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ADOPTING THE THEORY OF DEGROWTH AS A MEANS TO ACHIEVE SUSTAINABILITY IN SOUTH AFRICAN LAW

by

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ABSTRACT

Capitalism's mandate of infinite, exponential growth on a planet with finite, non-renewable resources has resulted in global environmental crisis. Contextualized by South Africa's industrial Minerals-Energy Complex, this paper submits that the growth imperative of neoliberal fossil capitalism is resulting in unsustainability in South African environmental management. Decision-making is skewed in favour of economic growth at the expense of sustainability. Degrowth is a movement that rejects the growth imperative as compulsory; it is a call not only to do *less*, but to do *differently*, a counterhegemonic alternative to capitalism that seeks environmental justice, decolonization of the North-South divide, and *alternatives to* growth and development. This paper posits that rejecting capitalism's growth imperative and approaching environmental management from a degrowth perspective can inform sustainability in South African environmental law. It posits that degrowth can find applicability in South African environmental law through its compatibility with ubuntu, which in the context of this study is accepted as a similar counterhegemonic alternative to capitalism. This paper emphasizes *ubuntu degrowth* as a framework to conceptualize South African environmental management, insofar as it offers a transformative alternative to growth, and to capitalism itself.

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I. INTRODUCTION

The causal connection between capitalistic growth and environmental crisis is by now well-established: growth is one of the root causes of the global socioeconomic and environmental crises, and the 'ultimate driver of unsustainability'.[1] Growth, often synonymous with development,[2] refers to an 'increase in commodified material and energy use'.[3] As countries grow, there will necessarily be an increase in the extraction and exploitation of natural resources, an increase in energy generation and consumption, as well as an increase in waste production and pollution; in this way, the economy itself becomes a consumer dependent on nature's natural capital.[4] Growth is fundamental to capitalism, a system which is functionally dependant on the imperative of exponential growth: increasingly accelerating rates of natural resource extraction, industrial development, and consumption.[5] Infinite, exponential growth and development on a planet with finite, non-renewable resources is unsustainable and has resulted in global environmental crisis. At its core, this is a crisis of sustainability; specifically, it is a crisis of so-called 'sustainable' development. Sustainability is commonly accepted as human interaction with the environment (i.e., development, or the use of natural resources) that benefits both present and future generations.[6]

Sustainable development envisages a balance between the right to environmental protection, the sustainable use of non-renewable natural resources, and justifiable socioeconomic development.[7] In *Fuel Retailers Association of Southern Africa v Director General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Others*[8] ('*Fuel Retailers*') the Constitutional Court recognized that socioeconomic development will 'invariably bring risk of environmental

[1] Viviana Asara et al 'Socially Sustainable Degrowth as Social-Ecological Transformation: Repoliticizing Sustainability' (2015) 10 *Sustain Sci*, at 375 and 382.
[2] Adrian Beling et al 'Discursive Synergies for a "Great Transformation" Towards Sustainability: Pragmatic Contributions to a Necessary Dialogue Between Human Development, Degrowth, and Buen Vivir' (2018) 144 *Ecological Economics* at 305.
[3] Jason Hickel 'What Does Degrowth Mean? A Few Points of Clarification' (2021) 18 *Globalizations* 7, at 1106.
[4] William E Rees 'Economic Development and Environmental Protection: An Ecological Economics Perspective' (2003) 86 *Environmental Monitoring and Assessment*, at 33.
[5] Jason Hickel *Less is More: How Degrowth Will Save the World* (2021) Penguin Random House at 20.
[6] Gary W Yohe et al 'Perspectives on Climate Change and Sustainability' (2007) *Climate Change 2007: Impacts, Adaptation and Vulnerability*. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, at 819.
[7] The National Environmental Management Act 107 of 1998, Preamble.
[8] *Fuel Retailers Association of Southern Africa v Director General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Others* 2007 (6) SA 4 (CC).

damage',[9] and so the exercise of reconciling these opposing ideals is a task which is 'central' to sustainable development.[10] Approached from within the context of the current global environmental crisis, this paper will focus on the reconciliation of these two arguably irreconcilable objectives. It is submitted that growth has permeated South African environmental management, corrupting the aim of reconciliation between development and the environment as envisaged by sustainable development. In response, this paper proposes a potential remedy: Degrowth.

Degrowth is a movement in ecological economics that calls to reject economic growth as a compulsory goal.[11] It entails a planned reduction in natural resource and energy consumption (i.e., a reduction in growth) in order to reverse ecological breakdown.[12] However, degrowth cannot be reduced to anti-growth,[13] nor forced decrease in GDP: degrowth is an *alternative to* growth.[14] It is an alternative mode of life and thought which seeks just systemic transformation.[15] Degrowth is not just about economics, it is also a political project[16] underscored by justice, decolonization, and democracy. Most importantly for the purposes of this paper, degrowth is not merely about doing *less* of the same, rather, it is about doing *differently*.[17] As Kallis and March put it: 'it is a call for an altogether new, qualitatively different world that will evolve through confrontation with the existing one.'[18] This paper will thus employ degrowth in its capacity as a radical transformative alternative that envisions a post-capitalist future characterized by sustainability, solidarity, commons and community. The unsustainability of growth will be contextualized using arguably the most prevalent cause of global environmental crisis today: global reliance on fossil fuels.

Growth is inextricable from capitalism, and capitalism is inextricable from fossil fuels.[19] The unsustainability of growth is evidenced by the current climate crisis, which is a

[9] Ibid para 58.
[10] Ibid para 50.
[11] Bengi Akbulut 'Degrowth: Rethinking Marxism' (2021) 33 *Journal of Economics, Culture and Society* 1, at 98.
[12] Giorgos Kallis *Degrowth* (2018) Agenda Publishing.
[13] Jason Hickel op cit note 3 at 1106.
[14] Corinna Dengler and Miriam Lang 'Commoning Care: Feminist Degrowth Visions for a Socio-Ecological Transformation' (2022) 28 *Feminist Economics* 1, at 4.
[15] Giorgos Kallis *Degrowth* (2018) Agenda Publishing.
[16] Bengi Akbulut et al 'Who Promotes Sustainability? Five Theses on the Relationships Between the Degrowth and Environmental Justice Movements' (2019) 169 *Ecological Economics,* 106418 at 4.
[17] Giorgos Kallis, Federico Demaria and Giacomo D'Alisa 'Introduction: Degrowth' in Giacomo D'Alisa, Federico Demaria and Giorgos Kallis (eds) *Degrowth: A Vocabulary for a New Era* (2015) Routledge.
[18] Giorgos Kallis and Hug March 'Imaginaries of Hope: The Utopianism of Degrowth' (2015) 105 *Annals of the Association of American Geographers* 2, *Futures: Imagining Socioecological Transformation*, at 362.
[19] Tadzio Müller 'Climate Justice: Global Resistance to Fossil-Fuelled Capitalism' in Corinna Burkhart, Matthias Schmelzer and Nina Treu (eds) *Degrowth in Movements: Exploring Pathways for Transformation* (2020) Zero Books at 123.

consequence of (*inter alia*) the extraction and development of non-renewable fossil fuels.[20] In the specific case of South Africa, Pillay confirms that it is precisely neoliberal fossil capitalism which has resulted in both the environmental and socioeconomic crises.[21] In South Africa, growth's unsustainability is most glaring in the drive for the exponential extraction, production, and consumption of fossil fuels (i.e., coal, oil, gas, and other hydrocarbon energy reserves) mandated by South Africa's 'carbon-constrained'[22] political economy, the Minerals-Energy Complex (MEC).[23] The MEC is characterised by mining, industrial extractivism, raw material exports, and a dominant, coal-reliant energy sector. The single-minded pursuit of growth under South Africa's MEC is skewing environmental decision-making in favour of elite fossil fuel interests at the expense of environmental justice and sustainability.

