Securing Land Tenure in Urban and Rural South Africa*. Pietermaritzburg: UKZN Press: p8.



### Role of traditional authorities

- First point of contact for investors (mines, conservation, malls)
- Land allocation
- Basic land administration and management
- Natural resource stewardship
- Stewardship of sacred and spiritually significant spaces
- Represent community interests in different fora
- Community mobilisation and information sharing

### Challenge in managing the interface

- Limited traditional authority and municipal collaboration & cooperation
- Lack of a process to guide traditional authority and municipal interface
- Municipalities and traditional authorities do not have access to land status documents (held by COGTA or land affairs at the provincial or national level)
- Limited records of off-register land rights holders, which must inform consultation and consent processes
- Misalignment between traditional authority land allocation practices and municipal spatial plans
- Lack of alignment between traditional authority and municipal/ State land records
- Absence of clear criteria to guide investor practice

**Consideration:** The intersection of Municipal wall-to-wall authority with the ongoing work of traditional authorities is negotiated on a case-by-case basis. The relationship should be handled delicately to avoid aggravating long-running unresolved tensions over land and natural resource management.

**Consideration:** The interests and consent of those who hold customary land rights must be prioritised and sought for transition-related investments. To facilitate collaboration, municipalities and traditional authorities need mechanisms and institutions to mediate disputes and municipalities should be transparent about planned developments and the criteria for evaluating them.

**Consideration:** Traditional authorities have a strategic role to play in collaboration with municipalities in unlocking land for the just transition. This includes facilitating community consultations, ensuring community consent and facilitating land release for investments. Traditional authorities can also be strategic allies in identifying climate vulnerable communities, for example those settled on flood plains, and implementing mitigation and adaptation activities.

**Consideration:** Municipalities do not have accurate and up to date information on land within their jurisdiction. The information is held by other stakeholders who include traditional authorities, mining companies, provincial and national government and the private sector. Collaborating with communities and traditional authorities to verify and share land records is important and will help to build trust. Municipalities can also work with government departments such as Cooperative Governance and Traditional Affairs (COGTA), Department of Rural Development and Land Reform (DRDLR) and Department of Public Works (DPW) who may hold information on different land rights.

## Municipal Tool: Spatial and land use planning

Spatial and land use planning is just one of the many municipal functions relating to land. However, it will play a crucial role in the just transition. Planning processes within the framework of the transition will need to strategically balance competing priorities, functions, and interests on land. Mutually supportive land and climate policies also have the potential to save resources, amplify social resilience, support ecological restoration, and foster engagement and collaboration between multiple stakeholders.<sup>56</sup> Municipalities are responsible for a critical mandate of land governance in the form of spatial planning, enabling them to map out where and how different forms of development can take place within their jurisdictions.<sup>57</sup> Following the democratic transition in 1994, spatial planning has become a crucial public policy instrument to rectify past spatial injustices. Yet significant geographic and socio-economic inequalities remain, and South Africa's energy transition is taking place within this context of incomplete democratic transition.<sup>58</sup> It is therefore vital that transition planning furthers and does not undermine the national mission to build a more equal and inclusive society.

Through their close proximity to communities, municipalities are well positioned to translate national transition plans to the local level, based on a given municipality's unique socio-economic, environmental, and cultural context.<sup>59</sup> Municipalities can leverage this positioning to advance distributive, procedural and restorative justice in their jurisdictions. It is important that municipalities leverage all planning instruments at their disposal to pave the way for transition developments, and do not limit the ability to respond to climate-linked vulnerabilities and risks. These planning documents should lay out a municipality's vision for development and guide the type and location of transition investments in the same way as the provision of infrastructure and services.

***Spatial planning and land-use planning can play a critical role in facilitating economic diversification and just transition-oriented projects that can take place within a particular municipal area. By implementing inclusive and participatory spatial and land-use planning processes, municipalities can proactively advance the procedural, restorative and distributive justice pillars of South Africa's just transition.***

56 IPCC (2019) 'Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security and Greenhouse Gas Fluxes in Terrestrial Ecosystems'. International Panel on Climate Change.

57 Constitution of the Republic of South Africa 1996 ch 7 s 156(1)(a) and Schedule 4B.

58 Hermanus, et al. (2022) Local Government Toolbox for a Just Energy Transition in South Africa, Trade and Industrial Policy Strategies, p. 17.

59 Hermanus, et al. (2022) Local Government Toolbox for a Just Energy Transition in South Africa, Trade and Industrial Policy Strategies, p. 18.

The 2024 Climate Change Act also gives district and metropolitan municipalities the mandate to develop climate change needs and response assessments, as well as climate change response implementation plans. These must be integrated into municipal planning instruments and policies, including Integrated Development Plans.<sup>60</sup> Ensuring a participatory approach to spatial and land use planning can help to ensure that municipalities fully account for existing formal and informal land rights, and the potential impact that any new investment may have upon these rights, when undertaking spatial planning and zoning, as well as when determining and considering approvals for new development applications.<sup>61</sup>

Key planning legislation in South Africa provides a solid foundation for advancing just transition aligned land use management. The Spatial Planning and Land Use Management Act (SPLUMA)<sup>62</sup> is centred on promoting spatial justice to address past spatial inequality. SPLUMA requires every land use and planning decision to promote social and economic inclusion and development. The development principles SPLUMA sets out align strongly with the objectives for the just transition and PCC-identified pillars of justice.<sup>63</sup> In addition, the Municipal Systems Act<sup>64</sup> provides the core systems needed by municipalities to move progressively towards the social and economic upliftment of local communities and access to essential services.

## SPLUMA development principles

**Spatial justice**, intended to reverse apartheid land patterns and improve access to opportunities and inclusive economic participation.

**Spatial sustainability**, to encourage resource efficiency, protect environmental assets and unique land uses, and consider all current and future costs of land use decisions.

**Efficiency**, to use land resources wisely, optimise existing resources and infrastructure, and reduce negative financial, social, economic, and environmental impacts.

