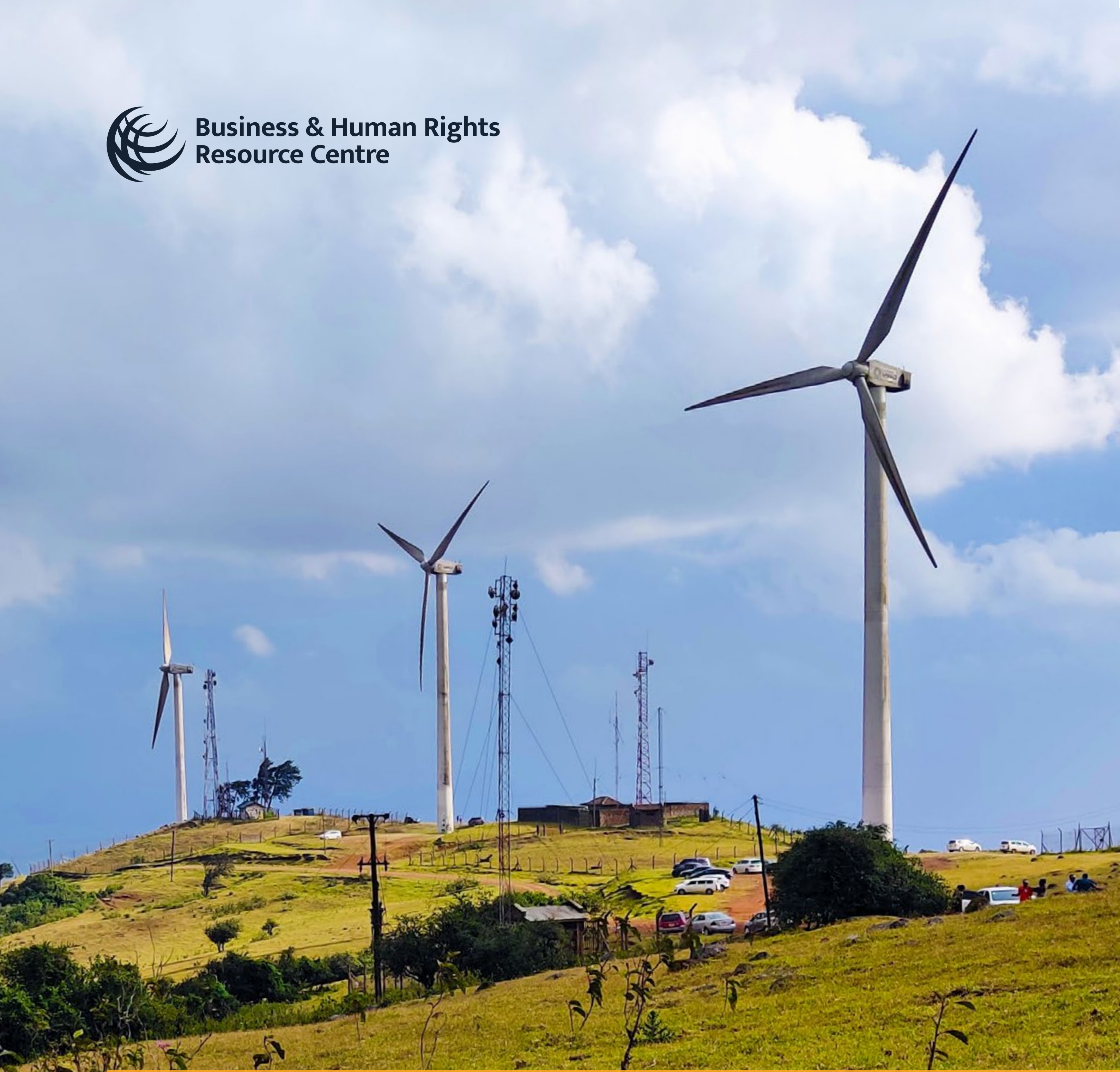

Business & Human Rights Resource Centre

Fast and fair renewable energy for Africa: Lessons from Kenya

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Contents

Executive summary

A welcome number of countries in Africa are embracing renewable energy. They see the potential for 'accelerated growth' in order to address persistent energy poverty and drive inclusive, just and sustainable energy transitions. To realise these goals, the renewable energy value chain in Africa is poised for significant investment: from extraction of minerals essential for the green energy transition including cobalt, zinc, copper and manganese, which are critical for renewable technology such as electric batteries, wind turbines and solar installations, to the renewable energy installations themselves. As a prime example, Kenya generates more than 70% of its power from renewable energy sources including solar, wind, geothermal and hydropower. This makes fertile ground for exploring investor risks and opportunities related to the human rights practices of companies driving the expansion of the African renewable energy sector on the ground.