In 2009, Patel emphasized the need to challenge the broader political context informing sustainability in South African environmental management.[24] This paper attempts to answer Patel's call for economic and institutional transformation using degrowth: it will investigate how the growth imperative of neoliberal fossil fuel capitalism is affecting sustainability; how degrowth can re-centre sustainability in South African environmental management; and how ubuntu can provide a Southern-specific, home-grown framework for the application of degrowth to South African environmental law. In addressing these questions, this paper will adopt a non-empirical research method using primary and secondary sources, including (*inter alia*): the Constitution, South African environmental legislation and case law, as well as journal articles and legal writings. This paper does not aim to suggest that a broad, blanket application of degrowth as mere reduction/shrinking of GDP is appropriate in the case of South Africa. In agreement with Perkins, this paper is cognizant that any changes to the economy will disproportionately impact those already most vulnerable and marginalized,[25] and so any application of degrowth in South Africa must necessarily prioritize justice, equity, and redistributive transformation. Degrowth exists within a matrix of transformative movements

[20] Devan Pillay 'Marx and the Eco-Logic of Fossil Capitalism' in Michelle Williams and Vishwas Satgar (eds) *Marxisms in the 21st Century: Crisis, Critique and Struggle* (2013) Wits University Press, at 143.
[21] Devan Pillay 'The Dialectic of Democracy: Capitalism, Populism, and Working-Class Politics' in Michelle Williams and Vishwas Satgar (eds) *Destroying Democracy: Neoliberal Capitalism and the Rise of Authoritarian Politics* (2021) Wits University Press, at 128.
[22] NPC Department of Planning, Monitoring and Evaluation RSA 'NPC Economy Series: Energy' (January 2018). Accessed at https://www.gov.za/sites/default/files/gcis_document/201802/npc-energy-paper.pdf.
[23] Ben Fine and Zavareh Rustomjee *The Political Economy of South Africa: From Minerals-Energy Complex to Industrialisation* (1996) Routledge, New York.
[24] Zarina Patel 'Environmental Justice in South Africa: Tools and Trade-Offs' (2009) 35 *A Journal of African* Studies 1, at 107-108.
[25] Patricia E Perkins 'Climate Justice, Commons, and Degrowth' (2019) 160 *Ecological Economics* at 186.

such as postdevelopment,[26] post-extractivism,[27] and ubuntu;[28] Dengler and Seebacher go as far as to embrace degrowth as a 'Northern supplement to existing Southern concepts'.[29] It is with this appreciation of degrowth as a radical transformative alternative (serving as a supplement to ubuntu and postcolonial environmental justice movements), rather than simply a scaling back/decrease in GDP that this paper makes the case for its applicability to South African environmental law.

This paper comprises four sections. Firstly, the introduction, which has addressed the concepts of growth, sustainability, and degrowth, as well as the research questions, aims, and methodology. Second, the impact of growth on sustainability in South African environmental management: this section will challenge the misconception of growth as benevolent, apolitical, and ahistorical by rooting it in a history of colonialism and imperial capitalist expansionism. This section will investigate trade-offs between development and the environment in South African environmental management, skewed in favour of unbridled economic interests, and will further address the misconception of growth as the panacea to poverty and inequality in the global South. Third, an investigation of the potential impact of degrowth on sustainability in South African environmental management: this section will focus on degrowth as a call for justice, and it will posit degrowth's applicability to South African law using the framework of ubuntu. Lastly, this paper will conclude with a conclusion and recommendations.

[26] Arturo Escobar 'Degrowth, Postdevelopment, and Transitions: a Preliminary Conversation' (2015) 10 *Sustainability Science, Special Feature: Socially Sustainable Degrowth as a Socio-Ecological Transformation,* 451-462.
[27] Ulrich Brand 'Post-Extractivism: Against the Exploitation of Natural Resources' in Corinna Burkhart, Matthias Schmelzer and Nina Treu (eds) *Degrowth in Movements: Exploring Pathways for Transformation* (2020) Zero Books at 246.
[28] Aïda C Terblanché-Greeff 'Ubuntu and Environmental Ethics: What the West Can Learn from Africa When Faced with Climate Change' in Munamato Chemhuru (ed) *African Environmental Ethics: A Critical Reader* (2019) Springer, 93-110.
[29] Corinna Dengler and Lisa M Seebacher 'What About the Global South? Towards a Feminist Decolonial Degrowth Approach' (2019) 157 *Ecological Economics* at 251.

II. GROWTH AND SUSTAINABILITY IN SOUTH AFRICAN ENVIRONMENTAL MANAGEMENT

a. Colonization and Recolonization: Growth and Development

Today, the growth imperative of western neoliberal capitalism is most glaring in countries' pursuit of development.[30] For the purposes of this paper, growth and development will be treated as interrelated and dependent, in that countries feel they must grow in order to be considered 'developed', and that they must similarly develop (typically in the sense of industrialization) in order to grow the economy (i.e., increase GDP).

Colonialism created an imaginary dichotomy of 'developed' vs. 'underdeveloped'; 'civilized' colonizers were the pioneers of 'productive' industrialized economies, while 'primitive' colonized peoples were limited to 'unproductive' subsistence/solidarity economies.[31] It follows that development is a western colonial construct imposed on the global South,[32] dictating that development is limited exclusively to linear and exponential growth.[33] Any deviation from the western standard is deemed developmentally 'backward'. As a result, much of the postcolonial global South prescribes to growth-focused extractivism and industrial development models (for instance, South Africa's MEC) in an attempt to remedy this purported backwardness.[34]

However, instead of 'catching up' to the North, the postcolonial South remains chained to cycles of postcolonial dependency.[35] Industrial extractivism in the name of catching-up to the global North is intended to continue *ad infinitum*: the global North relies on these postcolonial patronage networks in order to support its high-consuming, disproportionate rates of growth and expansion.[36] Growth-focused extractivism facilitates the neo-imperial appropriation of the global South's cheap labour and raw materials: extractivism as a

[30] Arturo Escobar op cit note 26 at 454.
[31] Valentin Mudimbe *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge* (1998) Indiana University Press (Bloomington and Indianapolis) at 17.
[32] Alberto Acosta and Mateo Martinez Abarca 'Buen Vivir: an Alternative Perspective from the Peoples of the Global South to the Crisis of Capitalist Modernity' in Vishwas Satgar (eds) *The Climate Crisis: South African and Global Democratic Ecosocialist Alternatives* (2018) at 133.
[33] Ashish Kothari, Federico Demaria and Alberto Acosta 'Buen Vivir, Degrowth and Ecological Swaraj: Alternatives to Sustainable Development and the Green Economy' (2015) 57 *Development* (3-4) at 366.
[34] Christelle Terreblanche 'Ubuntu and the Struggle for an African Ecosocialist Alternative' in *The Climate Crisis: South African and Global Democratic Ecosocialist Alternatives* (2018) edited by Vishwas Satgar at 170.
[35] Ibid at 173.
[36] Jason Hickel 'The Anti-Colonial Politics of Degrowth' (2021) 88 *Political Geography*, 102404 at 1.

development model in the global South serves as the 'backbone' of global capitalism's predatory processes of accumulation by dispossession.[37] Imperialism, too, can be directly traced back to capitalism's growth imperative. Rodney refers to imperialism as a phase of capitalist development born of European capitalism's logic of growth and expansionism.[38] If imperialism is in effect 'the extended capitalist system',[39] and if the capitalist system is inextricable from growth, it then follows that growth's logic of exponential expansion and extraction is directly implicit in perpetuating neo-imperialism in the postcolonial global South.

