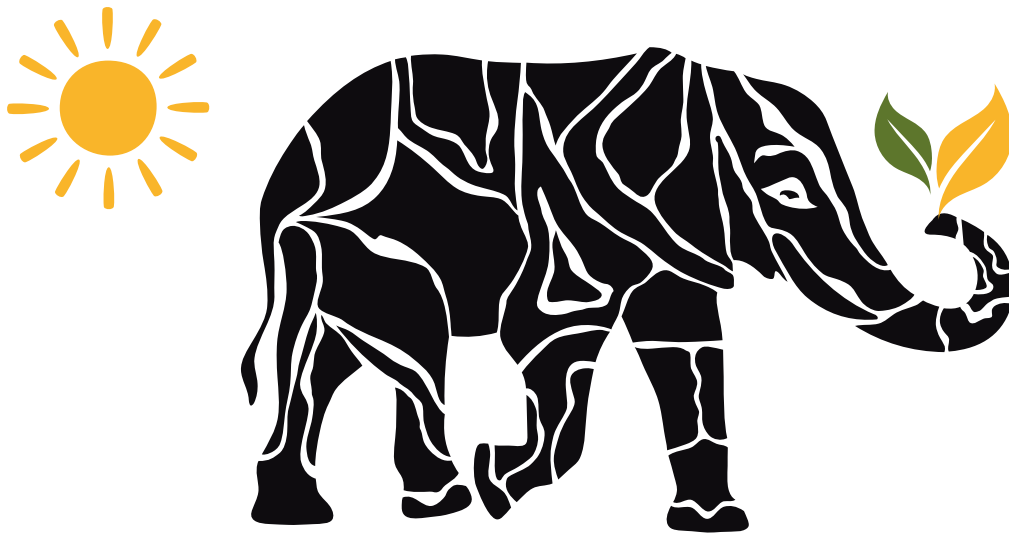


# CENTRING **JUSTICE** IN THE JUST ENERGY TRANSITION

## MITIGATING HUMAN RIGHTS VIOLATIONS IN AFRICA'S GREEN ENERGY SECTOR



**A COMPENDIUM OF CASE STUDIES FOR POLICY-MAKERS, GOVERNMENTS  
AND NEGOTIATORS AT THE INTERGOVERNMENTAL PANEL ON CLIMATE  
CHANGE CONFERENCE OF THE PARTIES (IPCC COP28)**



**A Just Energy Transition has two main components. The first is the transition from predominantly fossil fuel-based energy sources to renewable energy. The second component is centring the “just” in energy transitions.**

This has not been prioritised in decision-making processes and the implementation of energy transition policies and initiatives in Africa. If this is not done, within the transition, new projects coming onboard can and will contribute to human rights abuses and environmental challenges. Indigenous peoples and local communities are already facing the self-same or similar negative impacts and human rights violations to those experienced by fossil fuel- and extractive-affected communities.

Justice requires us to centre human and environmental rights in the Just Energy Transition. It is important to learn from the past. The following case studies show where violations of human rights are happening as a result of “green” energy projects and programmes in Africa.



## RECOMMENDATIONS

If we are to see justice within the Just Energy Transition in Africa, the following recommendations are made:

- **Meaningful public participation, people-centred decision-making and access to information** must be prioritised in all Just Energy Transition initiatives to guarantee rights to access information, to be part of public participation processes and to access justice and remedies as enshrined in the International Covenant on Civil and Political Rights, as well as the preamble of the Paris Agreement.
- International financing parties must set **human rights targets and standards** as requirements for funding and financing of Just Energy Transitions initiatives.
- States must support **access to energy** through the right to development as outlined in the United Nations Declaration on the Right to Development and meeting Sustainable Development Goal 7 to ensuring access to clean and affordable energy.
- All Just Energy Transition initiatives must **respect communities' land rights and cultural, traditional and small-scale practices** in terms of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.
- **Different models** in green, renewable energy which respect socio-economic and environmental rights of communities and address inequalities of the past energy systems must be established.
- Developers and businesses must uphold **community benefit agreements** that are enforceable in accordance with the principles in the United Nations Guiding Principles on Business and Human Rights.
- All Just Energy Transition initiatives must **promote and respect the rights of Indigenous Peoples** in terms of the International Labour Organisation Indigenous and Tribal Peoples Convention 1989 and the United Nations Declaration on the Rights of Indigenous People.
- States must **protect and respect the rights of environmental and human rights defenders** to participate in the Just Energy Transition, to access information, to express themselves, assemble and associate in accordance with the United Nations Declaration on Human Rights Defenders.
- States should provide support and recognition of the proposed appeal and grievance processes under Article 6.4 of the Paris Agreement. The **grievance procedure** could be utilised by communities where an activity, its implementation or its life cycle has, or is likely to have, an adverse effect on aspects of the natural or socio-economic environment.

