

XOLOBENI'S STRUGGLE AGAINST PATRIRACIAL-COLONOCAPITALIST MINING IN SOUTH AFRICA: A COUNTERPOINT TO CLIMATE CATASTROPHE?

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Mining is central to the history of repression in South Africa. Mining made Sandton¹ to be Sandton and the Bantustans² of the Eastern Cape to be the desolate places that they still are. Mining in South Africa also made the elites in England rich by exploiting workers in South Africa. You cannot understand why the rural Eastern Cape is poor without understanding why Sandton and the City of London are rich.³

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¹ Sandton, an ultra-elite suburb of Johannesburg, is reportedly (according to a range of sources including Mansion Global) Africa's "richest square mile." India Stoughton, *Sandton, Africa's 'Richest Square Mile,' Offers a Wide Range of Luxury Homes and a Bustling Economy*, MANSION GLOBAL (Aug. 20, 2021), <https://www.mansionglobal.com/articles/sandton-africas-richest-square-mile-offers-a-wide-range-of-luxury-homes-and-a-bustling-economy-228681> [<https://perma.cc/6LRR-NMA5>].

² "Bantustans" refers to the apartheid legacy of "homelands" for different groups of Black people who, under colonialism and apartheid (see *infra* note 6 for an explanation of the relationship between colonialism and apartheid), were dispossessed of their land and forced into "ethnic" or language group rural enclaves. Jackie Dugard & Nompumelelo Seme, *Access to Justice in South Africa – Not Yet Uhuru but not Quite Sisulu: An Examination of the Decolonizing Journey from Colonial-Apartheid Rule*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK ON DECOLONIZING JUSTICE 346, 347 (Chris Cunneen et al. eds., 2023). In contemporary South Africa, although not officially called Bantustans anymore, these territories largely persist as areas of traditional (Indigenous) customary governance. Under apartheid, they served as labor-sending territories for mining and other commercial activities in "white" South Africa. Today, apart from the labor-sending function, these areas are the location of 90 percent of new mining applications. Aninka Claassens, *Mining – Giving the Power the People*, CUSTOM CONTESTED (Dec. 10, 2018), <https://www.customcontested.co.za/mining-giving-the-power-the-people/> [<https://perma.cc/84L5-TVUD>]. This sets the scene for increasing clashes between mining and Indigenous communities, such as the Xolobeni struggle focused on in this Article.

³ Ayanda Kota, *The Marikana Mine Worker's Massacre: A Massive Escalation in the War on the Poor*, INT'L MARXIST-HUMANIST J. (Aug. 18, 2012), <https://imhojournal.org/articles/marikana-workers-massacre-massive-escalation-war-poor-ayanda-kota/> [<https://perma.cc/5KJY-JEDP>].

The crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear.⁴

ABSTRACT

In this Article, I pursue the notion of South Africa as an avatar for the intensification of the global economic, social, and environmental (dis)order—which I refer to here as “patrircial-colonocapitalism” (to capture the linked systems of gender, racial, economic, and environmental oppression)—in the context of climate change. I do so by focusing on the Xolobeni Indigenous struggle (including successful litigation) against mining, which is the historical core of South Africa’s system of patrircial-colonocapitalism. Through this analysis, I examine the potential for such resistance to offer a transformative counterpoint to the contemporary climate emergency that involves both destruction of the current unsustainable system and creation of an alternative socially and regenerative order that has the potential to prevent climate extinction.

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INTRODUCTION

When asked in the mid-1980s what apartheid⁵ South Africa represented, Algerian-born French philosopher Jacques Derrida responded

⁴ ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 556 (Quentin Hoare & Geoffrey Nowell Smith eds. & trans., ElecBook 1999) (1971).

⁵ While apartheid can be viewed as a form of colonialism in its focus on domination and extraction (and also because of the historical continuation between colonial and apartheid rule), it had specific characteristics not necessarily shared with other colonial contexts. The form of domination was specifically authoritarian and neo-fascist (linked to the project of Afrikaner nationalism) and was premised on an explicit program of racial segregation (exclusion). Thus, as a sub-species of settler

that it was “a concentration of world history.”⁶ Within this understanding, it is certainly not surprising that the term “racial capitalism” emerged during the 1970s from debates in the South African Black Consciousness Movement at the height of apartheid.⁷ Nor, sadly, is it surprising that the racial capitalism term has aptly been exported to other contexts around the world in which racial (and gender and environmental) supremacy is “inseparable from the capitalist political economy,”⁸ such that it has arguably become the dominant world (dis)order.

In this Article, I pursue the notion of South Africa as an avatar for the intensification of the global economic, social, and environmental (dis)order—which I refer to here as “patriral-colonocapitalism” (to capture the linked systems of gender, racial, economic, and environmental oppression)⁹—in the climate change context. Focusing on a recent Indigenous¹⁰ struggle against mining—which is the historical core of

colonialism, apartheid is sometimes referred to as colonialism of a special type. In this Article, I use the term apartheid to reflect the practice of white supremacy exercised under British colonialism and Afrikaner apartheid (referred to elsewhere as colonial-apartheid), which continues into the post-apartheid era.

⁶ Jacques Derrida & Peggy Kamuf, *Racism's Last Word*, 12 CRITICAL INQUIRY 290, 297 (1985).

⁷ Alyosha Goldstein, “*In the Constant Flux of its Incessant Renewal*”: *The Social Reproduction of Racial Capitalism and Settler Colonial Entitlement*, in COLONIAL RACIAL CAPITALISM 60, 61 (Susan Koshy et al. eds., 2022).

⁸ *Id.*

⁹ As pointed out by Jacklyn Cock, “[o]ppression is multiple and intersecting, but its causes are not.” Jacklyn Cock, *The Climate Crisis and a ‘Just Transition’ in South Africa: An Eco-Feminist-Socialist Perspective*, in THE CLIMATE CRISIS: SOUTH AFRICAN AND GLOBAL DEMOCRATIC ECO-SOCIALIST ALTERNATIVES 210, 214 (Vishwas Satgar ed. 2018). Similarly, Carmen Gonzalez highlights the “interlocking systems of oppression” of racial capitalism, as well as “slow violence” inflicted by the fossil fuel industry on racialized and poor communities. Carmen G. Gonzalez, *Racial Capitalism and the Anthropocene*, in THE CAMBRIDGE HANDBOOK OF ENVIRONMENTAL JUSTICE AND SUSTAINABLE DEVELOPMENT 72, 74–78 (Sumudu Atapattu et al eds., 2021).

¹⁰ Although there is considerable historical and anthropological diversity across South Africa, in general terms indigeneity has a slightly different connotation than elsewhere in the world, because all *homo sapiens* first evolved in Africa, with some coming from South Africa. Katie Pavid, *Rethinking our Human Origins in Africa*, NAT. HIST. MUSEUM (July 11, 2018), <https://www.nhm.ac.uk/discover/news/2018/july/the-way-we-think-about-the-first-modern-humans-in-africa.html> [<https://perma.cc/MTQ6-H759>]. Relatedly, many hold that indigeneity is an irrelevant post-colonial construct, and that all Black South Africans are Indigenous. Adam Kuper, *The Return of the Native*, 44 CURRENT ANTHROPOLOGY 389, 389 (2003). However, some scholars argue that the term Indigenous refers specifically to the Khoisan, as the indigenous first peoples in South Africa. Daniel Huizenga, *Governing Territory in Conditions of Legal Pluralism: Living Law and Free, Prior, and Informed Consent (FPIC) in Xolobeni, South Africa*, 6 EXTRACTIVE INDUS. & SOC’Y 711, 717 (2019). In contemporary South African usage, there is frequent crossover between the terms Black and Indigenous. In this Article, I consciously use the terms interchangeably. However, when I focus on rural Black communities who live under traditional governance or customary ways of life (mostly in former Bantustans areas), I specifically

South Africa's system of patrilacial-colonocapitalism—I examine the potential for such resistance to offer a transformative counterpoint to the contemporary climate emergency that, Kali-like,¹¹ involves both destruction of the current unsustainable system and creation of an alternative socially and environmentally regenerative order that has the potential to prevent climate extinction.

While mining no longer contributing as much to the gross domestic product as it did during apartheid,¹² “the mining industry has been at the heart of the economy's development.”¹³ Capturing the mining industry's pivotal role within what they term the minerals energy complex, heterodox economists Ben Fine and Zavareh Rustomjee highlight that South Africa's economic path has been shaped by the set of heavy industries revolving around mineral extraction and processing, resulting in a distinct system of accumulation based on extreme exploitation of labor and nature.¹⁴ As such, mining epitomizes South Africa's extractivist economic growth model. Extractivism is defined by WoMin, a pan-

use the term Indigenous (even if these communities might not refer to themselves in this way), according to the International Labour Organization's definition of indigenous/tribal people. *Who are the Indigenous and Tribal Peoples?*, INT'L LAB. ORG., https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang-en/index.htm#:~:text=Descent%20from%20populations%2C%20who%20inhabited,irrespective%20of%20their%20legal%20status [https://perma.cc/H46R-S3XU].