Through imperial capitalist expansionism, growth perpetuates the South's postcolonial dependency on the global North. In fact, the North's gross rates of excessive growth at the expense of the South's natural and human capital – as well as accelerating climate change and the unevenly distributed burdens thereof – can be said to constitute a *recolonization* of both global ecological space and the global South.[40] Pineault goes as far as to conceptualize growth as an unending cycle of 'colonization and recolonization'.[41] Degrowth is a call to decolonize the North-South divide,[42] and to dismantle and transform the institutions that maintain such colonial cycles (i.e., growth and capitalism itself).

b. Ecological Debt: Redistribution, Decolonization, and Southern Thought

It is common cause that responsibility for the planetary crisis cannot be shared equally. The growth giants of the global North (i.e., 'developed', high-consuming western countries) are primarily to blame, while the global South (i.e., those on the periphery that have been underdeveloped by colonialism and imperial capitalist expansionism) disproportionately bears the consequences.[43] Degrowth explicitly recognizes this ecological debt the North owes to the postcolonial South, and thus places particular emphasis on redistributive justice.[44] Ecological debt is typically the first point used against the case for degrowth in the Global South: how can it be considered just to expect South Africa to degrow, when it has not yet had the opportunity to grow in the first place?

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[37] Acosta and Abarca op cit note 32 at 141.
[38] Walter Rodney *How Europe Underdeveloped Africa* (1972) Verso Books, at 161-162.
[39] Ibid.
[40] Dorothy Grace Guerrero 'The Limits of Capitalist Solutions to the Climate Crisis' in Vishwas Satgar (eds) *The Climate Crisis: South African and Global Democratic Ecosocialist Alternatives* (2018) Wits University Press, at 41.
[41] Eric Pineault 'The Growth Imperative of Capitalist Society' in Corinna Burkhart, Matthias Schmelzer and Nina Treu (eds) *Degrowth in Movements: Exploring Pathways for Transformation* (2020) Zero Books, at 36.
[42] Jason Hickel op cit note 36.
[43] Jason Hickel op cit note 3 at 1.
[44] Akbulut et al op cit note 16 at 5.

When it comes to climate change accountability and mitigation responsibility, South Africa cannot reasonably be held to the same standards as the growth giants of the global North; although it is responsible for 42% of Africa's total carbon emissions, South Africa is only responsible for 1% of total global emissions.[45] Degrowth in the rich, high-consuming countries in the North will afford those developing countries in South (such as South Africa) the necessary 'ecological space'[46] to grow. However, this paper will depart from the goal of North-South redistribution (at least insofar as 'ecological space' and carbon emissions 'rights' discourse is concerned), instead siding with Latouche's aim of 'disentanglement'[47] from the western standard of development overall.

The Department of Mineral Resources and Energy (DMRE) maintains that the international climate change and energy transition discourse espoused at COP26 was dictated by 'developed' countries merely asserting their own national interests, and that there is therefore nothing stopping South Africa asserting its 'own transition trajectory'.[48] In other words, since South Africa does not have an 'advanced' economy such as those leaders at COP26, it should be allowed to remain indentured to fossil fuels, specifically coal. The general sentiment appears to be that – in the interests of fairness and redistributive justice – it is now 'our turn' to produce unfettered carbon emissions, and that the pressure and urgency to decarbonize, to mitigate adverse environmental impacts, or to degrow should be placed on those economically 'advanced' growth giants of the global North. Insofar as compulsory degrowth in the global North is concerned, this paper is in agreement – this paper does not aim to suggest that an application of degrowth in South Africa would in any way absolve the global North of its duty to degrow.

However, it is relevant to consider Hayward's position on emissions 'rights': he reminds us that while there is no 'human right to pollute',[49] there is a right to 'secure access to the means to a decent life',[50] which is not necessarily predicated on the right to produce unfettered carbon emissions. It then becomes necessary to define just what exactly 'a decent life' actually means from a Southern (specifically South African) perspective. Degrowth can

[45] Festus Victor Bekun et al 'Another Look at the Relationship Between Energy Consumption, Carbon Dioxide Emissions, and Economic Growth in South Africa' (2019) 655 *Science of the Total Environment*, at 760.
[46] Giorgos Kallis, Federico Demaria and Giacomo D'Alisa op cit note 17.
[47] Serge Latouche 'Degrowth Economics' (2004) *Le Monde Diplomatique* at 2-3.
[48] The DMRE 'Gwede Mantashe: Coal Colloquium' (01 February 2022) Accessed at https://www.gov.za/speeches/minister-gwede-mantashe-coal-colloqiuim-1-feb-2022-0000.
[49] Tim Hayward 'Human Rights Versus Emissions Rights: Climate Justice and the Equitable Distribution of Ecological Space' (2007) 21 *Ethics International Affairs* 4, at 432.
[50] Ibid.

provide the theoretical/conceptual space necessary to re-evaluate ideas of wellbeing, and a decent life,[51] allowing us to reframe and re-ground these ideas in a postcolonial, Southern-specific ontology of sustainability, solidarity, and sufficiency. Writing on degrowth as a feminist tool of socio-ecological transformation, Dengler and Lang point out that such notions of wellbeing and a decent life are hardly ever meaningfully informed by ever-increasing growth.[52] Advocating for South Africa to mimic the developmental tragedies of the West[53] – which have resulted in global environmental crisis, no less – cannot be said to be in the interests of securing the long-term, sustainable wellbeing of the South African people, nor can it be said to be in the spirit of decolonization. Decolonization is an ongoing process of emancipation, reclaiming autonomy and reviving indigenous ways of life and systems of knowledge, such as the law.[54] Growing (i.e., extracting, consuming, and polluting) in the same ecologically destructive manner as the global North will merely entrench the hegemony of the western development model and the 'misery that growth created',[55] which is the opposite of emancipation.

Further, the notion that the North must degrow so that the South can grow undermines both degrowth's and postdevelopment's counterhegemonic function as an *alternative to* growth and development, respectively.[56] North-South redistribution of ecological space (insofar as carbon emissions 'rights'/pollution 'rights' discourse is concerned) is rigid,[57] and fails to consider Southern-specific conceptualizations of ideas such as 'progress' and 'development'. For instance, in indigenous knowledge systems and worldviews originating in the global South, the concept of linear, growth-based development does not even exist.[58] In the specific instance of Africa, Van Norren writes that the notion of 'progress' is conceptualized not in terms of ever-increasing development and industrial expansion, but instead in terms of human relations, a perspective that prioritizes intergenerational justice and peoples' relationship to the land.[59]

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[51] Giorgos Kallis, Federico Demaria and Giacomo D'Alisa op cit note 17.
[52] Corinna Dengler and Miriam Lang op cit note 14 at 4.
[53] Devan Pillay 'Challenging the Growth Paradigm: Marx, Buddha and the Pursuit of "Happiness"' in Vishwas Satgar (ed) *The Climate Crisis: South African and Global Democratic Ecosocialist Alternatives* (2018) Wits University Press, at 161.
[54] Claire Deschner and Elliot Hurst 'Decolonisation and Degrowth' (01 February 2018) *Degrowth Blog*. Accessed at https://degrowth.info/blog/decolonisation-and-degrowth.
[55] Serge Latouche op cit note 47 at 3.
[56] Arturo Escobar op cit note 26 at 455.
[57] Ksenija Hanacek, Brototi Roy, Sofia Avila and Giorgos Kallis 'Ecological Economics and Degrowth: Proposing a Future Research Agenda from the Margins' (2020) 169 *Ecological Economics,* at 9.
[58] Alberto Acosta and Mateo Martinez Abarca op cit note 32 at 133.
[59] Dorine E Van Norren 'African Ubuntu and Sustainable Development Goals: Seeking Human Mutual Relations and Service in Development' (2022) 43 *Third World Quarterly* 12, at 2791.