**Spatial resilience**, embracing flexibility to ensure sustainable livelihoods within the most vulnerable communities.

**Good administration**, whereby all spheres of government ensure an integrated approach to land use and development

The tools for spatial and land-use planning under SPLUMA, such as MSDFs and LUSs can operationalise just transition strategies by protecting valuable ecosystems, promoting climate resilient settlement patterns, or including spatial strategies for economic diversification, in the case of MSDF for example, or protecting land and water resources, designating renewable energy zones, or incentivising energy efficient buildings through LUS. Municipal Planning Tribunals and by-laws represent a powerful tool for municipalities to shape the form development takes within their jurisdictions and facilitate implementation of just transition objectives.

60 Climate Change Act 22 of 2024 at section 17.

61 Hermanus, L., G. Montmasson-Clair, M. Patel and P. Wolpe (2022) 'Local Government Toolbox for a Just Energy Transition in South Africa'. Pretoria: Trade and Industrial Policy Strategies; p18.

62 Spatial Planning and Land Use Management Act 16 of 2013.

63 Spatial Planning and Land Use Management Act 16 of 2013 at s 7.

64 Local Government: Municipal Systems Act 32 of 2000.

## Key planning instruments

**Integrated Development Plans (IDPs)** are spatial and development planning documents which all South African municipalities must have and which provide the overall framework for development in a municipality. They have five-year lifespans. An IDP is developed under the Municipal Systems Act and provides the overall framework for development in a municipality. It sets a framework for how land should be used, the infrastructure and services needed and how the environment should be protected.

**Municipal Spatial Development Frameworks (MSDFs)** present the municipality's spatial planning initiatives for long-term planning periods (10 years or more), providing overall direction to those processes.<sup>65</sup> They are recognised as critical components of IDPs and are vital tools under SPLUMA for long-term municipal transition planning, alongside climate vulnerability and resilience assessments and LED strategies.<sup>66</sup>

**Municipal Land-Use Schemes (LUSs)** are tools for municipalities to guide and manage development in accordance with the vision set out in the IDP and MSD, and in the "interests of the general public to promote sustainable development and quality of life". An LUS is a planning tool that allows or restricts certain types of land uses to certain geographic areas. This includes zoning regulations that set out procedures and conditions associated with the use of land in any of these zones.

**Consideration:** The Spatial Planning and Land Use Management Act (SPLUMA) provides that municipalities have the key role of receiving and determining all land development applications in their jurisdictional areas. This gives the opportunity for municipalities to mobilise stakeholders and critically assess any new developments against the demands of the just transition.

**Consideration:** Municipal plans need to connect to provincial and national plans far more than is currently the case. Many long-term planning documents predate the current policy emphasis on the need for a just transition and do not always align with needed just transition and climate responses.

**Consideration:** Municipal land use plans lack guidance on how to institutionalise climate responsive and transition land uses, as well as linked rates and service levies. Land use plans should be revised and updated to include criteria for assessing transition goals and including transition-aligned approaches for land use zoning, property valuation and value capture.

65 Spatial Planning and Land Use Management Act 16 of 2013 at ch 4.

66 Hermanus, L., G. Montmasson-Clair, M. Patel and P. Wolpe (2022) 'Local Government Toolbox for a Just Energy Transition in South Africa'. Pretoria: Trade and Industrial Policy Strategies: p16.

## Municipal Tool: Participatory and inclusive land governance

Municipalities need to implement a robust and inclusive public participation process during the just transition, municipalities can better promote a fair distribution of risks and opportunities, address historical harm and social inequities, and empower individuals and communities to define their own paths to development and secure livelihoods – all crucial dimensions of a just transition. Contextual information can also be gathered, potential land tenure rights and community needs and interests identified, and competing land uses strategically prioritised and balanced.

Meaningful public participation has the potential to contribute the following transition-related benefits:

- **Ensure inclusivity in the transition:** as the country transitions from coal-based energy systems to more sustainable alternatives, the impacts on local communities, particularly those relying on coal mining for employment, will be significant. Proper participation mechanisms will ensure that affected communities have a voice in how this transition is managed, potentially aiding in mitigating job losses and ensuring economic diversification.
- **Balance economic and environmental concerns:** A fair, inclusive process should provide a structured mechanism through which stakeholders can weigh in on how best to balance economic needs with its environmental responsibilities.
- **Ensure equitable development:** Including the voices of ordinary people can guide decisions to ensure that development is equitable and that all communities, including marginalised ones, benefit from growth and transformation.
- **Improve popular legitimacy and involvement:** Engaging the public in discussions about sustainable energy, climate change, and sustainable land use encourages community buy-in and support, which can lead to more successful implementation of transition-linked decisions.
- **Identify potential conflicts:** By actively involving the public in the decision-making process, governments can proactively identify and address potential areas of conflict or contention, ensuring smoother policy implementation.
- **Public education:** Inclusive processes can also serve as a tool for educating communities about the transition, the importance of sustainable land use and spatial development, and the intricacies of climate responsive land-use.

The need for meaningful public participation is set out in the Constitution,<sup>67</sup> as well as many other pieces of legislation such as the Municipal Systems Act,<sup>68</sup> SPLUMA,<sup>69</sup> the National Environmental Management Act<sup>70</sup> and the Promotion of Administrative Justice Act.<sup>71</sup> But despite the strong legislative commitments to public participation, all levels of government have at times tended to treat public participation as a check-box exercise rather than one which can substantively shape the form government projects and policies take. Existing spaces for public participation are often failing to deliver.