**Acknowledgements:** The compendium includes information from: Anne Njoroge of Natural Justice, Timothy Ngetich, Justus Kithi Tsofa of Natural Justice, Yegeshni Moodley from Groundwork, Thialy Faye from Oxfam and Professor Tracy-Lynn Field.



# GREEN HYDROGEN PROJECTS IN SOUTH AFRICA

## BACKGROUND

In South Africa, an accelerated push for Green Hydrogen facilities in multiple areas has been facilitated through the Green Hydrogen Commercialisation Strategy. Natural Justice and other civil society organisations, through Green Hydrogen Watch, have recorded impacts from green hydrogen projects in two sites: Boegoebaai and Ermelo. Green hydrogen projects have been earmarked as **Strategic Integrated Projects**. This allows for the fast tracking of projects through streamlined environmental authorisations.

In Boegoebaai in the Northern Cape, the construction of green hydrogen initiatives have begun through the Northern Cape Green Hydrogen Strategy which was launched in November 2021 at the IPCC COP26. Boegoebaai is an area within South Africa where many Indigenous San and Khoi communities reside.

In Ermelo in the Mpumalanga province, in close proximity to one another, two green hydrogen and ammonia plants are close to the beginning of construction. Environmental Impact Assessments were conducted during 2022/2023.

## POTENTIAL AND REPORTED VIOLATIONS

Communities in Ermelo and Boegoebaai have reported that they have not been provided with information on what green hydrogen is, how it works, who it will benefit and how it will impact the community. When there has been public consultation, it has been insufficient. This is an infringement of the South African Constitutional guarantee to administrative justice and access to information, and violates standards of public participation.

While Green Hydrogen is a component of the Just Energy Transition and may play a necessary role in reducing country-level carbon emissions, land rights and security are threatened. Large areas of land are needed for solar and wind farms, which generate the energy needed for the projects, including providing energy to part of the project supply chain. The land of small-scale farmers, fishing rights and communities' land rights are being threatened.

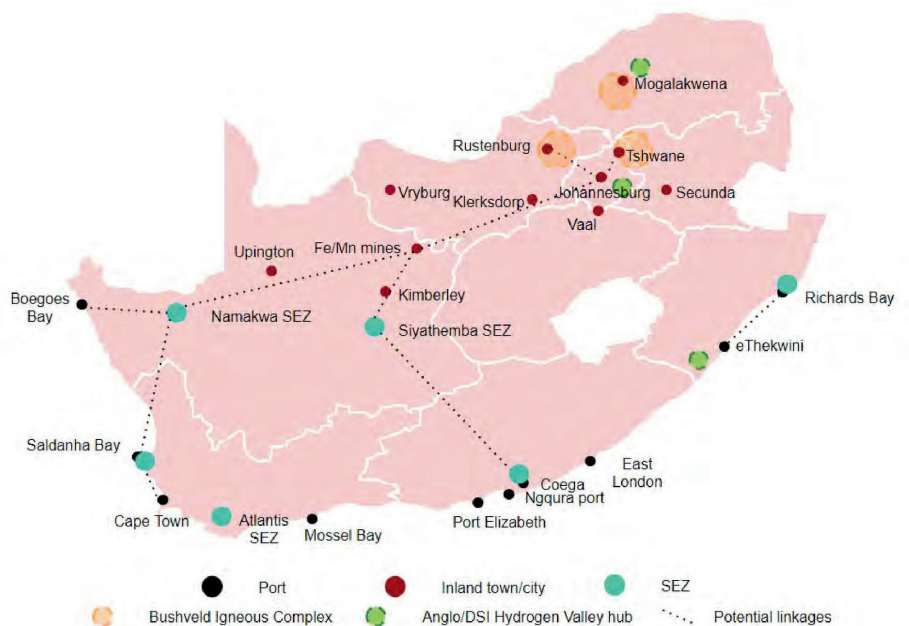


Figure 5.1: Geographic location of potential GH Hubs



## POTENTIAL AND REPORTED VIOLATIONS CONT...

For communities close to Green Hydrogen projects, many have already encountered land rights violations through dispossession of their land and damage to the environment from mining - in Boegoebaai, by diamond mines, and in Ermelo, by coal mines and unrehabilitated mines.