¹¹ Kali is the “ultimate expression of nature,” both destructive and creative, and is known as Mother Nature. *Hindu Goddess Kali: History, Mythology & Symbol*, STUDY.COM, <https://study.com/academy/lesson/the-hindu-goddess-kali-story-symbols-facts.html#:~:text=The%20Indian%20goddess%20Kali%20embodies,death%2C%20is%20terriFYing%20and%20amazing> [https://perma.cc/CW2Z-G3X5].

¹² The mining industry currently accounts for approximately 7 percent of South Africa's gross domestic product whereas, at its height in 1980, the mining industry contributed 21 percent to the gross domestic product. *Mining: A Brief History*, DEP'T STAT. S. AFR., <https://www.statssa.gov.za/?p=9720> [https://perma.cc/TBS2-NKR9]; Press Release, Minerals Council South Africa, The Minerals Council Publishes Facts & Figures Pocketbook 2022 (Feb. 6, 2023), <https://www.mineralscouncil.org.za/special-features/1345-facts-figures-pocketbook-2022> [https://perma.cc/DBQ8-48Z5].

¹³ DANIEL ATIN, HANS SEIDEL FOUND., THE SOUTH AFRICA MINING SECTOR: AN INDUSTRY AT A CROSSROADS 1 (2013), https://southafrica.hss.de/fileadmin/user_upload/Projects_HSS/South_Africa/170911_Migration/Mining_Report_Final_Dec_2013.pdf [https://perma.cc/S722-6CRT]; Gavin Capps, *Victim of Its Own Success? The Platinum Mining Industry and the Apartheid Mineral Property System in South Africa's Political Transition*, 39 REV. AFR. POL. ECON. 63, 65 (2012).

¹⁴ BEN FINE & ZAVAREH RUSTOMJEE, THE POLITICAL ECONOMY OF SOUTH AFRICA: FROM MINERALS-ENERGY COMPLEX TO INDUSTRIALISATION 241 (1996).

African eco-feminist¹⁵ alliance that works with mine-affected communities, as

an economic development model organised around the large-scale removable (or “extraction”) of non-renewable—and increasingly scarce—natural resources from locations which are often considered peripheral or “unproductive.” These natural resources, the basis of life and livelihood for indigenous and peasant populations across the global South are exported, usually in raw form, to the centres of industry and power in the global North, in the process reinforcing and deepening poverty and inequality within and across countries and regions in the world.¹⁶

Expanding on the inherent destructiveness of extractivism, WoMin explains:

The extractives sector lies at the very centre of [the] destructive economic system, securing massive profits for corporates and the global elite through the exploitation of productive and reproductive labour of peasants and working class people, and through the downward raiding of natural resources upon which the majority of the world’s people survive. . . . In the context of the growing ecological and climate crisis, and an ever-increasing world population, controls over scarce resources are becoming increasingly violent. Traditional, indigenous and customary communities are unable to exercise their rights to land, water and other natural resources in the face of elites raiding these resources. Women within these communities bear the brunt of these raids, given their positioning within the system of reproductive labour.¹⁷

Around the world, there is a growing realization that the dominant extractivist model driven by the imperative of infinite economic growth on a finite planet¹⁸ has resulted in unsustainable socioeconomic

¹⁵ I use the term eco-feminism broadly to describe a range of feminist environmental responses to the dominant global paradigm, some which are Indigenous-led (as focused on in this Article). Eco-feminism is sometimes aligned to eco-socialism, which refers to an environmental socialist dimension.

¹⁶ WOMIN AFR. ALL., WOMIN FIVE YEAR STRATEGY (2020–2024), at 3–4 (2024), <https://womin.africa/wp-content/uploads/2020/10/WoMin-2020-2024-5-Year-Strategy-for-web.pdf> [<https://perma.cc/X5ZT-7EVX>].

¹⁷ *Id.*

¹⁸ For a critique of the dominant growth-based model of economic development see for example Lorenzo Fioramonti, who points out that in a systemic “heterogenesis of ends” (meaning an inversion of the means-end relationship), “growth has ceased to be a means, it has become the goal.” LORENZO FIORAMONTI, WELLBEING ECONOMY: SUCCESS IN A WORLD WITHOUT GROWTH 28 (2017); see also Devan Pillay, *Happiness, Wellbeing and Ecosocialism - A Radical Humanist Perspective*, 17 GLOBALIZATIONS 380, 381 (2019) (citing Robert Kennedy’s 1968 criticism of

inequalities and climactic carbon dioxide emissions that have driven societies and ecological systems to the point of existential crisis.¹⁹

It is obvious that the dominating economy involves a great deal of violence against people and nature. The gap between rich and poor is increasing, natural resources are ruthlessly exploited. Loss of biodiversity and climate change are examples indicating that nature's rhythm and balance are dramatically disturbed. In addition to that, the economy itself is in a bad condition . . . What we need is a reconstruction of economy (and society) based on a combination of imagination and a far deeper understanding of reality.²⁰

Within the dominant growth-led model, extractivist activities such as mining have been responsible for much of the prevailing social and ecological harm across the world,²¹ including in South Africa. Having produced “savage inequalities, violent conflicts and ecological catastrophe,”²² mining has also entrenched the specific marginalization of Indigenous or Black mine-affected women. As underscored by WoMin, extractivism has “very particular impacts upon the bodies, labour, livelihoods and lives” of peasant, indigenous, and working-class women, especially in the Global South.²³ Similarly, leading South African ecofeminist-socialist scholar Jacklyn Cock notes that in mining-affected communities, women are often the “shock-absorbers,” having to work hard to perform social reproduction tasks such as obtaining clean water, growing food on degraded land, and caring for people whose health has been compromised by toxicity and pollution.²⁴

growth-based indices such as gross national product for measuring all economic activities, regardless of how harmful to humans or the environment, including air pollution, napalm sales, cigarette advertisements, the destruction of redwoods, and nuclear warheads).

¹⁹ In the words of Extinction Rebellion, under the banner “This is an emergency”: “Life on Earth is in crisis . . . We are on the brink of global catastrophe.” EXTINCTION REBELLION, <https://rebellion.global> [<https://perma.cc/GU2B-FGWN>].

²⁰ Fritjof Capra & Ove Daniel Jakobsen, *A Conceptual Framework for Ecological Economics Based on Systemic Principles of Life*, 44 INT’L J. SOC. ECON. 831, 831 (2017).

²¹ Gonzalez, *supra* note 9, at 77.

²² Jacklyn Cock, *Conflicting Environmental Imaginaries in Post-Apartheid South Africa*, in CAMBRIDGE HANDBOOK OF ENVIRONMENTAL SOCIOLOGY 285, 289 (Legun et al. eds., 2021).

²³ WOMIN AFR. ALL., *supra* note 16.

²⁴ Jacklyn Cock, *Resistance to Coal Inequalities and the Possibilities of a Just Transition in South Africa*, 36 DEV. S. AFR. 860, 860–61 (2019).

In this unprecedented dystopian reality, it is likely that “business as usual” is a “road to planetary disaster.”²⁵ If this prognosis is accurate, the approach to postapartheid mining transformation in South Africa, of deracializing the existing extractive economic growth model (outlined in Part I.A), is too limited to meet our interconnected socioenvironmental challenges. What is urgently needed instead is a “new political imaginary of transformation.”²⁶ With this need in mind, this Article examines the recent articulation among South African Indigenous communities of ambitious imaginaries of disruptive transformation. In particular, the Article highlights the (re)emergence of Ubuntu²⁷ ecofeminism as an alternative system to patriraal-colonocapitalism, and the implications of this alternative system for the climate transition more broadly.

The Article proceeds first, in Part I, with an outline of the patriraal-colonocapitalist mining paradigm, including postapartheid attempts to deracialize it. Thereafter, Part II examines the rise of Ubuntu ecofeminist activism against extractivism and explores alternative visions, focusing on the example of the Xolobeni community’s fight (including landmark litigation) against titanium mining on South Africa’s Eastern Cape Wild Coast. Finally, the conclusion tentatively links such struggles with the emergent degrowth agenda as a potential counterpower-counterpoint to climate change.

²⁵ Ian Angus, ‘*Anthropocene or Capitalocene?*’ *Misses the Point*, CLIMATE & CAPITALISM (Sept. 26, 2016), <https://climateandcapitalism.com/2016/09/26/anthropocene-or-capitalocene-misses-the-point/> [<https://perma.cc/3HK4-B4MX>].