67 Constitution of the Republic of South Africa 1996 s1(d), s 59, s 72, s 118, s 152(1)(e) and s 195(1)(e).

68 Local Government: Municipal Systems Act 32 of 2000 s16, s 17, s28 and s29.

69 Spatial Planning and Land Use Management Act 16 of 2013, e.g., s 3 and s 7.

70 National Environmental Management Act 107 of 1998

71 Promotion of Administrative Justice Act 3 of 2000.

To ensure public participation meaningfully delivers on its underlying objectives of accountable, inclusive and transparent governance, municipalities should comply with the following key principles:

- Timely and accessible notice must be given.
- Sufficient information to ensure informed participation must be provided well in advance, in easily accessible and understandable forms.
- Participation must be able to influence policy and project design. Therefore, it must begin before the key decisions have been taken.
- Reasonable timeframes must be allowed to facilitate inclusive and substantive participation.
- Appropriate support and access should be provided to facilitate participation, especially of marginalised groups, including women and young people.
- Input and feedback, including minutes of consultations, should be recorded and shared publicly.
- All relevant government stakeholders and decision-makers must be made aware of provided inputs.
- Provided input must be considered and feedback provided.
- Decision makers must be able to demonstrate how participation influenced reasoning.

***Meaningful participation takes information-sharing and consultation as the starting point, and entails genuine collaboration, where community input is valued, respected, and incorporated into planning, decision-making and oversight.<sup>72</sup>***

While meaningful participation does not require consensus and does not give those participating a veto right, it does require compliance with both the procedural (for example was the public invited, were consultations held) and substantive (was public input considered and did it influence the decision) aspects of the obligation. Public participation is not optional and failure to carry it out will increase risk and legal liability. Municipalities are required to develop mechanisms to consult with and include the local community in decision-making processes, including those related to economic development and these can be leveraged to ensure procedural justice in just transition planning.<sup>73</sup>

At the same time, municipalities should recognise that participation is not limited to formal 'invited' spaces. Community members also 'invent' spaces where they give feedback, such as civic organisations and protests.<sup>74</sup> Formal and informal engagements can play a complementary role, and municipalities should try to engage with communities on their own terms in addition to holding its own stakeholder engagements. They can also draw on the experience of civil society mechanisms to enhance public participation.

<sup>72</sup> COMPACT (2025)'Community Participation Index'. Case Study. Johannesburg: COMPACT: p3.

<sup>73</sup> Municipal Systems Act 32 of 2000.

<sup>74</sup> COMPACT (2025)'Community Participation Index'. Case Study. Johannesburg: COMPACT: p2.

*Municipalities must ensure that land use application and planning procedures promote public participation (including by notifying the public), and that all comments received from the public are considered. Municipalities must make communities aware of the mechanisms and procedures available for public participation.*

**Consideration:** Municipalities should aim to improve the quality of public participation, including by implementing an approach of collaboration or co-production. A co-production approach in which the public plays a role in defining the problem as well as possible solutions can significantly improve the outcomes of participation processes.<sup>75</sup> The COMPACT Local Government Collaboration Model, developed by PARI, SALGA and Integrity Action, is a method of bringing together different parts of the municipal government, councilors and the local community to foster meaningful collaboration on solving complex problems.<sup>76</sup>

**Consideration:** Municipalities should proceed from a starting position of respect for people's humanity, perspectives, and time. They should prioritise inclusion and collaboration with vulnerable and marginalised communities, including making affirmative efforts to facilitate their participation.

**Consideration:** Municipalities, with support of national and provincial government and other actors should invest in capacity building. Both community members and municipal officials must be equipped with the tools and knowledge necessary to engage effectively while also tying community feedback into existing legislative and planning requirements.

**Consideration:** Municipalities can explore partnering with civil society and NGOs which assist community members to understand their opportunities to participate, as well as the implications of proposed projects.

**Consideration:** Municipalities should advance transparency and make accessible relevant information and documents about community-impacting issues well in advance of any participation event. This helps community members understand how their participation fits into the bigger picture while also helping them calibrate their ongoing engagement and participation with the municipality.

75 Ledger, T. (2024) 'The Role of the State in a Successful Just Transition'. A PARI Report. Johannesburg: Public Affairs Research Institute.

76 COMPACT (2025) 'Local Government Collaboration Model, Factsheet #6'. Johannesburg: COMPACT.

## Municipal Tool: Protection of land tenure rights and consent

Municipalities have a responsibility to manage, administer and govern land in a way that facilitates a just transition in South Africa. This requires recognition of the different legitimate tenure rights, which can exist in addition to registered land ownership.<sup>77</sup> If implemented effectively, these municipal functions can contribute to redistributive, procedural and restorative justice by supporting social and economic transformation and addressing historical injustices. Transition implementation processes will require municipalities, provinces and national government to acquire or release land. This can displace communities and it is important decisions do not compound existing inequalities.

**Many of the people with off-register rights live in informal settlements on the outskirts of towns and townships. An estimated three million people live in approximately one million informal structures in the country.<sup>78</sup>**

To deliver a transition that is just, decision-makers will need to consider how land tenure shapes and is shaped by the decisions taken. Decisions taken to advance one goal of the transition, for example renewable energy projects, should not unnecessarily undermine another, for example tenure linked climate adaptation and resilience capabilities of poor and vulnerable groups. In all instances when land must be acquired, the people who hold rights on that land need to be consulted and in certain cases their consent must be obtained. This should be considered during spatial and land-use planning processes.

Consultation and consent seeking is different to public participation. While public participation advances principles of good governance and is a legal requirement open to all interested parties, consultation and consent seeking is linked to the tenure rights held by individuals and communities. The type of tenure rights held will determine the type and extent of consent sought. Ownership is a clear example of where consent is needed but off-register rights protected by IPILRA, for example, will also require the consent of rights holders.<sup>79</sup> Unfortunately, the holders of weak or off-register tenure rights are often not recognised by established systems and they are more vulnerable to transition injustice. They are also generally less able to benefit from government interventions aimed at mediating transition related risks and negative impacts. Municipalities must therefore pay particular attention to people who lack tenure security when designing climate response plans and transition-linked land use and development decisions.