Case studies analysed in this briefing provide rich lessons for Africa on how to achieve fast shifts to renewable energy while avoiding the delays and suspensions caused by irresponsible approaches, which create misery or dispossession for communities and workers. The cases concern renewable energy installations in Kenya that have been the subject of allegations of rights violations, loss of livelihoods, and violations of the rights of Indigenous peoples, including the right to Free, Prior and Informed Consent (FPIC) by surrounding and affected communities. We have tracked how the resulting (and understandable) protests have led to project delays and ballooning costs – which have real and immediate consequence for investors.

Key findings include:

- Land-related grievances form the highest percentage of complaints by local communities.
- A high number of cases reveal lack of information is a significant issue, resulting in protests by communities concerned about the impacts, and even lawsuits.
- Considerable delays in project implementation and financial loss occurred where protests and lawsuits arose from community dissatisfaction with the way the projects were being implemented.

A renewable energy sector which respects and even promotes human rights is possible – to the benefit of communities, companies, investors and the urgent energy transition which our planet needs. Despite the challenges faced by communities defending their lands, territories and resources against irresponsible business operations in the renewable energy sector, the case studies also show some companies have taken measures to improve their practices, fostering better relationships with local communities, including the creation of opportunities for shared benefit. The industry still has a long way to go to identify and mitigate human rights risks and consequent risks for investors. Nevertheless, the lessons drawn from these examples highlight essential approaches to build a fast and fair energy transition: the establishment and public communication of human rights standards; proactive and robust investor due diligence and engagement; respect for Indigenous communities' rights; and a focus on creating substantial co-benefit with communities and workers.

Current trends reveal a new approach is essential. Rapid expansion of investment in both renewable energy projects as well as extraction of transition minerals in Africa, including in Kenya, in the coming years is vital to the continental and global transition to clean energy. A sustainable transition requires fast-paced but also responsible investments that advance the human rights of those most directly affectedby the effects of the climate crisis. It is imperative for renewable energy investors and companies to uphold their human rights responsibilities so the energy transformation delivers shared prosperity for local communities, builds companies' social licence to operate, provides stable returns to investors, and offers the best chance for the development of a sustainable African green energy sector.

Background

Olkaria II geothermal power plant

Investment in the renewable energy sector is being driven by several key factors, both globally and in Africa specifically. To address persistent energy poverty, states have increasingly adopted policies to incentivise renewable energy installations as cheaper and more accessible options than reliance on fossil fuels. For example, Sustainable Energy for All, UNDP and Husk Power Systems have partnered with Nigeria to help electrify five million homes using mini-grid renewable energy projects. Namibia, together with businesses and governments which have made energy compact commitments as part of the transition, has targeted investment in solar and wind among other renewable energy projects. The African Development Bank Group has committed to aligning its policies with the Paris Climate Accord.[1] Global renewable energy capacity is rapidly building and is expected to increase by 8% in 2022. Given Africa's rich potential for renewable energy projects and vast resources in critical transition minerals, the continent is expected to witness an exponential growth in investment.[2]