In addition to land rights violations, Green Hydrogen has environmental impacts. There are fears that the water needed for the production of Green Hydrogen and the process of desalination of sea water for these purposes, will have an impact on aquatic life and water sources which communities depend on. Included are small-scale fishing communities who rely on healthy ocean systems for their livelihoods. Lastly, people in the communities are experiencing negative social impacts, due to the influx of people into the region who are seeking jobs.

There are real concerns that a mix of gas (a fossil fuel) will be used in the making of hydrogen due to lack of sufficient renewable energy supplies for the production of the Green Hydrogen. Using gas will be counter to the intention of Green Hydrogen, which is to lower carbon emissions.

A further concern of Green Hydrogen is the inefficiencies in energy use – particularly in a country where there are still gaps in electricity access, as well as rolling blackouts which have severely impacted the economy. A more efficient use of renewable energy may simply be to supply existing industries and households.

## LESSONS LEARNED AND WAY FORWARD

Communities and civil society are not being included in the planning and implementation of the Green Hydrogen Commercialisation Strategy in South Africa. No civil society representation was on the South African Green Hydrogen Panel who developed the Strategy. As a result, a loose coalition of civil society and community-based organisations exists which shares information on Green Hydrogen projects across South Africa under the name H2Watch. This has been important to monitor project development, but more should be done to include civil society and communities' voices, and these representatives should be present on any national project panel.

The labelling of projects as “green” energy seems to allow for less consideration of human rights issues such as public consultation, land rights and socio-economic rights. However, the same standards and principles of democracy and participation should have application. Projects are only aligned with the Just Energy Transition when standards of public consultation and respect for human rights are present.



***“Whether dirty or clean energy, it seems to be the same kind of operations. When public participation is seen as a privilege and not an entitlement, this is a problem.”***

- Yegeshni Moodley, Climate and Energy Justice Senior Campaign Manager: groundWork



# GREEN HYDROGEN PROJECT IN NAMIBIA

## BACKGROUND

In 2021, the Green Hydrogen Council was formed, and Hyphen Hydrogen Energy was selected in November 2021 as the preferred bidder for the project. Hyphen is a consortium of Enertrag, a German company based in Brandenburg, and Nicholas Holdings, an infrastructure investor in sub-Saharan Africa. In May 2023, Hyphen was finally awarded the contract.

An area of 4,000 km<sup>2</sup> of land was allocated for Phase 1 in the Tsau IlKhaeb National Park, formerly known as the Sperrgebiet, for the Green Hydrogen project.

Production is estimated at 300,000 tons of Hydrogen (GH<sub>2</sub>) and 1.7 million tons of ammonia (NH<sub>3</sub>) per year, to be generated from 5–6 GW of renewable energy, of which 3 GW will be used in electrolyzers. The total investment is expected to come to US\$10 billion, which is roughly equivalent to Namibia's gross domestic product.

In March 2022, a cooperation agreement was signed between Namibia and Germany. In November 2022, the President of the European Commission, Dr Ursula von der Leyen, and the President of Namibia, Dr Hage Geingob, signed an MoU at COP27 in Egypt on the establishment of a strategic partnership between the European Union and Namibia with regard to sustainable raw materials and renewable hydrogen. During the visit of German Energy Minister Mr Habeck in December 2022, Geingob signed a document of intent to supply GH<sub>2</sub> to Germany. Mr Habeck remarked "There would hardly be a better place in the world to produce GH<sub>2</sub> using wind and solar energy," and that negotiations would be conducted on an eye-to-eye and respectful level, and not a top-down one...."

## POTENTIAL AND REPORTED VIOLATIONS

Namibia is gripped in the global excitement around the development of Green Hydrogen. Some call it the solution for the decarbonisation of our planet, and ultimately the saviour of the climate. But, what impact will it have on Namibia's biodiversity and establishing socio-economic equality in a country, that according to the World Bank, has the second highest inequality of income distribution in the world?