**Although there are legal provisions for protecting the rights of off-register rights to land there are still lingering questions about institutional arrangements and the way communal or unregistered individual rights are to be recognised by the formal system.<sup>80</sup>**

77 FAO (2022) 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of national Food Security'. Rome: Food and Agriculture Organization of the United Nations.

78 Delius, P. and W. Beinart (2021) 'Securing the Land: From customary land tenure to registered titled land?', in K. Mabasa and B. Mabasa (eds) *Land in South Africa: Contested meanings and nation formation*. Johannesburg: Mapungubwe Institute for Strategic Reflection; Hornby, D., L. Royston, R. Kingwill and B. Cousins (2017) 'Tenure practices, concepts and theories in South Africa', in D. Hornby et al. (eds) *Untitled: Securing Land Tenure in Urban and Rural South Africa*. Pietermaritzburg: UKZN Press: p8.

79 *Baleni v Minister of Mineral Resources* 2019(2) SA 453(GP); *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* 2019(2) SA 1(CC).

80 Kingwill, R. (2004) 'Seeking Equilibrium: Land Rights Adjudication in off register, non-formal or formalising contexts in South Africa.' Presented at the Expert Group Meeting on Secure Land Tenure, Un-Girigiri in Nairobi, Kenya, 10-12 November 2004.

The internationally recognised good practice standard for consent is summarised as FPIC – Free, Prior, Informed, Consent. The term captures both the need for mutual agreement, as well as the key procedural requirements for consent to be valid. Any consent-seeking process should strive to ensure equality in negotiating capacities and include measures to ensure those impacted have the tools to meaningfully determine how developments will take place.<sup>81</sup> Consent, and the consultation and information sharing processes that support it, should happen at all stages of transition-linked land-use and project planning that will impact tenure rights. It is not a fixed or once-off process and must respond to implementation changes and emerging issues. Municipalities, as the part of government closest to communities, must ensure that they have the knowledge and contextual insights to ensure that developments intended to advance the just transition comply with consent requirements.

### Free, prior and informed consent (FPIC)

*Free, prior and informed consent (FPIC)* is a broad and comprehensive right which imposes obligations on the State.

**Free** means that the community makes the decision without coercion or pressure.

**Prior** means that there must be sufficient time to allow information gathering and sharing processes to take place, including translation, before the project is started.

**Informed** means that all relevant information reflecting all views must be available for consideration by the community concerned. This includes the release of potential employment data, social benefits, environmental and social risks (and how they will be mediated) and how the revenue generated will be distributed.

**Consent** means clear and compelling demonstration by the informal land right holders of their agreement to the proposal under consideration.

FPIC includes the right to say no or veto a decision with no threat of retaliation. The right to consent or decline is of fundamental importance to communities and provides them with the opportunity to negotiate benefits or compensation.<sup>82</sup>

**Consideration:** In spatial and land-use decision making, municipalities must account for the overlapping rights on land and the historical reasons for this. The different functions and values of land beyond its financial value must also be considered.

**Consideration:** It is vital that municipalities are able to assess and determine the nature of tenure rights held by individuals and communities. These rights will determine the type of consent needed and involvement in decision-making processes.

**Consideration:** Municipalities can protect off-register or informal land rights by expressly incorporating the requirements of FPIC into municipal by-laws and land release policies. Partnerships with NGOs can help to realise the requirements of FPIC with affected community members.

81 Bolger, M. (2021) 'Why Communities Need the Right to Say No to Mining Projects'. Blog post. Friends of the Earth Europe. [www.friendsoftheearth.eu](http://www.friendsoftheearth.eu)

82 Bruce, L.A. (2020) 'Game-changing judgement for Xolobeni community on mining rights applications'. Blog post. Centre For Applied Legal Studies [www.wits.ac.za](http://www.wits.ac.za); Barrie, G. (2023) 'The Introduction of "Free, Prior and Informed Consent" to the Land Reform Legal Lexicon: Baleni v Minister of Mineral Resources 2019 (2) SA 453 (GP)'. *Obiter* 44(4).

## Municipal Tool: Unlocking land

**Land acquisition** means attainment or procurement of an immovable property through construction, purchase, lease, donation, expropriation, exchange, or transfer of ownership to the municipality.

**Disposal of land** in this context refers to any process applied to immovable property which results in the municipality's loss of ownership and/or transfer of ownership to a third party; or the granting of right to use, control or manage municipal-owned immovable property.<sup>83</sup>

**Land processing** means the municipal function of preparing land parcels in advance of site developments. This includes the consideration of land use and development applications, as well as rezoning. Decisions can be taken by municipal officials, in specified circumstances, or Municipal Planning Tribunals.<sup>84</sup>

Unlocking land means acquiring, processing and disposing of land, in this case in favour of the diverse interests aligned with the just transition. As already discussed, municipalities have significant discretion to decide what can be done where.<sup>85</sup> Land unlocking decisions and processes should be undertaken in accordance with spatial and land use plans and in compliance with the requirements around public participation and land tenure rights described above.

This means that municipalities can play a key role in ensuring transition-linked developments advance integrated outcomes.<sup>86</sup> For example, while mining rights are granted at the national level, holding a mining right does not exempt a developer from complying with municipal planning requirements. Municipal authority in this regard has been affirmed by South Africa's Constitutional Court.<sup>87</sup>

Unlocking land for the transition is necessarily both proactive and responsive. Decisions and processes to unlock land should advance the procedural, restorative and redistributive justice principles of the just transition, as well as balance the competing land use needs of the transition.

A key challenge around unlocking land is that municipalities do not hold much of the land needed for transition projects. Land may be held or controlled by other organs of state, traditional authorities, Communal Property Associations or by individuals and businesses under formal title. Innovative approaches and partnerships, and strong intra-governmental engagement is therefore needed.

83 SALGA (2020) 'Generic Municipal Policy: Land acquisition and disposal'. Pretoria: South African Local government Association.

84 Middleton, L. (2023) 'Releasing Municipal Land for Affordable Housing: A community guide'. Cape Town: Development Aciton Group: p23.