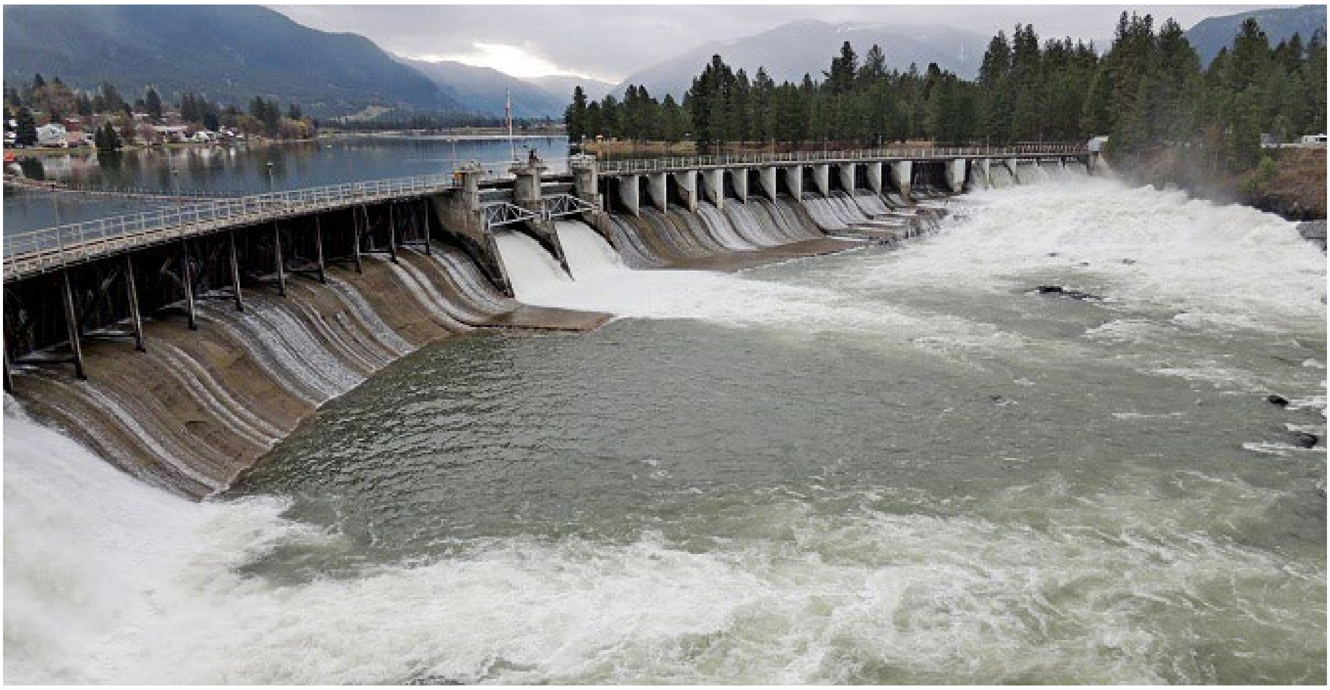
Kenya is an instructive example. The country has one of the most developed power sectors regionally, including in various forms of renewable energy development. It is the leading geothermal energy producer on the continent and the seventh largest geothermal energy producer globally. It is home to the largest solar project in East and Central Africa (the Garissa Solar Plant) and the largest wind project in Africa (Lake Turkana Wind Farm). Kenyan companies have also been contracted to develop renewable energy resources in other parts of Africa. There are cases where renewable energy installations have been undertaken by KenGen, a state-owned enterprise which has also won two geothermal contracts in Ethiopia, including the Tulu Moye Geothermal Project and the Aluto Project.[3]