²⁶ Jacklyn Cock, *Resistance to Coal and the Possibilities of a Just Transition in South Africa* 10 (Soc’y Work & Pol. Inst., Working Paper no. 13, 2019), https://www.swop.org.za/_files/ugd/de7bea_0630f5b62d6f44e8b0ebaf8f6cd06b2f.pdf [<https://perma.cc/E74B-5XZW>].

²⁷ Ubuntu is a Bantu term for humanity, describing the collective, communal way of African living (in contra-distinction to Western neoliberal notions of individualism). *Ubuntu – I am Because You Are*, AFN CONF., <https://www.afnconference.org.au/ubuntu-i-am-because-you-are/> [<https://perma.cc/2YM3-EEY8>]. It is encapsulated by the Zulu phrase meaning “I am because we are” (umuntu ngumuntu ngabantu). *Id.* The contemporary assertion of Ubuntu is associated with decolonial critiques of racial capitalism. Andile Zulu, *Racial Capitalism Destroys Ubuntu*, MAIL & GUARDIAN (Aug. 8, 2021), <https://mg.co.za/thought-leader/opinion/2021-08-28-racial-capitalism-destroys-ubuntu/> [<https://perma.cc/ERB3-6EWD>]. Therefore, in some respects, Ubuntu eco-feminism is a revival rather than a completely novel emergence of Indigenous discourse. However, as with all discourse, it is as shaped by the past as by the present, and it has been significantly (re)framed in the context of rising awareness of the existential threats posed by mining (ten years ago, most mine-affected communities in South Africa reluctantly accepted mining on their land, hoping to obtain as preferable deal as they could, but this reluctant acceptance has gradually been replaced by resistance as the adverse consequences of mining have become more evident).

I. THE PATRIRACIAL-COLONOCAPITALIST MINING PARADIGM

From a socioeconomic perspective, mining in South Africa has always relied on the exploitation of cheap Black (typically male) mineworkers.²⁸ Under apartheid, this exploitation of Black mineworkers was underwritten by apartheid geography and legislation. This included a system of job reservation that protected the best-paying, skilled mine jobs for whites.²⁹ It also entailed the establishment of Black Bantustans land reservations (where the Black majority was conglomerated following the wholesale colonial dispossession of its land as consolidated in the 1913 Natives Land Act and the 1936 Natives Trust and Land Act), which served as migrant labor reserves for the mining industry.³⁰ This profound system of racial capitalism provided the basis for the social production and white elite accumulation that, according to the World Bank, has resulted in South Africa having the world's most extremely racialized economic inequality to this day.³¹ Exacerbating the exploitative nature of mining, during the late 1980s, mining evolved into a highly globalized activity, with South African mining companies integrating into the global financial system of shareholder capitalism in which short-term shareholder "value" and profits were (and still are) prioritized³² to the detriment of worker rights and environmental sustainability.³³

²⁸ MARTIN LEGASSICK & DAVID HEMSON, FOREIGN INVESTMENT AND THE REPRODUCTION OF RACIAL CAPITALISM IN SOUTH AFRICA 7 (1976).

²⁹ Job reservation for white mineworkers started under the colonial regime with the Mine and Mine Works Act of 1911. See *Mine and Works Act*, BRITANNICA, <https://www.britannica.com/topic/Mines-and-Works-Act> [<https://perma.cc/W4E3-GPSH>].

³⁰ Huizenga, *supra* note 10, at 713; *1913 Natives Land Act Centenary*, S. AFR. GOV'T, <https://www.gov.za/news/events/commemorative-events/1913-natives-land-act-centenary> [<https://perma.cc/X6KM-3RQ9>].

³¹ *World Bank: South Africa is the Most Unequal Country in the World*, AFR. NEWS (Oct. 3, 2022), <https://www.africanews.com/2022/03/10/world-bank-south-africa-is-the-most-unequal-country-in-the-world/> [<https://perma.cc/TAS2-LD6Y>].

³² See David M. Brennan, *Co-Opting the Shareholder Value Movement: A Class Analytic Model of Share Repurchases*, 40 REV. RADICAL POL. ECON. 89, 89–91 (2008).

³³ The features of the racialized social production under colonial-apartheid (land dispossession, as well as the exploitation of Black labor and nature for white and corporate gain) trace those of global racial capitalism. See Carmen Gonzalez & Athena Mutua, *Mapping Racial Capitalism: Implications for Law*, 2 J.L. & POL. ECON. 127, 127–29 (2022).

Dominated by men in the (white) corporate and (Black) coalface spheres,³⁴ South African mining—as a microcosm of a highly militarized and violent patriarchal society³⁵—has also reinforced traditional gender divisions. Characterized by male mineworkers leaving home to work on faraway mines, with women being left in the rural areas to raise children and look after their homes, there has been considerable gender-based violence against the few women mineworkers.³⁶ Indeed, today, women make up only 12 percent of the South African mining sector (of which only a small percentage work underground),³⁷ largely due to the legacy of violent patriarchy in mining.³⁸ Thus, the South African Commission for Gender Equality has described the mining industry as “still largely a man’s domain.”³⁹

Environmentally, due to the close relationship between mining capital and the apartheid government, as well as the attendant fragmented and lax regulatory conditions, very little was done during the apartheid

³⁴ Until the early-2000s, legislation, including the Minerals Act 50 of 1991, prevented women from working underground in South Africa. See Masesi M. Mahlasela et al., *Women’s Perceived Working Conditions in the Mining Industry*, 28 HEALTH SA GESONDHEID 1, 1 (2023).

³⁵ See JACKLYN COCK, COLONELS AND CADRES: WAR AND GENDER IN SOUTH AFRICA 38–40 (1994); Robert Morrell, *The Times of Change: Men and Masculinity in South Africa*, in CHANGING MEN IN SOUTH AFRICA 3, 14 (Andrea Natrass ed. 2001); Indiran Govender, *Gender-Based Violence – An Increasing Epidemic in South Africa*, 65 S. AFR. FAM. PRAC. 1, 1 (2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10091185/> [<https://perma.cc/AE2D-ST4W>].

³⁶ See Mahlasela et al., *supra* note 34, at 5.

³⁷ MINERALS COUNCIL OF S. AFR., WOMEN IN MINING IN SOUTH AFRICA 3 (2018), file:///C:/Users/phill/Downloads/minerals-council-women-in-mining-2022_factsheet-updated%20(2).pdf [<https://perma.cc/GTD6-6BC5>].

³⁸ See Theresa Smith, *Changing the Narrative Around Women in Mining*, ESI AFR. (Feb. 14, 2023), <https://www.esi-africa.com/international/changing-the-narrative-around-women-in-mining/> [<https://perma.cc/AH9A-TU3P>]; SHEILA B. KEETHARUTH, LAWS. FOR HUM. RTS., WHAT HAPPENS UNDERGROUND STAYS UNDERGROUND: A STUDY OF EXPERIENCES OF GENDER-BASED VIOLENCE AND SEXUAL HARASSMENT OF WOMEN WORKERS IN THE SOUTH AFRICAN MINING INDUSTRY 1 (2021), <https://www.lhr.org.za/lhr-resources/what-happens-underground-stays-underground-study-of-experiences-of-gender-based-violence-and-sexual-harassment-of-women-workers-in-the-south-african-mining-industry/> [<https://perma.cc/KG8A-EULV>]; LUCY ATIM ET AL., DEUTSCHE GESELLSCHAFT FÜR INTERNATIONALE ZUSAMMENARBEIT (GIZ), SEXUAL AND GENDER-BASED VIOLENCE IN THE MINING SECTOR IN AFRICA: EVIDENCE AND REFLECTIONS FROM THE DRC, SOUTH AFRICA, TANZANIA AND UGANDA 16–17 (2020), <https://internationalwim.org/wp-content/uploads/2021/03/SGBV-in-the-Mining-Sector-in-Africa.pdf> [<https://perma.cc/Q94C-JMZR>].