85 Poswa, X. (2023) 'The Role of Municipalities in Protecting Communities Against Possible Harmful Mining'. Local Government Bulletin 18(4). Dullah Omar Institute, University of the Western Cape; SALGA (2020) 'Generic Municipal Policy: Land acquisition and disposal'. Pretoria: South African Local Government Association.

86 While the law provides that in "exceptional cases", the national government plays a role in relation to certain land development applications, this is alongside the municipal role, rather than supplanting it. Kariuki, P., P.S. Reddy and H. Wissink (2023) 'Municipal Governance, Traditional Leadership and Land Management'. Durban: Democracy Development Programme: pp. 55-56.

87 *Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal and Others* (CCT114/15) [2016] ZACC 2; 2016 (4) BCLR 469 (CC); 2016 (3) SA 160 (CC); *Maccsand (Pty) Ltd v City of Cape Town and Others* (CCT103/11)(CC) [2012] ZACC 7; 2012 (4) SA 181 (CC); 2012 (7) BCLR 690 (CC).

## Cape Town’s new municipal by-laws

In June 2025 the Cape Town City Council approved amendments to the Municipal Planning By-Law to allow the provision of affordable rental housing in backyard developments, as well as ‘incentive overlay zoning’, which allows certain additional development rights without the need for a land use application, in certain priority areas. It is hoped that this will encourage densification and provision of affordable, formal housing, while allowing the city to generate additional funds through property rates.<sup>88</sup>

Municipalities can make use of various mechanisms to unlock land. Purchase, lease, donation, expropriation and land swaps are some of the established methods for municipalities to acquire land but the processes are often complicated and difficult to navigate. Disposal of state land, whether through sale or lease, also involves multiple stages including valuation, resolving best method of disposal, consulting interested parties, calling for and adjudicating bids, and finally legal transfer. Municipal asset transfer regulations usually apply and prescribe that municipal land must be valued at market value. This may be discounted for various social or rights-based considerations.<sup>89</sup>

## Municipal mechanisms to acquire land



**Purchase** Municipalities can directly purchase land from the government, private sector or state-owned enterprises through a negotiated sale.



**Lease** Municipalities can lease land for a specified period, with agreed-upon terms and conditions from the government, private sector and state-owned enterprises.



**Donation** The municipality may receive donations of land from the state, large institutional landowners, agri-business, mining companies, financial institutions, churches and other groups.<sup>89</sup> Land donations can potentially facilitate land reform and address historical injustices in South Africa.



**Land expropriation** Subject to Section 25(2) of the Constitution and the Expropriation Act 13 of 2024, municipalities may make a request to the Minister of Public Works to expropriate land on their behalf. They may choose to do so when the entity that holds the land refuses to dispose of the land in a negotiation with the municipality, or charges an exorbitant amount, or the negotiations reach an impasse.



**Land swap** Municipalities can acquire land by exchanging land assets with another entity. The transaction may be based on market value of the respective pieces of land, and could include additional compensation.

88 Venter, I. (2025) ‘Cape Town revises by-law to boost selected backyard housing developments’, *Engineering News*, 27 June 2025.

89 Middleton, L. (2023) ‘Releasing Municipal Land for Affordable Housing: A community guide’. Cape Town: Development Action Group: p31.

90 Staff Reporter (2020) ‘Government has published a major new land policy for South Africa- here’s what you need to know’, *BusinessTech*, 10 February 2020.

## Innovative approaches for land unlocking

To meet the needs of the just transition and ensure land use advances both key principles of justice and strategic use of limited land resources, innovations for municipal land unlocking are needed.<sup>91</sup> Partnerships with private entities, including businesses or landholders like communal property associations, may be a fruitful way for municipalities to access land. Municipalities may also explore agreements to take over the infrastructure provided by private entities, such as when a power station is decommissioned or a mine closes. This might involve a land swap, in which title to the mine land is transferred to the municipality in return for another parcel of land, or a donation.

## The role of CSOs in rethinking land unlocking

Community and civil society advocacy and activism can help to innovate and revise orthodox thinking around unlocking land. In Cape Town, the NGO Ndifuna Ukwazi has led a campaign pressing for well-located affordable housing. Their work has included:

- Opposing the sale of a public school site to private investors.
- Questioning the leasing of large areas of municipal land at low rates to golf courses.
- Identifying other state-owned land, such as military airports, which could be used for affordable housing.<sup>92</sup>

This work has highlighted the importance of moving beyond the market valuation of land, and encouraged consideration of state land which might otherwise be ignored.

For many communities, insecure land tenure or the loss of land use rights such as grazing, farming or burial rights have been closely linked to private sector activity.<sup>93</sup> This has been seen in settlements such as Komati or the Arbour informal settlement near Kendall Power Station.<sup>94</sup> It is important that the way these industries close and the land is repurposed does not deepen the already precarious position of communities. Innovative land unlocking approaches linked to investment closure and infrastructure transfer can offer potential solutions for more effective transition land-use planning, as well as ensure principles of distributive, procedural and restorative justice are upheld. International good practice already outlines that mine closure planning should start when mining activities start and should consider social and economic impacts, as well as economic diversification and succession planning. It is therefore vital that strong relationships are established between companies, local government and affected communities.<sup>95</sup> Many of these principles are relevant for exit strategies across sectors.

91 Municipal land governance sits between two legitimate imperatives: land as a fiscal asset and land as a justice instrument. A just transition approach requires making these trade-offs explicit and rule-bound—so that speed and investment do not override rights, and justice commitments do not ignore delivery constraints.

92 Steyn, D., and M. Hirsch (2025) 'Concort Judgment on Tafelberg Could Change Future of Social Housing', *GroundUp*, 27 February 2025; *Ndifuna Ukwazi* (2024) 'Update on King David Mowbray Golf Course Lease', *Ndifuna Ukwazi*, 4 April 2024; Kretzmann, S. (2023) 'Calls Mount for Unused Military and State Land to be Released for Housing', *GroundUp*, 31 March 2023.