How realistic are the expectations created by the Tsau IlKhaeb National Park project?

What energy benefits will Namibia receive from the project? Green hydrogen will be exported to Germany, while Namibia imports up to 70% of coal-produced dirty electricity at high cost. Will Namibia be supplied with green hydrogen electricity; will the poor receive some of it and will it be affordable?



## POTENTIAL AND REPORTED VIOLATIONS CONT...

According to research by Bertchen Kohrs, questions remain around issues such as the legal framework and regulations for the production, transport, storage and use of GH<sub>2</sub>, which have yet to be determined. A desalination plant must be constructed. Nine kilogrammes of seawater are required to produce one kilogram of GH<sub>2</sub>. Current electrolysis technologies leave behind a caustic solution that should not be disposed of into the sea. The desalination process also produces a highly concentrated toxic residue called brine. The noxious waste from both desalination and electrolysis must be disposed of safely.

Transport issues is also a concern - for safe transport, GH<sub>2</sub> must be cooled to minus 250 degrees Celsius and liquefied. Ships capable of carrying GH<sub>2</sub> must be designed and built. Also, there are no terminals suited for GH<sub>2</sub> storage.

## LESSONS LEARNED AND WAY FORWARD

GH<sub>2</sub> has the potential to be a valuable, albeit expensive, energy resource that should be developed and used wisely to achieve the greatest possible reduction in CO<sub>2</sub> emissions. However, it is important to raise questions as to how local economies and communities will benefit. Is Green Hydrogen capable of being an energy source used for a Just Energy Transition if benefits are largely seen by foreign countries?

Similar to the South African Green Hydrogen project planning, there will be an impact on biodiversity. Tsau IlKhaeb National Park is also the location where exceptional endemic biodiversity was able to grow undisturbed for time immemorial. For Phase 1, 4,000 km<sup>2</sup> of the Park will be used, while for the proposed Phase 2, an additional 14 000 km<sup>2</sup> of the Park will be used.

An Environmental and Social Impact Assessment that only examines the Tsau IlKhaeb National Park is not enough. At present, offshore exploration for oil and gas is also taking place. In addition, other mineral exploitations and several maritime activities projects are being conducted in the south of Namibia and more are likely to come - all have the potential to contribute to accumulated environmental losses. It is recommended that a Strategic Environmental Assessment (SEA) be conducted in order to evaluate the overall impact of all activities on the economic, ecologic, and social effects.

***“The challenges of solving climate change and biodiversity loss are linked and as such have to be addressed in an integrated way. Green energy transition should not come at the expense of biodiversity.”***

- Dr Willem Odendaal, Programme Officer, Natural Justice



# THE NUCLEAR POWER PROGRAMME IN KENYA

## BACKGROUND

In Kenya, under the Nuclear Power Programme, there are plans for the first nuclear power plant of 1,000 MW to be commissioned by the year 2027 and it is expected to grow to 4,000 MW by 2035. However, 13 sites have been identified as candidate sites and cover the Coastal Region, Lake Victoria Region and the Lake Turkana Region.

While nuclear is not a renewable energy source, there are limited or no carbon emissions from the actual nuclear generation process. This is not discounting the carbon emissions and other environmental impacts associated with processes to develop, run and maintain nuclear power plants.

In Kenya, the Nuclear Power and Energy Agency (NuPEA) is charged with the responsibility of promoting and implementing Kenya’s Nuclear Power Programme. To comply with the Environmental (Impact Assessment and Audit) Regulations of 2003, NuPEA published the Nuclear Power Programme Strategic Environmental and Social Assessment (SESA) report. Natural Justice made comments on the SESA report and the potential and current violations of communities’ rights.

## POTENTIAL AND REPORTED VIOLATIONS



Figure 3-4: Map of Lake Victoria Basin  
(Adopted from Koyombo and Jorgensen, 2006)

One of the foremost concerns highlighted in the comments on the SESA report was the failure to consult with local communities and provide them with access to information. The key stakeholders that were referred to in the communication strategy did not include local communities. Additionally, while categorising the relevant stakeholders, host county communities were categorised as being of “low interest”.

The SESA report shows that candidate sites for nuclear facilities are mostly situated in areas or counties that have groups and communities that are listed as “vulnerable and marginalised”. The Nuclear Programme must take extra caution to protect the human rights of these groups. However, the report does not analyse the impacts of nuclear facilities on the culture, heritage, land and landscape associated with these groups.