³⁹ SA Commission for Gender Equality Policy Brief 17 Focus on Gender in South Africa’s Mining Sector, at 1 (July 2017), <http://cge.org.za/wp-content/uploads/2021/01/focus-on-gender-in-south-africas-mining-sector.pdf> [<https://perma.cc/LXB9-TXA9>].

years to ameliorate mining's harmful effects on the environment.⁴⁰ Thus, beyond constituting an exploitative economic activity with significant socially harmful impacts on racialized and gendered mine communities, South Africa's intensely extractive and historically underregulated mining industry has also had (and continues to have) a devastating environmental impact with high levels of air and water pollution, degraded land resources, and greenhouse gas emissions. Reflecting other racial capitalist contexts, poor, Black communities often lived (and continue to live) in environmentally hazardous areas.⁴¹ Manifestly, under apartheid, South Africa's racial capitalist minerals energy complex ignored "the impacts of its activities on both society and nature"⁴²—a laissez-faire approach that Austro-Hungarian economic anthropologist Karl Polanyi regarded as one of the hallmarks of global colonial practice.⁴³

A. THE (FORMALLY) DERACIALIZED POSTAPARTHEID EXTRACTIVE MODEL

The question of how to transform the apartheid mining sector proved challenging for the incoming African National Congress (ANC) in 1994. The ANC's 1955 Freedom Charter had proclaimed that "mineral wealth" would be transferred to the people.⁴⁴ However, by 1994, nationalization had been "ruled out" largely over concerns that it would deter foreign investment, so the ANC's dilemma became how to create "redistributive policies for the mining sector which would address [the] legacy of concentrated, racialised ownership without resorting to

⁴⁰ Rebecca A. Adler et al., *Water, Mining, and Waste: An Historical and Economic Perspective on Conflict Management in South Africa*, 2 *ECON. PEACE & SEC. J.* 33, 33 (2007).

⁴¹ For example, in the late 1980s and early-1990s many poor Black communities in search of jobs settled in mine dump areas such as the abandoned gold mine dumps (or "tailings dams") around Johannesburg, which suffer from acid mine drainage and are contaminated by Uranium. Jackie Dugard et al., *A Rights-Based Examination of Residents' Engagement with Acute Environmental Harm Across Four Sites on South Africa's Witwatersrand Basin*, 79 *SOC. RSCH.* 931, 936 (2012).

⁴² Victor Munnik, *Coal Kills: An Analytical Framework to Support a Move Away from Coal and Towards a Just Transition in South Africa* 8 (Soc'y Work & Pol. Inst., Working Paper no. 12, 2019), <https://www.swop.org.za/post/2019/10/08/three-new-swop-working-papers-now-available> [<https://perma.cc/99TM-DFL9>].

⁴³ See generally KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* (1957).

⁴⁴ Freedom Charter of South Africa 1955, <https://projects.kora.matrix.msu.edu/files/210-808-4720/PNUNCAA87opt.pdf> [<https://perma.cc/AT4M-WB5A>].

nationalism.”⁴⁵ The ANC, therefore, sought to “weaken the most formidable barrier to entry in mining, the near-monopoly control of the resource base.”⁴⁶ Thus, rather than pursue more structurally disruptive means, the ANC opted to rely on Black Economic Empowerment policies to transform the racial profile of mine ownership. This involved fostering the rapid formation of a Black mining class through facilitating the entry of new Black-owned companies into the mineral rights terrain.⁴⁷ In line with the 1996 Constitution’s commitment to “bring about equitable access to all South Africa’s natural resources,”⁴⁸ this objective was crystallized through the enactment of the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA) and the Broad-Based Economic Empowerment Charter of 2004 (Mining Charter 1).⁴⁹ The MPRDA and the Mining Charter have been the basis for subsequent government efforts to redistribute mining industry wealth through the deracialization of mineral rights ownership.

In a seismic shift from the apartheid arrangement, section 2 of the MPRDA established a new framework that severed any inherent connection between land ownership and mineral rights and gave effect “to the principle of the State’s custodianship of the nation’s mineral and petroleum resources.” Among the MPRDA’s core objectives are to: “promote equitable access to the nation’s mineral and petroleum resources to all the people of South Africa” and “substantially and meaningfully expand opportunities for historically disadvantaged persons, including women and communities, to enter into and actively participate in the mineral and petroleum industries and to benefit from the exploitation of the nation’s mineral and petroleum resources.”

⁴⁵ Andrew Bowman, *Dilemmas of Distribution: Financialization, Boom and Busts in the Post-Apartheid Platinum Industry* 5, 10 (Soc’y Work & Pol. Inst., Working Paper no. 6, 2016), https://www.swop.org.za/files/ugd/4e496b_4fbb161f0278440a9bd91716ca27576b.pdf [<https://perma.cc/NG2X-GHAU>]; see also Gavin Capps, *A Bourgeois Reform with Social Justice? The Contradictions of the Minerals Development Bill and Black Economic Empowerment in the South African Platinum Mining Industry*, 39 REV. AFR. POL. ECON. 315, 325 (2012).

⁴⁶ Bowman, *supra* note 45, at 11.

⁴⁷ *Id.* at 8–10.

⁴⁸ S. AFR. CONST., § 25(4)(a), 1996.

⁴⁹ Minerals and Petroleum Resources Development Act 28 of 2002, https://www.gov.za/sites/default/files/gcis_document/201409/a28-02ocr.pdf [<https://perma.cc/85DW-T9CV>]; Broad-Based Economic Empowerment Charter of 2004 (Mining Charter 1), <https://www.westerncape.gov.za/Text/2004/5/theminingcharter.pdf> [<https://perma.cc/NZ69-6FLE>].

Political economist Gavin Capps has highlighted that “despite its apparent radicalism, [the MPRDA] is a variant of what Marx termed a ‘Ricardian’ reform,”⁵⁰ designed here to “accelerate capital accumulation by eliminating the barrier of private minerals ownership.”⁵¹ As to whether the MPRDA and Mining Charter (in its various iterations) have succeeded in deracializing the mining sector, a 2019 review by the Minerals Department found that the benefits were concentrated among “a handful of black beneficiaries.”⁵² These Black beneficiaries have invariably been well-connected elites, as well as traditional leaders “who have been propped up as the de facto representatives of rural communities.”⁵³ Regarding any broader empowerment objectives, a 2013 JP Morgan platinum sector analysis concluded that “a few entrepreneurs have made large fortunes, but it seems to us that the breadth of the ‘benefits’ from BEE has reached very few of those that it had been intended to uplift.”⁵⁴

On its own terms, it seems the postapartheid project to deracialize South African mining has failed to secure the broader economic empowerment of Black workers and Black communities. Simultaneously, the devastating impact of mining on human and natural ecosystems is ever more visible and contested against the backdrop of climate change. In South Africa, as elsewhere, the unsustainability of mining—perhaps the most extreme form of the predatory relationship between people of different status, and between elites and nature, of extractive patrircial-colonocapitalism—is increasingly evident in the environmental contamination of rivers, air, and land; the socioeconomic exploitation of (Black) mineworkers; and the existential destruction of Indigenous communities’ ways of life. In the wake of the great variety of morbid symptoms in this Gramscian interregnum,⁵⁵ local (Black) communities have begun to both resist racial capitalism and assert alternative Ubuntu

⁵⁰ Capps explains that David Ricardo was a British political economist born in 1772, who advocated freeing the market so that it could operate optimally under conditions of free competition. Capps, *supra* note 45, at 315.

⁵¹ *Id.*

⁵² REPUBLIC OF S. AFR. DEP’T OF MIN. RES., MINING CHARTER IMPACT ASSESSMENT REPORT 17 (2009), <https://evaluations.dpme.gov.za/evaluations/60%20at%2017> [<https://perma.cc/LPT9-XFL2>].

⁵³ Huizenga, *supra* note 10, at 713.

⁵⁴ Bowman, *supra* note 45, at 13.

⁵⁵ Italian Marxist theorist Antonio Gramsci highlighted that capitalism was undergoing a (long-term) crisis but, that in the interregnum between the old system dying and the new system struggling to be born, “a great variety of morbid symptoms appear.” GRAMSCI, *supra* note 4, at 556.

ecofeminist paradigms that more harmoniously engage with society and ecology, offering a potential counterpoint for the climate change conundrum.

II. UBUNTU ECOFEMINISM RISING

Early ecofeminists Maria Mies and Vandana Shiva highlight in their 1993 book, *Ecofeminism*, the contrast between (1) women's concept and lived practice of, "development"—meaning human development, emphasizing sustainability, dignity, and wellbeing of people and the planet—and (2) the dominant extractive development model.⁵⁶ This is because—around the world but particularly in the Global South—women are most directly involved with subsistence work, which entails safeguarding the natural resources needed to sustain the family and community, as well as the work of social reproduction. In the contemporary South African context, the Ubuntu ecofeminist alternative to patriraal-colonocapitalism is perhaps most lucidly articulated by the South African-based, pan-African organization, WoMin, as advancing an "African post-extractivist, ecologically just, women-centred alternative to the dominant destructive model of development," and a vision in which "all women have secure access to the resources they, their families and communities need for life and livelihood, and an Africa in which all women can exercise full control over their bodies and development choices."⁵⁷

Ubuntu ecofeminism accords with structuralist versions of feminism often articulated in the Global South that underscore the existential ecological, social, and spiritual harm of the dominant (dis)order and propose collective alternatives, including those based on the care society.⁵⁸ The care society critique highlights the social and environmental costs and unsustainability of the current paradigm, based as it is on an inherent exploitation of racialized women (as responsible for social reproduction) and nature to advance the competitive accumulation of resources by white men mostly in the Global North. In the care society alternative, to overcome the current paradigm, "which places no value on

⁵⁶ See MARIA MIES & VANDANA SHIVA, *ECOFEMINISM* 170–71 (1993).