Degrowth has been linked to Cassano's framework of 'Southern thought',[60] which is primarily a call for emancipation from the so-called 'universality' of Northern ways of thinking and the western religion of development.[61] Southern thought recognizes the developed/underdeveloped dichotomy as a symbolic western imposition,[62] and calls for the global South to re-conquer and reclaim a Southern-specific autonomy of thought which rejects the idea of the South as pathologically/developmentally 'backward', and as a malformed, poor-man's North.[63] It follows that, in order to promote sustainability in South African environmental management, not only should we aspire to decouple the ideas of 'development' and 'progress' from economic growth,[64] we must aspire to qualitatively redefine them in distinctly South African terms, according to South African values and needs, aspiring to one day decouple such constructs from life itself. As an appropriate point of departure, this paper relies on Terblanché-Greeff's *ubuntu degrowth*, arguably an example of such an autonomous, emancipatory, and decolonial framework of Southern thought.

c. South African Environmental Management: Section 24, Sustainable Development, and 'Unbridled' Economic Principles

Under South African law, environmental management is governed by the National Environmental Management Act[65] (NEMA), alongside the right to the environment entrenched in section 24 of the Constitution[66]. According to section 24 of the Constitution, the people of South Africa have the right:

> (a) to an environment that is not harmful to their health or well-being; and
> (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
> (i) precent pollution and ecological degradation;
> (ii) promote conservation; and

[60] Giorgos Kallis, Angelos Varvarousis, and Panos Petridis 'Southern Thought, Islandness and Real-Existing Degrowth in the Mediterranean' (2022) 157 *World Development* 105957, 1-11.
[61] Franco Cassano 'Southern Thought' (2001) 67 *Thesis Eleven* 1, 1-10.
[62] Ibid at 3.
[63] Ibid at 2.
[64] Adrian Beling et al op cit note 2 at 305.
[65] The National Environmental Management Act 107 of 1998.
[66] The Constitution of the Republic of South Africa 1996.

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable and economic and social development.[67]

In the case of *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs*[68] (‘*BP Southern Africa’*), the court said that the section 24 constitutional right to the environment must be balanced with ‘competing economic rights.’[69] Later, in *Fuel Retailers*, the Constitutional Court held that protection of the environment will be afforded simultaneous recognition with the need for socio-economic development, and that these competing imperatives would be balanced using the integrated management approach of sustainable development[70]. Under section 1 of NEMA, sustainable development is defined as: ‘*the integration of social, economic, and environmental factors* into planning, implementation and decision-making so as to ensure that development serves present and future generations’[71] (i.e., inter/intragenerational justice/equity).

This integration of socioeconomic and environmental factors into environmental planning is facilitated by the decision-making tool of environmental impact assessment (EIA). The EIA process allows environmental authorities to make their decisions to in light of the adverse environmental impacts of proposed developments. Decision-makers will use the EIA process to balance any adverse environmental impacts with the socioeconomic benefits of the proposed development, and elect to grant/refuse to grant an environmental authorisation under section 24 of NEMA, accordingly. Economic considerations are integral to EIA for the simple reason that developments (based on the promise of economic benefits) are what trigger the EIA process in the first place.[72] Although they are integral, the court in *BP Southern Africa* held that ‘pure economic principles will no longer determine, in an unbridled fashion, whether a development is acceptable’.[73] However, this paper submits that the growth imperative of neoliberal fossil capitalism is resulting in the ‘unbridled’ influence of economic growth tainting environmental decision-making. Environmental management does not exist within a vacuum;

[67] Section 24 of the Constitution of the Republic of South Africa 1996.
[68] *BP Southern Africa (Pty) Ltd v MEC for Agriculture, Conservation, Environment and Land Affairs* 2004 (5) SA 124 (W).
[69] Ibid at 143.
[70] *Fuel Retailers* supra note 8 para 45.
[71] The National Environmental Management Act, section 1.
[72] Angus Morrison-Saunders and Thomas B Fischer ‘What is Wrong with EIA and SEA Anyway? A Sceptic’s Perspective on Sustainability Assessment’ (2006) 8 *Journal of Environmental Assessment Policy and Management* 1, at 24.
[73] *BP Southern Africa* supra note 68 at 144.

as a result of global capitalist hegemony (and by extension, the hegemony of growth), sustainability tools such as EIA become accordingly politicised and lose credibility as objective, unbiased and transparent environmental decision-aiding tools, often serving only to entrench the hegemony of western neoliberal capitalism.[74]

Today, in light of worsening ecological collapse, it seems most fitting to recall what the Constitutional Court held in the case of *Fuel Retailers*:

> …Development cannot subsist upon a deteriorating environmental base. Unlimited development is detrimental to the environment and the destruction of the environment is detrimental to development. Promotion of development requires the protection of the environment. Yet the environment cannot be protected if development does not pay attention to the costs of environmental destruction. The environment and development are thus inexorably linked.[75]

Most recently, the court in *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others*[76] (‘*Vukani Deadly Air*’) held that:

> ‘…economic development should not sacrifice the environment and human life and wellbeing and it must be that a balance should be struck. When one trumps the other, it cannot be said that the right of section 24(a) has been achieved.’[77]

The courts’ stance is unequivocally clear – why then does the environment continue to be sacrificed at the altar of economic growth? According to section 2(2) of NEMA, ‘environmental management must place people and their needs at the forefront of its concern.’[78] The misconception appears to be that trade-offs in favour of growth/development (with the narrow aim of increasing GDP) somehow prioritize the South African people and their needs, despite such a trade necessitating that environmental integrity (and the requisite life-support systems/environmental justice implications of such a trade) be discarded. From the perspective of poverty alleviation, it is understandable that those most vulnerable members of

[74] Alan Bond et al ‘Explaining the Political Nature of Environmental Impact Assessment (EIA): A Neo-Gramscian Perspective’ (2020) 244 *Journal of Cleaner Production* 118694, at 2.
[75] *Fuel Retailers* supra note 8 para 44.
[76] *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* (39724/2019) [2022] ZAGPPHC 208 (18 March 2022).
[77] Ibid para 175.
[78] NEMA section 2(2) – Principles.

underdeveloped/developing countries would favour environmental policies that prioritize economic growth over environmental protection,[79] however, it is submitted that this is due to a misplaced faith in economic growth as the 'tide that will raise all boats', rather than the reality of growth as a tool of elite-capture.[80] Further, South Africa's issues of poverty, inequality, and unequal opportunity are misconstrued as purely socioeconomic rather than environmental issues.[81] Stull, Bell, and Ncwadi remind us that the reality of injustice in South Africa must necessarily extend to *environmental* injustice; both socioeconomic and environmental injustice 'feed on each other in a continuing cycle.'[82]

It follows that placing people and their needs at the forefront of environmental management must entail a re-bridling of 'unbridled' economic growth skewing environmental decision-making at the expense of the environment and by extension, justice.

d. Not-So Sustainable Development: Trade-Offs and the Growth-Poverty-Inequality Nexus

'Regulation is no answer when the rules of the game are set by the corporate captured state.'[83]

Throughout the literature, sustainable development (i.e., the act of balancing the protection of the environment with socioeconomic development) is referred to as an 'oxymoron'[84] and an 'impossible goal'.[85] Sustainable development has fallen prey to corporate capture,[86] prioritizing growth-focused development at the expense of environmental justice and sustainability.