Some of the candidate sites also include coastal areas, which are home to marine life, rare species, mangroves and forests. Some of these areas have high environmental sensitivity. The SESA report did not address the degree of environmental sensitivity. The report analyses the impacts on birds but not the impacts on other parts of the ecosystem.



## POTENTIAL AND REPORTED VIOLATIONS CONT...

The report focuses on the so-called positive aspects of nuclear on the climate and fails to recognise the cradle-to-grave emissions associated with these projects. Although running a nuclear power plant produces near zero greenhouse gas emissions, the mining and transport of materials, as well as the construction of the necessary infrastructure, are examples of activities that release carbon emissions.

Lastly, Natural Justice's comments also focused on the costs of nuclear facilities. The SESA report claims that nuclear energy is cheaper than energy produced by fossil fuels, yet the report contains grossly incorrect information about the implementation and operational costs of a nuclear power programme. Another important consideration on cost is that investments in nuclear energy will remove funding from investments in renewable energy.

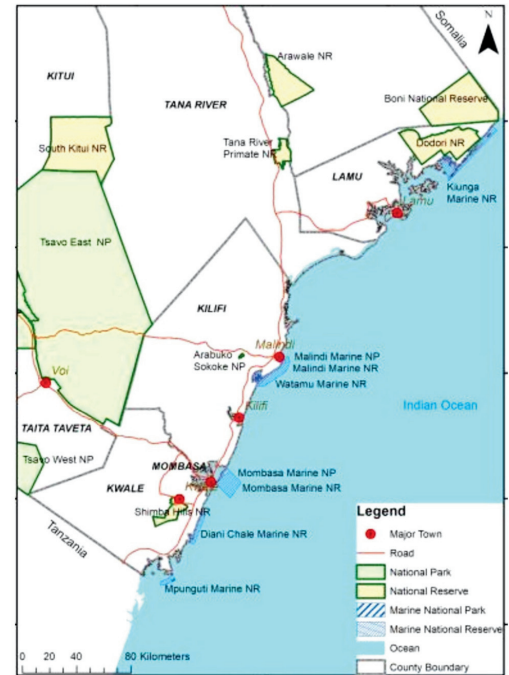


Figure 3-7: Map of Coastal Region  
(Source: Kenya Wildlife Service)

## LESSONS LEARNED AND WAY FORWARD

During the development of the SESA report, public consultations with communities were limited, and communities were considered as “low interest” stakeholders. However, nuclear power facilities have real adverse impacts on the natural and social environment. The purpose of public consultation is to ensure that aspects relating to heritage, culture and biodiversity are identified. As this was not done, harms to these have not been identified. Governments should pay greater attention to the various violations of rights that occur during any project – and the voices of communities must be valued at every level of decision-making.

By comparing the costs and impacts of fossil fuel energy in relation to nuclear energy, nuclear may be seen as a better option. However, should the same economic and power supply feasibility be done with clean, renewable energy such as wind and solar, nuclear energy is expensive and cannot compete. While governments must consider the best economic option for improving energy access, they must not fail to identify hidden environmental and social costs, which in the case of nuclear, could be significant.



***“People who have the burden of the nuclear power plant are the voices for negotiations.”***

- Justus Kithi Tsofa, Community Environmental Legal Officer: Natural Justice





# GEOTHERMAL EXPLORATION IN KENYA

## BACKGROUND

Geothermal is a renewable energy source with a smaller carbon footprint than fossil fuels. It is derived from heat from the earth which can be used to produce electricity. In Kenya, the exploration for geothermal energy began in the 1950s, but the first geothermal power plant was only built in the 1980s.

In 2017, Sosian Energy Limited applied for and was granted a Geothermal Resource License No. 8/2017 by the Ministry of Energy in Kenya. In 2019, an Environmental Impact Assessment was undertaken for the thermal gradient holes and exploration wells. Other plans developed were the resettlement action plan and land acquisition and compensation plan. However, questions have been raised about the Environmental Impact Assessment and the process leading up to the granting of the license. These include flaws in the public participation process and the failure to consider all the impacts.