⁵⁷ WOMIN AFR. ALL., *supra* note 16, at 1.

⁵⁸ See *Unpacking the Care Society: Caring for People and the Planet*, UN WOMEN, (Nov. 28, 2023) <https://www.unwomen.org/en/news-stories/explainer/2023/11/unpacking-the-care-society-caring-for-people-and-the-planet> [<https://perma.cc/J625-XQ8K>].

essential life-sustaining activities, reproduces gender, socioeconomic, ethnic and territorial inequalities and has a deleterious socioenvironmental impact,” it is necessary to reframe the goals and the modes of development to prioritize caring for people and the planet instead of accumulating capital.⁵⁹ As a predominantly decolonial project,⁶⁰ Ubuntu ecofeminism additionally focuses on collective and communal social and economic organization and empowerment, as opposed to the toxic individual advancement of Western neoliberal capitalism.

The assertion of Ubuntu ecofeminism, both to resist the continuation of patriraacial-colonocapitalist mining and to advance an alternative socioeconomic paradigm, has gained momentum over the past decade in South Africa, especially in traditional (Indigenous) governance regions. This resistance has overwhelmingly been driven by women activists.

In many mine-affected communities, black working-class women are forming new grassroots organisations, building social networks, formal or informal alliances and a collective identity through an emphasis on shared, everyday experiences. Many of these grassroots organisations draw on notions of climate justice, nature as a form of “commons,” food sovereignty and energy democracy. These are building blocks for an eco-feminist society.⁶¹

Cock identifies three strands of the emerging Ubuntu ecofeminism in South Africa. First, there is an ethic of reciprocity and sharing that emerges from Indigenous women’s daily tasks and social reproduction. Second, is “the hard work of procuring food, energy and water means an intimate connection with nature, which generates care and protection.” And third, this ethic “extends to many forms of caring,” such as taking responsibility for vulnerable members of the community.⁶² It is worth noting that many grassroots and Indigenous activists from mine-affected communities do not explicitly call themselves feminists (of any category).

⁵⁹ ECON. COMM’N FOR LATIN AM. AND THE CARIBBEAN, THE CARE SOCIETY: A HORIZON FOR SUSTAINABLE RECOVERY WITH GENDER EQUALITY 11–12 (2022), <https://repositorio.cepal.org/server/api/core/bitstreams/016d2a56-09fe-475e-bcfa-8f35bc41ced2/content> [<https://perma.cc/FX7J-F59T>].

⁶⁰ As previously discussed, the contemporary assertion of Ubuntu is associated with decolonial critiques of racial capitalism. See *supra* text accompanying note 27.

⁶¹ Jacklyn Cock, *What Do We Mean by Eco-Feminist-Socialism?*, AMANDLA! (Dec. 23, 2021), <https://www.amandla.org.za/what-do-we-mean-by-eco-feminist-socialism/> [<https://perma.cc/E6N6-R52Q>].

⁶² *Id.*

However, as stressed by Cock, the organic commitment to ecofeminism is demonstrated in the “the lives of many” rural women “through their support for other women and their challenging of social and environmental injustice, along with their rejection of both the normalization of women’s subordination,” and “the individualising elitism of liberal feminism.”⁶³ For Cock, this resonates with ecofeminist scholar Greta Gaard’s argument that, in contradistinction with the kinds of essentialist feminism that emerged in the Global North in the 1990s, ecofeminism has become a theory and movement largely articulated by activists’ activities themselves,⁶⁴ such that “while not claiming eco-feminism as an identity, these women are providing a unifying narrative in the form of an African eco-feminism.”⁶⁵

Two such women are community leaders from Xolobeni, a village in the Amadiba Pondoland territory of South Africa’s Eastern Cape Wild Coast,⁶⁶ whose members (as detailed in Part II.A) have been resisting attempts to pursue titanium mining on their land for over a decade. The leader of the Amadiba Crisis Committee (ACC), which the community established in 2007 to organize antimining resistance, is headed by Nonhle Mbuthuma, a woman who has recently become involved in broader national and international climate justice activism. This activism included winning a successful lawsuit in 2021 to stop Shell from commencing oil-drilling operations off the Eastern Cape shoreline.⁶⁷ Regarding traditional

⁶³ *Id.*

⁶⁴ Greta Gaard, *Ecofeminism Revisited: Rejecting Essentialism and Re-Placing Species in a Material Feminist Environmentalism*, 23 FEMINIST FORMATIONS 26, 26 (2011).

⁶⁵ Cock, *supra* note 61.

⁶⁶ Pondoland in the Eastern Cape province is one of South Africa’s least developed areas, the last surviving ‘wild’ stretch of what has long been known as the Wild Coast. Fred Pearce, *Murder in Pondoland: How a Proposed Mine Brought Conflict to South Africa*, GUARDIAN (Mar. 28, 2017), <https://www.theguardian.com/environment/2017/mar/27/murder-pondoland-how-proposed-mine-brought-conflict-south-africa-activist-sikhosiphi-rhadebe> [<https://perma.cc/TJ5N-CU8R>]. Its unusual red dunes, seasonal wetlands, woodlands, estuaries and offshore reefs are a biodiversity haven. *Id.* One of the territories in Pondoland is the Amadiba region, within which the Umgundundlovu traditional community lives. The Umgundundlovu community comprises five villages, including Xolobeni, the closest village to the sand dunes with the titanium deposits, and the center of anti-mining resistance (for the sake of convenience, I refer to Xolobeni’s struggles, but this activism has involved the wider Umgundundlovu communities).

⁶⁷ See Nonhle Mbuthuma, ‘People Power Stopped Shell in South Africa’ – Nonhle Mbuthuma, *Activist Protesting Shell at Sea*, GREENPEACE (Feb. 13, 2023), <https://www.greenpeace.org/international/story/58200/people-power-stopped-shell-in-south-africa-nonhle-mbuthuma-activist-protesting-shell-at-sea/> [<https://perma.cc/28L3-DP76>]; 28 December 2021 - Major Victory for Wild Coast Communities: Shell Interdicted from Conducting Seismic Operations with Immediate Effect, LEGAL RES. CTR. (Dec. 28, 2021), <https://lrc.org.za/28->

leadership, after rejecting the officially recognized chief of the Amadiba Traditional Council (Lunga Baleni) for his support of mining and alleged collusion with mining companies,⁶⁸ the Xolobeni community regards Duduzile Baleni (a woman) as its authentic leader and rightful headwoman of the Umgungundlovu Traditional Community (and representative on the Umgungundlovu Traditional Council). In the words of one community member, “the chiefs in Pondoland don’t come before the people.”⁶⁹

In South Africa, this organic Ubuntu ecofeminist activism has not been without casualties, and, like elsewhere in the world, Indigenous activists have been assassinated as they sought to resist the expansion of mining on Indigenous land. Violence against antioil activists, who are predominantly women, is escalating. For example, Cock draws attention to the assassination of Indigenous community leader, Fikile Ntshangase, of the Mfolozi Community Environmental Justice Organisation, which resisted the proposed expansion of an open-cast coal mine operated by Tendele Coal Mining (Pty) Ltd. near the Hluhluwe-iMfolozi Park. On October 22, 2022, Ntshangase, who had recently refused a ZAR 350,000⁷⁰ bribe from Tendele Coal,⁷¹ was gunned down in front of her eleven-year-old grandson.⁷² Nonetheless, as illustrated in the Xolobeni struggle

december-2021-major-victory-for-wild-coast-communities-shell-interdicted-from-conducting-seismic-operations-with-immediate-effect/ [https://perma.cc/AN6R-3LW4].

⁶⁸ Chief Lunga Baleni became a director of the Australian mining company’s South African subsidiary, Transworld Energy and Minerals Resources (SA) (Pty) Ltd. (TEM), and its local empowerment partner, Xolobeni Empowerment Company (Xolco). See Kwanele Sosibo, *Villagers Call for Chief’s Head Over Plan to Mine Their Land*, MAIL & GUARDIAN (May 7, 2015), <https://mg.co.za/article/2015-05-07-villagers-call-for-chiefs-head-over-plan-to-mine-their-land/> [https://perma.cc/P7M3-6BNZ]; Huizenga, *supra* note 10, at 715.