As a country underdeveloped by a history of colonialism, imperialism, and apartheid, South Africa places particular emphasis on economic growth as the key to redistributive redress

[79] Katrina Running 'Towards Climate Justice: How Do the Most Vulnerable Weigh Environment-Economy Trade-Offs?' (2015) 50 *Social Science Research*, 217-228.
[80] Eric Pineault op cit note 41 at 31.
[81] Carl Death 'Environmental Movements, Climate Change and Consumption in South Africa' (2014) 40 *Journal of Southern African Studies* 6, at 1226-1227.
[82] Valerie Stull, Michael M Bell and Mpumelelo Ncwadi 'Environmental Apartheid: Eco-Health and Rural Marginalization in South Africa' (2016) 47 *Journal of Rural Studies*, at 370.
[83] Del Weston 'The Politics of Climate Change in South Africa' in Patrick Bond (ed) *Durban's Climate Gamble: Trading Carbon, Betting the Earth* (2011) Unisa Press, at 145.
[84] Ashish Kothari, Federico Demaria and Alberto Acosta op cit note 33 at 366.
[85] Giorgos Kallis, Federico Demaria and Giacomo D'Alisa op cit note 17.
[86] Leslie Sklair 'The Corporate Capture of Sustainable Development and its Transformation into a 'Good Anthropocene' Historical Bloc' (2019) 19 *Civitas, Porto Alegre* 2, 296-314.

and poverty alleviation. However, growth-focused development initiatives merely perpetuate the externalization, quantification and commodification of the environment, serving to undermine not only environmental protection, but also meaningful economic transformation.[87] There is no shortage of instances where growth-focused environmental decision-making purports to be in the interests of 'poverty alleviation' and 'socioeconomic development', when in actual fact these proposed developments have proved not only environmentally unsustainable, but economically unviable as well.

For example, in *WWF South Africa v Minister of Agriculture, Forestry and Fisheries*[88] ('*WWF SA*'), the Minister attempted to rely on claims of 'poverty alleviation' and 'socioeconomic development' in order to justify her decision to set the 2017/2018 Total Allowable Catch (TAC) of lobster at 59% above what was scientifically recommended in order to ensure the sustainable use of the lobster resource, to which the court said:

> 'The further depletion of an already critically depleted resource jeopardises rather than enhances food security and is the reverse of "development" …As to the "alleviation of poverty", this cannot in context mean the short-term provision of a dwindling income to a dwindling number of fishers competing for a dwindling population of lobsters.'[89]

In 2022, the corporate capture of 'sustainable' development is arguably most glaring when it comes to South Africa's energy sector: despite increasing international and domestic pressure and international climate change commitments, entrenched fossil interests under the MEC have effectively prevented what Tyler and Hochstetler refer to as the 'institutionalisation of decarbonisation'.[90] This is apparent in South Africa's rigid coal fundamentalism and the DMRE's dogged insistence on developing offshore oil and gas reserves.

The case of *Earthlife Africa v Minister of Environmental Affairs*[91] ('*Thabametsi*') marked South Africa's landmark climate change litigation, dealing with whether it was necessary to consider the climate change impacts (as a precursor to environmental authorisation) of the new Thabametsi coal-fired power station. In that case, Earthlife Africa

[87] Desne Masie and Patrick Bond 'Eco-Capitalist Crises in the "Blue Economy": Operation Phakisa's Small, Slow Failures' in Vishwas Satgar (ed) *The Climate Crisis: South African and Global Democratic Ecosocialist Alternatives* (2018) Wits University Press, at 316.
[88] *WWF South Africa v Minister of Agriculture, Forestry and Fisheries* [2018] 4 ALL SA 889 (WCC).
[89] Ibid para 89-90.
[90] Emily Tyler and Kathryn Hochstetler 'Institutionalising Decarbonisation in South Africa: Navigating Climate Mitigation and Socio-Economic Transformation' (2021) 30 *Environmental Politics* S1, at S184.
[91] *Earthlife Africa Johannesburg v Minister of Environmental Affairs* [2017] 2 ALL SA 713 (SCA).

contested the lawfulness of the Minister's decision to grant an environmental authorisation without first conducting a climate change impact assessment.[92] It argued further the inappropriateness of coal-fired power stations, considering 'other forms of power generation are more sustainable and less damaging to the environment'.[93] In a similar vein to the current DMRE Minister's position on international climate change obligations as inapplicable to South Africa's energy transition, the Department of Environmental Affairs (DEA) in *Thabametsi* argued that South Africa's GHG mitigation obligations are 'broadly-framed and do not prescribe particular measures that the government must implement to reduce emissions.'[94] With regard to decarbonisation, the DEA cited the necessity of at least some degree of coal-generated energy in order to facilitate the transition, due to an 'over-riding priority to address poverty and inequality'.[95]

However, a 2021 report by the Energy Systems Research Group (ESRG) found proposed coal-fired power plants under South Africa's Integrated Resource Plan (IRP) 2019 to be economically unfeasible, resulting in job *losses* rather than job creation.[96] Additional coal-fired power plants under the 2019 IRP (such as Thabametsi) were found to be unnecessary and undesirable: unnecessary to secure energy security, 'more costly than alternatives', and predicted to result in a *decrease* in GDP (0.11% in 2030 and 0.08% in 2040).[97] In terms of climate change considerations, forcing the proposed new coal capacity would greatly increase greenhouse gas emissions, proving inconsistent with South Africa's mitigation target for 2030 in its Nationally Determined Contribution (NDC).[98]

In *Thabametsi*, the court held that 'climate change poses a substantial risk to sustainable development in South Africa'[99] and that climate change considerations are indeed relevant when it comes to coal-fired power stations.[100] The decarbonisation of South Africa's energy sector is indispensable to so-called sustainable development,[101] yet fossil-vested, growth-

[92] Ibid para 10.
[93] Ibid para 23.
[94] Ibid para 16.
[95] Ibid para 17-18.
[96] Bruno Merven, Jesse Burton and Patrick Lehmann-Grube 'Assessment of a New Coal Generation Capacity Targets in South Africa's 2019 Integrated Resource Plan for Electricity' (01 November 2021) University of Cape Town. Accessed at https://cer.org.za/wp-content/uploads/2021/11/ESRG_New-coal-plants-South-Africa_021121.pdf.
[97] Ibid at 5.
[98] Ibid at 3.
[99] *Thabametsi* supra note 91 para 82.
[100] Ibid para 91.
[101] Lere Amusan and Oluwole Olutola 'Paris Agreement (PA) on Climate Change and South Africa's Coal-Energy Complex: Issues at Stake' (2016) 9 *Africa Review* 1, at 54.

focused energy developments in the name of GDP expansion and 'poverty alleviation' continue to thwart meaningful just transition/reform. A ripe example would be Operation Phakisa: Unlocking the Oceans Economy ('Operation/Oceans Phakisa').

Operation Phakisa is a 2014 industrial development policy premised on GDP increase and industrial expansion.[102] The initiative expressly endeavours to address poverty alleviation and socioeconomic development,[103] with the 'untapped resource' of the South African oceans estimated to contribute 'up to R177 billion to GDP and create just over one million jobs by 2033'.[104] One of the priority growth areas of Oceans Economy is the offshore exploration of oil and gas; although oil and gas are fossil fuels, they are held to be important bridging fuels that will aid South Africa's energy transition away from its dependency on coal. However, in light of the DMRE's '*de facto* denialism'[105] and insistent devotion to coal-based energy, Operation Phakisa was more likely intended to be a mad dash for single-minded GDP growth and catch-up development, rather than a mechanism intended to help facilitate South Africa's just energy transition. This is evidenced by the DMRE's firm position on the matter:

> 'If we are going to *develop fully*, we cannot write off and kill prospects of gas and oil development before it even starts.'[106]

According to Masie and Bond, Operation Phakisa is a failure. Single-mindedly devoted to the pursuit of GDP-growth, Operation Phakisa is merely a project of commodification and quantification of the environmental commons;[107] it has failed to deliver on the promise of meaningful economic empowerment,[108] instead prioritizing narrow economic considerations at the expense of environmental justice and protection.[109] In 2021, The Green Connection found