93 Hallowes, D. and V. Munnik (2016) 'The Destruction of the Highveld Part 1: Digging Coal'. The groundWork Report 2016. Pietermaritzburg: groundWork.

94 Cock, J. (2019) 'Resistance to Coal Inequalities and the Possibilities of a Just Transition in South Africa'. *Development Southern Africa* 36(6): 860–73; Ncube, V. (2022) 'The Forever Mines: Perpetual Rights Risks from Unrehabilitated Coal Mines in South Africa'. Blog post. Human Rights Watch [www.hrw.org](http://www.hrw.org)

95 ICMM (2019) 'Integrated Mine Closure: Good Practice Guide, 2nd Edition'. International Council on Mining and Minerals.



## Land rehabilitation

A key consideration when it comes to municipal land unlocking relates to the rehabilitation of mining land or other industrial sites where the land has been degraded. Investments in land restoration and rehabilitation measures can result in benefits for local communities and provide both short-term economic returns (through job creation) and longer-term benefits in terms of climate change adaptation and mitigation, biodiversity and ecosystem services. Rehabilitation efforts can be more effective when policies support local management of natural resources, while strengthening co-operation between actors and institutions at all levels.<sup>96</sup> Ensuring that the companies responsible for loss or damage to the environment are also responsible for its rehabilitation also reflects the 'Polluter Pays' principle.<sup>97</sup>

**Consideration:** Municipalities can incorporate non-market-based criteria for acquisition and disposal of land which include social and environmental aspects, as well as longer term local economic development.

**Consideration:** Land relinquishment or transfer of ownership by companies in the context of post-closure land use should be considered throughout the planning process and should be closely linked to municipal planning processes. Using these processes to provide secure tenure to impacted communities, not just direct company employees, could realise elements of both distributive and restorative justice within the just transition context and optimise land use.<sup>98</sup>

**Consideration:** Post-investment closure land use planning and land allocation should be closely linked to plans for reskilling workers, involve community-based enterprises as much as possible, assist with relocation as appropriate, and provide support to set up new businesses in the green economy.<sup>99</sup>

96 NPC (2019) 'Social Partner Dialogue for a Just Transition'. Draft proposal version two to 2050 Vision and Pathways for a Just Transition to a low carbon, climate resilient economy and society. Pretoria: National Planning Commission.

97 Stępień, M., A. Stefanova, M. Vasser, R. Nigro and C. Schaible (2021) 'Briefing for the European Commission: The Polluter Principle in the Just Transition Process-Diagnosis and Recommendations'. CEE Bankwatch Network and European Environmental Bureau.

98 Everingham, J., S. MacKenzie, K. Svobodova and K. Witt (2020) 'Participatory Processes, Mine Closure and Social Transitions'. Brisbane: Centre for Social Responsibility in Mining, University of Queensland.

99 St. Dennis, H. and J. Hofmeyr (2024) 'Shaping a "Just" Business Role in South Africa's Energy Transition'. An IHRB Report. Eastbourne: Institute for Human Rights and Business.

## CONCLUSION:

# Making Land Visible in the Just Transition

**T**his Guide has made a central claim: land is not a technical input into transition projects, but rather a foundational part of determining whether the transition is to be truly just. In South Africa, this terrain is historically charged, institutionally fragmented, and legally complex. The land question carries the legacies of dispossession, spatial apartheid, uneven infrastructure, and layered tenure systems that do not fit neatly into conventional investment logics. Yet many transition-linked initiatives still arrive with a narrow framing: land is treated as a site to be accessed quickly, permitted efficiently, and valued primarily through the market. When this happens, municipalities are left to absorb the consequences, through service delivery backlogs, contested approvals, disputes over tenure, and long-term financial liabilities that outlast project timelines.

A critical lesson is that delivery and justice are not competing objectives in land governance, they are mutually dependent. Where tenure recognition is weak, participation is rushed, or consent thresholds are blurred, projects become legally vulnerable and socially illegitimate. The predictable outcome is objections, court challenges, site disruptions, community resistance, and fractured relationships between the municipality and residents. Meanwhile, where municipalities treat land merely as a revenue lever, disposing of assets under pressure or prioritising short-term rates outcomes, they may inadvertently lock in spatial patterns that increase climate risk, deepen exclusion, and impose future costs. In this sense, “fast” decisions can be the slowest path to implementation, because they generate conflict and require corrective processes later.

Making land visible therefore requires more than “better planning” in the abstract. It requires municipalities to treat land governance as a strategic institutional capability, with clear rules, trustworthy information, predictable processes, and accountability.

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### **Actions for municipalities to advance the just transition through land governance**

These are suggested considerations and actions that municipalities, in collaboration with other stakeholders, should take into account and proactively seek to implement to advance a just transition. The recommendations are not intended to be comprehensive but rather to highlight some of the approaches and actions that could contribute toward the meaningful integration of land considerations into just transition decision-making.

## Land-use decision considerations to advance the three pillars of a just transition

### Pillar 1

#### Distributive Justice

A **fair distribution** of transition risks and benefits is needed. Costs of transition adjustments should be shared fairly and burdens mitigated.

#### Considerations to advance distributive justice on land

Decisions should:

- Advance social justice and the equitable distribution of risks and benefits.
- Consider the interests and needs of all stakeholders.
- Prioritise the needs of local communities and consider what can be done to empower their involvement in transition-linked projects.
- Promote local economic benefits and reduce barriers to access economic opportunities for impacted communities or individuals.
- Consider environmental, social, and economic impacts and how all stakeholders can work together to safeguard land resources.
- Balance a development's economic benefit against its adverse impacts on others.