⁶⁹ Pearce, *supra* note 66. The choice of the community to support headwoman Duduzile Baleni over Chief Lunga Baleni is outlined at paragraph 1 of Duduzile Baleni’s Founding Affidavit (on record with the author) in the matter of *Baleni and Others v Minister of Mineral Resources and Others* 2019 (2) SA 453 (GP), discussed *infra* Part II.A. The assertion of their democratic choice of traditional leadership is regarded by the community as an articulation of living customary law, which can be viewed as a decolonial (Ubuntu) act of rejecting formally recognized authorities under the Traditional Leadership and Governance Framework Act 41 of 2003, due to its colonial continuity. See Huizenga, *supra* note 10.

⁷⁰ This amount converts to approximately \$20,000, but it has a much higher purchasing power value in South Africa.

⁷¹ Cock, *supra* note 61.

⁷² Patrick Greenfield, *South African Environmentalist Shot Dead in Her Home*, GUARDIAN (Oct. 23, 2020), <https://www.theguardian.com/world/2020/oct/23/south-african-environmental-activist-shot-dead-in-her-home> [https://perma.cc/6MNC-6VA3]; Khaya Koko, *Senseless Killings of Activists, Including Fikile Ntshangase, were Preventable – UN Report* (Mar. 18, 2021), MAIL & GUARDIAN, <https://mg.co.za/news/2021-03-18-senseless-killings-of-activists-including-fikile-ntshangase-were-preventable-un-report/> [https://perma.cc/Y33S-2L8C].

analyzed below, as the Gramscian old system is dying, there are glimmers that a new system is being conceived, if not yet born, in the assertion by the Xolobeni (and broader) community⁷³ of an alternative way of life to socially and environmentally destructive mining.

A. XOLOBENI'S STRUGGLE AGAINST TITANIUM MINING AND FOR AN ALTERNATIVE, ANTIEXTRACTIVE PARADIGM⁷⁴

On the evening of March 22, 2016, antimining community activist Sikhosiphi “Bazooka” Rhadebe called two leaders of the ACC to tell them there was a hit list against them, and that he was at the top.⁷⁵ A short while later, two men claiming to be police officers arrived at his home in Pondoland's⁷⁶ Xolobeni village, demanding to question Rhadebe.⁷⁷ When he resisted, the men shot him eight times—his son, who hid under the bed during the gunfire, found him lying dead.⁷⁸

Rhadebe was known as Bazooka, after his favorite football player. But, as described in an article written a year after his murder, his “real love was the magnificent coastal lands of South Africa's Eastern Cape, where he chaired a community organization campaigning to prevent an Australian mining company from strip-mining their sand dunes for titanium.”⁷⁹ Rhadebe was the chairman of the ACC, which represents five villages adjacent to the dunes. The residents of the villages believe their

⁷³ This is not to suggest that there is no ambivalence or dissent in the “community” (I use the word understanding that it is a convenient term that obscures inevitable socio-economic tensions, divisions, etc.). Some press reports suggest the community has been split into pro-mining and anti-mining camps. However, activists and commentators who have been following the contestation for a long time argue that such analysis is inaccurate.

⁷⁴ This section builds on a previous article about mineral rights contestation and adjudication in South Africa. See Jackie Dugard, *Evaluating Transformative Constitutionalism in South Africa: A View from the Mineral Rights Adjudication Looking Glass*, 39 *NORDIC J. HUM. RTS.* 373, 373 (2021).

⁷⁵ Greg Nicolson, *Goodbye Bazooka: Wild Coast Anti-Mining Activist Killed*, *DAILY MAVERICK* (Mar. 24, 2016), <https://www.dailymaverick.co.za/article/2016-03-24-goodbye-bazooka-wild-coast-anti-mining-activist-killed/> [<https://perma.cc/QN9D-TW3Z>].

⁷⁶ Apart from being one of the last remaining ‘wild’ areas of South Africa's coastline, Pondoland also has a long and proud history of attachment to the land and resistance against dispossession, including the Pondoland revolt of 1950-61, which was the first substantial uprising against apartheid. See *Pondoland Revolt – 1950-1961*, *S. AFR. HIST. ONLINE* (Jan. 31, 2014), <https://www.sahistory.org.za/article/pondoland-revolt-1950-1961> [<https://perma.cc/YS5A-DYUN>].

⁷⁷ Pearce, *supra* note 66.

⁷⁸ Nicolson, *supra* note 75.

⁷⁹ Pearce, *supra* note 66.

way of life will be destroyed by the mining. At the time of Rhadebe's murder, the ACC had, for over a decade, been resisting attempts by Australian mining company Mineral Resource Commodities (MRC)—along with its South African subsidiary, Transworld Energy and Mineral Resources (SA) (Pty) Ltd (TEM), and local partner, Xolobeni Empowerment Company (Xolco)—to access the titanium-rich Amadiba coastal dunes.⁸⁰ The ACC “understood the murder of its chairperson to be directly related to the ACC’s determination to obstruct the mining through tactics such as blocking the roads and refusing to cooperate in any environmental impact surveys or social impact plans.”⁸¹ An ACC press release at the time commemorated “our beloved Bazooka,” who “made the ultimate sacrifice defending our ancestral land of Amadiba on the Wild Coast.”⁸²

Following the publicity over Rhadebe's murder—which has not been solved, nor have several other murders⁸³—then minister of mineral resources, Mosebenzi Zwane, announced an eighteen-month moratorium on the mining application. Consequently, MRC formally withdrew from South Africa,⁸⁴ handing control of TEM to another local partner, Keysha Investments 178 (Keysha).⁸⁵ However, the ACC—subsequently headed by Chairwoman Nonhle Mbuthuma—knew the threat had not gone away.⁸⁶ In Mbuthuma's keynote address to the Alternative Mining Indaba in Cape Town in February 2017, she said: “We will sacrifice our bodies, our blood to save that land for our children.”⁸⁷

⁸⁰ Nicolson, *supra* note 75. During the early-2000s, MRC had identified the sand dunes that extend along the coast and several kilometers inland as “among the world’s 10 richest reserves of ilmenite, the ore that contains the metal titanium.” Pearce, *supra* note 66.

⁸¹ Dugard, *supra* note 74, at 384. On 12 April 2016, the South African Human Rights Commission issued a statement in which it condemned the murder of Rhadebe and also linked it to the community's ongoing opposition to mining on their land. See *SAHRC Appalled by the Murder of Human Rights Activist*, S. AFR. HUM. RTS. COMM'N (Apr. 12, 2016), <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/373-sahrc-appalled-by-the-murder-of-human-rights-activist> [<https://perma.cc/MZS7-CVGU>].

⁸² Nicolson, *supra* note 75.

⁸³ Pearce, *supra* note 66.

⁸⁴ Dugard, *supra* note 74, at 384.

⁸⁵ As of 2017, one of the active directors of Keysha was Chief Baleni (who was also on the boards of TEM and Xolco) and the then Chief Executive Officer of the MRC, Mark Caruso was still a director of TEM. See Pearce, *supra* note 66.

⁸⁶ Dugard, *supra* note 74, at 384.

⁸⁷ Mark Olalde, *The Pondoland Rebellion*, ROADS & KINGDOMS (Apr. 10, 2017), <https://roadsandkingdoms.com/2017/rebellion-in-pondoland/> [<https://perma.cc/89NC-6B5L>].

The community views its past, present, and future as intrinsically tied to the land. Instead of seeing “the land stripped bare through mining, the community wants to continue with a communally-oriented pastoral way of life and small-scale ecotourism.”⁸⁸ As explained by Mbuthuma while wearing a shirt emblazoned with the words “No mining in our land,” “Once we lose the land, we lose everything—We lose our identity.”⁸⁹ And in the words of another community member, Sibhoso Divele:

There is no benefit the mining would give us. I am a farmer. I have a cow. I plough the maize and potatoes. When there was no mine here, we were peaceful and the community was friendly. The mine is coming to separate you, even if you are brothers.⁹⁰

In 2018, the Xolobeni struggle was taken to court, with Headwoman Duduzile Baleni as the lead applicant. In *Baleni and Others v Minister of Mineral Resources and Others*, the ideological battleground between mining and antimining played out over the interpretation of two postapartheid laws that were both enacted to address racialized exclusion and dispossession and to “restore land and resources to Black people who were the victims of historical discrimination.”⁹¹ First is the MPRDA, which requires in various clauses that the community is consulted before the minister awards a mining right. Second is the Interim Protection of Informal Land Rights Act (IPILRA),⁹² which provides that Indigenous communities (such as that of the applicants) must consent to any deprivation of their informal land rights.⁹³

The applicants argued that the best way to interpret the two legal requirements’ purposes, as well as constitutional and international law, is to read the two acts together to mean that “the community must be consulted under the MPRDA, and must consent in terms of IPILRA.”⁹⁴

⁸⁸ Dugard, *supra* note 74, at 384–85.