[102] Desne Masie and Patrick Bond op cit note 87 at 237.
[103] Ken Findlay 'Operation Phakisa and Unlocking South Africa's Ocean Economy' (2018) 14 *Journal of the Indian Ocean Region* 2, at 248.
[104] President Jacob Zuma at the Operation Phakisa: Unlocking the Economic Potential of the Ocean Economy Open Day, International Convention Centre (ICC) Durban (15 October 2014). Accessed at https://www.operationphakisa.gov.za/cc/Documents/Open%20Day%20Operation%20Phakisa%20President%20Speech.pdf.
[105] Moira Levy 'While the Powerful Fight Their Battle…The Rest of Us May Lose the War on Climate Change' (2022) *New Agenda: South African Journal of Social and Economic Policy* 82, at 43.
[106] Julia Evans 'Mantashe: "Gas is Going to be a Game-Changer" – Opposition Disagrees' (20 May 2022) *Daily Maverick* (Our Burning Planet). Accessed at https://www.dailymaverick.co.za/article/2022-05-20-gas-is-going-to-be-a-game-changer-in-the-economy-says-mantashe/ (emphasis added).
[107] Desne Masie and Patrick Bond op cit note 87 at 316.
[108] Ibid.
[109] Ibid at 237-328.

that Oceans Phakisa had failed to deliver on its promised economic gains, and that the initiative had actually resulted in a *negative* impact on GDP (4.4% (R110 billion) in 2010, to 4.2% (R130 billion) in 2019).[110]

Operation Phakisa has made its mark in the South African courts: in 2021, both *Border Deep Sea Angling Association & Others v Minister of Mineral Resources and Energy and Others*[111] ('*Border Deep Sea Angling*') and *Sustaining the Wild Coast NPC & Others v Minister of Mineral Resources and Energy*[112] ('Part A of *Sustaining the Wild Coast*') were heard – both matters dealt with respective seismic surveys proposed by Shell for oil and gas exploration along South Africa's Wild Coast, and both matters concerned the impact of the survey on the cultural/customary rights and livelihoods of the affected traditional coastal communities. In *Border Deep Sea Angling,* the applicants challenged the seismic survey on the grounds that Shell had failed to obtain the required environmental authorisation under NEMA.[113] Inexplicably, the court ruled in favour of Shell, affording greater weight to the economic loss Shell would suffer (if the seismic survey were to be interdicted)[114] than to the irreparable harm to marine ecosystems and interruption to sustainable customary livelihoods. Arguably in contravention of the precautionary principle, the court reasoned that the applicants had failed to provide adequate evidence of reasonable apprehension of irreparable harm to the marine life.[115]

In *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*[116] ('Part B of *Sustaining the Wild Coast*), Shell argued that the proposed seismic survey for oil and gas exploration off the coast of South Africa should be allowed, considering the alleged socioeconomic development that would be fostered as a result.[117] However, Shell failed to substantiate just exactly *how* the seismic survey would lead to job creation and socioeconomic improvement.[118] The applicants argued that this was noncompliant

[110] The Green Connection 'Who Stole Our Oceans? A Literature Review of the Socioeconomic Consequences of Offshore Oil and Gas Activities on South Africa' (October 2021). Accessed at https://thegreenconnection.org.za/wp-content/uploads/2021/10/Economic-impacts-of-offshore-oil-and-gas-on-South-Africa.12042021-1.pdf.
[111] *Border Deep Sea Angling Association & Others v Minister of Mineral Resources and Energy & Others* [2021] ZAECGHC 111.
[112] *Sustaining the Wild Coast NPC & Others v Minister of Mineral Resources and Energy and Others* [2021] ZAECGHC 118 'Part A'.
[113] *Border Deep Sea Angling* supra note 111 para 18.
[114] Ibid para 38.
[115] Ibid para 40.
[116] *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* [2022] 4 ALL SA 533 (ECG) 'Part B'.
[117] Ibid para 33.
[118] Ibid para 135.

with section 2*(d)* and *(f)* of the Minerals and Petroleum Resources Development Act[119] (MPRDA),[120] which provides for the *substantial and meaningful* expansion of 'opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation'[121] of such minerals, as well as for the promotion and advancement of 'employment and social and economic welfare of all South Africans'.[122]

Further, hydrocarbon exploration in the name of Operation Phakisa cannot be said to be sustainable, nor necessary/desirable in light of climate change considerations. Seismic surveys are widely accepted as a precursory step to the extraction and development of fossil fuels.[123] The court held that:

> '…most of the discovered reserves of oil and gas cannot be burnt if we are to stay on the pathway to keep global average temperature increases below 1.5 degrees. Authorising new oil and gas exploration, with its goal of finding exploitable oil/gas reserves and consequently leading to its production, is not consistent with South Africa complying with its international climate change commitments.'[124]

In light of the future climate change impacts of the proposed survey, the court held that the proposed exploration (a precursor to the extraction and development of fossil fuels) was 'neither needed nor desirable'.[125]

Considering the above examples, it becomes relevant to ask the question: is growth truly the answer to poverty and equality in South Africa? The knee-jerk response to degrowth in South Africa is scepticism: after all, isn't growth (i.e., industrial development and GDP expansion) necessary to address poverty and inequality in the underdeveloped global South? South Africa is the most unequal country in the world.[126] This inequality has been entrenched by uneven distribution of resources/opportunities created by spatial segregation and racial disenfranchisement during colonialism and apartheid.[127] A narrow, growth-focused approach

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[119] Act 28 of 2002.
[120] Part B of *Sustaining the Wild Coast* supra note 116 para 134.
[121] Section 2*(d)* of the MPRDA.
[122] Section 2*(f)* of the MPRDA.
[123] Part B of *Sustaining the Wild Coast* supra note 116 para 121.
[124] Ibid.
[125] Ibid para 125.
[126] The World Bank (WB) 'Inequality in Southern Africa: An Assessment of the Southern African Customs Union (SACU)' (2022) at 1. Accessed at https://documents1.worldbank.org/curated/en/099125303072236903/pdf/P1649270c02a1f06b0a3ae02e57eadd7a82.pdf .
[127] Ibid at 3.

to addressing poverty and inequality disregards the historic/systemic 'processes of exclusion and marginalization'[128] that have created and entrenched poverty and inequality in the first place. The growth-poverty-inequality nexus[129] has its roots in South Africa's history of colonialism, imperialism and apartheid; according to Bond, economic growth in South Africa was (and is) informed by capitalist mechanisms of 'imposed deprivation and accumulation-by-dispossession.'[130] Mwipikeni writes that one-sided economic growth (under South Africa's neoliberal economy) entrenches and reproduces poverty by facilitating the elite-capture of wealth in 'economic oligarchy'.[131] Gerber and Raina go as far as to say that growth in fact relies on poverty as a convenient pool of cheap labour.[132]

Following this logic, it would prove counterproductive to rely on growth to remedy the very cycles of poverty and inequality which it created in the first place and on which it relies. A system which has created – and which maintains – a systemic issue cannot reasonably be considered the only appropriate remedy such an issue.[133] Growth is not an apolitical, magical process that will trickle down to those most in need.[134] Poverty is a systemic, structural symptom of uneven distribution and processes of accumulation by dispossession; South Africa does not need to 'develop' or grow in order to be able to remedy such artificial scarcity, rather, the focus should be on the equitable redistribution of what it is we already have: *enough.*[135]

It follows that true poverty alleviation (i.e., the substantial and meaningful expansion of opportunities for historically disadvantaged persons) would necessitate a dismantling of the dominant systems and ideologies which create and maintain poverty and inequality. In order to address poverty and inequality under South Africa's MEC, growth proves insufficient in effecting substantive change. The 'short-term provision of a dwindling income'[136] through job

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[128] Siri H Eriksen and Karen O'Brien 'Vulnerability, Poverty, and the Need for Sustainable Adaptation Measures' (2007) 7 *Climate Policy* 4, at 341.

[129] Olusegun Ayodele Akanbi 'The Growth, Poverty and Inequality Nexus in South Africa: Cointegration and Causality Analysis' (2016) 33 *Development in Southern Africa* 2, 166-185.

[130] Patrick Bond 'Degrowth, Devaluation, and Uneven Development from North to South' in Ekaterina Chertkovskaya, Alexander Paulsson, and Stefania Barca (eds) *Towards a Political Economy of Degrowth* (2019) Rowman and Littlefield International, at 152.