### Pillar 2

#### Restorative Justice

**Address prior harm** to individuals, communities, and the environment and recognise existing vulnerabilities.

**Facilitate redress** by acknowledging the past and take steps to avoid future injustice.

#### Considerations to advance restorative justice on land

Decisions should:

- Facilitate the restoration of land rights to dispossessed families and communities.
- Acknowledge the continuing impacts of colonial and apartheid dispossession and spatial segregation.
- Consider indirect impacts on other constitutionally protected rights.
- Respect communities' cultural and material connections to land.
- Make allowance for landholding models that recognise collective and customary land rights.
- Recognise existing informal land administration practices, particularly in tenure insecure areas.

### Pillar 3

#### Procedural Justice

**Inclusive decision-making, access to information, meaningful participation and access to justice.** Ensuring people can define their own development and raise their concerns.

#### Considerations to advance procedural justice on land

- Decision-making processes should be transparent and relevant information made freely available.
- Decisions should be made following meaningful participation of communities.
- Decisions should be based on the free, prior, and informed consent of relevant land rights holders.
- Decisions should build on local practices for securing land tenure.
- Decisions should recognise and support the agency of land rights holders.
- Decisions should recognise different interests and rights within communities. Individual or household rights should not be collectively decided on.
- The role of NGOs and other stakeholders should be recognised and supported and alliances between all stakeholders fostered.

## Unlocking municipal tools



### Intergovernmental relations and stakeholder collaboration

- **Vertical coordination:** Align municipal processes with provincial and national strategies (e.g., Just Energy Transition Implementation Plan) through structured intergovernmental platforms. Municipalities should be included in investment decision-making that carry impacts at the local level. Existing platforms should be expanded to allow for integrated land-use decision-making.
- **Horizontal collaboration:** Partner with civil society and academic institutions to build technical capacity in transition planning that includes smart climate land-use through for example, participatory GIS mapping.
- **Traditional authority interface:** Establish joint forums with traditional leaders and collective land rights holders to harmonise customary land allocation and use with municipal spatial plans.
- **Institutionalise intragovernmental coordination** across multiple levels and ensure legal mandates are not overridden by perceived institutional hierarchies. Mandate overlaps, conflicts, or gaps should be identified and resolved.
- **Integrate community participation** and voice into multi-stakeholder coordination and municipal decision-making processes. Community structures can play an important role in compliance monitoring, the articulation of grievances, and mobilisation for collective action.

### Strategic land use and spatial justice



- **Use GIS and participatory mapping, climate risk-adjusted land audits, and public consultations** to identify land rights, pressures, and vulnerabilities. Ensure that decisions adequately reflect local priorities and needs, recognise the differentiated impacts and historical context, account for community and individual land rights, and are transparent and inclusive.
- **Align IDPs, MSDFs, and Land Use Schemes (LUS)** with just transition and climate goals, mine closure plans, and infrastructure planning, as well as relevant provincial and national policies. Integrate all available data, including community-generated data, on environment, climate, tenure, and livelihoods into land-use planning decision-making.
- **Develop criteria to guide transition aligned land-uses** and needs prioritisation. Land resources are facing increased pressure and should be assessed and allocated in accordance with the most sustainable use, balancing for example, transition investments with biodiversity preservation and climate adaptation and mitigation needs.
- **Proactively plan for transition investments** (e.g., solar/wind farms) while taking climate adaptation, mitigation, and resilience needs into account. Increased coherence between large-scale investment approval and municipal IDPs, which accounts for social and labour plans, investment closure, and land rehabilitation and transfer planning will facilitate improved outcomes for local communities and municipal authorities.
- **Promote spatial transformation by leveraging transition linked developments** to build sustainable and climate resilient human settlements. Introduce spatial transformation linked incentives and approval criteria for new transition developments and ensure long-term municipal infrastructure and planning needs are linked to investment closure plans.
- **Benchmark, compare and monitor progress on spatial transformation**, including through SALGA's Spatial Transformation Barometer.
- **Generate information** that links degraded land and natural resources to those responsible, especially regarding mining-affected land and polluted water. Develop institutional coordination mechanisms to strengthen locally led monitoring and enforcement efforts.

## Inclusive consultation and public participation



- Assist communities to understand what the just transition entails; engage communities at the conceptualisation stage and throughout project lifecycles to benefit from local knowledge and adapt to changing circumstances.
- Allow adequate time and space for community consultation processes, specifically discussing points of agreement and disagreement, for example how land will be used, in a transparent and open manner.
- Commit to full transparency and make information, including financial information, budgets, council documents, and details of community-impacting issues, accessible in multiple languages and formats.
- Establish robust mechanisms for public participation, consultation and consent seeking, including through existing structures such as ward committees and IDP representative forums, and engage with community members in their own spaces as well. Ensure accessible feedback channels exist.
- Facilitate the participation of marginalised people and ensure that their input is incorporated through identifying interested and affected communities, considering language and accessibility needs, and understanding socio-economic and cultural contexts.
- Train municipal officers in skills such as active listening, outreach and awareness to ensure broad participation, the meaning of free, prior and informed consent, and fostering collaborative decision-making.
- Develop guidelines for engaging communities potentially affected by land acquisition and disposal, mandating substantive engagement, adequate notice, and access to information, amongst others. Explore including these principles in municipal by-laws.

## Recognise and protect diverse land rights



- Document and protect off-register and customary land rights, including for people living in informal settlements and under customary and communal tenure. Work with land rights holders and other relevant stakeholders to identify off-register tenure rights holders.
- Consolidate formal land ownership records from valuation rolls, land audits, long leases. Collaborate across national departments to access records of mining rights, as well as land under restitution claims. Generate integrated tenure rights records to enable informed decision-making for just transition planning.
- Ensure appropriate processes to identify off-register tenure rights ahead of transition project implementation, as well as appropriate alternate land options. This will assist to avoid conflict and facilitate fair benefit sharing and mitigate burdens.
- Prioritise tenure security alongside infrastructure investment to prevent displacement and dispossession. Work with all government and private sector stakeholders to ensure robust grievance mechanisms in all decision-making and transition project implementation.
- Uphold the requirements of free, prior and informed consent (FPIC) and ensure that directly affected land tenure rights holders provide consent (and not only the broader community).
- Ensure the differences between FPIC, public participation and consultation are taken into account and that each process is fully implemented.
- Explore innovative ways to provide services to land distributed under land reform which includes private but collective tenure.