⁸⁹ Olalde, *supra* note 87.

⁹⁰ *Id.*

⁹¹ 2019 (2) SA 453 (GP) at para. 40.

⁹² Interim Protection of Informal Land Rights Act 31 of 1996 § 2.

⁹³ The key provision of IPILRA is section 2(1), which requires the consent of the holder of an informal land right before s/he may be deprived of property (“no person may be deprived of any informal right to land without his or her consent.”). *Id.*

⁹⁴ *Baleni* (2) SA 453 (GP) at para. 6. Part of the applicants’ argument is that, whereas the MPRDA explicitly mentions (in section 4(2)) that “in so far as the common law is inconsistent with this Act, this Act prevails,” the MPRDA contains no similar provision regarding customary law, which “is a source of law with equal constitutional status to common law”; nor does the MPRDA (unlike

The respondents⁹⁵ argued that the MPRDA trumps IPILRA, meaning that communities such as Xolobeni have the right to be consulted but not to veto mining development.

Baleni played out in the North Gauteng High Court in 2018, providing critical insights into the resistance zone between two competing visions of development. On the one hand, the state (together with the mining company, its subsidiaries, and Chief Lunga Baleni) wanted to use its custodial powers to facilitate multinational titanium mining on the land. On the other hand, the Xolobeni community (together with headwoman Duduzile Baleni) sought to protect its way of life and assert an alternative, communal and social development–focused ecotourism model. The community’s resistance to mining and its counterhegemonic model for how to coexist on the land are evocatively expressed in Duduzile Baleni’s Founding Affidavit, which sets out their communal use of the land for farming and their hope to pursue ecotourism as follows:

The Applicants are the holders of rights in and to land including rights to use and occupy this land in accordance with our law and custom. The land that comprises the proposed mining area is an important resource and is central to the livelihoods and subsistence of the Applicants and of many community members, who utilise it for grazing for their livestock and for the cultivation of crops and who depend on it for their water supply and its natural resources which include building materials, firewood, edible or medicinal fruits and plants and fish and shellfish . . . The balance of the land, including grazing land, forestry, and unallocated parcels, is owned and used by the community in a layered structure of collective rights and responsibilities defined by our customary law . . . There are networks of mutual support and dependency . . . relating to the sharing and exchange of food and other natural resources . . . in the pooling or sharing of draught animals and human labour. Tourism has repeatedly been identified as an important potential driver of economic growth in the area as the area is one of great natural beauty and is of significant ecological interest and value . . . These reciprocal relationships play an important role in sustaining the . . . community during times of hardship and shortages and in ensuring social cohesion. The most important commercial activity outside of farming is eco-tourism, which employs more than 40 community members on a full or part time basis. The growth potential inherent in tourism has not been

other legislation), state that it generally prevails over other legislation in the event of a conflict. *Id.* at para. 76.

⁹⁵ The ministers, the departments, and relevant officials from both Mineral Resources, and Rural Development and Land Reform, as well as the TEM mining company.

realised. This is in no small part due to the repeated prospecting and mining right applications brought by TEM, which is a deterrent to investment in tourism and eco-tourism which are activities that are contingent upon the preservation of the area's natural beauty and ecological diversity.⁹⁶

Emphasizing the community's organic Ubuntu ecofeminist framing, Baleni elaborates:

Central to our way of life is the social and economic interconnectedness of our community. We are first and foremost a community and the quality and value of our lives, as individuals, is substantially determined by our place in and our involvement with community . . . Our social, our cultural and our economic lives are inextricably intertwined and inter-dependent.⁹⁷

And, regarding the existential threat to their way of life (and the planet) posed by mining, Baleni explains:

Our customary law governs our lives, as we live them collectively and individually, and it is the order around which we organise and legitimate our rights and obligations to each other with respect to valuable resources such as land . . . Our customary law places a special premium on social harmony and sound communal relations. Decisions which are likely to cause conflict are treated with the greatest degree of circumspection . . . A decision to approve mining operations without consensus having been achieved would trigger massive conflict between those community members who may benefit and those who would be severely prejudiced and harmed. It would tear the community apart.⁹⁸

Expanding on the ecosocial impact of mining, the affidavit details the likely adverse effects of the proposed mining operations, including: massive use of water resources by the mine and diminution of the water table; destruction or depletion of wells and springs; contamination of soil and grazing fields; displacement of households from their land and the subsequent impairment of access to the sea and estuaries; and annihilation of communal customs, livelihoods, and the "social and economic linkages that bind the community together and ensure its sustainability."⁹⁹

Handing down judgment on November 22, 2018, the North Gauteng High Court sided with the Xolobeni community, agreeing with

⁹⁶ Applicant's Founding Aff. at paras. 29–30, 57–60, *Baleni* (2) SA 453 (GP).

⁹⁷ *Id.* at paras. 113–14.

⁹⁸ *Id.* at paras. 69–105.

⁹⁹ *Id.* at paras. 148–54.

the applicants' interpretation of IPILRA (and the MPRDA). In a watershed ruling, the judgment emphasizes IPILRA's protection of communal land rights. It establishes, in line with the international law frameworks for free, prior, and informed consent,¹⁰⁰ that the applicants have "the right to decide what happens on their land," that they "may not be deprived of their land without their consent," and that they must be "allowed to take a communal decision in terms of their custom and community on whether they consent or not to a proposal to dispose of their rights to their land".¹⁰¹

The *Baleni* decision has far-reaching consequences for South Africa's mining paradigm. In the words of community social worker John Clarke at the time of the high court decision, "it's going to change the whole landscape of mineral regulation in this country,"¹⁰² affording significant autonomy to customary communities regarding the parameters of mining projects, including the right to veto any mining on customarily held land.¹⁰³ Taking this further in the context in which 90 percent of new mining applications relate to former Bantustans' land that falls under customary law, Allan Reid (head of the mining and minerals division at one of the largest South African law firms, Cliffe Dekker Hofmeyer) expressed the view that the judgment would "cripple the mining industry."¹⁰⁴ In a similar vein, then mineral resources minister, Gwede

¹⁰⁰ This principle is expressed inter alia in Comm. on the Elimination of Racial Discrimination, Gen. Recommendation No. 23 on the Rights of Indigenous Peoples, U.N. Doc A/52/18 (Aug. 8, 1997), issued in terms of the International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965 660, U.N.T.S. 195, and also Comm. on Econ., Soc. and Cultural Rts., General Comment No. 21: Right of Everyone to Take Part in Cultural Life (art 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), U.N. Doc. E/C.12/GC/21, (Nov. 20, 2009). It is also a key principle of the Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 1650 U.N.T.S. 383, which South Africa has not ratified.

¹⁰¹ *Baleni* (2) SA 453 (GP) at para. 83.

¹⁰² Lisa Steyn, *Historic Xolobeni Ruling Will Change the Face of Mineral Regulation*, BUSINESSDAY (Nov. 22, 2018), <https://www.businesslive.co.za/bd/national/2018-11-22-historic-xolobeni-ruling-will-change-the-face-of-mineral-regulation/> [<https://perma.cc/3AN2-KDE8>].

¹⁰³ In such instances, the only way for mining to continue would be for the state to use its power to expropriate the land in terms of sections 25(2)–(3) of the South African Constitution, assuming such expropriation was held to be "for a public purpose or in the public interest" as required by section 25(2)(a).

¹⁰⁴ Lisa Steyn, *Xolobeni Ruling Could Hurt Investment, Say Experts*, BUSINESSDAY (Nov. 25, 2018), <https://www.businesslive.co.za/bd/national/2018-11-25-xolobeni-ruling-could-hurt-investment-say-experts/> [<https://perma.cc/3PY3-5KQJ>].

Mantashe, predicted that if the *Baleni* judgment is confirmed,¹⁰⁵ “within ten years . . . there will be no mining.”¹⁰⁶

Xolobeni’s battle has undoubtedly exposed a cogent fault line of transformation that is at odds with the dominant approach of merely deracializing the existing racial capitalism mining model. That the struggle poses an existential challenge to the state’s mining agenda is clear from the language of Amadiba Crisis Committee’s call for a mass meeting on Human Rights Day in March 2019:

We demand the Right to Say No to mining and Yes to development that doesn’t destroy the land and our livelihood. We say Yes to protection of Mother Earth. Yes to food security. Yes to development of agriculture, fishing and tourism. **IF WE HAVE LAND WE ARE NOT POOR! UMHLABA NGOWETHU! IMALI IYAPHELA, UMHLABA AWUPHELI!** On Human Rights Day, we will celebrate the victory of the Xolobeni community in the Pretoria High Court in November that Minister Mantashe and DMR have appealed.¹⁰⁷ We, the affected . . . community on the Wild Coast, we won the right to say No to mining. You will never take our land rights from us. Communities are coming to celebrate with us. They will demand the same right that was confirmed in court: The Right to Say NO to “development” that destroys their communities. They will join us to condemn Mr Mantashe’s campaign against this communal right; his campaign for the benefit of mining corporations and whoever they bribe in the state and in traditional leaderships. We are building a movement for the Right to Say No. **No to capitalist for-profit only “development” and land grab!**¹⁰⁸

III. CONCLUSION

The global challenge revealed in the *Baleni* case is that transformation (however incomplete) along the race axis in mining (and within the racial capitalist paradigm more broadly) has not resolved deeper contradictions in the socioeconomic and environmental landscape. This

¹⁰⁵ The government signaled its intention to appeal the *Baleni* judgment but has not pursued this, perhaps at least partially because it is extremely unlikely that another court would come to a different opinion regarding the legal interpretation of IPILRA.