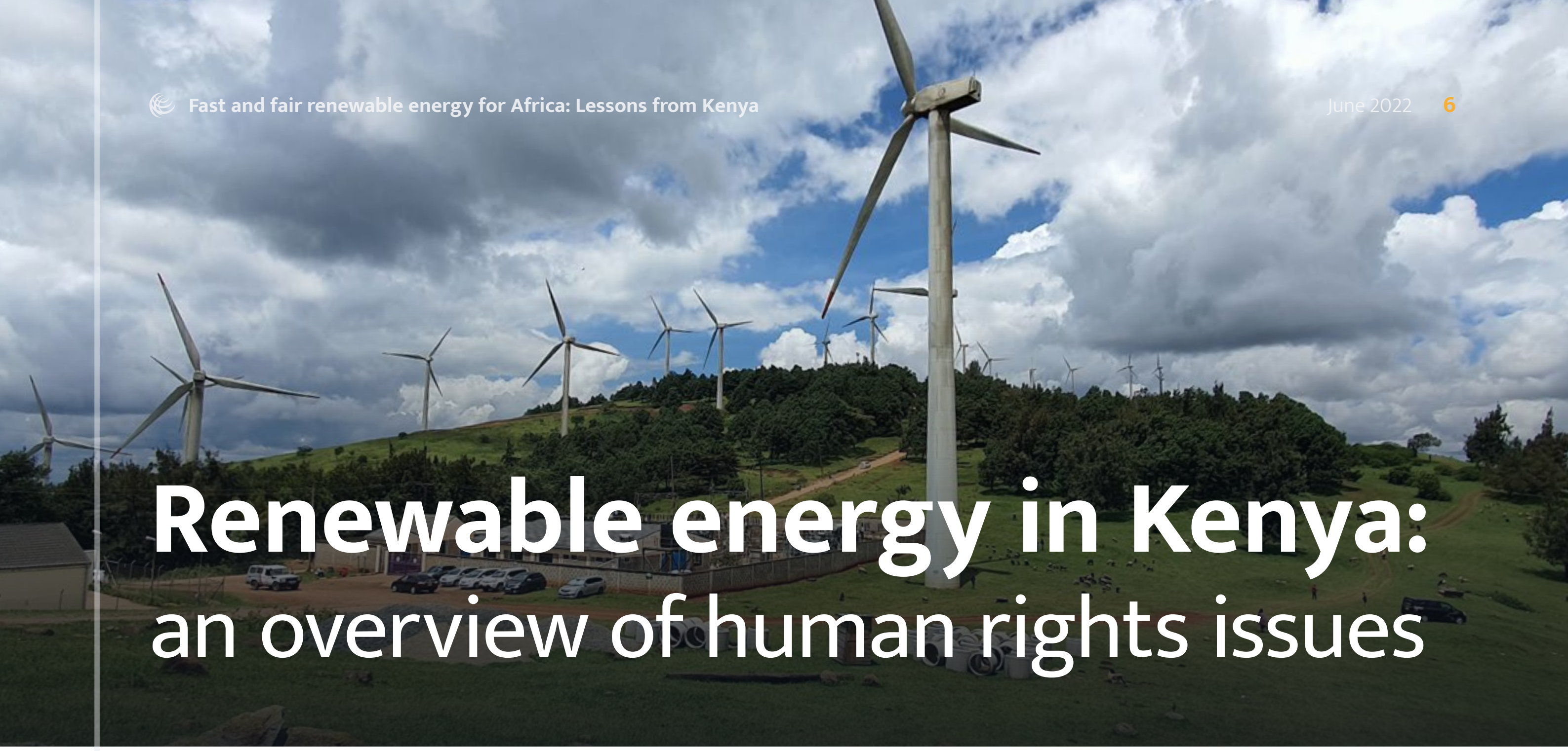
As investment in renewable energy in Africa has expanded, human rights risks for communities and the investors and companies associated with the projects have also grown over the last decade. The Business & Human Rights Resource Centre (the Resource Centre) has documented the human rights policies and practices of companies involved in this value chain, from extraction of the minerals used to power renewable energy installations and inputs to the green energy installations themselves. Worryingly, we have tracked numerous allegations involving violations of land, water and community rights, as well as failures to respect the rights of human rights defenders (HRDs) and Indigenous communities. Companies frequently lack human rights policies and their practices reflect these omissions. In respect of transition mineral mining, a large number of companies still fail to identify and address human rights risks.

The Resource Centre's Transition Mineral Tracker highlights common abuses such as child labour, health and safety breaches, worker-related deaths, denial of freedom of association, and protests/strikes/blockades and discrimination. Our findings on renewable energy developments themselves – such as wind farms and solar installations – are little better. As detailed in the Resource Centre's Renewable Energy Benchmark, green energy developments risk replicating the fossil fuel extractive model, well-known for its problematic human rights record.

The United Nations Guiding Principles on Business and Human Rights (UNGPs)[4] provide basic guidance on the human rights obligations of states and business, including state-owned and private enterprises, which are applicable to the renewable energy value chain. Among other things, state-owned enterprises must lead by example in ensuring their operations are consistent with the states' international human rights obligations.[5] Other enterprises have a minimum responsibility to respect human rights. This requires businesses to address potential human rights-related abuses and their existing human rights impacts through prevention, mitigation and remediation. The UNGPs also implore industry and multi-stakeholder initiatives to ensure effective grievance mechanisms are available at the individual member level and/or as collaborative initiatives.

Investors have similar responsibilities in line with the UNGPs. Furthermore, as fiduciaries of their clients' capital, long-term investors must increasingly factor in environmental, social and governance (ESG) indicators in their investment due diligence and analysis in order to meet the UNGPs standards. Unfortunately, it is increasingly clear the 'S' in this acronym – the social dimension of corporate impact, which includes labour standards, human rights and social dialogue – is being neglected in the assessment of investment opportunities along the renewable energy value chain, as this briefing demonstrates. Indeed, as communities begin to more consistently challenge corporate failures in respect of their human rights responsibilities, projects risk delays or even permanent suspension. Reputational and financial consequences for investors and companies in these circumstances can be significant. The transition to renewable energy itself is also at risk.