[131] Peter Mwipikeni 'Ubuntu, Rights, and Neoliberalism in South Africa' (2019) 14 *International Journal of African Renaissance Studies – Multi-, Inter-, and Transdisciplinarity* 2, 81-102.

[132] Julien-François Gerber and Rajeswari S Raina 'Post-Growth in the Global South? Some Reflections from India and Bhutan' (2018) 150 *Ecological Economics* at 355.

[133] Vishwas Satgar 'The Climate Crisis and Systemic Alternatives' in Vishwas Satgar (ed) *The Climate Crisis: South African and Global Democratic Ecosocialist Alternatives* (2018) Wits University Press, at 7.

[134] Ashish Kothari 'Radical Ecological Democracy: Reflections from the South on Degrowth' in Corinna Burkhart, Matthias Schmelzer and Nina Treu (eds) *Degrowth in Movements: Exploring Pathways for Transformation* (2020) Zero Books, at 260.

[135] Giorgos Kallis and Hug March op cit note 18 at 367.

[136] *WWF SA* supra note 88 para 89-90.

creation is merely a temporary fix: there must be *systemic transformation*. This is where degrowth as a counterhegemonic alternative comes in.

III. DEGROWTH AND SUSTAINABILITY IN SOUTH AFRICAN ENVIRONMENTAL MANAGEMENT

a. Degrowth in the Global South: A Call for Justice

Growth not only adversely affects environmental sustainability, but also perpetuates cycles of environmental injustice. Section 2(4)(*c)* of NEMA provides for the principle of environmental justice:

> '(c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.'[137]

When it comes to both social and environmental injustice (perpetuated by the uneven distribution of environmental impacts/risks), Leonard identifies South Africa's neoliberal political economy as the 'common enemy.'[138] Growth entrenches and exacerbates the uneven distribution of environmental risks by creating environmental 'sacrifice zones': areas and people which, considered 'unprofitable'[139] bear the disproportionate burden of the externalization of environmental risks (i.e., ambient air pollution, water/soil contamination, climate change impacts). It is submitted that South Africa (and much of the postcolonial global South) constitutes one giant sacrifice zone, whereby the peoples of the global South – those most marginalized by growth's unceasing engine – are left clinging for survival on the periphery of environmental/climate justice.

Growth's impact on environmental justice in South Africa can be illustrated using the case of *South Durban Community Environmental Alliance v MEC for Economic Development,*

[137] S2(4)(*c*) of NEMA.
[138] Llewellyn Leonard 'Bridging Social and Environmental Risks: The Potential for an Emerging Environmental Justice Framework in South Africa' (2018) 36 *Journal of Contemporary African Studies* 1, 23-38.
[139] Carmen Gonzalez and Athena Mutua 'Mapping Racial Capitalism: Implications for Law' (2022) 2 *Journal of Law and Political Economy* 2, at 128.

Tourism and Environmental Affairs; KZN Government[140] ('*SDCEA*'). In that case, the South Durban Community Environmental Alliance (SDCEA) challenged the Minister's decision to grant an environmental authorisation for a development of a logistics park in the South Durban Basin – an area characterized by heavy industry – on the grounds that said development would produce disproportionate levels of carbon emissions, affecting residents already experiencing gross levels of ambient air pollution as a result of a history of spatial apartheid.[141] However, despite the South Durban Basin's history of institutionalized environmental injustice, the SCA favoured the MEC's prioritization of the industrial development in an area considered 'a national economic hub.'[142] It is submitted that the South Durban Basin constitutes such a sacrifice zone: despite the fact that the principle of environmental justice is entrenched in section 2(4)(*c*) of NEMA, it appears to be disregarded by the relevant environmental authorities so long as the trade-off is in favour of GDP-based economic growth. The 'unprofitable' communities of the South Durban Basin will simply continue, as they have, to bear the disproportionate burden of the externalization/uneven distribution of the related environmental risks.

Akbulut et al draw the connection between degrowth and environmental justice movements,[143] highlighting that both degrowth and environmental justice movements are underscored by a common goal of transformation.[144] As submitted in the introduction, re-centring sustainability in South African environmental management can be informed by applying the theory of degrowth, provided that such an application necessarily prioritizes those most vulnerable and marginalized.[145] Sustainability – a concept founded on principles of inter and intragenerational justice – is inextricable from considerations of justice. Therefore, in light of degrowth's compatibility with environmental justice movements and principles, this paper emphasizes degrowth as a tool of sustainability, and by extension, *justice*.

[140] *South Durban Community Environmental Alliance v MEC for Economic Development, Tourism and Environmental Affairs; KZN Government* [2020] 2 ALL SA 713 (SCA).
[141] Ibid para 56.
[142] Ibid para 37.
[143] Akbulut et al op cit note 16.
[144] Ibid at 7.
[145] Patricia E Perkins op cit note 25.

b. Ubuntu Degrowth: Legal Relevance

In *Gongqose and Others v Minister of Agriculture, Forestry and Fisheries and Others*[146] ('*Gongqose*'), the Supreme Court of Appeal (SCA) highlighted the relationship between the customary practices of indigenous communities and environmental conservation. In that case, the issue involved balancing customary fishing rights with the conservation of marine living resources, and whether the two could coexist. The SCA went on to say that the customary law of the Dwesa-Cwebe communities 'provides for sustainable conservation and utilisation of resources',[147] and that when it comes to the sustainable utilisation of natural resources and conservation of ecosystems, these communities have 'a greater interest than any other people'.[148] *Gongqose*, arguably, could be indicative of the start of a shift towards recognizing the role of the customary practices and sustainable livelihoods of traditional indigenous communities. Together with sustainable indigenous ways of life, this paper emphasizes ubuntu's legal relevance as a distinctly South African environmental ethic, and a framework within which to adopt degrowth into South African environmental management.

Ubuntu is a southern African philosophy that roots a person's humanness in relationality and interconnectedness with the other humans and the natural, non-human world (i.e., the environment).[149] Ubuntu is recognized as an 'alternative cosmovision',[150] a Southern mode of thought that opposes western capitalistic values (i.e., profit-seeking at the expense of human life, gross individualism, the commodification of nature etc.),[151] offering an alternative, southern-African perspective on concepts such as 'progress', 'productivity' and 'wellbeing'.

When it comes to South African environmental management, the call to reclaim ubuntu as an environmental ethic and policymaking tool[152] has been long established. Shumba underscores the connection between ubuntu and sustainability, calling for the traditional ecological knowledge and environmental ethics of traditional communities to inform

[146] *Gongqose and Others v Minister of Agriculture, Forestry and Fisheries and Others; Gongqose and Others v the State and Others* 2018 (5) SA 104 (SCA).
[147] Ibid para 56.
[148] Ibid.
[149] Mogobe B Ramose 'Ubuntu' in Giacomo D'Alisa, Federico Demaria and Giorgos Kallis (eds) *Degrowth: A Vocabulary for a New Era* (2015) Routledge.
[150] Giorgos Kallis, Federico Demaria and Giacomo D'Alisa op cit note 17.
[151] Mogobe B Ramose (2015) op cit note 149.
[152] Danford T Chibvongodze 'Ubuntu is Not Only About the Human! An Analysis of the Role of African Philosophy and Ethics in Environmental Management' (2016) 53 *Journal of Human Ecology* 2, at 165.

sustainable development education;[153] Le Grange recommends ubuntu be implemented together with international environmental standards and principles in order to address global socio-ecological crisis;[154] and most recently, Van Norren has framed ubuntu as a relevant factor in law and policymaking post-COVID 19.[155]

Ubuntu is one of many transformative Southern alternatives recognized as supplementary or even equivalent to degrowth.[156] Ramose suggests that 'ubuntu is in Africa what degrowth is in the Global North',[157] and Terblanché-Greeff goes as far as to call for an environmental ethic based on ubuntu *as* degrowth.[158] This paper is aligned with Terblanché-Greeff's call for a transformative, systemic shift away from capitalism and development itself heralded by *ubuntu degrowth.*[159]

Both degrowth and ubuntu reject the commodification of nature; the logic of extractive fossil capitalism necessitates the creation of a human/nature dichotomy in order to externalize, commodify and exploit nature for the purposes of growth and capital accumulation.[160] Further, ubuntu – a concept often adopted by African revolutionaries and postcolonial thinkers as a framework to approach decolonization and emancipation from western hegemony – has been partially credited as the ideological catalyst (at least on the African continent) for the global post-extractivist call to leave fossil fuels in the ground.[161] This intersection between ubuntu and post-extractivism becomes particularly significant when considering the DMRE's insistence on extracting and developing South Africa's offshore oil and gas reserves, in spite of South Africa's international climate change commitments and resistance from environmental justice groups.