## Responsibly manage land acquisition and disposal



- Consider land acquisition from government and state-owned enterprises (SOEs), private sector, traditional authorities and rehabilitated mines.
- Mediate market bias: Use full cost accounting when considering land disposal proposals, including:
  - The tangible and non-tangible costs of proposed and existing developments on the land and natural resources.
  - The social value of land.
  - The impact on people's livelihoods.
- Map and clarify roles and responsibilities for land acquisition, release and planning approval across municipal departments.
- Follow transparent processes for land acquisition, use, and disposal, in line with Municipal Asset Transfer Regulations and the Municipal Finance Management Act.<sup>100</sup>
- Reserve and ringfence land subsidy stock that can be used to prove alternate accommodation or livelihood options.
- Ensure social and environmental assessments accompany land acquisition and enforce the "Polluter Pays" principle for corporate accountability. Work with the relevant district, provincial and national authorities who hold the sole and/or complementary mandates to enforce compliance and rehabilitation responsibility on those responsible for polluting the land.
- Leverage investment approval processes and conditions to capitalise on transition investments. Options could include:
  - Rates and taxes
  - Infrastructure provision
  - Local economic development linkages
  - Spatial transformation
  - Service delivery support
  - Increase access to land held by non-municipal authorities
  - Closure plans, including land and infrastructure transfer and land rehabilitation
- Generate standards, tools and procedures to guide municipal land acquisition and release for the just transition, including:
  - Guidelines for zoning, development conditions including bulk infrastructure contributions, and municipal rating and regulation of land acquired for renewable energy investments located on municipal land and non-municipal land.
  - Guidelines and regulations on the terms of land transfer and repurposing on mine or power station closure, considering the suitability and rezoning of land from mining to settlement, waste management or agriculture, and regulations regarding informal settlements on mining and industrial land.

<sup>100</sup> Municipal Finance Management Act 56 of 2003.

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## How municipalities can support investment in land for the just transition

1. Publish up-to-date information on available land in the municipality and the terms and restrictions on which it can be accessed. This could include biodiversity issues, land claims, agricultural value, and SOE and departmental land holdings.
2. Develop streamlined and transparent procedures for handling business applications for land and permits, including processing of energy-related investments and projects developed through other government departments.
3. Mainstream climate and transition screening criteria and development conditions into business applications to ensure predictable processes. This includes reviewing legislation and local by-laws, considering standards for renewable energy installations, carbon credits, zoning revisions, and potential for island settlements.
4. Support post-mining closure and infrastructure handover. Include conditions for township proclamation when the investment village is established to facilitate smooth handover of housing and community assets at the closure of the investment.
5. Support responsive valuation of land in cases of changing land use, for example when farmland becomes a mining site or hosts a settlement.
6. Generate regulations for transition infrastructure and investments to guide business developments, including regarding zoning, permits, transition-linked waste disposal, and renewable power generation.
7. Support FPIC-compliant community engagement protocols for business to promote fair community consultation and consent-seeking processes. Ensure that acquisition of communal land for development is compliant with constitutional and legislative provisions.
8. Explore ways of aggregating diverse transition-related investments to enable economies of scale in provision of social, community and service infrastructure.
9. Mediate in negotiations with Traditional authorities by supporting land information generation, community consultation and avoidance of potential conflict.

## How national and provincial government departments can support municipalities to unlock land for the just transition

1. Make progress towards a consolidated national land information system capable of recording off-register rights.
2. National and provincial government should regularly share with municipalities all information which is already documented and held at national and provincial level, such as land claims or usage restrictions on a given land parcel, as well as mining licences granted in their jurisdiction.
3. Enhance provincial and national government participation in the IDP and SDF processes and information sharing to ensure that local government plans are aligned with provincial and national policies, projects and needs.
4. Improve use of the variety of intergovernmental platforms to ensure a coherent approach to land governance and the just transition.
5. Expedite state land transfer and disposal processes to allow municipalities to access land held by government departments and SOEs in a quicker and more straightforward way.
6. Develop guiding principles for a common approach amongst municipalities. National and provincial government entities such as COGTA can assist municipalities to develop policies regarding the integration of renewable energy and other transition-linked investments into land use schemes, valuation and rating policies, the terms of land transfer and repurposing on mine or power station closure, and regulations regarding informal settlements on mining and industrial land.



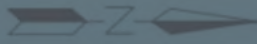
## Entities consulted

- Presidential Climate Commission
- South African Local Government Association – Planning, Land and Rural Development
- South African Local Government Association – Mpumalanga Province
- South African Local Government Association – Provincial Working Groups, Mpumalanga
- SALGA National Working Group on Development Planning and Rural Development
- Department of Agriculture, Rural Development, Land and Environmental Affairs – Mpumalanga Province
- Department of Cooperative Governance and Traditional Affairs – Mpumalanga Province
- Mpumalanga Green Cluster Agency
- Nkangala District Municipality
- Nkangala District Municipality Climate Change Forum
- Dr JS Moroka Local Municipality
- Steve Tshwete Local Municipality
- Middelburg Chamber of Commerce and Industry
- Middelburg Tourism
- Groundwork
- Mining Affected Communities United in Action – Emalahleni
- South African National Civic Organisation – Emalahleni
- Bakone Ba Phetla Communal Property Association
- Dinkwanyane Communal Property Association
- Doornkop Communal Property Association
- Makhomane Communal Property Association
- Ndzundza Mabusa Traditional Council
- Ndzundza Madlayedwa Traditional Leaders
- Emakhazeni Local Municipality Community Imbizo
- Lydenburg Farmers
- Middelburg Smallholder Farmers









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**A PARI-IIED-SALGA-ALIGN PROJECT**

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