Renewable energy in Kenya: an overview of human rights issues

Over the years we have tracked human rights allegations raised by advocacy organisations, HRDs and communities themselves against companies responsible for the implementation of various renewable energy projects in Kenya, including geothermal, wind and hydropower projects. This briefing references these grievances, including those explicitly referred to the Resource Centre and where we have conducted specific outreach to the companies through our Company Response Mechanism, which encourages companies to address human rights concerns publicly. Other allegations covered in this briefing have been drawn from lawsuits.[6] All projects are privately owned, apart from Olkaria IV Geothermal, which is developed by state-owned KenGen.

As the following case studies demonstrate, Kenya is home to considerable renewable energy opportunity – as well as a range of related human rights violations that have had significant negative consequences for hosting communities and, ultimately, for the investors in those projects. Primary challenges concerned land and community rights, and the inability of impacted communities to access full information in order to participate effectively in consultation processes.

While these examples bring investor risks into sharp relief, the converse is also true: where these do not occur or where violations have been remedied, the investment case for renewable energy, with a view towards generating shared prosperity, remains compelling. Kenya provides fertile ground for examination of both.

Allegations of human rights abuse linked to renewable energy projects

	Lake Turkana Wind Power	Baharini Wind Power	Gitson Energy Ltd.	Kinangop Wind Power	KenGen (Olkaria IV)	Akiira Geothermal
Land rights	●	●	●	●	●	●
Human rights defenders	○	○	○	○	●	○
Access to information	○	○	○	●	●	●
Food, health and livelihoods	●	●	○	●	●	●
Indigenous Peoples' rights	●	○	○	○	●	●
Environment	○	○	○	●	○	○

Geothermal projects

Akiira I

In 2018, a report by Narasha Community Development Group identified the community lacked crucial information relating to the construction of the Akiira I Geothermal Power Project, developed by Akiira Geothermal. The missing information included where, when, and how the project would be conducted, the purported benefits of the project, as well as clear information regarding just compensation or resettlement for anticipated loss of land.[7] We invited Akiira to respond to these allegations. In its response, Akiira stated that stakeholder engagement and consultations had been conducted in accordance with the requirements by lenders and international organisations, and it had a functioning grievance mechanism that the Project Affected Persons (PAPs) were aware of.[8] In October 2019, the European Investment Bank withdrew its US$192 million loan and published a report admitting its failure to monitor social performance despite providing applicable standards to be met.[9]

Olkaria IV

The Olkaria IV Project has been developed by KenGen, a state-owned enterprise. It is said to be the world's single largest geothermal power plant. After it was established, concerns were raised that land was acquired irregularly, affecting 150 households.[10] HRDs advocating for the rights of the community affected by the project have been arrested for their advocacy work and some have allegedly been subjected to police brutality.[11] A complaint was filed to the financiers (World Bank and European Investment Bank) stating that 14 households had been left out of the resettlement process, as PAPs were asked to relocate before receiving title and before the construction of infrastructure was complete.

It was further alleged that the grievance mechanism in place was ineffective. The financiers conducted a joint investigation which found PAPs were adversely affected by the resettlement. Most importantly, PAPs included members of the Maasai community, an Indigenous population. However, the specific rights of those Indigenous people had not been taken into account in the context of resettlement.[12] While the conditions of resettlement were deemed sufficient for some PAPs, offering one-acre plots with bigger two-bedroom houses and access to social amenities such as schools and dispensaries, the resettlement still negatively impacted the Maasai livelihood and pastoralist lifestyle.[13]

Hydropower projects[14]

The Seven Folks Dams, run by KenGen, are the most important source of hydroelectric power in Kenya. In 2018, following heavy rains, the hydropower dams overflowed, resulting in flooding of low-lying areas that destroyed farms belonging to over 200 farmers and properties such as schools in Garissa and Tana River Counties. Hundreds of families were displaced.[15] Local politicians threatened to sue KenGen for damages amounting to about Kshs 5 billion.[16] KenGen denied any responsibility for the flooding.