An *ubuntu degrowth* approach would effectively serve to neutralize the corporate capture of sustainable development under South African environmental management; it would re-centre sustainability, justice, and solidarity, and it would re-evaluate the weighting afforded to the opposing ideals of the environment and single-minded, growth-focused development

[153] Overson Shumba 'Commons Thinking, Ecological Intelligence and the Ethical and Moral Framework of *Ubuntu*: An Imperative for Sustainable Development' (2011) 3 *Journal of Media and Communication* 3, at 94.
[154] Lesley Le Grange 'Ubuntu/Botho as Ecophilosophy and Ecosophy' (2015) 49 *Journal of Human Ecology* 3, at 307.
[155] Dorine E Van Norren op cit note 59 at 2806.
[156] Viviana Asara et al op cit note 1 at 376.
[157] Mogobe B Ramose (2015) op cit note 149.
[158] Aïda C Terblanché-Greeff op cit note 28 at 95 and 104.
[159] Ibid at 107.
[160] Jason W Moore 'The Capitalocene Part I: On the Nature and Origins of Our Ecological Crisis' (2017) 44 *Journal of Peasant Studies* 3, at 600.
[161] Christelle Terreblanche op cit note 34 at 176.

under South Africa's neoliberal political economy. Such an approach is arguably in line with what Madavo refers to as 'trans-anthropocentric':[162] African environmental thought conceptualizes the environment as more than an inert commodity to be exploited for capital gain, and so an environmental ethic based on *ubuntu degrowth* would necessarily extend the scope of environmental management beyond growth-focused corporate interests. Ubuntu concerns itself with the protection/rights of the yet-to-be-born,[163] meaning it is consistent with one of the fundamental principles of South African environmental law: the principle of intergenerational justice. In *Thabametsi*, the court confirmed the inextricable link between sustainable development and intergenerational justice, holding that short-term needs (i.e., socioeconomic development, job creation, and poverty alleviation) must be weighed against long-term consequences (i.e., the impact of climate change on life-sustaining ecological integrity).[164]

When it comes to ubuntu's legal relevance, Van Norren identifies a type of ubuntu jurisprudence[165] employed by the South African courts; although it is not an expressly recognized legal principle, the Constitutional Court has conceded that the law of South Africa is indeed permeated[166] by, and is thus inextricable from, ubuntu and its accompanying communitarian/humanitarian values. Himonga, Taylor and Pope observe that while ubuntu is not synonymous with South African customary law, ubuntu is, however, an inherent element of customary law.[167] If ubuntu is inherent to customary law, and if – in the spirit of transformative constitutionalism – customary law is afforded official legal recognition under section 211(3) of the Constitution,[168] it follows that ubuntu must also necessarily enjoy legal relevance under South African law. Further, if ubuntu enjoys legal relevance/recognition, it can be argued that degrowth (recognized as a 'Northern supplement'[169] that is 'equivalent'[170] to ubuntu) can also stand to be applied as a guiding theoretical principle in South African environmental law, at least insofar as it is accepted as a counterhegemonic call for environmental sustainability, justice, and transformation.

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[162] Garikai Madavo 'African Environmental Ethics: Lessons from the Rain-Maker's Moral and Cosmological Perspectives' in Munamato Chemhuru (ed) *African Environmental Ethics: A Critical Reader* (2019) Springer, at 142.
[163] Mogobe B Ramose (2015) op cit note 149.
[164] *Thabametsi* supra note 91 para 82.
[165] Dorine E Van Norren op cit note 59 at 2794.
[166] *S v Makwanyane* 1995 3 SA 391 (CC) para 237.
[167] C Himonga, M Taylor and A Pope 'Reflections on Judicial Views of Ubuntu' (2013) 16 *PER/PELJ* 5, at 373.
[168] 'The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.'
[169] Corinna Dengler and Lisa M Seebacher op cit note 29.
[170] Viviana Asara et al op cit note 1.

IV. CONCLUSION

This paper has investigated the research questions and answered them accordingly: the single-minded pursuit of growth under South Africa's Minerals-Energy Complex is resulting in developments which are not only environmentally unsustainable, but which are economically unfeasible as well. This is most apparent in South Africa's fossil fuel fundamentalism and the DMRE's dogged push for the extraction and development of offshore oil and gas reserves, despite deepening climate crisis and international obligations regarding decarbonisation. Growth is skewing the balance between development and the environment as envisaged by sustainable development, to the extent where sustainable development has fallen prey to corporate capture. Environmental management does not exist within a vacuum and thus will reflect the interests/values/principles of the hegemonic neoliberal paradigm; this is evidenced by skewed environmental decision-making and EIA's lack of objectivity when balancing the opposing ideals of development and the environment.[171]

This paper has further shown that degrowth can inform sustainability in that it is first and foremost a critique of and an *alternative to* the western constructs of growth and development, constructs rooted in a history of colonialism and broadly accepted as the main causes of unsustainability.[172] Therefore, in the spirit of decolonization and emancipation, it is submitted that South Africa must unsubscribe from the dream of one day 'catching up' to the global North. In particular, degrowth can inform sustainability by affording South Africa the theoretical framework/conceptual space it needs in order to develop a unique, distinctly South African trajectory of environmental management, independent of hegemonic western influence. Consistent with Cassano's framework of Southern thought,[173] degrowth can inform sustainability in South African environmental law in that it advocates for a decolonial, Southern-specific approach to recognizing indigenous knowledge systems and alternative sustainable livelihoods, without confining South Africa within western standards of growth, development, or progress.

Lastly, this paper has demonstrated that ubuntu can provide a home-grown framework for the application of degrowth to South African environmental management. This paper has posited Terblanché-Greeff's concept of *ubuntu degrowth* as a point of departure: like degrowth,

[171] Alan Bond et al op cit note 74.
[172] Viviana Asara et al op cit note 1.
[173] Giorgos Kallis, Angelos Varvarousis and Panos Petridis op cit note 60.

ubuntu is recognized as a counterhegemonic alternative to capitalism, accepted – by authors such as Ramose, Dengler and Seebacher, and Asara et al – as effectively a 'Southern version' of degrowth. Degrowth (conceptually and ideologically equivalent to ubuntu) can enjoy applicability to South African environmental law by virtue of its proximity to ubuntu, which the courts have already conceded permeates South African law.

This paper recommends adopting the theory of degrowth in order to challenge the broader political context in which South African environmental management takes place, namely: neoliberal fossil capitalism. It is submitted that Patel's call for economic and institutional transformation in order to recentre sustainability in South African environmental management[174] can be answered by degrowth. South Africa should adopt degrowth in that it should do *differently*: it must aspire to disentangle from the western constructs of growth and development,[175] adopting a home-grown, distinctly South African framework (i.e., *ubuntu degrowth*) of environmental management in order to recentre environmental justice and sustainability.

[174] Zarina Patel op cit note 24.
[175] Serge Latouche op cit note 47.

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