The Environmental Impact Assessment report has been appealed by the Menengai West Stakeholders Forum with support from Natural Justice and the Katiba Institute. Menengai West Stakeholders Forum would like, firstly, the EIA license granted to Sosian Energy Limited to be cancelled; secondly, a new EIA to be conducted; and thirdly, the undertaking of a Strategic Environmental Assessment for all geothermal activities planned by the Geothermal Development Company along the greater Menengai Caldera crater. The judgment is still pending.

## POTENTIAL AND REPORTED VIOLATIONS

In this case, the affected community have indicated that they were not provided with project information, which is in contravention of the principle of public participation and the right of access to information, as found in the Kenyan Constitution. Since public participation was undertaken during the scoping phase of the project, the project and its effects could not be explained.

The case that has been made against it argues that any comments received from such a flawed process does not meet the requirements of adequate and effective public consultation. The Public Hearing did not allow stakeholders to give their views on the proposed project. At the hearing, presentations by community residents were restricted.

Many promises have been made to the community by the companies involved. This included promises of jobs, to build schools, construct roads, health facilities and sponsoring children to attend school. However, it was only in 2022 that some of these promises were fulfilled and very few job opportunities have been made available to the community.



## POTENTIAL AND REPORTED VIOLATIONS CONT...

Sosian Energy Limited did not carry out baseline data collection on air quality. There was also limited focus of the health effects of geothermal projects. Health impacts can include irritation of the eyes and nose, coughs, breathlessness, nausea, headaches and mental health symptoms such as depression. The projects also cause noise pollution. The only mitigation measure proposed was a communication strategy to address community members who may be affected by odour nuisance.

Local farmers have felt impacts on vegetation and movement of wildlife. The communities around these geothermal holes have had to endure acid rain and earthquakes. The project also failed to consider any climate change impacts.

## LESSONS LEARNED AND WAY FORWARD

Geothermal projects have many health- and environment-related impacts. Baseline reports on air and soil quality must be conducted and included in the Environmental and Social Impact Assessment prior to a project commencing so the true impact of the project can be measured. A thorough health assessment would also be beneficial to track these issues within the community. In this case, a Strategic Environmental Assessment must also be conducted to account for accumulated and cross-boundary impacts beyond the immediate area.

Similarly, to other projects in Kenya, such as the Lake Turkana Wind Power project, projects can be derailed if just process is not followed. Should public consultation not be conducted in terms of the law, legal challenges may take place. Therefore, those involved, including Environmental Impact Assessment practitioners, developers and governments should ensure that meaningful public participation is completed and the voices of communities are heard.

A proper consideration of mitigation measures should be done, and these measures provided to the communities who will be affected. Furthermore, project developers must consider the expectations that arise from promises and the consequences of failing to fulfil them. As a Just Energy Transition project, the Sosian Energy project is an example of how communities can fail to benefit, which violates principles of justice and equity.



***“The kind of investment put into the crater and kind of output given to communities is not comparable...It’s a bit confusing because geothermal is termed as green energy but when you critically look at it, there are so many negatives from it”.***

- Timothy Ngetich, member of the community



# OFF-GRID SOLAR ACCESS PROJECT IN KENYA

## BACKGROUND

In Kenya, the Off-Grid Solar Access Project (KOSAP) is a flagship project of the Ministry of Energy and financed by the World Bank. Its objective is to provide electricity and clean cooking solutions to remote, low density, and traditionally underserved areas of the country.

The project is part of the government's commitment to provide universal access to electricity in Kenya by 2022 and universal access to modern energy services for cooking by 2030. It forms part of Kenya's Vision 2030.

In December 2019, the Rural Electrification and Renewable Energy Corporation (REREC) submitted an **Environmental and Social Impact Assessment Study Report** for the proposed Mkwiro Village mini-grid power project within Wasini Island, Lunga Lunga constituency, Kwale County.

## POTENTIAL AND REPORTED VIOLATIONS

The Kwale county community which has been directly impacted by the solar project has expressed several concerns regarding the project. The community members, who have no access to electricity, are yet to gain access to the mini grid. While there had been public participation meetings to discuss compensation for land, communities know very little about the project. With this lack of information comes doubts whether the power provided will be free or affordable for poor local communities.

During site visits, community members also complained that illegal logging of mangroves had occurred to make land available for the project.