Wind power projects

A number of wind parks and power projects have sprung up in Kenya in the recent past which have resulted in communities raising a range of human rights allegations:

- The Kinangop's 60.8 Megawatts project proposed by Kinangop Wind Park was cancelled in early 2016 after local landowners protested the compensation they received for their land. Locals had stated grievances in 2015 including their fear the turbines would cause health problems and that they would be forced to sell their land.[17]
- A 300-Megawatts wind power project by Gitson Energy in Bubisa was halted following a dispute over 60,705 hectares of land. Local leaders filed a case against Gitson Energy. The High Court ruled that the Commissioner of Lands had no powers to demarcate the contested land. This decision was upheld by the Court of Appeal.[18]
- The 90-Megawatts Baharini wind power project by Baharini Wind Power Company was halted by a Lamu County Assembly motion in 2020. According to the members of the County Assembly, Baharini Wind Power failed to meet agreed standards such as setting aside land for resettlement.[19] The direct involvement of the investors in a resettlement action plan in 2019 angered local leaders who believed investors were swaying the resettlement process and would have preferred if the process was conducted independently by a third party.[20]
- The Lake Turkana Wind Farm Project is the largest wind power project in sub-Saharan Africa. It is land-intensive, with 365 wind turbines. Local communities' grievances regarding the negative impacts of the project included a loss of livelihoods for the pastoral communities in the project area.[21] The lawsuit filed by PAPs challenged the 33-year lease of 150,000 acres of land in Marsabit County, which they claimed was issued without adequate consultation, remuneration or lease procedure. The court ruled that proper statutory and constitutional procedures were not followed in reserving the land for the project.

In each instance, the delays and challenges associated with human rights concerns related to these projects had direct consequences for the companies and investors involved; the Kinangop Wind Power and Baharini Wind Power have been postponed indefinitely. This came after developers had made progress on the renewable energy farm's construction. For example, the Kinangop Wind Power Project was halted after all finances were depleted, but before it was completed. Protests, which delayed the project and raised expenditures, played a big role in this. Investors in other projects, such as the Akiira Geothermal Project, withdrew, causing further delays. Some ventures were put on hold, postponing returns on investment. The Bubisa Wind Power Project stalled as a result of litigation, presumably with financial consequences for investors.