¹⁰⁶ S’thembile Cele, *Mantashe: Xolobeni Ruling Means We Could Have No Mining in SA*, CITY PRESS (Nov. 22, 2018), <https://www.news24.com/citypress/Business/mantashe-xolobeni-ruling-means-we-could-have-no-mining-in-sa-20181122> [<https://perma.cc/V3V7-BSWL>].

¹⁰⁷ This is a reference to then Minister of the Department of Minerals, Gwede Mantashe.

¹⁰⁸ *Mass Meeting on Human Rights Day in Sigidi Village, Mbizana* (Mar. 20, 2019), <https://aidc.org.za/mass-meeting-human-rights-day-sigidi-village-mbizana/> [<https://perma.cc/R32E-RKBZ>].

points to the need for a more expansive version of transformation that goes beyond race to consider other structures of intersectional domination that not only obliterate sustainable ways of life but hasten climate catastrophe and threaten all survival.

Emblematic of the struggles of Indigenous communities elsewhere in the world and with our planet “howling at us to transform,”¹⁰⁹ Xolobeni takes on an even greater significance. This is because, Kali-like, the Xolobeni struggle represents what Cock refers to as transformative resistance, entailing both negation and creation.¹¹⁰ Thus, beyond the victories of Indigenous struggles such as those mounted by the Amadiba Crisis Committee to stop mining on their land, the (re)emergence of Ubuntu ecofeminism has the potential to profoundly challenge the dominant extractivist development paradigm by offering an alternative vision of the world that rejects accumulation by the few at the expense of people and nature.

Articulating their transformative resistance, Xolobeni community members “actively contest the prevailing perception that they are poor and that their land is under-used.”¹¹¹ As set out in the *Baleni* legal papers, community members participate in subsistence farming and farming for market sale, both of which are critical for the Eastern Cape province, which suffers from significant food insecurity. Also set out in the *Baleni* papers is the community’s desire to develop ecotourism, largely based on preserving the pastoral nature of the land. As such, South African climate and food systems scholar Andrew Bennie argues that the community has

deployed agriculture as a tactic of resistance, giving literal expression to the notion that “resistance is fertile.” Tactics like these represent a particular form of stern defiance against the plans of a fledgling [Black] business class and state elite that, to them, has long severed itself from their humble desires: to keep their land, to decide what to do with it, to welcome others to appreciate it with them, and to be

¹⁰⁹ Kevin Bloom, *The Fate of Xolobeni Would Be the Fate of Us All* 39 (Tricontinental: Inst. for Soc. Rsch., Working Document No. 2, 2019), https://thetricontinental.org/wp-content/uploads/2019/10/190928_Working-Documents-2_EN_Web-1.pdf [<https://perma.cc/6TWY-F7EE>].

¹¹⁰ Cock, *supra* note 24, at 861.

¹¹¹ Andrew Bennie, *Questions for Labour on Land, Livelihoods and Jobs: A Case Study of the Proposed Mining at Xolobeni, Wild Coast*, 42 S. AFR. REV. SOCIO. 41, 42 (2011). This echoes colonial sentiments and practice around the idea that land in African countries including South Africa was under-utilized and “vacant” (“*terra nullius*”), and therefore available for colonial (and racial capitalistic) exploitation. Carmen G. Gonzalez, *Environmental Justice, Human Rights, and the Global South*, 13 SANTA CLARA J. INT’L L. 151, 164–65 (2015).

assisted in a forward-looking approach that seeks to build on it rather than destroy it.¹¹²

South African journalist Kevin Bloom points out that, like the Sioux in the United States have battled against the Dakota Access Pipeline, the Xolobeni community's story is an ever-more globalized account of "how a small group of rural agitators, branded 'anti-development' because of their commitment to the old ways," are using nonviolent tactics to fight for water sovereignty, food sovereignty, and environmental sovereignty.¹¹³ Bloom also highlights that, around the world, there is mounting acceptance that Indigenous and feminist rejection of extractivism in favor of more sustainable socioeconomic activities and ways of being might offer "one of the most effective bulwarks against humanity's growing list of existential threats."¹¹⁴

Thus, Indigenous and other Black women in South Africa face a double injustice—they have benefited the least from patriraacial-colonocapitalism, and they are the worst affected by climate change. But against this reality, there is growing solidarity and consensus around the need to pursue more socially, economically, and environmentally just human development alternatives. Referring to gendered campaigns, such as Xolobeni's, which "bring together, on a global scale, many more

¹¹² Andrew Bennie, 'Resistance is Fertile' – Amadiba Agriculture Challenges Elite Mining Agenda, DAILY MAVERICK (July 20, 2017), <https://www.dailymaverick.co.za/article/2017-07-20-op-ed-resistance-is-Ofertile-amadiba-agriculture-challenges-elite-mining-agenda/> [<https://perma.cc/BW3A-S3U4>].

¹¹³ Bloom, *supra* note 109, at 7.

¹¹⁴ Bloom, *supra* note 109, at 8. Among the authorities cited by Bloom to substantiate the acceptance point, is the United Nations (UN)'s Food and Agricultural Organization's Commission on Genetic Resources for Food and Agriculture, which has several reports on the urgent need to protect and advance biodiversity through regenerative farming and socio-economic practices. *Commission on Genetic Resources for Food and Agriculture*, FOOD & AGRIC. ORG. U.N., <https://www.fao.org/cgrfa/en> [<https://perma.cc/6QL3-MD4P>]. Similarly, the UN's Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services has focused on Indigenous rights and practices to recoup biodiversity, sustain life, and counteract climate change. *See generally Global Assessment Report on Biodiversity and Ecosystem Services*, IPBES, <https://www.ipbes.net/global-assessment> [<https://perma.cc/RRF6-WYKD>]. The UN Intergovernmental Panel on Climate Change's 2019 special report on "Climate Change and Land" has amplified these connections. IPCC, CLIMATE CHANGE AND LAND (2019), <https://www.ipcc.ch/srcc1/> [<https://perma.cc/DZ46-W5NE>]. As has the Climate Land Ambition & Rights Alliance (CLARA), an international network of activists, farmers, scientists, and Indigenous leaders, which argues that securing the rights of Indigenous and local rural communities holds more promise than relying on potentially disastrous and likely ineffective measures such as carbon capture and trading. *See Climate Land Ambition & Rights Alliance*, CLARA, <https://www.clara.earth/> [<https://perma.cc/SG7V-SQST>]; Bloom, *supra* note 109, at 15.

ordinary citizens who do not like seeing such extreme environmental injustice along the lines of species, race, gender and class,” WoMin argues that such struggles serve to “reclaim an ecofeminist perspective that establishes women as forceful social, economic and political actors in resistance against the ecologically destructive impacts of extractivism and climate change, at a broader political-economic scale.”¹¹⁵

Rejecting environmentally and socially damaging extractivist development in favor of locally sustainable and regenerative activities, Xolobeni’s transformative resistance reflects the imperatives of the nascent degrowth agenda,¹¹⁶ which is increasingly understood to offer the only viable panacea to climate extinction. As summed up by Bloom, “in this un-brave new world, the fate of Xolobeni would be the fate of us all.”¹¹⁷

¹¹⁵ WoMin Afr. All., Women of Rural KwaZulu-Natal Versus Big Coal: An Eco-Feminist Materialist Analysis from the Frontiers of ‘Blockadia’ 11 (Aug. 25, 2015) (unpublished manuscript) (on file with author).

¹¹⁶ See, e.g., DE GRUYTER HANDBOOK OF DEGROWTH (Lauren Eastwood & Kai Heron eds., 2024); TOWARDS A POLITICAL ECONOMY OF DEGROWTH (Ekaterina Chertkovskaya et al. eds., 2019).

¹¹⁷ Bloom, *supra* note 109, at 39.