The community members indicated that there was no Project Implementation Committee (PIC), which they believe is important in the implementation of the project. The community members informed Natural Justice that there was also no conflict resolution committee. They believed this committee is necessary for raising their grievances. The project, in their opinion, was driven by the project proponent alone.



## LESSONS LEARNED AND WAY FORWARD

Renewable energy projects do not always provide energy for nearby communities. This must be stipulated in the project plans clearly and communities should be consulted regarding what they can expect from the project, and how they can contribute to its implementation. However, it is important that communities benefit from these projects. This could be through ensuring that they access the renewable energy and that they also benefit from the jobs created by the renewable energy projects. The Paris Climate Agreement in its preamble, states that government must “[emphasise] the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty.”

Renewable energy projects should not destroy biodiversity, especially biodiversity that is crucial for environmental functioning, climate adaptation or that which can act as carbon sinks. Mangroves are particularly sensitive, and across the world, facing numerous threats. They are owed special protection, and this should have been factored into the project planning. When considering Just Energy Transition initiatives, governments and project proponents should identify land that is not connected to communities or an integral part of the local environment and livelihoods.



***"Access to energy is a huge component in the just energy transition. A country's positive steps towards renewable energy investments should result in increased energy access. Otherwise, the just energy transition is non-existent."***

Anne Njoroge, Programme Officer: Natural Justice



# JUST ENERGY TRANSITION PARTNERSHIPS – SENEGAL AND SOUTH AFRICA

## BACKGROUND

In 2021, South Africa entered the first Just Energy Transition Partnership in Africa with France, Germany, the United Kingdom, the United States of America and the European Union. Through the partnership, the international parties will mobilise \$8.5 billion between 2023 and 2027 for South Africa's Just Energy Transition. The funds will be provided predominantly as loans and loan guarantees. In June 2022, South Africa's Presidential Climate Commission published a Just Transition Framework for South Africa to guide the process. This guide incorporates the value of **distributive, procedural and administrative justice** needed in just energy transitions and the partnerships that follow.

In 2022 and 2023, Senegal negotiated and signed a Just Energy Transition Partnership with international partners France, Canada, the European Union, the United Kingdom and Germany. The partnership will provide Euro 2.5 billion in financing to Senegal over the initial 3-to-5-year period. This partnership will increase renewable energy from 30% to 40% of the country's energy mix. It is seeking to provide universal electrification to Senegal's residents, as only 70% of people currently have access to electricity. Much of the rural population do not have access.

## POTENTIAL AND REPORTED VIOLATIONS

With both Just Energy Transition partnerships, there have been complaints about the lack of public consultation and access to information. At the African People's Assembly which took place during the African Climate Summit in 2023, there was a call from civil society organisations for transparency and inclusion in this process. They stated the need for monitoring and evaluation for all planned activities which are made public. This includes participation of civil society and communities, highlighting Indigenous peoples, women and children.

There are specific needs and requirements for women within Just Energy Transitions. This is due to women carrying the bulk of home and care responsibilities, which include providing energy to the household (usually in the form of the collection of biomass). Household access for poorer and rural communities should be prioritised. At the same time, negative environmental, land rights and social impacts of renewable energy projects can have disproportionate negative effects on women.

It is important to prioritise the local context by creating "green jobs" for communities. There needs to be skills and technology sharing, especially when it comes to renewable energy. In the instance of South Africa, formal jobs within the fossil fuel sector, including in coal mines, need to be replaced. However, there are also informal jobs that are created around the fossil fuel supply chain, like informal traders, and they must not be forgotten.



## POTENTIAL AND REPORTED VIOLATIONS CONT...

Although South Africa and Senegal have committed to Just Energy Transitions, both countries are still giving some priority to the exploration and production of fossil fuel-based energy sources. For example, both South Africa and Senegal have granted licenses for exploration and production of gas (both onshore and offshore). Senegal is making gas a transitional energy in its gas-to-power strategy. These projects are not in line with energy transitions and will cause damage to the environment, violate human rights and contribute to the deepening climate crisis.

## LESSONS LEARNED AND WAY FORWARD

Just Energy Transitions in Africa require not only an energy transition from fossil fuels to renewable energy, but need to be people-centred and human rights-centred through meaningful consultation with affected workers and communities. Billions of dollars are at stake through these partnerships and priority should be given to broadening access to energy and ensuring everyone benefits - equity of access and enjoyment should be prioritised in the outcome.