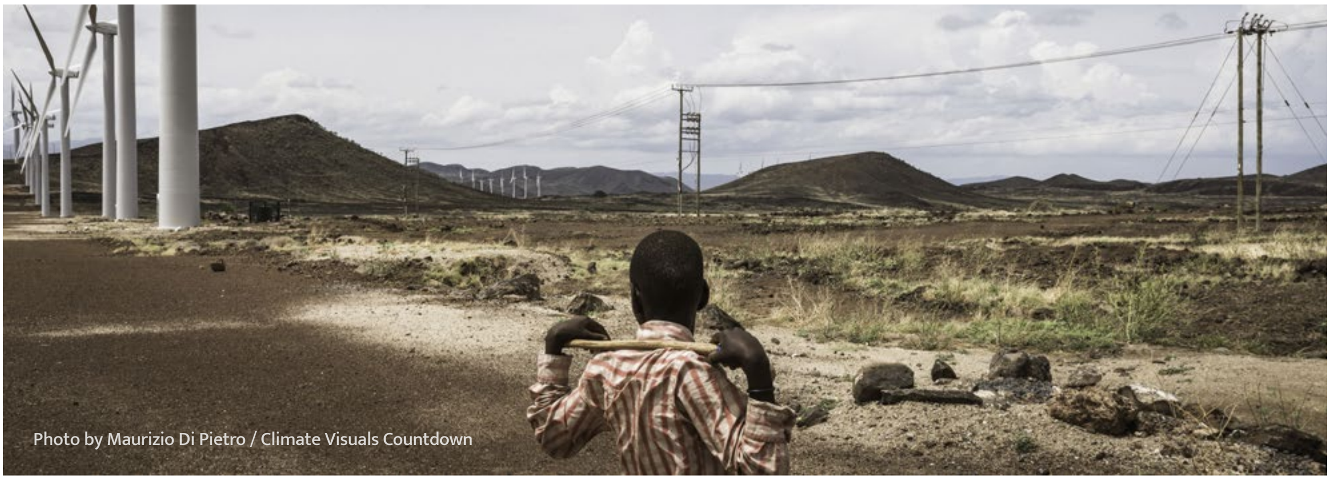


Photo by Maurizio Di Pietro / Climate Visuals Countdown

Good practice and opportunity for shared benefit

As documented above, there exists a range of examples where Kenyan communities have suffered negative consequences related to the burgeoning renewable energy sector. There are, however, cases where renewable energy companies have taken measures to improve their practices and foster better relationships with local communities, including developing opportunities for shared benefit. We highlight these good practices to demonstrate the necessity of proactive human rights and environmental due diligence, robust community engagement, and implementation of accessible and effective grievance mechanisms. Together, these practices can allow for conflict resolution between community and company, and also foster opportunities for a range of shared gains – essential for the sustainability of the renewable energy sector. These ultimately benefit all stakeholders, from communities to companies and shareholders. They include:

- **Community ownership:** Kipeto Energy has a memorandum of understanding entitling land owners to 1.4 % of the revenue from the turbines on their land. It also has a project Community Office to handle complaints and share information on the project. Gitson Energy also provided for community sharing of the benefits of the project.
- **Engagement with communities:** Local communities impacted by Akiira's operations raised concerns about the potential impacts of the project on the environment. The company met with the aggrieved people and the issues were resolved.
- **Responding to grievances:** The Resource Centre has approached three companies (Lake Turkana Wind Power, KenGen and Akiira Geothermal) to seek responses to grievances about their operations. Akiira Geothermal and Lake Turkana Wind Power responded. KenGen did not respond. The companies' willingness to respond to our outreach was a first step towards enhancing their transparency.
- **Resettlement of PAPs:** PAPs KenGen's Olkaria IV Project benefited from successful settlement on 1,500 acres of land after the European Investment Bank (EIB) Complaints Mechanism triggered a Mediation Agreement. This resulted in an Agreement Olkaria IV Resettlement Mediation of 28 May 2016.
- **Withdrawing lawsuit against local advocates:** At the request of financiers, KenGen withdrew a lawsuit against protestors, who alleged non-compliance with the resettlement plan.

It must be noted that most of these initiatives have been developed after community protests or referral to a third party for mediation, indicating the industry still has some way to go in proactively identifying and mitigating human risks – and consequent risks for investors, as rising incidents of protests can halt projects and potentially affect the value of investments. Ideally, these practices should be implemented before the situation escalates and harms are caused. Nevertheless, these examples highlight there are ways to address human rights risk and impacts through robust engagement and remedy. These mechanisms and practices should form part of investors' due diligence as they assess investment opportunities along the renewable energy value chain.

Recommendations

Renewable energy, if developed in a manner that is rights-respecting, has the potential to enable a transition to a net zero carbon economy in a way that fosters sustainable development, is socially just, inclusive, and beneficial for all, and encourages strong new investment.

To play their part in achieving this goal, investors should put in place the following measures:

- Undertake rigorous **human rights and environmental due diligence** and review potential investees for any past involvement in human rights abuses. Avoid investing in companies with this track record.
- Engage investee companies which cause, contribute to, or are directly linked to human rights and environmental harms, including attacks on HRDs, to insist companies rapidly **mitigate harm and provide access to remedy** to those affected. Where land has been acquired from the community by the company or through the government on behalf of the investee company, investors should ensure that such acquisition did not compromise livelihoods, and that compensation provided is fair and timely.
- Where an Indigenous community is affected, investors should require the investee companies to ensure that all aspects of their operations are respectful of the **Indigenous community's rights, including the right to FPIC**. This must include special measures to protect women and livelihoods.
- Engage regularly with investee companies to ensure they have put in place **mitigation and remediation measures** to human and environmental risks associated with their projects, to prevent abuse and avoid legal, financial, and regulatory risks.
- Establish and publicly communicate **human rights standards** for all renewable energy investment (for both investors and investor-owned companies), consistent with the UNGPs and emerging official ESG standards.
- Support companies which engage in both **co-benefit and co-ownership models** to build long-term value and stable development.
- Divest as a last resort, and with an **exit strategy** that includes human rights and environmental due diligence to avoid abuse and harm.

Endnotes

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Business & Human Rights Resource Centre is an international NGO which tracks the human rights impacts of over 10,000 companies in over 180 countries, making information available on our 10-language website.

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