Just Energy Transitions must include an appreciation of the impacts on vulnerable groups, including Indigenous peoples, youth and women. Access to energy should be prioritised for households, where women hold the bulk of family responsibility. At the same time, the negative impacts of projects may also be felt by these groups, and these should be mitigated.

Pledges for financing Just Energy Transition Partnerships should be based on meeting targets and setting standards for access to energy and promotion of human rights, including land, labour, cultural, social and environmental rights.

***“Nous, acteurs de la société civile sénégalaise, appelons les autorités étatiques à mettre en place un cadre de gouvernance inclusif autour de la mise en œuvre de ce partenariat. Le déploiement rapide d'énergies renouvelables est la réponse à la fois à la crise climatique et à l'accès à l'énergie. Mais il est impératif que les solutions qui vont être adoptées soient centrées sur les populations et appropriées sur le plan environnemental et social.***

***Le JETP doit également être une opportunité pour davantage promouvoir le contenu local. Les objectifs et les plans en matière d'énergies renouvelables en Afrique doivent garantir aux promoteurs (et en particulier aux acteurs à plus petite échelle et moins expérimentés ou disposant de moins de ressources, tels que les agriculteurs, les coopératives, les communautés, les petites et moyennes entreprises et les institutions publiques) une sécurité d'investissement à long terme (par le biais, par exemple, de tarifs de rachat et d'autres garanties de paiement).”***



Thialy Faye, Responsable du Programme Justice Economique d'Oxfam au Sénégal



# WIND POWER PROJECT IN KENYA

## BACKGROUND

The Lake Turkana Wind Power Project is found in Marsabit county in Kenya. It is considered one of the largest wind farms in Africa, and has 365 wind turbines and a high voltage substation. It also includes a 438km transmission line constructed by the Kenya Transmission Company. The project provides 17% of Kenya's installed capacity and is a private-public partnership project developed on land used by traditional pastoralists. This land is trust land, held by the municipality for use by the local communities.

## POTENTIAL AND REPORTED VIOLATIONS

The Lake Turkana Wind Power Project has always suffered under controversies, mostly around the land that is being used for the project, which the courts found was illegally acquired. The project occupies a vast concession of over 607 square kilometres neighbouring with Lake Turkana, a UNESCO heritage site and the largest desert lake in the world. The land is inhabited by four pastoralist communities – the Rendilles, Turkanas, Samburus and El Molos – who have used it for livelihoods, cultural, ceremonial and spiritual purposes for centuries. The local Indigenous Peoples claim to have customary rights to the land and that the company failed to properly consult them before their land was requisitioned.

Africa's largest wind power firm, **Lake Turkana Wind Power Limited**, now risks cancellation of its title deeds for the land on which the project stands. On the 24 May 2023, the High Court in Nairobi upheld its earlier finding that nullified title deeds for 150,000 acres of community land.

While throwing out a review application by the power producer, the court stated that the Marsabit county government, the Attorney-General, the Chief Land Registrar and the National Land Commission deliberately failed to obey orders of the court issued on 19 April 2021 that gave them one year to regularise the process of allocation of the land to it.

***“We note that no action has been taken for over one year since delivery of the judgment. It is the view of the court that Lake Turkana Wind Power Kenya Limited has not proffered a good reason as to why the period provided gratuitously by the court was not adequate to carry out the process of regularization,”*** the court ruled.

They noted that since they rendered their decision on 19 April 2021 declaring the acquisition of the land illegal and unconstitutional, no action has been taken to initiate the process by any of the government authorities involved.

As of 31 March 2017, when all the 365 wind turbines were installed, the project employed 911 people, of whom 81% were local. There are, however, grievances between the Turkana and Samburu, over fairness in distribution of jobs.



## LESSONS LEARNED AND WAY FORWARD

The Lake Turkana Wind Power Project case study is a cautionary tale of what can happen when renewable energy projects do not follow due process, and ignore the rights of people who live on or access community land. While impressive in nature, the rights of communities have trumped those of the developer, who has claimed the project provides clean and affordable energy. The community were able to organise themselves around the cultural and heritage rights, as well as their claims that the project put their livelihoods at stake. In all renewable energy projects, legal frameworks of land rights applies, regardless of type of energy. Classification as a renewable energy does not preclude application of the legal system and land rights should be respected and protected.

## RESOURCES AND FURTHER READING

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